

A BILL

ENTITLED

AN ACT to Provide for the incorporation and operation of international business companies, and for connected matters.

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BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

PART I—*Preliminary*

1. This Act may be cited as the International Business Companies Act, 2018, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title
and
commence-
ment.

Interpreta-
tion.

2.—(1) In this Act, unless the context otherwise requires—

“affairs” means the relationships among a company, its affiliates and the shareholders, directors or officers of the company, but does not include the business carried on by the company;

“affiliate”, in relation to two or more bodies corporate, means that—

- (a) one of them is the subsidiary of the other;
- (b) each of them is a subsidiary of the same body corporate;
- (c) each of them is controlled directly or indirectly by the same person; or
- (d) a shareholder of one of them, either alone or with an associate or associates, holds fifty per cent or more of the shares of the other body corporate or is entitled to exercise, or control the exercise of more than fifty per cent of the voting power of the other body corporate at a general meeting;

“appointed day” means the date of commencement of this Act;

“approved surveyor” has the meaning assign to it by section 2 of the *Land Surveyors Act*;

“articles” means, except as otherwise expressly provided in this Act, the original or restated articles of incorporation (whether or not restated as amended) and the by-laws;

“associate,” where used to indicate a relationship with any person, means any—

- (a) company of which the person beneficially owns, directly or indirectly, voting securities carrying more than ten per cent of the voting rights attached to all voting securities of the company for the time being outstanding;
- (b) partner or business of that person;

- (c) trust or estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar capacity;
- (d) relative of the person, including the person's spouse;

“banking business” means—

- (a) the business of any one or more of the following activities carried out by a deposit taking institution—
 - (i) receiving deposits from the public which may be invested by way of advances to customers or otherwise;
 - (ii) in the case of a bank, and without limiting the application of subparagraph (i) in relation thereto, receiving deposits from the public on current or deposit account, which is payable, on demand, by cheque or order;
 - (iii) the operation of automated banking machines, automated teller machines or similar devices;
 - (iv) the issue of electronic money; or
 - (v) any other business specified by the Supervisor as banking business by notice published in the *Gazette*; but
- (b) does not include payment products or activities authorized by the Bank of Jamaica under the *Payment, Clearing and Settlement Act* carried out by an entity other than a deposit taking institution;

“beneficial owner”—

- (a) in relation to shares, means the individual on whose behalf the shares are held or on whose behalf a share transaction is conducted;

- (b) in relation to a company, means the individual who exercises ultimate ownership or ultimate effective control;

“board of directors” includes a sole director;

“body corporate” includes a body corporate with or without share capital and whether or not it is a company to which this Act applies (incorporated or otherwise established outside of Jamaica);

“by-laws” means the by-laws of a company referred to in section 4(1)(b)(ii) as amended, from time to time, in accordance with this Act;

“casual vacancy” means a vacancy due to death or retirement rather than removal or resignation;

“certified copy” means—

- (a) in relation to a document of a company, a copy of the document certified to be a true copy by an officer of the company;
- (b) in relation to a document issued by the Court, a copy of the document certified to be a true copy under the seal of the Court and signed by the Registrar or other authorized official of the Court;
- (c) in relation to a document in the custody of or issued by the Registrar, a copy of the document certified to be a true copy and signed by the Registrar;
- (d) in relation to a document not falling within paragraph (a), (b) or (c), a copy of the document certified to be a true copy by a Notary Public, Justice of the Peace, or an attorney-at-law who is admitted to practise in Jamaica;

“Commission” means the Financial Services Commission established by the *Financial Services Commission Act*;

“company” means an international business company incorporated under this Act;

“company number” and “number”, in relation to a company, means the number assigned to the company in accordance with section 6;

“competent authority” means the Registrar, the Financial Services Commission, Tax Administration Jamaica, the Financial Investigations Division of the Ministry of Finance or any other person or entity declared so to be by the Minister, by notice published in the *Gazette*;

“Court” means the Supreme Court of Judicature of Jamaica;

“debt obligation” means a bond, debenture, note or other similar obligation of a body corporate, or guarantee of the obligation, whether secured or unsecured;

“director” means a person occupying the position of director, by whatever named called, of a company and includes an alternate director when acting as a director in accordance with the articles of the company;

“electronic signature” means information submitted in a form or manner acceptable to the Registrar, that is—

- (a) contained in, attached to, or logically associated with, an electronic document; and
- (b) used by a signatory to indicate his adoption of the content of that document,

but does not include any signature produced by a facsimile machine or by an electronic scanning device;

“financial statement” means a financial statement referred to in section 96;

“fractional share” means a partial share in the share capital of a company;

“Government Trustee” means the Government Trustee appointed under section 227 of the *Insolvency Act*;

“incorporator” means a person who signs the articles of incorporation of a company;

“individual” means a natural person but does not include a partnership, unincorporated syndicate, unincorporated organization, trust or a natural person in that person’s capacity as a trustee, an executor, an administrator or other legal representative;

“international service provider” means an individual, firm or company that engages or proposes to engage in the business of providing an international service as defined in the *International Corporate and Trust Services Providers Act*;

“liability” includes a debt of a company arising under section 30, section 125(16) or section 189(3)(f) or (g);

“number name” means the company number in the certificate of incorporation followed by the word “Jamaica” and the word “Incorporated” or the abbreviation “Inc.”;

“officer”, in relation to a company, means a director, secretary or senior executive by whatever name called;

“ordinary resolution” means a resolution (other than a special resolution) that is submitted to a meeting of the shareholders of a company and passed, with or without amendment, at the meeting by a majority of the votes cast or by proxy;

“personal representative”, where used with reference to business shares in that capacity, means—

- (a) an executor;
- (b) an administrator;
- (c) a guardian;
- (d) a trustee;
- (e) a receiver;

(f) a person with lawful authority to act on behalf of a person who is mentally or otherwise incapable of managing his property or affairs;

“recognized stock exchange” means a stock exchange licensed under the *Securities Act*;

“redeemable share” means a share that may be redeemed in accordance with section 26(1);

“referee” means a person appointed by the Court under section 28(6) or 184(2);

“registered office” means the office referred to as such in section 11;

“registered public accountant” has the meaning assigned to it in section 2 of the *Public Accountancy Act*;

“Registrar” means the Registrar of Companies;

“security” means a share of any class or series of shares or an instrument evidencing a debt obligation of a body corporate;

“security certificate” means a certificate issued by or on behalf of a body corporate evidencing a security of the body corporate;

“security interest” means an interest in or charge upon property of a body corporate by way of a mortgage, pledge, hypothecation, assignment or otherwise, to secure payment of a debt or performance of any other obligation of the body corporate;

“send” includes delivery by hand, ordinary or registered mail or telephonic or electronic mail;

“senior executive” in relation to a company, means the chief executive officer, the president, the chief financial officer and any other person who exercises senior managerial functions;

“series”, in relation to shares, means a division of a class of shares;

“share” means a share in the share capital of a company, and includes stock, except where a distinction between stock and share is expressed or implied;

“special resolution” means a resolution that is submitted to a meeting of the shareholders of a company duly called in accordance with section 46, for the purpose of considering the resolution and passed, with or without amendment, by a majority of not less than three-fourths of the votes cast in person or by proxy;

“spouse” means a person—

- (a) to whom a person is married, as recognized under the laws of Jamaica;
- (b) who is a single man who has cohabited with a single woman, as if he were in law her husband, for a period of not less than five years; or
- (c) who is a single woman who has cohabited with a single man, as if she were in law his wife, for a period of not less than five years;

“stated capital account” means an account in the books of a company to which is credited—

- (a) the total issue price (including consideration other than cash) of all classes of shares;
- (b) the full value of transfers to capital by a company from profit or reserves or capital reserves, including the total amount applied in paying up bonus shares issued upon a capitalization of profits or revenue reserve or capital reserves; and
- (c) capital contributions or any other amounts invested by the shareholder;

“Supervisor” means the Governor of the Bank of Jamaica acting in the capacity as the Supervisor of banks, financial holding companies and other specified financial institutions under section 34B of the *Bank of Jamaica Act*;

“telephonic or electronic” means communication in any of the following forms—

- (a) telephone calls or messages;

- (b) facsimile messages;
- (c) electronic mail;
- (d) the transmission of data or information through other prescribed means;

“transfer agent” means a transfer agent appointed under section 82;

“trust indenture” means any deed, indenture or other instrument, including any supplement or amendment thereto, made by a body corporate under which the body corporate issues or guarantees debt obligations and in which a person is appointed as trustee for the holders of the debt obligations issued or guaranteed thereunder;

“ultimate effective control” means the control exercised by an individual who—

- (a) is in a position to determine the policy of the company or to make the final determination as to the decisions to be made by the company; or
- (b) by himself or together with a connected person within the meaning of subsection (5) is in a position to control more than fifty per cent of the voting power in the company or would hold interest in more than fifty per cent of the issued shares of the company;

“ultimate ownership” means any situation in which ownership of a company is exercised by means of control other than direct control, and includes any arrangement utilizing one or more persons through which beneficial ownership of a company is established;

“unanimous shareholders agreement” means an agreement signed by all the shareholders of a company;

“uncertificated security” means a security which does not have a security certificate;

“voting security” means any security other than a debt obligation of a body corporate carrying a voting right either under all

circumstances or under some circumstances that have occurred and are continuing;

“warrant” means any certificate or other document issued by a company as evidence of conversion privileges or options or rights to acquire securities of that company.

(2) For the purposes of this Act, a body corporate (“A”) shall be deemed to be a subsidiary of another body corporate (“B”) if, and only if A is—

- (a) controlled by—
 - (i) B; or
 - (ii) B and one or more of its bodies corporate each of which is controlled by B; or
- (b) a subsidiary of a body corporate that is the subsidiary of B.

(3) A body corporate shall be deemed to be the holding body corporate of another body corporate if and only if that other body corporate is its subsidiary within the meaning of subsection (2).

(4) For the purposes of this Act, a body corporate (“C”) shall be deemed to be controlled by another person (“D”), or by two or more bodies corporate acting jointly (“E”), if and only if—

- (a) voting securities of the first-mentioned body corporate C carrying more than fifty per cent of the voting rights are held (other than by way of security only) by, or for the benefit of, that other person D or those other bodies corporate E, as the case may be; or
- (b) the votes carried by such securities are sufficient, if exercised to elect a majority of the board of directors of C.

(5) For the purposes of subsection (1), the following persons shall be treated as being connected with a given person (“A”), and the person with A, and shall be so treated notwithstanding that at the relevant time any of the persons in question (not being individuals) had not yet come into existence or ceased to exist—

- (a) a holding company or subsidiary of A;
- (b) a subsidiary of a holding company of A;

- (c) a holding company of a subsidiary of A;
- (d) any company of which A has control;
- (e) any company of which A and persons connected with A together have control;
- (f) any company which together with A constitute a group;
- (g) an individual who is a director, manager or a person who has control of A or any partner or any immediate relative of such director, manager or person aforesaid;
- (h) any company of which any of the persons referred to in subparagraph (g) is a director, manager or has control.

(6) For the purposes of subsection (5)(f), "group" in relation to a company means that company and—

- (a) any other company which is its holding company or subsidiary;
- (b) any other company which is a subsidiary of the holding company;
- (c) any company which is controlled by a person who directly or indirectly controls or is controlled by any company referred to in paragraph (a) or (b);
- (d) any company which is controlled by a person referred to in paragraph (a), (b) or (c).

(7) Notwithstanding subsections (2), (3) and (4), for the purposes of subsections (5) and (6), a company is a holding company of any company that is its immediate, intermediate or ultimate subsidiary, whether the holding company holds that other company's shares on trust or is the beneficial owner of such shares.

(8) A reference in this Act to international financial services is a reference to international financial services as defined in the *Jamaica International Financial Services Act*, subject to any modifications made under section 12(5).

3. A company that issues or sells securities in Jamaica shall comply with the *Securities Act* and regulations made under the *Securities Act*.

Application
of the
*Securities
Act*.

PART II—*Incorporation*

Incorporation of a company.

4.—(1) One or more individuals or bodies corporate, or any combination thereof, may form a company by—

- (a) signing articles of incorporation; and
- (b) submitting to the Registrar—
 - (i) the signed articles of incorporation;
 - (ii) the by-laws of the company which shall contain provisions in relation to all of the matters in the First Schedule and such other provisions as the incorporators may determine in relation to the company or the rights and obligations of shareholders that are not inconsistent with the laws of Jamaica;
 - (iii) the notice of the location of its registered office referred to in section 11; and
 - (iv) the prescribed fee in accordance with section 215.

First Schedule.

(2) The articles of incorporation shall be in the prescribed form and contain the prescribed information.

Certificate of incorporation.

5.—(1) Upon receipt of the documents and fee in accordance with section 4(1), the Registrar shall, in accordance with section 215, issue a certificate of incorporation.

(2) The certificate of incorporation shall be conclusive evidence that the company has been incorporated under this Act on the date set out in the certificate, except in the case where the Registrar has cancelled the registration for cause, in accordance with section 180.

Assignment of number.

6.—(1) The Registrar shall assign to each company a number, which shall be specified as the company number in the certificate of incorporation.

(2) Where the name of the company is not specified in the articles that are submitted to the Registrar, the Registrar shall assign a number name to the company which shall be the number referred to in subsection (1) followed by the word “Jamaica” and the word “Incorporated” or the abbreviation “Inc.”.

(3) Where for any reason the Registrar has issued a certificate of incorporation that sets out the company number incorrectly, the Registrar may substitute a corrected certificate that bears the date of the certificate it replaces.

7. Subject to subsection (2), a company shall not have a name that— Prohibited names.

- (a) contains a word or expression prohibited by this Act or any regulations made under this Act;
- (b) is the same as or, except where a number name is proposed, similar to the name of another company registered under this Act; or
- (c) does not meet the prescribed requirements.

8.—(1) The word “Incorporated” or the abbreviation “Inc.” shall be the last word or part of the name of every company, but the name of a company may be legally designated by either the full or the abbreviated form. Restrictions on name of company.

(2) For the purposes of subsection (1), only letters from the Roman alphabet or Arabic numerals, or a combination thereof, together with such punctuation marks and other marks as are permitted by regulations, may form part of the name of a company.

(3) Subject to the provisions of this Act and any regulations made hereunder, a company may have in its articles, a special provision permitting it to set out its name in any language and the company may be legally designated by that name.

9.—(1) If a company, inadvertently or otherwise, has acquired a name contrary to section 7 or 8, the Registrar shall give the company an opportunity to be heard, and the company shall give an undertaking to change the name and upon such change the Registrar shall issue a certificate stating the corrected name of the company and an amended certificate of incorporation stating the correct name. Change of name if objectionable.

(2) The Registrar may make rules for the conduct of hearings under subsection (1) which may provide for written submissions instead of oral submissions.

(3) Where a company or its representative gives an undertaking to change its name and the undertaking is not carried out within the time specified, the Registrar may, after giving the company an opportunity to be heard, issue a certificate stating the corrected name of the company and an amended certificate of incorporation stating the corrected name.

Company
seal.

10. A company may have a company seal.

Registered
office.

11.—(1) A company shall at all times have a registered office in Jamaica.

(2) A company shall file a notice of the location of its registered office at the time of incorporation of the company and within fourteen days after any subsequent change of location.

Corporate
powers.

12.—(1) A company shall have the capacity and rights, powers and privileges of a natural person.

(2) A company shall have the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside of Jamaica, to the extent permitted by the laws of that jurisdiction.

(3) A company shall not—

- (a) carry on business or exercise any power that is restricted by its articles; or
- (b) exercise any of its powers in a manner contrary to its articles.

(4) Notwithstanding subsection (3), no act of a company, including a transfer of property to or by the company, is invalid by reason only of the fact that the act is contrary to its articles, a unanimous shareholders agreement or this Act.

(5) Subject to the provisions of subsection (6), a company shall not carry on business of any kind or type in Jamaica, including—

- (a) any international financial services business, unless it is registered or licensed to do so under the laws of Jamaica;
- (b) any banking business, whether alone or in conjunction with any other activity;

- (c) any financial services business, within the meaning of the *Financial Services Commission Act* or any other relevant enactment;
- (d) a shipping business, whether alone or in conjunction with any other activity, unless it has complied with an enactment relating to the company in a shipping business; or
- (e) the business of an international service provider.

(6) Notwithstanding subsection (5), the activities of a company specified in the Second Schedule, shall not, by themselves, be treated as carrying on business in Jamaica. Second Schedule.

(7) The Minister may by order, subject to affirmative resolution, amend the Second Schedule.

(8) A company which contravenes subsection (5) commits an offence and is liable, on conviction, to a penalty specified in the Third Schedule and may be struck off the Register by the Registrar. Third Schedule.

13. A person shall not be affected or deemed to have notice of the contents of a document concerning a company by reason only that the document has been filed with the Registrar or is available for inspection at an office of the company. Where notice not deemed.

14.—(1) Subject to subsection (2), a company or guarantor of a company's obligation may not assert against a person dealing with the company or with any person who has acquired rights from the company that— Indoor management rules.

- (a) the articles or any unanimous shareholders agreement have not been complied with;
- (b) the persons named in the most recent notice of directors named in the articles, are not the directors of the company;
- (c) the location named in the most recent notice filed under section 11(2) is not the registered office of the company;
- (d) a person held out by the company as a director, an officer or an agent of the company has not been duly appointed or does not have authority to perform the functions that are

customary in the business of the company or usual for such director, officer or an agent;

- (e) a document issued by any director, officer or agent of the company with actual or apparent authority to issue the document is not valid or not genuine; or
- (f) a sale, lease or exchange of property referred to in section 124(3) was not authorized.

(2) Subsection (1) shall not apply in any case where the person has, or ought to have, knowledge of the matters specified in that subsection, by virtue of the person's position or relationship with the company.

Contract
prior to
corporate
existence.

15.—(1) Except as provided in this section, a person who enters into an oral or written contract in the name of or on behalf of a company before it comes into existence is personally bound by the contract and is entitled to the benefits of the contract.

(2) A company may, within a reasonable time after it comes into existence, by any action or conduct signifying its intention to be bound by the contract, adopt an oral or written contract made before it came into existence in its name or on its behalf, and upon such adoption—

- (a) the company is bound by the contract and is entitled to the benefits thereof as if the company had been in existence at the date of the contract and had been a party to the contract; and
- (b) a person who purported to act in the name of or on behalf of the company ceases, except as provided in subsection (4), to be bound by or entitled to, the benefits of the contract.

(3) Until a company adopts an oral or written contract made before it came into existence, the person who entered into the contract in the name of or on behalf of the company may assign, amend or terminate the contract, subject to the terms of the contract.

(4) Except as provided in subsection (5), whether or not an oral or written contract made before the company comes into existence

is adopted by the company, a party to the contract may apply to the Court for an order—

- (a) fixing obligations under the contract as joint or joint and several; or
- (b) apportioning liability between the company and the person who purported to act in the name of or on behalf of the company,

and the Court may make such order as it thinks fit.

(5) If expressly so provided in the oral or written contract referred to in subsection (1), a person who purported to act in the name of or on behalf of the company before it came into existence, is not in any event bound by the contract or entitled to the benefits of the contract.

PART III—*Corporate Finance*

16.—(1) The shares of a company shall be in registered form and shall be without nominal or *par* value. Shares.

(2) Where a company has only one class of shares, the rights of the holders thereof are equal in all respects and include the rights—

- (a) to vote at all meetings of shareholders; and
- (b) to receive the remaining property of the company upon dissolution.

(3) The articles may provide for more than one class of shares and where they so provide—

- (a) the rights, privileges, restrictions and conditions attaching to the shares of each class shall be set out therein; and
- (b) each of the rights set out pursuant to paragraph (a) shall be attached to at least one class of shares, but both such rights are not required to be attached to any one class.

(4) Notwithstanding subsection (3), the right of the holders of a class of shares to one vote for each share at all meetings of shareholders

other than meetings of holders of another class of shares, or to receive the remaining property of the company upon dissolution, need not be set out in the articles.

(5) Except as provided in section 19, each share of a class shall be the same in all respects as every other share of that class.

(6) The articles may provide that two or more classes of shares or two or more series within a class of shares may have the same rights, privileges, restrictions and conditions.

Issuance of
shares.

17.—(1) Subject to the articles or a unanimous shareholders agreement of a company and section 20, shares may be issued at such time and to such persons and for such consideration as the directors may determine.

(2) Shares issued by a company are non-assessable and the holders are not liable to the company or to its creditors in respect thereof.

(3) A share shall not be issued until the consideration for the share is fully paid in money or in property or past service that is not less in value than the fair equivalent of the money that the company would have received if the share had been issued for money.

(4) Subject to this section, no allotment of shares for a consideration other than cash shall be made unless—

- (a) the directors of the company have passed a resolution that the allotment be made; and
- (b) the resolution states the nature of the consideration, its value and the extent to which the shares to be issued in respect of the consideration will be credited as paid up by virtue of the consideration.

(5) Before passing a resolution under subsection 4(a), the directors of the company shall—

- (a) where the consideration consists of services, ensure that a registered public accountant estimates the value of the services to the company in money terms; or

(b) in any other case, have the consideration valued by a registered public accountant, valuer or quantity surveyor.

(6) In determining the value of property or past service, the registered public accountant, valuer or quantity surveyor mentioned in subsection (5) may take into account reasonable charges and expenses of organization and reorganization and payments for property and past service reasonably expected to benefit the company.

(7) For the purposes of subsection (3) and section 18(3), a document evidencing indebtedness of a person to whom shares are to be issued, or of any other person not dealing at arm's length with such person, does not constitute property.

18.—(1) A company shall maintain a separate stated capital account for each class and series of shares issued by it.

Separate
capital
account.

(2) A company shall add to the appropriate stated capital account in respect of any shares issued by it, the full amount of the consideration received by it as determined by the directors which, in the case of shares not issued for money, shall be the amount determined by the directors in accordance with section 17(5).

(3) Notwithstanding subsection (2) of this section and section 17(3), a company may, subject to subsection (4), add to the stated capital accounts maintained for the shares of classes or series, the whole or any part of the consideration that it receives, if the company issues shares—

(a) in exchange for—

- (i) the property of a person who immediately before the exchange did not deal with the company at arm's length;
- (ii) the shares of, or another interest in, a body corporate that immediately before the exchange, or because of the exchange, did not deal with the company at arm's length;
- (iii) the property of a person who, immediately before the exchange, dealt with the company at arm's length as aforesaid, if the person, the company

and all shareholders in the class or series of shares so issued consent to the exchange; or

- (b) under an agreement to amalgamate referred to in section 115(1);
- (c) to shareholders of an amalgamating company who received the shares in addition to or instead of, securities of the amalgamated company; or
- (d) under an amalgamation of a body corporate with a company or more than one company that results in an amalgamated company, subject to the provisions of this Act.

(4) The consent referred to in subsection (3)(a)(iii) is not required if the issuance of the shares does not result in a decrease in value of the stated capital account maintained for the class or series divided by the number of shares in the class or series.

(5) On the issue of a share, a company shall not add to a stated capital account in respect of the share an amount greater than the amount referred to in subsection (2).

(6) Notwithstanding subsection (2), where a company has been continued in accordance with section 120, the amount in the stated capital account maintained by the company in respect of each class or series of shares then issued shall be equal to the aggregate amount paid up on the shares of each such class or series of shares immediately prior thereto, and after such time the company may, upon complying with subsection (7), add to the stated capital account maintained by it in respect of any class or series of shares, any amount it has credited to a retained earnings or other surplus account.

(7) Where a company proposes to add any amount to a stated capital account that it maintains in respect of a class or series of shares otherwise than under section 32(2), the addition to the stated capital account shall be approved by special resolution if the—

- (a) amount to be added—
 - (i) was not received by the company as consideration for the issue of shares; or

- (ii) was received by the company as consideration for the issue of shares but does not form part of the stated capital attributable to such shares; and
- (b) company has outstanding shares of more than one class or series.

(8) Where a class or series of shares of a company would be affected by the addition of an amount to any stated capital account under subsection (7) in a manner different from the manner in which any other class or series of the shares of the company would be affected by such action, the holders of the differently affected class or series of shares are entitled to vote separately as a class or series, as the case may be, on the proposal to take the action, whether or not such shares otherwise carry the right to vote.

(9) The stated capital accounts of a company may be expressed in one or more currencies.

(10) A company shall not reduce its stated capital or any stated capital account, except in the manner provided in this Act.

(11) The provisions of this Act relating to stated capital do not apply to a mutual fund as defined in subsection (12).

(12) For the purposes of this section, "mutual fund" means a company that carries on only the business of investing the consideration it receives for the shares it issues and all or substantially all the shares of which are redeemable upon the demand of the holders of such shares.

19.—(1) The articles may, subject to the limitations set out therein— Special shares
in series.

- (a) authorize the issue of any class of shares in one or more series and may fix the number of shares in, and determine the designation, rights, privileges, restrictions and conditions attaching to the shares of each series; and
- (b) where the articles authorize the issue of any class of shares in one or more series, authorize the directors to fix the number of shares in, and to determine the designation, rights, privileges, restrictions and conditions attaching to the shares of each series.

- (2) Subsection (3) shall apply in any case where any amount—
- (a) of cumulative dividends, whether or not declared, or declared non-cumulative dividends; or
 - (b) payable on return of capital in the event of the liquidation, dissolution or winding up of a company,

in respect of shares of a series is not paid in full.

(3) For the purposes of subsection (2), the shares of the series shall participate rateably with the shares of all other series of the same class in respect of—

- (a) all accumulated cumulative dividends, whether or not declared, and all declared non-cumulative dividends; or
- (b) all amounts payable on return of capital in the event of the liquidation, dissolution or winding up of the company.

(4) No rights, privileges, restrictions or conditions attached to a series of shares, the issue of which is authorized under this section, shall confer upon the shares of a series a priority in respect of—

- (a) dividends; or
- (b) return of capital in the event of the liquidation, dissolution or winding up of the company,

over the shares of any other series of the same class.

(5) Where, in respect of a series of shares, before the issue of such shares, the directors exercise the authority conferred on them under subsection (1)(b), the directors shall submit a notice in the prescribed form designating such series to the Registrar.

Pre-emptive rights.

20. If so provided in the articles or a shareholders agreement, no shares of a class or series shall be issued unless the shares have first been offered to the shareholders of the company holding shares of that class or series or of another class or series, on such terms as are provided in the articles or the shareholders agreement.

Conversion privileges, etc.

21.—(1) A company may issue warrants as evidence of conversion privileges or options or rights to acquire securities of the company and shall set out the conditions thereof—

- (a) in certificates evidencing the securities to which the conversion privileges, options or rights are attached; or

(b) in separate certificates or other documents.

(2) Conversion privileges and options or rights to acquire securities of a company may be made transferable or non-transferable, and options or rights to acquire may be made separable or inseparable from any securities to which they are attached.

(3) Where—

(a) a company has granted privileges to convert any securities, other than shares issued by the company, into shares of the company or has issued or granted options or rights to acquire the shares of the company; and

(b) the articles limit the number of authorized shares,

the company shall reserve and continue to reserve sufficient authorized shares to meet the exercise of such conversion privileges, options and rights.

22.—(1) Except as provided in subsection (2) and sections 23, 24, 25 and 26, a company shall not—

(a) hold shares in itself or in its holding company; or

(b) permit any of its subsidiary companies to hold shares in the company.

Subsidiaries not to hold shares of holding companies.

(2) A company shall cause its subsidiary that holds shares of the company to sell or otherwise dispose of those shares within five years from the date on which that company became a subsidiary of the company.

23.—(1) A company may, in the capacity of a personal representative, hold shares in itself or its holding company, unless the company or the holding company or a subsidiary of either of them has a beneficial interest in the shares.

Non-application of section 22.

(2) A company may permit a subsidiary to hold shares of the company in the capacity of a personal representative, unless the company or the subsidiary or a subsidiary of either of them has a beneficial interest in the shares.

(3) A company may hold shares in itself or in its holding company by way of security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.

Purchase of issued shares.

24.—(1) Subject to subsection (2) and to its articles, a company may purchase or otherwise acquire any of its issued shares or warrants.

(2) A company shall not make any payment to purchase or otherwise acquire shares issued by it if there are reasonable grounds for believing that—

- (a) the company is or, after the payment, would be unable to pay its liabilities as they become due; or
- (b) after the payment, the realizable value of the assets of the company would be less than the aggregate of its—
 - (i) liabilities; and
 - (ii) stated capital of all classes.

Non-application of section 24.

25.—(1) Notwithstanding section 24(2) and subject to subsection (3) and the articles, a company may purchase or otherwise acquire shares issued by it to—

- (a) settle or compromise a debt or claim asserted by or against the company;
- (b) eliminate fractional shares; or
- (c) fulfill the terms of a non-assignable agreement under which the company has an option or is obliged to purchase shares owned by a current or former director, officer or employee of the company.

(2) Notwithstanding section 24(2), a company may purchase or otherwise acquire shares issued by it to—

- (a) satisfy the claim of a shareholder who dissents under section 125;
- (b) comply with an order under section 189.

(3) A company shall not make any payment to purchase or otherwise acquire shares under subsection (1), if there are reasonable grounds for believing that—

- (a) the company is or, after the payment, would be unable to pay its liabilities as they become due; or
- (b) after the payment, the realizable value of the assets of the company would be less than the aggregate of—
 - (i) its liabilities; and
 - (ii) the amount required for payment on a redemption or in a liquidation of all shares where the holders have the right to be paid before the holders of the shares to be purchased or acquired, to the extent that the amount has not been included in its liabilities.

26.—(1) Subject to section 24(2), section 25(3) and subsection (2) of this section, any share of any class or of any series may, provided that the articles of the company allow that redemption, be redeemed by the company at its option or at the option of the holders of such shares or upon the occurrence of a specified event, as provided by the articles. Redemption
of shares.

(2) A company shall not make any payment to purchase or redeem any redeemable shares issued by it if there are reasonable grounds for believing that—

- (a) the company is or after the payment, would be unable to pay its liabilities as they become due; or
- (b) after the payment, the realizable value of the assets of the company would be less than the aggregate of—
 - (i) its liabilities; and
 - (ii) the amount that would be required to pay the shareholders that have a right to be paid on a redemption or on a liquidation, rateably with or before the holders of the shares to be purchased or redeemed, to the extent that the amount has not been included in its liabilities.

(3) Subject to subsection (2), any redeemable shares may be purchased or redeemed for cash, property or rights, including securities of the same or another body corporate, at such time, price or rate and with such adjustments as shall be stated in the articles.

Donation of shares.

27. A company may accept from any shareholder, a share of the company surrendered to it as a gift, but may not extinguish or reduce a liability in respect of an amount unpaid on any such share, except in accordance with section 28.

Reduction of liability *re* unpaid shares or stated capital.

28.—(1) Subject to subsection (4), a company may, by special resolution, reduce its stated capital for any purpose including, without limiting the generality of the foregoing, the purpose of—

- (a) distributing to the holders of issued shares of any class or series of shares, an amount not exceeding the stated capital of the class or series; or
- (b) declaring its stated capital to be reduced by an amount—
 - (i) that is not represented by realizable assets; or
 - (ii) otherwise determined in respect of which no amount is to be distributed to holders of the issued shares of the company.

(2) Where a class or series of the shares of a company would be affected by a reduction of stated capital under subsection (1)(b), in a manner different from the manner in which any other class or series of the shares of the company would be affected by such action, the holders of the differently affected class or series of shares are entitled to vote separately as a class or series, as the case may be, on the proposal to take the action, whether or not the shares otherwise carry the right to vote.

(3) A special resolution under this section shall specify the stated capital account or accounts from which the reduction of stated capital effected by the special resolution will be made.

(4) A company shall not take any action to extinguish or reduce any liability in respect of an amount unpaid on a share or to

reduce its stated capital for any purpose other than that mentioned in subsection (1)(b)(i) if there are reasonable grounds for believing that—

- (a) the company is or, after taking such action, would be unable to pay its liabilities as they become due; or
- (b) after taking such action, the realizable value of the assets of the company would be less than the aggregate of its liabilities.

(5) A creditor of a company is entitled to apply to the Court for an order compelling a shareholder or other recipient to—

- (a) pay to the company an amount equal to any liability of the shareholder that was extinguished or reduced contrary to this section; or
- (b) pay or deliver to the company any money or property that was paid or distributed to the shareholder or other recipient as a consequence of a reduction of capital made contrary to this section.

(6) Where it appears that there are numerous shareholders who may be liable under this section, the Court may—

- (a) permit an action to be brought against one or more of them as representatives of the class; and
- (b) if the applicant establishes a claim as creditor, make an order and add as parties, all such shareholders as may be found,

and the Court may appoint a person (in this section known as a referee) who shall determine the amount that each should contribute toward the applicant's claim, which amount may not, in the case of any particular shareholder, exceed the amount referred to in subsection (5), and the referee may direct payment of the sums so determined.

(7) A person who holds shares in the capacity of a personal representative and is registered as a shareholder on the records of the company and therein described as the personal representative of a named person, is not personally liable under this section, but the named person is subject to all liabilities imposed by this section.

(8) This section shall not affect any liability that arises under section 73.

Amount
deducted
from account
upon
purchase,
etc., of
shares.

29.—(1) Upon a purchase, redemption or other acquisition by a company under section 24, 25, 26, 34, 125 or 189(3)(f), of shares or fractions thereof issued by it, the company shall deduct from the stated capital account maintained for the class or series of shares of which the shares purchased, redeemed or otherwise acquired form a part, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class, series or fractions thereof purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

(2) A company shall deduct the amount of a payment made by the company to the security holder under section 189(3)(g) from the stated capital account maintained for the class or series of shares in respect of which the payment was made.

(3) A company shall adjust its stated capital account or accounts in accordance with any special resolution referred to in section 28(3).

(4) Upon a change under section 108(1), 126 or 189 of a company's issued shares, or upon a conversion of such shares pursuant to their terms, into shares of another class or series, the company shall—

- (a) deduct from the stated capital account maintained for the class or series of shares changed or converted, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series changed or converted and dividing by the number of issued shares of that class or series immediately before the change or conversion; and
- (b) add the result obtained under paragraph (a) and any additional consideration received pursuant to the change or conversion to the stated capital account maintained or to be maintained for the class or series of shares into which the shares have been changed or converted.

(5) For the purposes of subsection (4) and subject to its articles, where—

- (a) a company issues two classes or series of shares; and
- (b) there is attached to each class or series of shares, a right to convert a share of one class or series into a share of the other class or series, the amount of stated capital attributable to a share in either class or series is the amount obtained when the sum of the stated capital of both classes or series of shares is divided by the number of issued shares of both classes or series of shares immediately before the conversion.

(6) Shares of any class or series or fractional shares issued by a company and purchased, redeemed or otherwise acquired by it shall be cancelled or, if the articles limit the number of authorized shares of the class or series, may be restored to the status of authorized but unissued shares of the class.

(7) For the purposes of this section, a company holding shares in itself as permitted by section 23(1) and (2) shall be deemed not to have purchased, redeemed or otherwise acquired the shares.

(8) Where shares of a class or series are changed under section 125(1), 126 or 189 or converted pursuant to their terms into the same or another number of shares of another class or series—

- (a) such shares become the same in all respects as the shares of the class or series respectively into which they are changed or converted; and
- (b) if the articles limit the number of shares of either of such classes or series, the number of authorized shares of such class or series is changed and the articles are amended accordingly.

30.—(1) A contract with a company providing for the purchase of the shares of the company by the company is specifically enforceable against the company except to the extent that the company cannot perform the contract without thereby contravening section 24, 25 or 26.

Contract with
company
repurchase of
shares.

(2) In any action brought in relation to a contract referred to in subsection (1), the company has the burden of proving that the performance thereof is prevented by section 24, 25 or 26.

(3) Until the company has fulfilled all of its obligations under a contract referred to in subsection (1), the other party to the contract retains the status of a claimant entitled to be paid as soon as the company is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors and to the rights of holders of any class of shares whose rights were in priority to the rights given to the holders of the class of shares being purchased, but in priority to the rights of other shareholders.

Commission
on sale of
shares.

31. The directors may authorize the company to pay a reasonable commission to any person in consideration of the person purchasing or agreeing to purchase the shares of the company from the company or from any other person, or procuring or agreeing to procure purchasers for any such shares.

Declaration
of dividend.

32.—(1) Subject to its articles and any unanimous shareholders agreement, the directors may declare, and a company may pay a dividend, by issuing fully paid shares of the company or options or rights to acquire fully paid shares of the company and, subject to subsection (3), a company may pay a dividend in money or property.

(2) If the shares of a company are issued in payment of a dividend in money or property, the company may add all or part of the value of those shares to the stated capital account of the company maintained or to be maintained for the shares of the class or series issued in payment of the dividend.

(3) The directors shall not declare, and the company shall not pay, a dividend in money or property if there are reasonable grounds for believing that—

- (a) the company is or, after the payment, would be unable to pay its liabilities as they become due; or

- (b) the realizable value of the assets of the company would thereby be less than the aggregate of its—
 - (i) liabilities; and
 - (ii) stated capital of all classes.

33.—(1) Notwithstanding any other provision of this Act, a company that— Companies with wasting assets.

- (a) has at least seventy-five *per cent* of its assets being of a wasting character; or
- (b) is incorporated for the purpose of acquiring the assets or a substantial part of the assets of a body corporate and administering such assets for the purpose of converting them into cash and distributing the cash among the shareholders of the company,

may declare and pay dividends out of funds derived from the operations of the company.

(2) The powers conferred by subsection (1) may be exercised even though the value of the net assets of the company may be thereby reduced to less than its stated capital of all classes if the payment of the dividends does not reduce the value of its remaining assets to an amount insufficient to meet all the liabilities of the company, exclusive of its stated capital of all classes.

(3) The powers conferred by subsection (1) may be exercised only under the authority of a special resolution.

34.—(1) The articles of a company or a shareholders agreement may provide that the company has a lien on a share registered in the name of a shareholder or the shareholder's personal representative for a debt of that shareholder to the company, including an amount unpaid in respect of a share issued by a body corporate on the date that it was continued under this Act. Lien on share.

(2) A company may enforce a lien referred to in subsection (1) in accordance with its articles or shareholders agreement.

Legal nature
of shares.

35. The shares of a company are personal property.

Irredeemable
debt
obligation.

36.—(1) A condition contained in a debt obligation or in an instrument for securing a debt obligation is not invalid by reason only that the debt obligation is thereby made irredeemable or redeemable only on the occurrence of a contingency, however remote, or on the expiration of a period, however long.

(2) Debt obligations issued, pledged, hypothecated or deposited by a company are not redeemed by reason only that the indebtedness evidenced by the debt obligations or in respect of which the debt obligations are issued, pledged, hypothecated or deposited is repaid.

(3) Debt obligations issued by a company and purchased, redeemed or otherwise acquired by it may be cancelled or, subject to any applicable trust indenture or other agreement, may be reissued, pledged or hypothecated to secure any obligation of the company then existing or thereafter incurred, and any such acquisition and reissue, pledge or hypothecation is not a cancellation of the debt obligations.

PART IV—*Corporate Securities*

Certified or
uncertificated
securities.

37.—(1) A security issued by a company may be in the form of a security certificate or may be an uncertificated security.

(2) Unless otherwise provided by the articles of the company, the directors of a company may provide by resolution that any or all classes and series of its shares or other securities shall be uncertificated securities, but the resolution shall not apply to securities represented by a certificate until such certificate is surrendered to the company.

(3) Within thirty days after the issue or transfer of an uncertificated security, the company shall send to the registered owner of the security, a written notice containing the information required to be stated on a share certificate pursuant to section 39(1) and (2).

(4) Except as otherwise expressly provided or authorized by law, the rights and obligations of the registered owners of uncertificated securities and the rights and obligations of the certificated securities of the same class and series shall be identical.

(5) A company may charge a fee, not exceeding the prescribed amount, for a security certificate issued in respect of a transfer.

(6) A company that is required to issue a security certificate is not required to issue more than one security certificate in respect of securities held jointly by several persons, and delivery to one of several joint holders is sufficient delivery to all.

38.—(1) A security certificate shall be signed by at least one of the following persons—

Signing of
security
certificate.

- (a) an officer of the company;
- (b) the registrar or transfer agent of the company or other authenticating agent of the company; or
- (c) a trustee who certifies it in accordance with a trust indenture.

(2) A signature required by subsection (1) may be printed or otherwise mechanically reproduced on the security certificate.

39.—(1) There shall be stated on the face of each share certificate issued by a company—

Contents of
share
certificate.

- (a) the name of the company;
- (b) the words “Incorporated under the Laws of Jamaica”, “Subject to the International Business Companies Act” or words of like effect;
- (c) the name of the person to whom it is issued; and
- (d) the number and class of shares and the designation of any class or series represented by the certificate.

(2) Where a company is authorized to issue shares of more than one class or series, the company shall legibly state on each share certificate—

- (a) the rights, privileges, restrictions and conditions attached to the class or series of the shares that are represented by the certificate; or

- (b) that the class or series of the shares that are represented by the certificate has rights, privileges, restrictions or conditions attached thereto, and that the company will furnish to a shareholder, on demand and without charge, a full copy of the text thereof.

(3) A share certificate issued prior to the date of the certificate of continuance by a body corporate continued under section 120, does not contravene this Act solely because the certificate refers to the share or shares represented thereby as having a nominal or par value.

(4) Where a share certificate issued by a company contains the statement mentioned in subsection (2)(b), the company shall furnish to a shareholder on demand and without charge, a full copy of the text of the rights, privileges, restrictions and conditions attached to that class or series of which the shares that are represented by the certificate form part.

(5) Where a share certificate issued by a company contains a reference to a restriction under subsection (4), the company shall furnish to a shareholder, on demand and without charge, a full copy of the text of the restriction.

Certificate
for fractional
share.

40.—(1) A company may issue a certificate for a fractional share.

(2) A company may issue the fractional share described in subsection (1) as an uncertificated security registered or recorded in records maintained by or on behalf of the company, the registrar or transfer agent or other authenticating agent of the company, by making an appropriate entry in the records of the company or its registrar or transfer agent or other authenticating agent.

(3) A holder of a fractional share issued by a company is not entitled to exercise voting rights or to receive a dividend in respect of the fractional share unless—

- (a) the fractional share results from a consolidation of shares; or
(b) the articles of the company provide otherwise.

Effect of a
security.

41.—(1) A company may, subject to sections 45 and 46, treat the registered holder of a security issued by the company, as the person

entitled to vote, to receive notices and any interest, dividends or other payments in respect of the security issued by the company, and otherwise to exercise all the rights and powers of the holder of the security.

(2) A company whose articles restrict the right to transfer its securities shall, and any other company may, treat a personal representative of a registered security holder as the registered security holder entitled to exercise all the rights of the registered security holder that the person represents if that person furnishes evidence to the company that the person is a personal representative of the registered security holder.

(3) If a person upon whom the ownership of a security devolves by operation of law, other than a personal representative referred to in subsection (2), furnishes proof of that person's authority to exercise rights or privileges in respect of a security of the company that is not registered in the person's name, the company shall treat the person as entitled to exercise those rights or privileges.

(4) A company is not required to enquire into the existence of, or see to the performance or observance of, any duty owed to a third person by a registered holder of any of its securities or by anyone whom it treats, pursuant to this section, as the owner or registered holder thereof.

(5) If a minor exercises any rights of ownership in the securities of a company, no subsequent repudiation or avoidance is effective against the company.

(6) Where a security is issued to several persons as joint holders, upon satisfactory proof of the death of one joint holder, the company may treat the surviving joint holders as the owners of the security.

(7) Subject to any applicable law relating to the collection of taxes, a personal representative of a deceased registered security holder is entitled to become a registered holder or to designate a registered holder, if the person deposits with the company or its transfer agent such evidence, as may be from time to time determined by the directors, to show that the person is the personal representative of the deceased registered security holder.

PART V—*Shareholders*

Shareholders' liability limited.

42. The shareholders of a company are not, as shareholders, liable for any act, default, obligation or liability of the company except as provided in sections 28(6) and 184.

Place of meetings.

43.—(1) Subject to the articles, a meeting of shareholders of a company shall be held at such place as the directors determine or, in the absence of such a determination, at the location of the registered office of the company.

(2) A meeting held under section 44(2) shall be deemed to be held at the place where the company's registered office is located.

Shareholders meeting.

44.—(1) Subject to section 53(1), the directors of a company—

- (a) shall call an annual meeting of shareholders not later than eighteen months after the company comes into existence, and subsequently not later than fifteen months after holding the last preceding annual meeting; and
- (b) may, at any time, call a general meeting of the shareholders.

(2) Unless the articles provide otherwise, a meeting of the shareholders may be held by telephonic, electronic or other means of communication, and a shareholder who, through those means, votes at the meeting or establishes a communication link to the meeting shall be deemed for the purposes of this Act to be present at the meeting.

Date for determining entitlement, etc., of shareholders.

45.—(1) For the purpose of determining shareholders—

- (a) who are entitled to receive payment of a dividend;
- (b) who are entitled to participate in a liquidation or any other distribution; or
- (c) for any other purpose, except the right to receive notice of or to vote at a meeting,

the directors may fix in advance a date as the record date for such determination of shareholders, but the record date shall not precede by more than fifty days, the particular action to be taken.

(2) For the purpose of determining shareholders entitled to receive notice of a meeting of shareholders, the directors may fix in advance, a date as the record date for such determination, but the

record date shall not precede by more than sixty days nor less than thirty days, the date on which the meeting is to be held.

(3) Where no record date is fixed, the record date for the determination of shareholders—

(a) who are entitled to receive notice of a meeting of shareholders shall be—

(i) at the close of business on the day immediately preceding the day on which notice is sent or delivered personally in accordance with section 206; or

(ii) if no notice is sent or delivered personally in accordance with section 206, the day on which the meeting is held; and

(b) for any purpose other than to establish a shareholder's right to receive notice of a meeting or to vote, shall be at the close of business on the day on which the directors pass the resolution in respect of which the record date is relevant.

46.—(1) Notice of the day, hour and place of a meeting of shareholders shall be sent, not less than ten days, but, in either case, not more than fifty days before the meeting—

Notice of shareholders meeting.

(a) to each shareholder entitled to vote at the meeting;

(b) to each director; and

(c) to the auditor of the company.

(2) A notice of a meeting is not required to be sent to shareholders who were not registered on the records of the company or its registrar or transfer agent on the record date determined under section 45(2) or (3), and failure to receive a notice does not deprive a shareholder of the right to vote at the meeting.

(3) Unless the articles otherwise provide, if a meeting of shareholders is adjourned for less than thirty days, it shall not be necessary to give notice of the continuation of the adjourned meeting.

(4) If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of thirty days or more, notice of the adjourned meeting shall be given as for an original meeting.

(5) All business transacted at a meeting of shareholders, except consideration of the minutes of an earlier meeting, the financial statements and auditor's report, election of directors and reappointment of the incumbent auditor, shall be deemed to be special business.

(6) Notice of a meeting of shareholders at which special business is to be transacted shall state or be accompanied by a statement of—

- (a) the nature of that business, in sufficient detail to permit the shareholders to form a reasoned judgment thereon; and
- (b) the proposed text of any special resolution to be submitted to the meeting.

Procedure at
shareholders
meeting.

47. Subject to this Act or the articles of a company—

- (a) all questions proposed for the consideration of the shareholders shall be determined by the majority of the votes cast, and the chairman presiding at the meeting shall have a second or casting vote in case of an equality of votes;
- (b) the chairman presiding at a meeting of shareholders may, with the consent of the meeting, and subject to such conditions as the meeting decides and subject to section 46(3) and (4), adjourn the meeting from time to time and from place to place; and
- (c) the chairman, for the time being, of the board of directors shall preside as chairman at a meeting of shareholders unless the shareholders present, by majority, choose a person from their number to chair the meeting.

Waiving
notice.

48.—(1) The shareholders of a company may unanimously agree to waive the convening of a shareholders meeting.

(2) Notwithstanding section 208, a shareholder may in any manner and at any time waive his right to notice of a meeting of

shareholders, and any attendance of a shareholder is a waiver of the shareholder's right to notice of the meeting, except where that shareholder attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

49.—(1) A registered holder of shares entitled to vote, or a beneficial owner of shares that are entitled to be voted, at a meeting of shareholders may— Proposal.

- (a) submit to the company, notice of a proposal; and
- (b) discuss at the meeting any matter in respect of which the registered holder or beneficial owner would have been entitled to submit a proposal.

(2) Where a company receives notice of a proposal and the company solicits proxies, it shall set out the proposal in the management information circular.

(3) If so requested by the person who submits notice of a proposal, the company shall include in the management information circular or attach to it a statement in support of the proposal by the person and the name and address of the person.

(4) The proposal referred to in subsection (2) and the statement referred to in subsection (3) shall together not exceed the prescribed maximum number of words.

(5) A proposal may include nominations for the election of directors if the proposal is signed by one or more shareholders representing in the aggregate, not less than five per cent of the shares or five per cent of the shares of the class or series of shares of the company entitled to vote at the meeting to which the proposal is to be presented, but this subsection does not preclude nominations being made at a meeting of shareholders.

(6) A company is not required to comply with subsections (2) and (3) where—

- (a) the proposal is not submitted to the company at least sixty days before the anniversary date of the last annual meeting,

if the matter is proposed to be raised at an annual meeting, or at least sixty days before a meeting other than the annual meeting, if the matter is proposed to be raised at a meeting other than the annual meeting;

- (b) it clearly appears that the primary purpose of the proposal is to enforce a personal claim or redress a personal grievance against the company or its directors or security holders;
- (c) not more than two years before the receipt of the proposal, a person failed to present, in person or by proxy, at a meeting of shareholders, a proposal that, at the person's request, had been included in a management information circular relating to the meeting; or
- (d) substantially the same proposal was submitted to shareholders in a management information circular or a dissident's information circular relating to a meeting of the shareholders held within two years preceding the receipt of the shareholder's request and the proposal was defeated.

(7) A company or person acting on its behalf shall not incur any liability by reason only of circulating a proposal or statement in compliance with this section.

(8) If a company refuses to include a proposal in a management information circular, the company shall, within ten days after receiving the proposal, send notice to the person submitting the proposal of its intention to omit the proposal from the management information circular and send to the person a statement of the reasons for the refusal.

(9) On the application of a person submitting a proposal, who claims to be aggrieved by a company's refusal under subsection (8), a court may restrain the holding of the meeting to which the proposal is sought to be presented and make any further order it thinks fit.

(10) The company or any person aggrieved by a proposal may apply to the Court for an order permitting the company to omit the proposal from the management information circular, and the Court, if it

is satisfied that subsection (6) applies, may make such order as it thinks fit.

(11) An applicant under subsection (9) or (10) shall give the Registrar notice of the application and the Registrar is entitled to appear and to be heard in person or by an attorney at law.

(12) In this section, “proposal” means a matter that the registered holder or beneficial owner of shares entitled to be voted, proposes to raise at a meeting of shareholders.

50.—(1) Unless the articles otherwise provide, the holders of a majority of the shares entitled to vote at a meeting of shareholders, whether present in person or represented by proxy, constitute a quorum. Quorum of shareholders.

(2) If a quorum is present at the opening of a meeting of shareholders, the shareholders present may, unless the articles otherwise provide, proceed with the business of the meeting even if a quorum is not present throughout the meeting.

(3) If a quorum is not present at the time appointed for a meeting of the shareholders, or within such reasonable time thereafter as the shareholders present may determine, the shareholders present may adjourn the meeting to a fixed time and place but may not transact any other business.

(4) If a company has only one shareholder or only one holder of any class or series of shares, the shareholder present or by proxy constitutes a quorum at a shareholders meeting or at a meeting of the shareholders of that class or series, as the case may be.

51.—(1) Unless the articles or terms of issue of the shares otherwise provide, each share of a company entitles the holder thereof to one vote at a meeting of shareholders. Voting rights.

(2) Unless the articles of the company otherwise provide, where a body corporate is a shareholder of a company, the company shall recognize any individual authorized by a resolution of the directors or governing body of the body corporate to represent it at meetings of the company’s shareholders.

(3) An individual authorized as set out in subsection (2) may exercise, on behalf of the body corporate represented by that individual, all the powers it could exercise if it were an individual shareholder.

(4) Unless the articles otherwise provide, where two or more persons hold shares jointly, one of those holders present at a meeting of shareholders may, in the absence of the others, vote at the shareholders meeting, but if two or more of those persons are present, in person or by proxy, they shall vote as one on the shares jointly held by them.

Manner of
voting, *etc.*

52.—(1) Unless the articles otherwise provide, voting at a meeting of shareholders shall be by show of hands, except where a ballot is demanded by a shareholder or proxy holder entitled to vote at the meeting.

(2) A shareholder or proxy holder may demand a ballot either before or after any vote by show of hands.

(3) Unless a ballot is demanded, an entry in the minutes of a meeting of shareholders to the effect that the chairman declared a resolution to be carried is admissible in evidence as proof of the fact, in the absence of evidence to the contrary, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) If the articles require a greater number of votes of shareholders than is required by this Act to effect any action, the provisions of the articles shall prevail.

Resolution in
lieu of
meeting.

53.—(1) Except where a written statement is submitted by a director under section 67(2) or where representations in writing are submitted by an auditor under section 90(6)—

- (a) a resolution in writing signed by all the shareholders or their attorney entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of the shareholders; and
- (b) a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders, and

signed by all the shareholders entitled to vote at that meeting, satisfies all the requirements of this Act relating to that meeting of shareholders.

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the meetings of shareholders.

(3) For the purposes of paragraphs (a) and (b) of subsection (1), a resolution signed on behalf of a shareholder by a person who has been authorized in writing by the shareholders so to do, shall be deemed to have been duly signed by the shareholder.

54.—(1) The holders of not less than ten per cent of the issued shares of a company that carry the right to vote at a meeting may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition. Requisition
for meeting.

(2) The requisition referred to in subsection (1) shall state the business to be transacted at the meeting and shall be sent to the registered office of the company.

(3) Upon receiving the requisition referred to in subsection (1), the directors shall call a meeting of shareholders to transact business stated in the requisition unless the directors have called a meeting of shareholders and have given notice thereof under section 46.

(4) Subject to subsection (3), if the directors do not call a meeting within twenty-one days after receiving the requisition referred to in subsection (1), any shareholder who signed the requisition may call a meeting.

(5) A meeting called under this section shall be called, as nearly as possible, in the manner in which meetings are to be called under the articles, this Part and Part VI.

(6) The company shall reimburse the shareholders for the expenses reasonably incurred by them in requisitioning, calling and holding the meeting, unless the shareholders have not acted in good faith and in the interest of the company's shareholders generally.

Requisition
by Court.

55.—(1) Subsection (2) shall apply in any case where, for any reason, it is impracticable to call a meeting of the shareholders of a company in the manner in which meetings of those shareholders may be called or to conduct the meeting in the manner prescribed by the articles and this Act, or for any other reason the Court thinks fit.

(2) The Court, upon the application of a director or a shareholder entitled to vote at the meeting, may order a meeting to be called, held and conducted in such manner as the Court directs and upon such terms as to security for the costs of holding the meeting or otherwise as the Court deems fit.

(3) A meeting called, held and conducted under this section is for all purposes a meeting of shareholders of the company duly called, held and conducted.

Determina-
tion of
matter.

56.—(1) A company, shareholder or director may apply to the Court to determine any matter with respect to an election or appointment of a director or auditor of the company.

(2) Upon an application under this section, the Court may make any order it thinks fit including, without limiting the generality of the foregoing, an order—

- (a) restraining a director or auditor, whose election or appointment is challenged, from acting, pending the determination of the dispute;
- (b) declaring the result of the disputed election or appointment;
- (c) requiring a new election or appointment and including in the order, directions for the management of the business and affairs of the company until a new election is held or appointment made; and
- (d) determining the voting rights of shareholders and of persons claiming to own shares.

PART VI—*Proxies*

57. In this Part—

Interpreta-
tion of Part
VI.

“form of proxy” means a form that—

- (a) is in written or printed format or a format generated by telephonic or electronic means; and
- (b) becomes a proxy when completed and signed in writing or electronic signature by or on behalf of a shareholder;

“proxy” means a completed and signed form of proxy by means of which a shareholder has appointed a proxy holder to attend and act on a shareholder’s behalf at a meeting of shareholders.

58.—(1) Every shareholder entitled to vote at a meeting of shareholders may by means of a proxy appoint a proxy holder or one or more alternate proxy holders, who need not be shareholders, as the shareholder’s nominee to attend and act at the meeting in that manner, to the extent and with the authority conferred by the proxy.

(2) Subject to subsection (6), a proxy shall be signed—

- (a) in writing or by electronic signature, by the shareholder or by a person who is authorized, by a document that is signed by the shareholder in writing or by electronic signature, to sign the proxy on the shareholder’s behalf; or
- (b) if the shareholder is a body corporate, by an officer or other representative of the body corporate, duly authorized.

(3) A shareholder may revoke a proxy—

- (a) by depositing an instrument in writing that complies with subsection (4) and is signed by the shareholder, or by a person referred to in subsection (2)(a), in writing or by electronic signature; or
- (b) by transmitting, by telephonic or electronic means, a revocation that complies with subsection (4) and that, subject to subsection (5), is signed by electronic signature; or

(c) in any other manner permitted by law.

(4) The instrument or the revocation referred to in subsection (3) shall be delivered to the—

- (a) registered office of the company at any time up to and including the last business day preceding the day of the meeting, or any adjournment thereof, at which the proxy is to be used; or
- (b) chairman of the meeting on the day of the meeting or an adjournment thereof.

(5) A shareholder or a person referred to in subsection (2)(a) may sign, by electronic signature, a proxy, a revocation of proxy or a power of attorney authorizing the creation of either of them if the means of electronic signature permits a reliable determination that the document was created or communicated by or on behalf of the shareholder or the person, as the case may be.

(6) The directors may, by resolution, fix a time not exceeding forty-eight hours, excluding Saturdays, Sundays and public general holidays, preceding any meeting or adjourned meeting of shareholders before which time, proxies to be used at that meeting shall be deposited with the company or an agent thereof, and any period of time so fixed, shall be specified in the notice calling the meeting.

PART VII—*Directors and Officers*

Directors.

59.—(1) The directors shall manage or supervise the management of the business and affairs of a company.

(2) On the application for registration of the articles of a company, the applicant shall deliver to the Registrar a list of the persons who have consented to be directors of the company.

(3) The company shall keep at its registered office, the consent to act as a director in the prescribed form, of each individual who is named in the articles as a first director and of each individual who is subsequently appointed a director.

(4) The company shall permit, without charge, a director, shareholder or creditor, to inspect a consent mentioned in subsection (3) during the usual business hours of the company and to make a copy thereof.

(5) Where there is a change in the list of directors of a company, a notice of change of directors shall be filed with the Registrar.

(6) Subject to subsection (8), where all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of a company, shall be deemed to be a director for the purposes of this Act.

(7) A shadow director shall be deemed to be a director for the purposes of this Act.

(8) Subsections (6) and (7) shall not apply to—

- (a) an officer who manages the business of the company under the direction or control of a shareholder or other person;
- (b) an attorney-at-law, accountant or other professional who participates in the management of the company solely for the purposes of providing professional services; or
- (c) a trustee in bankruptcy, receiver, receiver-manager or secured creditor who participates in the management of the company or exercises control over its property solely for the purposes of enforcement of a security agreement or, in the case of a trustee in bankruptcy, the administration of a bankrupt's estate.

(9) The directors of a company shall take all reasonable steps to ensure that the secretary of the company is a person who appears to the directors to have the requisite knowledge and experience to discharge the functions of a secretary of a company.

(10) For the purposes of this section, a person—

- (a) who, on the appointed date held the office of secretary, assistant secretary, or deputy secretary of a body corporate;
- (b) who, for at least three years of the five years immediately preceding his appointment as secretary, held the office of secretary of a company;
- (c) who is a member in good standing of the Institute of Chartered Accountants of Jamaica, the Jamaica Association of Secretaries and Administrative Professionals or the Chartered Institute of Public Finance and Accountancy;
- (d) who is an attorney-at-law; or
- (e) who, by virtue of his business or having held any other position or having been a member of any other body, appears to be capable of discharging the functions of a secretary of a company,

may be assumed by a director of a company to have the requisite knowledge and experience to discharge the functions of a secretary of a company, unless the director knows otherwise.

(11) If the articles or the unanimous shareholders agreement require a greater number of votes of directors than is required by this Act to effect any action, the provisions of the articles or the unanimous shareholders agreement shall prevail.

(12) In this section, “shadow director” means a person in accordance with whose directions or instructions the directors of the company are accustomed to act.

Articles by
resolution.

60.—(1) Unless the articles otherwise provide, the directors may, by special resolution or ordinary resolution, as the case may be, make, amend or repeal any articles that regulate the business or affairs of a company.

(2) Where the directors make, amend or repeal any articles under subsection (1), they shall submit the amendment or repeal to the

shareholders at the next meeting of the shareholders who may confirm, reject or amend the amendment or repeal the articles.

(3) Where the articles are—

- (a) made, amended or repealed under subsection (1), the articles or any amendment or repeal thereof is effective from the date of the resolution of the directors until it is confirmed, with or without amendment or rejected by the shareholders under subsection (2) or until it ceases to be effective under subsection (4);
- (b) confirmed or confirmed as amended, the articles continue in effect in the form in which they are so confirmed.

(4) If—

- (a) the amended or repealed articles are rejected by the shareholders; or
- (b) the directors do not submit the amended or repealed articles to the shareholders in accordance with subsection (2),

the amended or repealed articles cease to be effective on the date of such rejection or on the date of the meeting of shareholders at which it should have been submitted, as the case may be, and no subsequent resolution of the directors to make, amend or repeal articles having the same purpose or effect is effective until the resolution is confirmed.

(5) If a shareholder's proposal to make, amend or repeal the articles is made in accordance with section 49, and is adopted by the shareholders at a meeting, the articles or the amendment or repeal thereof is effective from the date of the adoption and require no further amendment by the shareholders.

(6) An article need not be described as an article in a resolution referred to in this section.

61.—(1) After incorporation, a meeting of the directors of a company shall be held at which the directors may—

Directors
Meeting, etc.

- (a) make by-laws;

- (b) adopt forms of security certificates and company records;
- (c) authorize the issue of securities;
- (d) appoint officers;
- (e) appoint one or more auditors to hold office until the first annual or general meeting of shareholders;
- (f) make banking arrangements; and
- (g) transact any other business.

(2) Any matter referred to in subsection (1) may be dealt with by the directors by a resolution in writing signed by all the directors.

(3) If the articles require a greater number of votes of directors than is required by this Act to effect any action, the provisions of the articles shall prevail.

(4) Subsection (1) does not apply to a company that is an amalgamated company under section 117 or that is continued under section 120.

(5) An incorporator or a director may call the meeting of directors referred to in subsection (1) by giving not less than five days notice thereof to each director, stating the time and place of the meeting.

Disqualifica-
tions of
directors.

62.—(1) A person is disqualified from being a director of a company, if the person—

- (a) is less than eighteen years of age;
- (b) has been found under the *Mental Health Act* by reason of mental disorder to be incapable of managing and administering his property and affairs or has been found to be so incapable by a court in Jamaica or elsewhere; or
- (c) has the status of an undischarged bankrupt pursuant to the *Insolvency Act* or under the laws of any other country.

(2) Unless the articles otherwise provide, a director of a company is not required to hold shares issued by the company.

63.—(1) Each director named in the articles shall hold office from the date of the certificate of incorporation until the first meeting of shareholders. Term of office of director, etc.

(2) Until the first meeting of shareholders, the resignation of a director named in the articles shall not be effective unless at the time the resignation is to become effective, a successor has been elected or appointed.

(3) The first directors of a company named in the articles have all the powers and duties and are subject to all the liabilities of directors.

(4) Subject to section 64(a), the shareholders of a company shall elect, at the first meeting of shareholders and at each succeeding annual meeting at which an election of directors is required, directors to hold office for a term expiring not later than the close of the third annual meeting of shareholders following the election, unless otherwise provided in the articles of the company.

(5) It is not necessary that all directors elected at a meeting of the shareholders hold office for the same term.

(6) A director who is not elected for an expressly stated term ceases to hold office at the close of the first annual meeting of shareholders following that director's election.

(7) Notwithstanding the provisions of subsections (1) to (6), if directors are not elected at a meeting of shareholders, the incumbent directors continue in office until their successors are elected.

(8) If a meeting of shareholders fails to elect the number of directors required by the articles or by section 69, by reason of the disqualification, incapacity or death of one or more candidates, the directors elected at that meeting and any continuing directors, if they constitute a quorum, may exercise all powers of the directors of the company pending the holding of a general meeting of shareholders in accordance with section 63(4).

(9) Subject to subsection (10), the election or appointment of a director under this Act is not effective unless the person elected or appointed consents in writing before or within ten days after the date of the election or appointment.

(10) If the person elected or appointed consents in writing after the period mentioned in subsection (9), the election or appointment is invalid.

(11) Subsection (9) does not apply to a director who is re-elected or reappointed where there is no break in the director's term of office.

Cumulative
voting for
directors.

64. Unless otherwise provided expressly in the articles, where the articles provide for cumulative voting—

- (a) each shareholder entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by the shareholder multiplied by the number of directors to be elected, and the shareholder may cast all such votes in favour of one candidate or distribute them among the candidates in any manner;
- (b) a separate vote of shareholders shall be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting two or more persons to be elected by a single resolution;
- (c) if a shareholder has voted for more than one candidate without specifying the distribution of the shareholder's votes among the candidates, the shareholder is deemed to have distributed the shareholder's votes equally among the candidates for whom the shareholder voted;
- (d) if the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes shall be eliminated until the number of candidates remaining equals the number of positions to be filled;
- (e) each director ceases to hold office at the close of the first annual meeting of shareholders following that director's election;
- (f) a director may not be removed from office if the votes cast against the director's removal would be sufficient to elect

that director and such votes could be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected;

- (g) the number of directors required by the articles may not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director and such votes could be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected; and
- (h) the articles shall require a fixed number and not a minimum and maximum number of directors.

65.—(1) A director of a company ceases to hold office when that director—

When
director
ceases to
hold office.

- (a) dies or, subject to section 63(2), resigns;
- (b) is removed in accordance with section 66; or
- (c) becomes disqualified under section 62(1).

(2) A resignation of a director becomes effective at the time a written resignation is received by the company or at the time specified in the resignation, whichever is later.

66.—(1) Subject to section 64(f), the shareholders of a company may by ordinary resolution at an annual or general meeting, remove any director from office.

Removal of
director

(2) Where the holders of any class or series of shares of a company have an exclusive right to elect one or more directors, a director so elected may only be removed by an ordinary resolution at a meeting of the shareholders of that class or series.

(3) Subject to section 64(a) to (d), a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed or, if not so filled, may be filled under section 68.

Entitlement
of director.

67.—(1) A director of a company is entitled to receive notice of, and to attend and be heard at, every meeting of shareholders.

(2) A director who—

- (a) resigns; or
- (b) receives a notice or otherwise learns of a meeting of—
 - (i) shareholders called for the purpose of removing that director from office; or
 - (ii) directors or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of the resignation or removal of the director or because the director's term of office has expired or is about to expire,

is entitled to submit to the company a written statement giving the reasons for the director's resignation or why the director opposes any proposed action or resolution, as the case may be, and receive a general notice of any such resolution to remove him as director or to appoint another director in his place.

(3) On receipt of a notice of an intended resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

(4) Where notice is given of an intended resolution to remove a director under this section and the director concerned makes, with respect thereto, written statements to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the statements are received by it too late for it to do so—

- (a) in any notice of the resolution given to the members of the company, state the fact of the statements having been made; and

- (b) send a copy of the statements to every member of the company to whom notice of the meeting is sent, whether before or after receipt of the statements by the company,

and if a copy of the statement is not sent as aforesaid because it was received too late or because of the default of the company, the director may, without prejudice to his right to be heard orally, require that the statements shall be read out at the meeting.

(5) The copies of the statements referred to in subsection (4) need not be sent out and the statements need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for a defamatory matter, and the Court may order the company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

(6) Upon receipt of a statement under subsection (2), a company shall forthwith send a copy of the statement to every shareholder entitled to receive notice of meetings of the shareholders.

(7) A company or a person acting on behalf of a company shall not incur any liability by reason only of circulating a director's statement in compliance with subsection (6).

68.—(1) Subject to subsections (3), (5) and (6), a quorum of directors may fill a vacancy among the directors, except a vacancy resulting from—

Filling of
vacancy.

- (a) an increase in the number of directors otherwise than in accordance with subsection (3), or in the maximum number of directors, as the case may be; or
- (b) a failure to elect the number of directors required to be elected at any meeting of shareholders.

(2) Where a special resolution passed under section 69(2) empowers the directors of a company, the articles of which provide for a minimum and maximum number of directors to determine the number of directors, the directors may not, between meetings of

shareholders, appoint an additional director if, after such appointment, the total number of directors would be greater than one and one-third times the number of directors required to have been elected at the last annual meeting of shareholders.

(3) If there is no quorum of directors, or if there was a failure to elect the number of directors required by the articles or by section 69, the directors then in office shall, forthwith, call a general meeting of shareholders to fill the vacancy, and, if they fail to call the general meeting or there are no directors then in office, the meeting may be called by any shareholder.

(4) Where the holders of any class of shares or series of shares of a company have an exclusive right to elect one or more directors and a vacancy occurs among the directors—

- (a) subject to subsection (6), the remaining directors elected by that class or series may fill the vacancy, except a vacancy resulting from an increase in the number of directors for that class or series or from a failure to elect the number of directors for that class or series; or
- (b) if there are no such remaining directors, any holder of shares of that class or series may call a meeting of the holders thereof for the purpose of filling the vacancy.

(5) The articles may provide that a vacancy among the directors shall only be filled by a vote of the shareholders or by a vote of the holders of any class or series of shares having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by that class or series.

(6) A director appointed or elected to fill a vacancy holds office for the unexpired term of the director's predecessor.

Change in
number of
directors.

69.—(1) A company may increase or decrease the number, or the minimum or maximum number, of its directors in accordance with section 108(1)(k), but no decrease in the number of directors shall shorten the term of an incumbent director.

(2) Where a minimum and maximum number of directors of a company is provided for in its articles, the number of directors of the company and the number of directors to be elected at the annual meeting of the shareholders shall be such number as shall be determined from time to time by special resolution or, if the special resolution empowers the directors to determine the number, by resolution of the directors.

(3) Where no resolution is passed under section (2), the number of the directors of the company shall be the number of directors specified in the articles.

70.—(1) Subject to subsection (2), a meeting of the board of directors shall be held at such place, either within or outside of Jamaica, as may be designated by, or in the manner provided in, the articles or if not so designated, as determined by the board of directors.

Place of meetings and quorum of board directors.

(2) Except where the articles provide otherwise, in any financial year of the company, a majority of the meetings of the board of directors shall be held at a place within Jamaica.

(3) Subject to the articles and subsection (4), a majority of the number of directors or the minimum number of directors required by the articles constitutes a quorum at any meeting of directors, but in no case shall a quorum be less than two-fifths of the number of directors or minimum number of directors, as the case may be.

(4) Where a company has fewer than three directors, all directors shall be present at any meeting of directors to constitute a quorum.

(5) In addition to any other provision in the articles of a company for calling meetings of directors, a quorum of the board may, at any time, call a meeting of the directors for the transaction of any business, the general nature of which is specified in the notice calling the meeting.

(6) Where it is not stated in the articles of the company how notice of a meeting of directors ought to be given, notice of the time and place for the holding of the meeting called under subsection (5), shall be given to every director of the company by sending the notice ten days or more before the date of the meeting to each director's latest address as shown on the records of the company.

(7) A director may, in any manner and at any time, waive a notice of a meeting of directors, and attendance of a director at a meeting of directors is a waiver of notice of the meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

(8) Notice of an adjourned meeting of directors is not required to be given if the time and place of the adjourned meeting is announced at the original meeting.

(9) Where a company has only one director, the director may constitute a meeting.

(10) Subject to subsection (9), unless the articles otherwise provide, a meeting of the directors or of a committee of directors may consist of a meeting between some or all of the directors or, as the case may be, members of the committee who are not all in one place, but each of whom is able (directly or by means of telephonic or electronic communication) to speak to each of the others and to be heard by each of the others and such a meeting shall be deemed to take place—

- (a) where the largest group of those participating in the meeting is assembled;
- (b) if there is no such group, where the chairman of the meeting then is; or
- (c) if neither subparagraph (a) or (b) applies, in such location as the meeting itself decides.

Meeting by
telephone,
etc.

71. Pursuant to section 70(10), where a meeting is held by means of telephonic or electronic communication, the facilities available shall permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and a director participating in such a meeting by such means is deemed, for the purpose of this Act to be present at the meeting.

Validity of
acts of
officers.

72. An act done by an officer is not invalid by reason only of any defect that is thereafter discovered in his appointment, election or qualification.

73.—(1) For the purposes of this section, a director shall be deemed to have acted with due care, diligence and skill where, in the absence of fraud or bad faith, the director reasonably relied in good faith on documents relating to the affairs of the company, including financial statements, reports of experts or on information presented by other directors or, where appropriate, other professionals. Liability of directors.

(2) Subject to subsections (3) and (4), no director, agent or voluntary trustee of a company is liable for any debt, obligation or default of the company.

(3) The directors of a company who vote for or consent to a resolution authorizing—

- (a) a purchase, redemption or other acquisition of shares contrary to section 24, 25 or 26;
- (b) a commission contrary to section 31;
- (c) a payment of a dividend contrary to section 32;
- (d) a payment of an indemnity contrary to section 77; or
- (e) a payment to a shareholder contrary to section 125 or 189,

are jointly and severally liable to restore to the company any amounts so distributed or paid and not otherwise recovered by the company.

(4) Any director who may have been absent when a decision under subsection (3) was made, or who may have dissented from the act or resolution by which the decision was made, may be exonerated from such liability by causing his dissent to be entered on the books containing the minutes of the proceedings of the directors at the time the same was done, or immediately after such director has notice of the same.

(5) A director who is liable under subsection (3) is entitled to apply to the Court for an order compelling a shareholder or other recipient to pay or deliver to the director, any money or property that was paid or distributed to the shareholder or other recipient contrary to section 24, 25, 26, 31, 32, 77, 125 or 189.

(6) In connection with an application under subsection (7), the Court may, if it is satisfied that it is equitable to do so—

- (a) order a shareholder or other recipient to pay or deliver to a director any money or property that was paid or distributed to the shareholder or other recipient contrary to section 24, 25, 26, 31, 32, 77, 125 or 189;
- (b) order a company to return or issue shares to a person from whom the company has purchased, redeemed or otherwise acquired shares; or
- (c) make such further order as it thinks fit.

(7) A director is not liable under subsection (3) if the director proves that he did not know and could not reasonably have known that the share was issued for a consideration less than the fair equivalent of the money that the company would have received if the share had been issued for money.

Disclosure:
conflict
of interest.

74.—(1) A director or an officer of a company who is a—

- (a) party to a material contract or transaction or proposed material contract or transaction with the company; or
- (b) director or an officer of, or has a material interest in, a body who is a party to a material contract or transaction or proposed material contract or transaction with the company,

shall disclose in writing to the company or request to have entered in the minutes of meetings of directors, the nature and extent of the interest of that director or officer.

(2) The disclosure required by subsection (1) shall be made in the case of—

- (a) a director—
 - (i) before the company enters into the proposed contract or transaction;
 - (ii) at the meeting at which the proposed contract or transaction is first considered;

- (iii) if the director was not then interested in a proposed contract or transaction, at the first meeting after the director becomes so interested;
 - (iv) if the director becomes interested after a contract is made or a transaction is entered into, at the first meeting after the director becomes so interested; or
 - (v) if a person who is interested in a contract or transaction later becomes a director, at the first meeting after that person becomes a director; and
- (b) an officer who is not a director—
- (i) forthwith after the officer becomes aware that the contract or transaction or proposed contract or transaction is to be considered or has been considered at a meeting of directors;
 - (ii) if the officer becomes interested after a contract is made or a transaction is entered into, forthwith after the officer becomes so interested; or
 - (iii) if a person who is interested in a contract or transaction later becomes an officer, forthwith after that person becomes an officer.

(3) Notwithstanding subsection (2), if a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the business of the company, would not require approval by the directors or shareholders of the company, the director or officer shall disclose in writing to the company, or request to have entered in the minutes of meetings of directors, the nature and extent of his interest forthwith after the director or officer becomes aware of the contract or transaction or proposed contract or transaction.

(4) A director referred to in subsection (1) shall not attend any part of a meeting of directors during which the contract or transaction

is discussed and shall not vote on any resolution to approve the contract or transaction unless the contract or transaction is one—

- (a) relating primarily to the director's remuneration as a director of the company or an affiliate;
- (b) for indemnity or insurance under section 77; or
- (c) with an affiliate of the contracting company or with a body corporate which is a part of a group of companies of which the contracting company is a part or a body corporate that is otherwise related to the contracting company.

(5) If no quorum exists for the purpose of voting on a resolution to approve a contract or transaction only because a director is not permitted to be present at the meeting by reason of subsection (4), the remaining directors shall be deemed to constitute a quorum for the purposes of voting on the resolution.

(6) Where every director is required to make a disclosure under subsection (1), the contract or transaction may be approved only by the shareholders.

(7) For the purposes of this section, a general notice to the directors by a person who is a director or officer is sufficient disclosure of interest in relation to any such contract or transaction if it discloses that—

- (a) the person is a director, partner or officer of, or has a material interest in a body;
- (b) there has been a material change in the director's, partner's or officer's interest in the body; and
- (c) the director or officer is to be regarded as interested in any contract made or any transaction entered into with that body.

(8) Subsection (9) shall apply in any case where a material contract or a material transaction is made or entered into between—

- (a) a company and a director, partner or officer of the company;
- or

- (b) a company and another body of which a director, partner or officer of the company is a director, partner or officer or in which the director or officer has a material interest,

if the director, partner or officer disclosed his interest in accordance with subsection (2), (3) or (7) as the case may be, and the contract or transaction was reasonable and fair to the company at the time it was so approved.

(9) For the purposes of subsection (8), if the director, partner or officer disclosed his interest in accordance with subsection (2), (3) or (7), as the case may be, and the contract or transaction was reasonable and fair to the company at the time it was so approved—

- (a) the director, partner or officer is not accountable to the company or its shareholders for any profit or gain realized from the contract or transaction; and
- (b) the contract or transaction is neither void nor voidable, by reason only—
 - (i) of that relationship; or
 - (ii) that the director is present at or is counted to determine the presence of a quorum at the meeting of directors that authorized the contract or transaction.

(10) Notwithstanding anything in this section, a director or officer, acting honestly and in good faith, is not accountable to the company or its shareholders for any profit or gain realized from any such contract or transaction by reason only of his holding the office of director or officer, and the contract or transaction, if it was reasonable and fair to the company at the time it was approved, is not by reason only of the director's or officer's interest therein, void or voidable where the—

- (a) contract or transaction is confirmed or approved by special resolution at a meeting of the shareholders duly called for that purpose; and

- (b) nature and extent of the interest of the director or officer in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting.

(11) Subject to subsections (8), (9) and (10) where a director or officer of a company fails to disclose his interest in a material contract or transaction in accordance with this section or otherwise fails to comply with this section, the company or a shareholder thereof may apply to the Court for an order setting aside the contract or transaction and directing that the director or officer account to the company for any profit or gain realized and, upon such application, the Court may so order or make such other order as it thinks fit.

Standards of care, etc., of directors, etc.

75.—(1) Every director and every officer of a company in exercising his powers and discharging his duties to the company shall—

- (a) act honestly and in good faith with a view to the best interest of the company; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) Every director and every officer of a company shall comply with the articles, this Act, and any regulations made under this Act.

(3) No provision in a contract, the articles or a resolution relieves a director or officer from the duty to act in accordance with this Act and any regulations made under this Act or relieves the director or officer from liability for a breach thereof.

Consent of director at meeting.

76.—(1) Subject to subsection (2), a director who is present at a meeting of directors or committee of directors is deemed to have consented to any resolution passed or action taken thereat, unless the director—

- (a) requests that the director's dissent be, or is entered, in the minutes of the meeting;
- (b) sends a written dissent to the secretary of the meeting before the meeting is terminated; or
- (c) sends a dissent by registered mail or delivers it to the registered office of the company forthwith after the meeting is terminated.

(2) A director who votes for, or consents to, a resolution is not entitled to dissent under subsection (1).

(3) A director who was not present at a meeting at which a resolution was passed or action taken is deemed to have consented thereto unless within seven days after becoming aware of the resolution the director—

- (a) causes his dissent to be placed with the minutes of the meeting; or
- (b) sends his dissent by registered mail or delivers it to the registered office of the company.

(4) A director is not liable under section 73 and has complied with his duties under section 75(2) if the director exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances, including reliance in good faith on—

- (a) the financial statements of the company represented to him by an officer of the company or in a written report of the auditor of the company to present fairly the financial position of the company in accordance with generally accepted accounting principles;
- (b) an interim or other financial report of the company represented to him by an officer of the company to present fairly the financial position of the company in accordance with generally accepted accounting principles;
- (c) a report or advice of an officer or employee of the company, where it is reasonable in the circumstances to rely on the report or advice; or
- (d) a report of an attorney-at-law, accountant, engineer, valuer, or other person whose profession lends credibility to a report made by any such person.

77.—(1) A company may indemnify—

- (a) a director, officer or auditor of the company;

Indemnifi-
cation.

- (b) a former director, officer or auditor of the company;
- (c) an individual who acts or acted at the request of the company as a director or officer or an individual of another body corporate acting in a similar capacity; or
- (d) a legal representative,

against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of that association with the company or other entity.

(2) A company may advance money to a director, officer or other individual for the costs, charges and expenses of a proceeding referred to in subsection (1), so, however, that the individual shall repay the money if the individual does not fulfill the conditions set out in subsection (3).

(3) A company shall not indemnify an individual under subsection (1) unless the individual acted honestly and in good faith with a view to the best interests of the company or, as the case may be, to the best interests of the other entity for which the individual acted as director or officer or in a similar capacity at the request of the company.

(4) In addition to the conditions set out in subsection (3), if the matter is a criminal or administrative action or proceeding that is enforced by a monetary penalty, the company shall not indemnify an individual under subsection (1) unless the company had reasonable grounds for believing that the individual's conduct was lawful.

(5) A company may, with the approval of the Court, indemnify an individual referred to in subsection (1) or advance moneys under subsection (2), in respect of an action by or on behalf of the company or other entity to obtain judgment in its favour, to which the individual is made a party because of the individual's association with the company or other entity as described in subsection (1), against all costs, charges and expenses reasonably incurred by the individual in connection with such action, if the individual fulfills the conditions set out in subsection (3).

(6) Notwithstanding subsection (1), an individual referred to in that subsection is entitled to indemnity from the company in respect of all costs, charges and expenses reasonably incurred by the individual in connection with the defense of any civil, criminal, administrative, investigative or other proceeding to which the individual is subject because of the individual's association with the company or other entity as described in subsection (1), if the individual seeking an indemnity—

- (a) was not judged by a court or other competent authority to have committed any fault or omitted to do anything that the individual ought to have done; and
- (b) fulfils the conditions set out in subsections (3) and (4).

(7) A company may purchase and maintain insurance for the benefit of an individual referred to in subsection (1) against any liability incurred by the individual, in the individual's capacity as—

- (a) a director or officer of the company; or
- (b) a director or officer, or a similar capacity, of another entity, if the individual acts or acted in that capacity at the request of the company.

(8) A company or a person referred to in subsection (1) may apply to the Court for an order approving an indemnity under this section and the Court may so order and make any further order it thinks fit.

(9) Upon an application under subsection (8), the Court may order that notice be given to any interested person and such a person is entitled to appear and be heard in person or by an attorney-at-law.

78. Subject to the articles or any unanimous shareholders agreement, the directors of a company may fix the remuneration of the directors, officers and employees of the company.

Remuneration of directors.

PART VIII—*Books And Records*

79.—(1) Where this Act requires a record to be kept by a company, it may be kept in a bound or loose leaf book or may be entered or recorded by any means of mechanical or electronic data processing or any other information storage device.

Obligations to maintain records.

(2) The company shall—

- (a) take adequate precautions, appropriate to the means used, for guarding against the risk of falsifying the information recorded; and
- (b) provide means for making the information available in an accurate and intelligible form within a reasonable time to any person lawfully entitled to examine the records.

(3) The bound or loose leaf book or, where the record is not kept in a bound or loose leaf book, the information in the form in which it is made available under subsection (2)(b) is admissible in evidence as proof, in the absence of evidence to the contrary, of all facts stated therein, before and after dissolution of the company.

(4) A person shall not—

- (a) remove, withhold or destroy information required by this Act, or regulations made under this Act to be recorded;
- (b) knowing it to be untrue—
 - (i) record or assist in recording any information in a record; or
 - (ii) make information purporting to be accurate available in a form referred to in subsection (2).

(5) A person who contravenes subsection (4) commits an offence and shall be liable, on summary conviction, to the penalty specified in the Third Schedule.

Third
Schedule.

The nature
of records.

80.—(1) A company shall maintain, at its registered office in Jamaica—

- (a) the articles and all amendments thereto;
- (b) minutes of meetings and resolutions of shareholders;
- (c) a register of directors in which are set out the names and residence addresses, including the street number, if any, of all persons who are or have been directors of the company

with the several dates on which each became or ceased to be a director; and

(d) a securities register complying with section 81.

(2) In addition to the records described in subsection (1), a company shall prepare, and maintain in Jamaica—

(a) adequate accounting records; and

(b) records containing minutes of meetings and resolutions of the Board and any committee thereof,

but provided the retention requirements of any taxing authority of Jamaica or any other jurisdiction to which the company is subject have been satisfied, the accounting records mentioned in paragraph (a) need only be retained by the company for seven years from the end of the last fiscal period to which they relate.

(3) For the purposes of—

(a) subsection (1) (b) and subsection (2), where a company is continued under this Act, “records” includes similar records required by law to be maintained by the company before it was so continued; and

(b) subsection (2) “accounting records” means records that correctly record and explain the transactions and financial position of the company.

(4) A company who contravenes subsection (1) or (2) commits an offence and shall be liable, on summary conviction, to the penalty specified in the Third Schedule.

81.—(1) A company shall prepare and maintain at its registered office, or any other place in Jamaica designated by the directors, a securities register in which it records the securities issued by it in registered form, showing, in respect of each class or series of securities—

(a) the names, in alphabetical order, of persons who are or have been within six years registered as—

(i) shareholders of the company, the address including the street number, if any, of every such

Third
Schedule.

Securities
register and
register of
transfers.

person while a holder, and the number and class of shares registered in the name of that holder;

- (ii) holders of debt obligations of the company, the address including the street and number, if any, of every such person while a holder, and the class or series and principal amount of debt obligations registered in the name of such holder; or
- (iii) holders of warrants of the company, other than warrants exercisable within one year from the date of issue, the address including the street and number, if any, of every such person while a registered holder, and the class or series and number of warrants registered in the name of such holder; and

- (b) the date and particulars of the issue of each security and warrant.

(2) A company which contravenes subsection (1) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

Third
Schedule.

(3) A company shall cause to be kept at its registered office, or any other place in Jamaica designated by the directors, a register of transfers in which shall be set out all transfers of securities issued by the company in registered form and the date and other particulars of each transfer.

(4) A company which contravenes subsection (3) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

Transfer
agents.

82. For each class of securities and warrants issued by it, a company may appoint a—

- (a) trustee, transfer agent or other agent to keep the securities register and the register of transfers and one or more persons or agents to keep branch registers; and

- (b) registrar, trustee or agent to maintain a record of issued security certificates and warrants,

and one person may be appointed for the purposes of both paragraphs (a) and (b) in respect of all securities and warrants of the company or any class or classes thereof.

83.—(1) The registration of the transfer of a security or warrant of a company in the register of transfers is a complete and valid registration for all purposes. Effect of registration, etc.

(2) A company or person appointed under section 82 is not required to produce—

- (a) any security certificate or warrant that is not in registered form; or
- (b) any security certificate or warrant that is in registered form after seven years, as follows—
- (i) in the case of a share certificate, from the date of its cancellation;
 - (ii) in the case of a warrant, from the date of its transfer or exercise, whichever first occurs; or
 - (iii) in the case of a certificate representing a debt obligation, from the date of cancellation of that certificate.

84.—(1) The records mentioned in sections 80 and 81 shall, during usual business hours of a company, be open to examination by any director and shall, except as provided in sections 80(2) and 83, and subsections (2) and (3), be kept at the registered office of the company. Records open to examination.

(2) A company may keep at any place where it carries on business, such parts of the accounting records as relates to the operations, business and assets and liabilities of the company carried on, supervised or accounted for at such place, but there shall be kept at the registered office of the company or such other place as may be authorized under this section, such records as will enable the directors to ascertain quarterly, with reasonable accuracy, the financial position of the company.

(3) A company may keep all or any of the records mentioned in subsection (1) at a place other than the registered office of the company if the records are available for inspection during usual office hours at the registered office by means of a computer terminal or other electronic technology.

Examina-
tion of
records by
shareholders
and creditors.

85.—(1) The registered shareholders, beneficial owners of shares and creditors of a company, their agents and legal representatives may examine the records referred to in section 80(1) during the usual business hours of the company and may take extracts from those records, free of charge.

(2) A registered holder or beneficial owner of shares of a company is entitled upon request and without charge to one copy of the articles and of any unanimous shareholder agreement.

List of
share-
holders.

86.—(1) The registered shareholders, beneficial owners of shares and creditors of a company, their agents and legal representatives, upon payment of a reasonable fee and upon sending to the company, or its transfer agent, the statutory declaration referred to in subsection (6), may require the company or its transfer agent to furnish a basic list setting out the names of the registered holders of the shares of the company, the number of shares of each class and series owned by each registered holder and the address of each of them, as shown on the records of the company.

(2) The basic list referred to in subsection (1) shall be furnished to the applicant as soon as is practicable and when furnished, shall be as current as is practicable, having regard to the form in which the securities register of the company is maintained, but, in any case, shall be furnished not more than ten days following the receipt by the company or its transfer agent, of the statutory declaration referred to in subsection (1) and shall be made up to a date not more than ten days before the date on which it is actually furnished.

(3) A person requiring a company to supply a basic list may, if the person states in the statutory declaration referred to in subsection (1) that the person requires supplemental lists, require the company or its agent, upon payment of a reasonable fee to furnish supplemental

setting out any changes from the basic list in the names or addresses of the registered holders of the shares of the company and the number of shares owned by each registered holder for each business day following the date to which the basic list is made up.

(4) The company or its agent shall furnish a supplemental list required under subsection (3)—

- (a) on the date the basic list is furnished, where the information relates to changes that took place prior to that date; and
- (b) on the business day following the day to which the supplemental list relates, where the information relates to changes that take place on or after the date on which the basic list is furnished.

(5) A person requiring a company to supply a basic or supplemental list may also require the company to include in that list the name and address of any known holder of an option or right to acquire shares of the company.

(6) The statutory declaration required under subsection (1) shall state—

- (a) the name and address including the street and number, if any, of the applicant and whether the applicant is a registered holder, beneficial owner, creditor or any other person referred to in that subsection;
- (b) the name and address including street and number, if any, for service of the body corporate if the applicant is a body corporate; and
- (c) that the basic list and any supplemental list shall be used only as permitted under subsection (8).

(7) If the applicant is a body corporate, the statutory declaration shall be made by a director or officer of the body corporate.

(8) A list of registered holders of shares obtained under this section shall not be used by any person except in connection with—

- (a) an effort to influence the voting by registered holders of the company;

- (b) an offer to acquire shares of the company; or
- (c) any other matter relating to the affairs of the company.

Proof of
status.

87.—(1) Before providing a document referred to in section 84 or 85 to a person who claims to be a beneficial owner of the shares of the company, a company may require the person to provide proof that the person is a beneficial owner.

(2) A written statement by a securities intermediary, as defined in the *Securities Act*, that a person is a beneficial owner is sufficient proof for the purposes of subsection (1).

Trafficking
in lists.

88. A person shall not offer for sale or sell, purchase or otherwise traffic in a list or a copy of a list of all or any of the holders of securities or warrants of a company.

PART IX—*Auditors and Financial Statements*

Exemption
from audit
require-
ments.

89. In respect of a financial year of a company, the company is exempt from the requirements of this Part regarding the appointment and duties of an auditor, if all of the shareholders consent in writing to the exemption in respect of that year.

Auditors.

90.—(1) The shareholders of a company at their first annual or general meeting shall appoint one or more auditors to hold office until the close of the first or next annual or general meeting, as the case may be, and, if the shareholders fail to do so, the directors shall forthwith make such appointment or appointments.

(2) The shareholders shall at each annual meeting appoint one or more auditors to hold office until the close of the next annual meeting and, if an appointment is not so made, the auditor in office continues in office until a successor is appointed.

(3) The directors may fill any casual vacancy in the office of auditors, but, while such vacancy continues, the surviving or continuing auditors, if any, may act.

(4) The shareholders may, except where the auditor has been appointed by order of the Court under subsection (8), by resolution passed by a majority of the votes cast at a general meeting duly called

for the purpose, remove an auditor before the expiration of the auditor's term of office, and shall by a majority of the votes cast at that meeting appoint a replacement for the remainder of the auditor's term.

(5) Before calling a general meeting for the purpose specified in subsection (4) or an annual or general meeting where the board is not recommending the reappointment of the incumbent auditor, the company shall, fifteen days or more before the notice of the meeting is sent, give to the auditor—

- (a) written notice of the intention to call the meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed; and
- (b) a copy of all material proposed to be sent to shareholders in connection with the meeting.

(6) An auditor has the right to make to the company, within three days before the mailing of the notice of the meeting, representations in writing, concerning the—

- (a) auditor's proposed removal as auditor;
- (b) appointment or election of another person to fill the office of auditor; or
- (c) auditor's resignation as auditor,

and the company, at its expense, shall forward with the notice of the meeting a copy of such representations to each shareholder entitled to receive notice of the meeting.

(7) The remuneration of an auditor appointed by the shareholders shall be fixed by the shareholders, or by the directors if they are authorized so to do by the shareholders, and the remuneration of an auditor appointed by the directors shall be fixed by the directors.

(8) If a company does not have an auditor, the Court may, upon the application of a shareholder or the Registrar, appoint and fix the remuneration of an auditor to hold office until an auditor is appointed by the shareholders.

(9) The company shall give notice in writing to an auditor of the auditor's appointment forthwith after the appointment is made.

(10) The company shall forthwith inform the Registrar, by notice in writing, of the appointment of an auditor.

Resignation
of auditors.

91.—(1) A resignation of an auditor becomes effective at the time when a written resignation is sent to the company or at the time specified in the resignation, whichever is later.

(2) The company shall forthwith inform the Registrar, by notice in writing, of the resignation of an auditor.

Auditor's
attendance at
meetings.

92.—(1) The auditor of a company is entitled to receive notice of every meeting of shareholders and, at the expense of the company, to attend and be heard thereat on matters relating to the auditor's duties.

(2) If any director or shareholder of a company, whether or not the shareholder is entitled to vote at the meeting, gives written notice, not less than fourteen days or more before a meeting of shareholders, to the auditor or former auditor of the company, the auditor or former auditor shall attend the meeting at the expense of the company and answer questions relating to the auditor's duties.

(3) A director or shareholder who sends a notice referred to in subsection (2), shall send concurrently, a copy of the notice to the company.

(4) A person shall not accept an appointment or consent to be appointed as auditor of a company if the person is replacing an auditor who has resigned, been removed, or whose term of office has expired, or is about to expire, until the person has requested, and received from that auditor, a written statement of the circumstances and the reasons, in that auditor's opinion, that auditor is to be replaced.

(5) Notwithstanding subsection (4), a person otherwise qualified may accept appointment or consent to be appointed as an auditor of a company if, within fifteen days after making the request referred to in that subsection, the person does not receive a reply.

(6) Any interested person may apply to the Court for an order declaring an auditor to be disqualified and the office of auditor to be vacant if the auditor has not complied with subsection (4), unless subsection (5) applies with respect to the appointment of the auditor.

(7) Any oral or written statement or report made under this Act by the auditor or former auditor of a company has qualified privilege.

93. A person shall not be qualified for appointment as auditor of a company unless he is a registered public accountant as defined in section 2 of the *Public Accountancy Act*.

Qualifi-
cation for
appoint-
ment as
auditor.

94.—(1) A person is disqualified from being an auditor of a company if the person is not independent of the company, all of its affiliates, or of the directors or officers of the company and its affiliates.

Disqualifi-
cation as
auditor.

(2) For the purposes of this section—

- (a) independence is a question of fact; and
- (b) a person is deemed not to be independent if the person or the person's business partner—
 - (i) is a business partner, director, officer or employee of the company or any of its affiliates, or a business partner of any director, officer or employee of the company or any of its affiliates;
 - (ii) beneficially owns directly or indirectly or exercises control or direction over a material interest in the securities of the company or any of its affiliates; or
 - (iii) has been a receiver, receiver and manager, trustee of the company or any of its affiliates within two years of the person's proposed appointment as auditor of the company.

(3) An auditor who becomes disqualified under this section shall, resign forthwith upon becoming aware of such disqualification.

(4) An interested person may apply to the Court for an order declaring an auditor to be disqualified under this section and for the office of auditor to be vacant.

(5) For the purposes of subsection (2), a person's business partner includes a shareholder of the person.

Examina-
tion
by auditor.

95.—(1) An auditor of a company shall make such examination of the financial statements required by this Act to be placed before shareholders as is necessary to enable the auditor to report thereon and the auditor shall report as prescribed and in accordance with generally accepted auditing standards.

(2) A director or an officer of a company shall forthwith notify the audit committee and the auditor, or the former auditor, of any error or misstatement of which the director or officer becomes aware in a financial statement that the auditor or the former auditor has reported upon, if the error or misstatement in all the circumstances appears to be significant, and shall inform the board of directors of such error or misstatement accordingly.

(3) If the auditor or former auditor of a company is notified or becomes aware of an error or misstatement in a financial statement upon which he has reported, and if, in his opinion, the error or misstatement is material, the auditor or former auditor shall inform each director accordingly.

(4) Where under subsection (3) the auditor or former auditor informs the directors of an error or misstatement, the directors shall within a reasonable time—

- (a) prepare and issue revised financial statements; or
- (b) otherwise inform the shareholders.

(5) Upon the demand of an auditor of a company, the present or former directors, officers, employees or agents of the company shall furnish such—

- (a) information and explanations; and
- (b) access to records, documents, books, accounts and vouchers of the company or any of its subsidiaries, as are, in the auditor's opinion, necessary to enable the auditor to make the examination and report required under this section and that the directors, officers, employees or agents are reasonably able to furnish.

(6) Upon the demand of the auditor of a company, the directors of the company shall—

- (a) obtain from the present or former directors, officers, employees and agents of any subsidiary of the company, the information and explanations that the present or former directors, officers, employees and agents are reasonably able to furnish and that are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required under this section; and
- (b) furnish the information and explanations so obtained to the auditor.

(7) Any oral or written communication under this section between the auditor or former auditor of a company and its present or former directors, officers, employees or agents or those of any subsidiary of the company, has qualified privilege.

96.—(1) The directors shall place before each annual meeting of shareholders—

- (a) a financial statement for the period which began on the date the company came into existence and ended not more than six months before the annual meeting or, if the company has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than six months before the annual meeting;
- (b) the report of the auditor, if any, to the shareholders; and
- (c) any further information respecting the financial position of the company and the results of its operations required by the articles or any unanimous shareholders agreement.

Information
to be laid
before annual
meeting.

(2) Except as provided in section 53(1), the report of the auditor to the shareholders shall be open to inspection at the annual meeting by any shareholder.

(3) Not less than ten days before each annual meeting of shareholders or before the signing of a resolution under section 53(1),

in *lieu* of the annual meeting, the company shall send a copy of the documents referred to in subsection (1) to all shareholders other than those who have informed the company in writing that they do not wish to receive a copy of those documents.

Preparation
of financial
statements.

97. The financial statements required under this Act shall be prepared in the manner prescribed by regulations and in accordance with generally accepted accounting principles.

Financial
statements
of
subsidiaries.

98.—(1) True copies of the latest financial statements of each subsidiary of a company shall be kept on hand by the company at its registered office and shall be open to examination by the shareholders of the company and their agents and legal representatives who may make extracts therefrom free of charge on request during the usual business hours of the company.

(2) A company may, within fifteen days after a request to examine under subsection (1), apply to the Court for an order barring the right of any person to so examine, and the Court may, if satisfied that such examination would be detrimental to the company or a subsidiary, bar such right and make such further order as it thinks fit.

Audit
committee.

99.—(1) A company may have an audit committee, a majority of whom are not officers or employees of the company or any of its affiliates, to hold office until the next annual meeting of the shareholders.

(2) An audit committee shall review the financial statements of the company and shall report thereon to the board of directors of the company before such financial statements are approved under section 100.

(3) The auditor of a company is entitled to receive notice of every meeting of the audit committee and, at the expense of the company, to attend and be heard thereat and, if so requested by a member of the audit committee, shall attend every meeting of the committee held during the term of office of the auditor.

(4) The auditor of a company shall be entitled to attend at the expense of the company, and be heard at meetings of the board of directors of the company, on matters relating to the auditor's duties.

100.—(1) The financial statements of a company shall be approved by the board of directors and the approval shall be evidenced by the signature at the foot of the balance sheet by any director authorized to sign, and the auditor's report shall be attached to or accompany the financial statements. Approval by directors.

(2) A company shall not issue, publish or circulate copies of the financial statements referred to in section 96 unless the financial statements are—

- (a) approved and signed in accordance with subsection (1); and
- (b) accompanied by the report of the auditor of the company, if any, unless the company is exempt under section 89 from the requisite audit requirements.

PART X—*Investigation*

101.—(1) Without prejudice to the powers conferred by any other enactment, a registered holder or a beneficial owner of a security or the Registrar may apply, without notice, or on such notice as the Court may require, to the Court for an order directing an investigation to be made of the company or any of its affiliates. Investigation.

(2) Where, upon an application under subsection (1), it appears to the Court that—

- (a) the business of the company or any of its affiliates is or has been carried on with intent to defraud any person;
- (b) the business or affairs of the company or any of its affiliates are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner that is oppressive or unfairly prejudicial to, or that unfairly disregards, the interests of a security holder;
- (c) the company or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
- (d) persons concerned with the formation, business or affairs of the company or any of its affiliates, as referred to in

paragraphs (a), (b) and (c), have in connection therewith acted fraudulently or dishonestly,

the Court may order an investigation to be made of the company and any of its affiliates.

(3) An applicant under this section is not required to give security for costs.

(4) The hearing of an application made without notice under this section shall be closed to the public.

(5) A person shall not publish anything relating to an application under this section except with the authorization of the Court or the written consent of the company being investigated.

Orders by the
Court in
connection
with an
investi-
gation

102.—(1) In connection with an investigation under this Part, the Court may make any order it thinks fit, including, without limiting the generality of the foregoing, an order—

- (a) to investigate;
- (b) appointing and fixing the remuneration of an inspector or replacing an inspector;
- (c) determining the notice to be given to any interested person, or dispensing with notice to any person;
- (d) authorizing an inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything and make copies of any document or record found on the premises;
- (e) requiring any person to produce documents or records to the inspector;
- (f) authorizing an inspector to conduct a hearing, administer oaths and examine any person upon oath and prescribing rules for the conduct of the hearing;
- (g) requiring any person to attend a hearing conducted by an inspector and to give evidence upon oath;

- (h) giving directions to an inspector or any interested person on any matter arising in the investigation;
- (i) requiring an inspector to make an interim or final report to the Court;
- (j) determining whether a report of an inspector should be made available for public inspection and ordering that copies be sent to any person designated by the Court;
- (k) requiring an inspector to discontinue an investigation; and
- (l) requiring the company to pay the costs of the investigation.

(2) An inspector shall send to the Registrar a copy of every report made by the inspector under this Part which, subject to subsection (1)(j), shall be placed on the file of the company for public inspection.

103.—(1) An inspector has, under this Part, the powers set out in the order appointing him. Powers of inspector.

(2) In addition to the powers set out in the order referred to in subsection (1), an inspector appointed to investigate a company may furnish to, or exchange information and otherwise cooperate with, any public official who is authorized to exercise investigatory powers and who is investigating, in respect of the company, any allegation of improper conduct that is the same as, or similar to, the conduct described in section 101(2).

(3) An inspector shall, upon request, produce to an interested person, a copy of any order made under section 101(1).

104.—(1) Any interested person may apply to the Court for an order that a hearing conducted under this Part be closed to the public and for directions on any matter arising in the investigation. Rights at hearing.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part has a right to be represented by an attorney-at-law.

105. Any oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege. Privileged statements.

Attorney-
client
privilege.

106. Nothing in this Part shall be construed so as to affect the privilege that exists in respect of communications between an attorney-at-law and the client of the attorney-at-law.

Inquiries by
Registrar.

107. The Registrar may make inquiries of any person relating to compliance with this Part.

PART XI—*Fundamental Changes*

Amendment
of articles.

108.—(1) Subject to sections 110 and 111, a company may, from time to time, amend its articles to add, change or remove any provision that is permitted by this Act, or that is set out in its articles, including, without limiting the generality of the foregoing to—

- (a) change its name;
- (b) add, change or remove any restriction on the business that the company may carry on or on the powers that the company may exercise;
- (c) add, change or remove any maximum number of shares that the company is authorized to issue or any maximum consideration for which any shares of the company are authorized to be issued;
- (d) create new classes of shares;
- (e) change the designation of all or any of its shares and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or unissued;
- (f) change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series;
- (g) divide a class of shares, whether issued or unissued, into series and fix the number of shares in each series, and the rights, privileges, restrictions and conditions thereof;
- (h) authorize the directors to divide any class of unissued shares into series and fix the number of shares in each series, and the rights, privileges, restrictions and conditions thereof;

- (i) authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series;
- (j) revoke, diminish or enlarge any authority conferred under paragraphs (h) and (i);
- (k) subject to sections 64 and 69, increase or decrease the number, or minimum or maximum number, of directors; and
- (l) add, change or remove restrictions on the issue, transfer or ownership of shares of any class or series.

(2) Where the directors are authorized by the articles to divide any class of unissued shares into series and determine the designation, rights, privileges, restrictions and conditions thereof, they may authorize the amendment of the articles to so provide.

(3) The directors of a company may, if so authorized by a special resolution effecting an amendment under this section, revoke the resolution without further approval of the shareholders at any time prior to the issue by the Registrar of a certificate of amendment of articles in respect of such amendment.

(4) Notwithstanding subsection (1), where a company has a number name, the directors may amend its articles to change that name to a name that is not a number name.

(5) An amendment under—

- (a) subsection (1) shall be authorized by a special resolution; and
- (b) subsection (2) or (4) may be authorized by a resolution of the directors.

109.—(1) A registered shareholder entitled to vote, or a beneficial owner of shares that are entitled to be voted, at an annual meeting of shareholders, may make a proposal to amend the articles. Proposal to amend articles.

(2) Notice of a meeting of shareholders at which a proposal to amend the articles is to be considered shall set out the proposed amendment and, where applicable, shall state that a dissenting

shareholder is entitled to be paid the fair value of the shares but failure to make that statement does not invalidate an amendment.

Authori-
zation for
variation of
rights of
special share-
holders.

110.—(1) The shareholders of a class or, subject to subsection (2), of a series are, unless the articles otherwise provide in the case of an amendment referred to in paragraph (a), (b) or (e), entitled to vote separately as a class or series upon a proposal to amend the articles to—

- (a) increase or decrease any maximum number of authorized shares of such a class or series, or increase any maximum number of authorized shares of a class or series having rights or privileges equal or superior to the shares of such class or series;
- (b) effect an exchange, reclassification or cancellation of the shares of such class or series;
- (c) add to, remove or change the rights, privileges, restrictions or conditions attached to the shares of such class or series and, without limiting the generality of the foregoing—
 - (i) remove or change prejudicially, rights to accrued dividends or rights to cumulative dividends;
 - (ii) add, remove or change prejudicially, redemption rights or sinking fund provisions;
 - (iii) reduce or remove a dividend preference or a liquidation preference; or
 - (iv) add, remove or change prejudicially, conversion privileges, options, voting, transfer or pre-emptive rights, or rights to acquire the securities of a company;
- (d) add to the rights or privileges of any class or series of shares having rights or privileges equal or superior to the shares of such class or series;
- (e) create a new class or series of shares equal or superior to the shares of such class or series, except in the case of a series under section 19;

- (f) make a class or series of shares having rights or privileges inferior to the shares of such class or series equal or superior to the shares of such class or series;
- (g) effect an exchange or create a right of exchange of the shares of another class or series into the shares of such class or series; or
- (h) add, remove or change restrictions on the issue, transfer or ownership of the shares of such class or series.

(2) The holders of a series of shares of a class are entitled to vote separately as a series under subsection (1) only if such series is affected by an amendment in a manner different from other shares of the same class.

(3) Subsection (1) applies whether or not shares of a class or series otherwise carry the right to vote.

(4) A proposed amendment to the articles referred to in subsection (1) is adopted when the shareholders have approved the amendment by a special resolution of the shareholders of each class or series entitled to vote thereon.

111.—(1) Articles of amendment in the prescribed form or restated articles incorporating the amendments made shall be sent to the Registrar.

Effects of amendment of articles, etc.

(2) If an amendment effects or requires a reduction of stated capital, subsections (4) and (5) of section 28 shall apply.

(3) A company shall not change its name if—

- (a) the company is unable to pay its liabilities as they become due; or
- (b) the realizable value of the assets of the company is less than the aggregate of its liabilities.

112. Upon receipt of articles of amendment, the Registrar shall issue in accordance with section 215, a certificate of amendment.

Articles of amendment.

Restated
articles of
incorpor-
ation.

113.—(1) The directors may, at any time, restate the articles of incorporation as amended.

(2) Restated articles of incorporation in the prescribed form shall be sent to the Registrar.

(3) Upon receipt of restated articles of incorporation by the Registrar, the company may request from the Registrar a certified copy of the restated certificate of incorporation.

(4) Restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

Amalga-
mation.

114. Two or more bodies corporate, including companies or one or more of their subsidiaries or associates, may amalgamate where the surviving entity is a company.

Amalga-
mation
agreement.

115.—(1) Pursuant to section 114, where bodies corporate propose to amalgamate, each body corporate shall enter into an agreement setting out the terms and means of effecting the amalgamation, including—

- (a) the provisions that are required to be included in articles of incorporation under section 4;
- (b) subject to subsection (2), the basis upon which and the manner in which the holders of the issued shares of each amalgamating body corporate are to receive—
 - (i) securities of the amalgamated company;
 - (ii) money; or
 - (iii) securities of any body corporate other than the amalgamated company, in the amalgamation;
- (c) the manner of payment of money instead of the issue of fractional shares of the amalgamated company or of any other body corporate, the securities of which, are to be received in the amalgamation;
- (d) whether the by-laws of the amalgamated company are to be those of one of the amalgamating bodies corporate and the

address where a copy of the proposed by-laws may be examined; and

- (e) such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated company.

(2) Where shares of one of the amalgamating bodies corporate are held by or on behalf of another of the amalgamating bodies corporate, the amalgamation agreement shall provide for the cancellation of such shares upon the amalgamation becoming effective without any repayment of capital in respect thereof, and no provision shall be made in the agreement for the conversion of such shares into shares of the amalgamated company.

116.—(1) The directors of each amalgamating body corporate shall submit the amalgamation agreement for approval at a meeting of the shareholders of the amalgamating body corporate of which they are directors and subject to subsection (3), of the shareholders of each class or series entitled to vote thereon. Submission of
amalgamation
agreement.

(2) The notice of the meeting of shareholders of each amalgamating body corporate shall include or be accompanied by—

- (a) a copy or summary of the amalgamation agreement; and
- (b) a statement that a dissenting shareholder is entitled to be paid the fair value of the shares in accordance with section 125 but failure to make that statement does not invalidate an amalgamation.

(3) The holders of a class or series of shares of an amalgamating body corporate, whether or not they are otherwise entitled to vote, are entitled to vote separately as a class or series in respect of an amalgamation if the amalgamation agreement contains a provision that, if contained in a proposed amendment to the articles, would entitle such holders to vote separately as a class or series under section 110.

(4) An amalgamation agreement is adopted when the shareholders of each amalgamating body corporate have approved of the amalgamation by a special resolution of the shareholders of each class or series entitled to vote thereon.

(5) An amalgamation agreement may provide that, at any time before the endorsement of a certificate of amalgamation, the agreement may be terminated by the directors of an amalgamating body corporate, despite approval of the agreement by the shareholders of all or any of the amalgamating bodies corporate.

Amalgamations involving company.

117. A company and one or more of its subsidiaries or associates may amalgamate where the surviving entity is a company without complying with sections 115 and 116 if—

- (a) the amalgamation is approved by a resolution of the directors of each amalgamating entity;
- (b) all of the issued shares of each amalgamating subsidiary or associate are held by one or more of the other amalgamating entities; and
- (c) the resolutions provide that—
 - (i) the shares of each amalgamating subsidiary or associate shall be cancelled without any repayment of capital in respect thereof;
 - (ii) the by-laws of the amalgamated company shall be the same as the by-laws of the amalgamating company;
 - (iii) except as may be prescribed, the articles of amalgamation shall be the same as the articles of the amalgamating company; and
 - (iv) no securities shall be issued and no assets shall be distributed by the amalgamated company in connection with the amalgamation.

Articles of amalgamation.

118.—(1) After an amalgamation has been adopted under section 116 or approved under section 117, then, subject to section 116(5), the articles of amalgamation in the prescribed form shall be filed with the Registrar.

(2) There shall be attached to the articles of amalgamation, a statement of a director or an officer of each amalgamating body corporate stating that—

- (a) there are reasonable grounds for believing that—
 - (i) each amalgamating body corporate is, and the amalgamated company will be, able to pay its liabilities as they become due; and
 - (ii) the realizable value of the assets of the amalgamated company will not be less than the aggregate of its liabilities and stated capital of all classes;
- (b) there are reasonable grounds for believing that—
 - (i) no creditor will be prejudiced by the amalgamation; or
 - (ii) adequate notice has been given to all known creditors of the amalgamating bodies corporate;
- (c) the grounds of the objections of all creditors who have notified the amalgamating body corporate that they object to the amalgamation, setting out with reasonable particularity, the grounds on which such objections are either frivolous or groundless; and
- (d) the amalgamating body corporate has given notice to each person who has, in the manner referred to in paragraph (c), notified the amalgamating body corporate of an objection to the amalgamation, that—
 - (i) the grounds upon which the person's objection is based are considered to be frivolous or groundless; and
 - (ii) a creditor of an amalgamating body corporate who objects to an amalgamation has the status of a complainant under section 189.

(3) For the purposes of subsection (2), adequate notice is given if—

- (a) a notice in writing is sent to each known creditor having a claim against the amalgamating body corporate that exceeds two million dollars, at the last address of the creditor known to the amalgamating body corporate;
- (b) a notice is published twice in a newspaper published and circulating in the place where the amalgamating body corporate has its registered office; and
- (c) each notice states that the amalgamating body corporate intends to amalgamate with one or more specified bodies corporate in accordance with this Act unless a creditor of the amalgamating body corporate objects to the amalgamation within thirty days from the date of posting or publication or distribution of the notice.

(4) Upon receipt of articles of amalgamation, the Registrar shall endorse thereon in accordance with section 215, a certificate which shall constitute the certificate of amalgamation.

Effect of
certificate.

119. Upon the articles of amalgamation becoming effective—

- (a) the amalgamating bodies corporate are amalgamated and continue as one company under the terms and conditions prescribed in the amalgamation agreement;
- (b) the amalgamating bodies corporate cease to exist as entities separate from the amalgamated company;
- (c) the amalgamated company possesses all the property, rights, privileges and franchises and is subject to all liabilities, including civil and criminal and all contracts, disabilities and debts of each of the amalgamating bodies corporate;
- (d) a conviction against, or ruling, order or judgment in favour or against an amalgamating body corporate may be enforced by or against the amalgamated company;

- (e) the articles of amalgamation are deemed to be the articles of incorporation of the amalgamated company and, except for the purposes of section 61(1), the certificate of amalgamation is deemed to be the certificate of incorporation of the amalgamated company; and
- (f) the amalgamated company shall be deemed to be the claimant or the defendant, as the case may be, in any civil action commenced by or against an amalgamating body corporate before the amalgamation becomes effective.

120.—(1) A body corporate incorporated under the laws of any jurisdiction other than Jamaica may, if it appears to the Registrar, to be thereunto authorized by the laws of the jurisdiction in which it was incorporated, apply to the Registrar for a certificate of continuance. Articles of con-
tinuance.

(2) Articles of continuance in the prescribed form shall be filed with the Registrar together with any other prescribed documents.

(3) The articles of continuance—

- (a) shall make any amendments to—
 - (i) the original or restated articles of incorporation;
 - (ii) letters patent;
 - (iii) supplementary letters patent;
 - (iv) articles of amalgamation,

and any other instrument by which the body corporate was incorporated and any amendments thereto necessary to make the articles of continuance conform to the laws of Jamaica; and

- (b) may make such other amendments as would be permitted under this Act if the body corporate were incorporated under the laws of Jamaica, provided that at least the same shareholder approval has been obtained for those other amendments as would have been required under this Part if the body corporate was incorporated under the laws of Jamaica.

(4) Upon receipt of articles of continuance and any other prescribed documents, the Registrar may, on such terms and subject to such limitations and conditions as the Registrar considers proper, issue a certificate which shall constitute the certificate of continuance.

(5) Upon the articles of continuance becoming effective—

- (a) the body corporate becomes a company to which this Act applies as if it had been incorporated under this Act;
- (b) the articles of continuance are deemed to be the articles of incorporation of the continued company; and
- (c) except for the purposes of section 61(1), the certificate of continuance is deemed to be the certificate of incorporation of the continued company.

(6) The body corporate shall submit a copy of the certificate of continuance, certified by the Registrar, to the appropriate official or public body in the jurisdiction in which continuance was authorized.

(7) When a body corporate that was incorporated in another jurisdiction is continued as a company under this Act—

- (a) the company possesses all the property, rights, privileges and franchises and is subject to all the liabilities, including civil and criminal and all contracts, disabilities and debts of the body corporate;
- (b) a conviction against a ruling, order or judgment in favour of or against the body corporate may be enforced by or against the company; and
- (c) the company shall be deemed to be the claimant or the defendant, as the case may be, in any civil action commenced by or against the body corporate.

(8) A share of a body corporate issued before the body corporate was continued under this Act, shall be deemed to have been issued in compliance with this Act and with the provisions of the articles of continuance, notwithstanding that the share is not fully paid and any designation, rights, privileges, restrictions or conditions set out on, or

referred to in the certificate representing the share, and continuance under this section does not deprive a holder of any right or privilege that the holder claims under, or relieve the holder of any liability in respect of an issued share.

(9) A body corporate that was incorporated in another jurisdiction and continued as a company under this Act, is exempt from the requirements specified in section 8, for the naming of a company under this Act.

121.—(1) Subject to subsection (8), a company may, if it is authorized by the shareholders and the Registrar in accordance with the laws of Jamaica, apply to the appropriate official or authority of another jurisdiction requesting that the company be continued as if it had been incorporated under the laws of that other jurisdiction.

Transfer of
Jamaican
company.

(2) Where a meeting of the shareholders is called for the purposes of subsection (1), the notice of the meeting of shareholders shall include or be accompanied by a statement that a dissenting shareholder is entitled to be paid the fair value of the shares in accordance with section 125, but failure to make that statement does not invalidate an authorization under subsection (3)(a).

(3) An application for continuance becomes authorized—

- (a) by the shareholders when the shareholders voting thereon have approved of the continuance by a special resolution; and
- (b) by the Registrar when, following receipt from the company of an application in the prescribed form, the Registrar issues a certificate of authorization.

(4) The Registrar may issue a certificate of authorization if the Registrar is satisfied that the application is not prohibited by subsection (9).

(5) The authorization of the Registrar for an application for continuance expires six months after the date of the certificate of authorization unless, within the six-month period, the company is continued under the laws of the other jurisdiction.

(6) The directors of a company may, if authorized by the shareholders, abandon an application without further approval of the shareholders.

(7) The company shall, within sixty days after the date of issuance, file with the Registrar, a copy of the instrument of continuance issued to it by the other jurisdiction.

(8) This Act ceases to apply to the company on the date upon which the company is continued under the laws of the other jurisdiction.

(9) A company shall not apply under subsection (1) to be continued as a body corporate under the laws of another jurisdiction unless those laws provide in effect that—

- (a) the property of the company continues to be the property of the continued body corporate;
- (b) the continued body corporate continues to be liable for the obligations of the company;
- (c) an existing cause of action, claim or liability to prosecution is unaffected;
- (d) a civil, criminal or administrative action or proceeding pending by or against the company may be continued to be prosecuted by or against the continued body corporate; and
- (e) a conviction against the company may be enforced against the continued body corporate or a ruling, order or judgment in favour of or against the company may be enforced by or against the continued body corporate.

Arrange-
ment.

122.—(1) In this section—

“arrangement”, with respect to a company, includes—

- (a) a reorganization of the shares of any class or series of the company or of the stated capital of any such class or series;
- (b) the addition to or removal from the articles of the company of any provision that is permitted by this Act to be, or that is, set out in the articles or any change of any such provision;

- (c) an amalgamation of the company with another company;
- (d) an amalgamation of a body corporate with a company or more than one company that results in an amalgamated company subject to this Act;
- (e) a transfer of all or substantially all the property of the company to another body corporate in exchange for securities, money or other property of the body corporate;
- (f) an exchange of securities of the company held by security holders for other securities, money or other property of the company or securities, money or other property of another body corporate that is not a take-over bid within the meaning of the *Securities Act*;
- (g) a liquidation or dissolution of the company;
- (h) any other reorganization or scheme involving the business or affairs of the company, or of any or all of the holders of its securities, or of any options or rights to acquire any of its securities that is, at law, an arrangement; and
- (i) any combination of the foregoing.

(2) A company proposing an arrangement shall prepare, for the approval of the shareholders, a statement thereof setting out in detail what is proposed to be done and the manner in which it is proposed to be done.

(3) Subject to any order of the Court made under subsection (5), where an arrangement has been approved by shareholders of a company or by shareholders of each class or series entitled to vote separately thereon pursuant to subsection (4), in each case by special resolution, the arrangement shall be deemed to have been adopted by the shareholders of the company and the company may apply to the Court for an order approving the arrangement.

(4) The shareholders of a class or series of shares of a company are not entitled to vote separately as a class or series in respect of an arrangement unless the statement of the arrangement referred to in subsection (2) contains a provision that, if contained in a proposed

amendment to the articles, would entitle such holders to vote separately as a class or series under section 110 and, if the statement of the arrangement contains such a provision, those holders are entitled to vote separately on the arrangement whether or not such shares otherwise carry the right to vote.

(5) The company may, at any time, apply to the Court for advice and directions in connection with an arrangement or proposed arrangement, and the Court may make such order as it considers appropriate, including, without limiting the generality of the foregoing, an order—

- (a) determining the notice to be given to any interested person or dispensing with notice to any person;
- (b) requiring the company to call, hold and conduct an additional meeting of, or to hold a separate vote of, all or any particular group of holders of any securities or warrants of the company in such manner as the Court directs;
- (c) permitting a shareholder to dissent under section 125 if the arrangement is adopted;
- (d) appointing an attorney-at-law, at the expense of the company, to represent the interests of shareholders;
- (e) that the arrangement or proposed arrangement shall be deemed not to have been adopted by the shareholders of the company unless it has been approved by a specified majority that is greater than two-thirds of the votes cast at a meeting of the holders, or any particular group of holders, of the securities or warrants of the company; and
- (f) approving the arrangement as proposed by the company or as amended in any manner as the Court may direct, subject to compliance with such terms and conditions, if any, as the Court thinks fit,

and to the extent that any such order is inconsistent with this section, such order shall prevail.

(6) Where a reorganization or scheme is proposed as an arrangement and involves an amendment of the articles of a company or the taking of any other steps that could be made or taken under any other provision of this Act, the procedure provided for in this section, and not that provided for in such other provision, applies to that reorganization or scheme.

123.—(1) After an order referred to in section 122(5)(f) is made, articles of arrangement in the prescribed form shall be filed with the Registrar.

Articles of
arrangement
sent to
Registrar.

(2) Upon receipt of articles of arrangement, the Registrar shall, in accordance with section 215, issue a certificate which shall constitute the certificate of arrangement.

124.—(1) Unless the articles of a company or a unanimous shareholder agreement otherwise provide, the articles of a company shall be deemed to state that the directors of a company may, without authorization of the shareholders—

Borrowing
powers. *etc.*

- (a) borrow money upon the credit of the company;
- (b) issue, reissue, sell or pledge debt obligations of the company;
- (c) give a guarantee on behalf of the company to secure performance of an obligation of any person; and
- (d) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the company, owned or subsequently acquired, to secure any obligation of the company.

(2) Unless the articles of a company relating thereto, otherwise provide, the directors may by resolution delegate any or all of the powers referred to in subsection (1) to a director, a committee of directors or an officer.

(3) A sale, lease or exchange of all, or substantially all of the property of a company, other than in the ordinary course of business of the company, requires the approval of the shareholders in accordance with subsections (4) to (8).

(4) The notice of a meeting of shareholders to approve a transaction referred to in subsection (3) shall be sent to all shareholders and shall include or be accompanied by—

- (a) a copy or summary of the agreement of sale, lease or exchange; and
- (b) a statement that a dissenting shareholder is entitled to be paid the fair value of the shares in accordance with section 125, but failure to make that statement does not invalidate a sale, lease or exchange referred to in subsection (3).

(5) At a meeting referred to in subsection (4), the shareholders may authorize the sale, lease or exchange and may fix or authorize the directors to fix any of the terms and conditions thereof.

(6) If a sale, lease or exchange by a company referred to in subsection (3) would affect a particular class or series of shares of the company entitled to vote on the sale, lease or exchange at the meeting referred to in subsection (4), the holders of such first mentioned class or series of shares, whether or not they are otherwise entitled to vote, are entitled to vote separately as a class or series in respect to such sale, lease or exchange.

(7) The approval of a sale, lease or exchange referred to in subsection (3) is effective when the shareholders have approved the sale, lease or exchange by a special resolution of the holders of the shares of each class or series entitled to vote thereon.

(8) The directors of a company may, if authorized by the shareholders approving a proposed sale, lease or exchange and, subject to the rights of third parties, abandon the sale, lease or exchange without further approval of the shareholders.

125.—(1) Subject to subsection (3) of this section and sections 126 and 189, if a company resolves to—

- (a) amend the articles under section 108 to add, remove or change restrictions on the issue, transfer or ownership of shares of a class or series of the shares of the company;

Rights of
dissenting
share-
holders.

- (b) amend its articles under section 108 to add, remove or change any restriction upon the business that the company may carry on or upon the powers that the company may exercise;
- (c) amalgamate with another company under sections 115 and 116;
- (d) be continued under the laws of another jurisdiction under section 121; or
- (e) sell, lease or exchange all or substantially all its property under section 124(3),

a holder of shares of any class or series entitled to vote on the resolution may dissent.

(2) If a company resolves to amend its articles in a manner referred to in section 110(1), a holder of shares of any class or series entitled to vote on the amendment under section 108 or 110 may dissent, except in respect of an amendment referred to in section 110(1)(a), (b) or (e) where the articles provide that the shareholders of such class or series are not entitled to dissent.

(3) The right to dissent described in subsection (2) applies even if there is only one class of shares.

(4) In addition to any other right the shareholder may have, but subject to subsection (29), a shareholder who complies with this section is entitled, when the action approved by the resolution from which the shareholder dissents becomes effective, to be paid by the company the fair value of the shares held by the shareholder in respect of which the shareholder dissents, determined as at the close of business on the day before the resolution was adopted.

(5) A dissenting shareholder shall claim in respect of all shares of a class held by him on behalf of each or any one beneficial holder where the shares are registered in his name.

(6) A dissenting shareholder shall send to the company, at or before any meeting of shareholders at which a resolution referred to in subsection (1) or (2) is to be voted on, a written objection to the resolution, unless the company did not give notice to the shareholder of the purpose of the meeting or of the shareholder's right to dissent.

(7) The execution or exercise of a proxy does not constitute a written objection for the purposes of subsection (6).

(8) The company shall, within ten days after the shareholders adopt the resolution, send to each shareholder who has filed the objection referred to in subsection (6), notice that the resolution has been adopted, but such notice is not required to be sent to any shareholder who voted for the resolution or who has withdrawn the objection.

(9) A notice sent under subsection (8) shall set out the rights of the dissenting shareholder and the procedures to be followed to exercise those rights.

(10) A dissenting shareholder entitled to receive notice under subsection (8) shall, within twenty days after receiving such notice, or, if the shareholder does not receive such notice, within twenty days after learning that the resolution has been adopted, send to the company a written notice containing—

- (a) the shareholder's name and address;
- (b) the number and class of shares in respect of which the shareholder dissents; and
- (c) a demand for payment of the fair value of such shares.

(11) No later than the thirtieth day after the sending of a notice under subsection (10), a dissenting shareholder shall send the certificates, if any, representing the shares in respect of which the shareholder dissents, to the company or its transfer agent.

(12) A dissenting shareholder who fails to comply with subsections (6), (10) and (11) has no right to make a claim under this section.

(13) On sending a notice under subsection (10), a dissenting shareholder ceases to have any rights as a shareholder other than the right to be paid the fair value of the shares as determined under this section except where—

- (a) the dissenting shareholder withdraws notice before the company makes an offer under subsection (14);

- (b) the company fails to make an offer in accordance with subsection (14) and the dissenting shareholder withdraws the notice; or
- (c) the directors revoke a resolution to amend the articles under section 108 (3), terminate an amalgamation agreement under section 116(5), make an application for continuance under section 120(1) or abandon a sale, lease or exchange under section 124(8),

in which case the dissenting shareholder's rights are reinstated as of the date that the shareholder sent the notice referred to in subsection (10).

(14) A company shall, within seven days after either the action approved by the resolution is effective or the day the company received the notice referred to in subsection (10), whichever occurs later, send to each dissenting shareholder who has sent such notice—

- (a) a written offer to pay for the dissenting shareholder's shares in an amount considered by the directors of the company to be the fair value thereof, accompanied by a statement showing how that fair value was determined; or
- (b) if subsection (29) applies, a notification that it is unable lawfully to pay dissenting shareholders for their shares.

(15) Every offer made under subsection (14) for shares of the same class or series shall be on the same terms.

(16) Subject to subsection (29), a company shall pay for the shares of a dissenting shareholder within ten days after an offer made under subsection (14) has been accepted, but any such offer lapses if the company does not receive an acceptance thereof within thirty days after the offer has been made.

(17) Where a company fails to make an offer under subsection (14) or if a dissenting shareholder fails to accept an offer, the company may, within fifty days after the action approved by the resolution is effective, or within such further period as the Court may allow, apply to the Court to fix a fair value for the shares of any dissenting shareholder.

(18) If a company fails to apply to the Court under subsection (17), a dissenting shareholder may apply to the Court for the same purpose within a further period of twenty days or within such further period as the Court may allow.

(19) A dissenting shareholder is not required to give security for costs in an application made under subsection (17) or (18).

(20) If a company fails to comply with subsection (14), then the costs of a shareholder application under subsection (18) are to be borne by the company unless the Court otherwise orders.

(21) Before making an application to the Court under subsection (17), or not later than seven days after receiving notice of an application to the Court under subsection (18), as the case may be, a company shall give notice to each dissenting shareholder who, at the date upon which the notice is given—

- (a) has sent to the company the notice referred in subsection (10);
- (b) has not accepted an offer made by the company under subsection (14), if such an offer was made,

of the date, place and consequences of the application and of the dissenting shareholder's right to appear and be heard in person or by an attorney-at-law and a similar notice shall be given to each dissenting shareholder who, after the date of such first mentioned notice and before the termination of the proceedings commenced by the application, satisfies the conditions set out in paragraphs (a) and (b) within three days after the dissenting shareholder satisfies those conditions.

(22) All dissenting shareholders who satisfy the conditions set out in subsection (21)(a) and (b) shall be deemed to be joined as parties to an application either under subsection (17) or (18) on the date upon which the application is brought or the date upon which they satisfy the conditions, whichever is the later date, and shall be bound by the decision rendered by the Court in the proceedings commenced by the application.

(23) Upon an application to the Court under subsection (17) or (18), the Court may determine whether any other person is a dissenting shareholder who should be joined as a party, and the Court shall fix a fair value for the shares of all dissenting shareholders.

(24) The Court may in its discretion, appoint one or more valuers to assist the Court to fix a fair value for the shares of the dissenting shareholders.

(25) The final order of the Court in the proceedings commenced by an application under subsection (17) or (18) shall be rendered against the company and in favour of each dissenting shareholder who, whether before or after the date of the order, complies with the conditions set out in subsections (21)(a) and (b).

(26) The Court may, in its discretion, allow a reasonable rate of interest on the amount payable to each dissenting shareholder from the date the action approved by the resolution is effective until the date of payment.

(27) Where subsection (29) applies, the company shall, within ten days after the pronouncement of an order under subsection (25), notify each dissenting shareholder that it is unable lawfully to pay dissenting shareholders for their shares.

(28) Where subsection (29) applies, a dissenting shareholder, by notice in writing sent to the company within thirty days after receiving a notice under subsection (27), may—

- (a) withdraw a notice of dissent in which case the company is deemed to consent to the withdrawal and the shareholder's full rights are reinstated; or
- (b) retain a status as a claimant against the company, to be paid as soon as the company is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors of the company but in priority to its shareholders.

(29) A company shall not make a payment to a dissenting shareholder under this section if there are reasonable grounds for believing that—

- (a) the company is or, after the payment, would be unable to pay its liabilities as they become due; or
- (b) the realizable value of the assets of the company would thereby be less than the aggregate of its liabilities.

(30) Upon application by a company that proposes to take any of the actions referred to in subsection (1) or (2), the Court may, if satisfied that the proposed action is not in all the circumstances one that should give rise to the rights arising under subsection (4), by order declare that those rights will not arise upon the taking of the proposed action, and the order may be subject to compliance with such terms and conditions as the Court thinks fit.

Re-organi-
zation.

126.—(1) In this section, “reorganization” means a Court order made under section 188 approving a proposal.

(2) If a company is subject to a reorganization, its articles may be amended by the order to effect any change that might lawfully be made by an amendment under section 108.

(3) Where a reorganization is made, the Court making the order may also—

- (a) authorize the issue of debt obligations of the company, whether or not convertible into shares of any class or having attached any rights or options to acquire shares of any class and fix the terms thereof; and
- (b) appoint directors in place of or in addition to all or any of the directors then in office.

(4) After reorganization has been made, articles of reorganization in the prescribed form shall be filed with the Registrar.

(5) Upon receipt of the articles of reorganization, the Registrar shall issue a certificate which shall constitute the certificate of amendment and the articles shall be amended accordingly.

(6) A shareholder is not entitled to dissent under section 125 if an amendment to the articles is effected under this section.

PART XII—*Beneficial Ownership*

127.—(1) A company shall keep a register to be known as the Register of Beneficial Owners, in which shall be recorded the particulars set out in subsections (2) and (3), respectively.

Register of
Beneficial
Owners.

(2) Where the beneficial owner is an individual, the Register of Beneficial Owners shall contain the following particulars in relation to that beneficial owner—

- (a) the full name of the beneficial owner;
- (b) the date on which the individual became a beneficial owner;
- (c) where applicable, the date on which the individual ceased to be a beneficial owner;
- (d) a copy of a valid identification (including a driver's licence, a passport or any other national identification) of the beneficial owner;
- (e) the residential address of the beneficial owner, and if different, an address for service of documents;
- (f) the date of birth of the beneficial owner;
- (g) the nationality of the beneficial owner;
- (h) the occupation of the beneficial owner;
- (i) the particulars of the beneficial interest of the beneficial owner and how that beneficial interest is held; and
- (j) such other information as may be prescribed.

(3) If the beneficial owner is a body corporate, the Register of Beneficial Owners shall contain the following particulars in relation to that beneficial owner—

- (a) the full name of the beneficial owner;
- (b) the date on which the body corporate became a beneficial owner;

- (c) where applicable, the date on which the body corporate ceased to be a beneficial owner;
- (d) a copy of the articles of the body corporate;
- (e) the name of the Act under which the body corporate was incorporated, and by which the body corporate is governed;
- (f) the principal place of business of the body corporate;
- (g) the particulars of the beneficial interest of the body corporate and how that beneficial interest is held; and
- (h) such other information as may be prescribed.

(4) A company may engage an international corporate service provider, licensed under the *International Corporate and Trust Services Providers Act*, to maintain its Register of Beneficial Owners.

(5) The directors shall ensure that the information required by subsection (1) to be kept in the Register of Beneficial Owners is accurate and up-to-date.

(6) The Register of Beneficial Owners may be in such form as the directors may approve, however,—

- (a) if it is in hard copy, it shall be kept at the registered office of the company; and
- (b) if it is in magnetic, electronic or other data storage form, the company shall be able to produce legible evidence of its contents and ensure that such contents are accessible from Jamaica.

(7) An entry relating to a former beneficial owner of the company may be removed from the Register of Beneficial Owners after five years from the date on which that person ceased to be a beneficial owner of the company.

Inspection
of Register of
Beneficial
Owners.

128.—(1) A beneficial owner of a company may, in person or by his attorney-at-law (in furtherance of a proper purpose, duly specified) request in writing, to inspect during normal business hours, the Register of Beneficial Owners of the company and to make copies or extracts therefrom.

(2) For the purposes of subsection (1), a proper purpose is a purpose reasonably related to the interest of the beneficial owner.

(3) If a request under subsection (1) is submitted by an attorney-at-law, the request shall be accompanied by a power of attorney authorizing the attorney-at-law to act for the beneficial owner.

129.—(1) If—

- (a) particulars that are required to be entered in the Register of Beneficial Owners under section 127(2) and (3) are omitted therefrom or inaccurately entered therein; or
- (b) there is unreasonable delay in entering the particulars in the Register of Beneficial Owners,

Rectification
of Register
of Beneficial
Owners.

a beneficial owner of the company, or any person who is aggrieved by the omission, inaccuracy or delay, may apply to the Court for an order that the Register of Beneficial Owners be rectified, and the Court may either grant or refuse the application, with or without costs to be paid by the applicant, or order the rectification of the Register of Beneficial Owners, and may direct the company to pay all costs of the application and any damages the applicant may have sustained.

(2) The Court may, in any proceedings under subsection (1), determine any question relating to the right of a person who is a party to the proceedings to have his name entered in or omitted from the Register of Beneficial Owners, whether the question arises between—

- (a) two or more members or alleged members; or
- (b) between members or alleged members and the company, and generally the Court may in the proceedings, determine any question that may be necessary or expedient to be determined for the rectification of the Register of Beneficial Owners.

(3) Nothing in this section shall preclude a company from rectifying an omission, an inaccuracy or a delay in entering any particulars in the Register of Beneficial Owners, at the request of a beneficial owner or any other aggrieved person, without an order from the Court.

Duty of company to obtain information on beneficial owners, etc.

130.—(1) Subject to subsection (2), a company to which section 127(1) applies shall seek to identify each beneficial owner of the company.

(2) A company to which section 127 applies shall give written notice to anyone whom it knows or has reasonable cause to believe is a beneficial owner in relation to the company, which notice shall require that person—

- (a) to state whether or not he is a beneficial owner in relation to the company; and
- (b) if so, where applicable, to provide, confirm or correct the particulars relating to him, which are required for the Register of Beneficial Owners.

(3) A company to which section 127 applies shall give written notice to anyone whom it knows, or has reasonable cause to believe, knows the identity of a person who is a beneficial owner in relation to the company, which notice shall require that person—

- (a) to state whether or not he knows the identity of a beneficial owner in relation to the company or knows the identity of any person likely to have that knowledge; and
- (b) if so, to supply any particulars of such person who is within the knowledge of the person notified.

(4) Without limiting subsections (2) and (3), a company may at any time give written notice to a member of the company, to provide, confirm or correct the information supplied under section 127 in relation to the shares or guarantee membership interest in the company held by the member.

(5) A person to whom a notice under this section is given, shall comply with the notice within thirty days commencing from the date of the notice.

(6) A person to whom a notice under this section is given, shall not provide false or misleading information to the company.

(7) A person who contravenes subsection (6) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

(8) A company is not required to take steps or give notice under this section with respect to a beneficial owner if the company has already been informed in writing of the person's status as a beneficial owner in relation to the company, and has been supplied with the information under section 127.

131.—(1) Within thirty days after a person becomes a beneficial owner in relation to a company, he shall give written notice to the company of the information required pursuant to section 127.

Updating of particulars of beneficial ownership.

(2) If there is a change in any particulars provided to the company in relation to a beneficial owner, that beneficial owner shall give written notice of the change to the company and the date on which the change occurred.

(3) A person shall not provide false or misleading information under this section.

(4) A person who contravenes subsection (3) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

Third Schedule.

132. Except where information is requested by order of the Court or a competent authority, information kept in a Register of Beneficial Owners of a company is deemed to be confidential information.

Non-disclosure of beneficial ownership particulars.

PART XIII—*Liquidation and Dissolution*

133. In this Part—

“contributory” means a person who is liable to contribute to the property of a company in the event of the company being wound up under this Act;

“trustee” means a person who is licensed and appointed as such under the *Insolvency Act*, or the Government Trustee appointed under section 227 of the *Insolvency Act* or a trustee, liquidator, receiver, receiver-manager or other similar officer, however named, appointed under the law of another jurisdiction.

Interpretation of Part XIII.

Non-appli-
cation to
companies
that are
insolvent
under the
*Insolvency
Act*.

134. The provisions of this Act with respect to winding up, shall not apply in respect of a company that is an insolvent person within the meaning of the *Insolvency Act*.

Modes of
winding up.

135.—(1) The modes of winding up of a company may be either—

- (a) by the Court;
- (b) voluntary; or
- (c) subject to the supervision of the Court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

Application
of sections
137 to 147.

136. Sections 137 to 147 shall apply to companies being wound up voluntarily.

Voluntary
winding up.

137.—(1) The shareholders of a company may, by special resolution, require the company to be wound up voluntarily.

(2) For the purposes of subsection (1), the shareholders shall appoint one or more persons, who may be directors, officers or employees of the company, as trustee of the estate and effects of the company for the purpose of winding up its business and affairs and distributing its property, and may at that or any subsequent meeting, fix the trustee's remuneration and the costs, charges and expenses of the winding up.

(3) On the application of any shareholder or creditor of the company or of the trustee, the Court may review the remuneration of the trustee and, whether or not the remuneration has been fixed in accordance with subsection (2), the Court may fix and determine the remuneration at such amount as it thinks fit.

(4) A company shall file with the Registrar, a notice in the prescribed form, of a resolution of the directors' decision or consent of all the shareholders, requiring the voluntary winding up of the company, within ten days after the resolution was passed and shall, within twenty

days after the resolution is passed, publish the notice in a daily newspaper printed and published in Jamaica.

138. The shareholders of a company being wound up voluntarily may delegate to any committee of shareholders, contributories or creditors (hereinafter referred to as inspectors) the power of appointing the trustee and filling any vacancy in the office of trustee, or may enter into any arrangement with creditors of the company with respect to the powers to be exercised by the trustee and the manner in which they are to be exercised. Inspectors.

139. If a vacancy occurs in the office of trustee by death, resignation or otherwise, the shareholders may, subject to any arrangement the company may have entered into with its creditors upon the appointment of inspectors, fill such vacancy and a meeting for that purpose may be called by the continuing trustee, if any, or by a shareholder or contributory and shall be deemed to have been duly held if called in the manner prescribed by the articles or by-laws of the company, or in default thereof, in the manner prescribed by this Act for calling meetings of the shareholders of the company. Vacancy in office of trustee.

140. The shareholders of a company may by ordinary resolution passed at a meeting called for that purpose, remove a trustee appointed under section 137, 138 or 139, and in such case shall appoint a replacement. Removal of trustee.

141. A voluntary winding up commences at the time of the passing of the resolution requiring the winding up, or at such later time as may be specified in the resolution. Commencement of winding up.

142. A company being wound up voluntarily shall, from the commencement of its winding up, cease to carry on its undertaking, except in so far as may be required as beneficial for the winding up thereof, and all transfers of shares, except transfers made to or with the sanction of the trustee taking place after the commencement of its winding up, are void, but its corporate existence and all its corporate powers, even if it is otherwise provided by its articles or by-laws, continue until its affairs are wound up. Company to cease business.

No proceedings against company after voluntary winding up.

143. After the commencement of the voluntary winding up—

- (a) no action or other proceeding shall be commenced against the company; and
- (b) no attachment, sequestration or execution shall be put in force against the estate or effects of the company,

except by leave of the Court and subject to such terms as the Court imposes.

Meetings of company during winding up.

144.—(1) The trustee may, during the continuance of the voluntary winding up, call meetings of the shareholders of the company for any purpose the trustee thinks fit.

(2) Where a voluntary winding up continues for more than one year, the trustee shall call a meeting of the shareholders, contributories and creditors of the company at the end of the first year and of each succeeding year from the commencement of the winding up, and the trustee shall lay before the meeting, an account showing the trustee's acts and dealings and the manner in which the winding up has been conducted during the immediately preceding year.

Powers of trustee in voluntary winding up.

145. A trustee in a voluntary winding up shall have power—

- (a) to bring or defend any action or other legal proceedings in the name and on behalf of the company;
- (b) to carry on the business of the company, so far as may be necessary for the winding up thereof;
- (c) to appoint an attorney-at-law or other agent to assist him in the performance of his duties;
- (d) to pay any classes of creditors in full;
- (e) with the sanction either of the Court or the inspectors, to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, liquidated or unliquidated against the company or whereby the company may be rendered liable;
- (f) with the sanction either of the Court or the inspectors, to compromise all debts and liabilities capable of resulting in debts;

- (g) with the sanction either of the Court or the inspectors, to compromise all claims, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the company and any contributory, alleged contributory or other debtor or person who may be liable to the company;
- (h) to compromise all questions in any way relating to or affecting the property of the company or the winding up of the company, upon the receipt of such sums payable at such times and generally upon such terms as are agreed, and the trustee may take any security for the discharge of such debts or liabilities referred to in this subsection and give a complete discharge in respect thereof;
- (i) to sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
- (j) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the seal of the company;
- (k) to prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his estate and to receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;
- (l) to draw, accept, make, and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or endorsed by or on behalf of the company in the course of its business;
- (m) to raise on the security of the assets of the company any money requisite;

- (n) to take out in his official name, letters of administration to any deceased contributory, and to do in his name, any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purposes of enabling the trustee to take out the letters of administration or recover the money, deemed to be due to the trustee himself;
- (o) to appoint an agent to do any business which the trustee is unable to do himself; and
- (p) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(2) Any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of the powers conferred on the trustee by subsection (e), (f) or (g).

Power to accept shares, etc., as consideration for sale of property to another company.

146.—(1) Where a company is proposed to be, or is in the course of being wound up voluntarily, and it is proposed to transfer the whole or a portion of its business or property to another body corporate, the trustee, with the approval of a resolution of the shareholders of the company conferring either a general authority on the trustee or an authority in respect of any particular arrangement may—

- (a) receive, in compensation in whole or in part, for the transfer, cash or shares or other like interest in the purchasing body corporate or any other body corporate for the purpose of distribution among the creditors or shareholders of the company that is being wound up in the manner set out in the arrangement; or
- (b) in lieu of receiving cash or shares or other like interest, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing body corporate or any other body corporate.

(2) A transfer made or arrangement entered into by the trustee under this section is not binding on the shareholders of the company

that is being wound up unless the transfer or arrangement is approved in accordance with subsections (3), (6) and (7) of section 124.

(3) No resolution is invalid for the purposes of this section because it was passed before or concurrently with a resolution for winding up the company or for appointing the trustee.

147.—(1) The trustee shall make up an account showing the manner in which the winding up has been conducted and the property of the company disposed of, and thereupon shall call a meeting of the shareholders of the company for the purpose of having the account laid before them and hearing any explanation that may be given by the trustee, and the meeting shall be called in the manner prescribed by the articles or, in default thereof, in the manner prescribed by this Act for the calling of meetings of shareholders.

Account of
voluntary
winding up to
be made by
trustee at
meeting.

(2) The trustee shall, within ten days after the meeting is held, file a notice in the prescribed form with the Registrar, stating that the meeting was held, and the date thereof, and shall forthwith publish the notice in the *Gazette* and in one daily newspaper printed and circulated throughout Jamaica.

(3) Subject to subsection (4), on the expiration of three months after the date of the filing of the notice, the company is dissolved.

(4) At any time during the three month period mentioned in subsection (3), the Court may, on the application of the trustee or any other person interested, make an order deferring the date on which the dissolution of the company is to take effect to a date fixed in the order, and in such event, the company is dissolved on the date so fixed.

(5) Notwithstanding any other provision of this Act, the Court may, at any time after the affairs of the company have been fully wound up, and on the application of the trustee or any other person interested, make an order dissolving the company and it is dissolved on the date fixed in the order.

(6) The person on whose application an order was made under subsection (4) or (5) shall within ten days after it was made, file with the Registrar a certified copy of the order, and forthwith publish the notice of the order in the *Gazette* and in one daily newspaper printed and circulated throughout Jamaica.

Application
of sections
149 to 161.

Winding up
by Court.

148. Sections 149 to 161 apply to companies being wound up by the Court.

149.—(1) A company may be wound up by order of the Court

- (a) where the Court is satisfied that in respect of the company or any of its affiliates—
 - (i) any act or omission of the company or any of its affiliates effects a result;
 - (ii) the business or affairs of the company or any of its affiliates are or have been carried on, or conducted in a manner; or
 - (iii) the powers of the directors of the company or any of its affiliates are, or have been exercised in a manner,

that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of any shareholder, creditor, director or officer;

- (b) where the Court is satisfied that—
 - (i) the articles or a shareholders agreement entitled a complaining shareholder to demand dissolution of the company after the occurrence of a specified event and that event has occurred;
 - (ii) proceedings have been started to wind up voluntarily and it is in the interest of contributories and creditors that the proceedings should be continued under the supervision of the Court;
 - (iii) the company, although it may not be insolvent, cannot by reason of its liabilities, continue its business and it is advisable to wind it up; or
 - (iv) it is just and equitable for some reason, other than the bankruptcy or insolvency of the company, that it should be wound up; or
- (c) where the shareholders, by special resolution, authorize an application to be made to the Court to wind up the company.

(2) Upon an application under this section, the Court may make such order under this section or section 189(3) as it thinks fit.

150.—(1) A winding up order may be made upon the application of the company or of a shareholder or of the trustee, where the company is being wound up voluntarily. Who may apply.

(2) Except where the application is made by the company, four days notice of the application shall be given to the company before the making of the application.

151.—(1) The Court may—

- (a) make the order applied for;
- (b) dismiss the application with or without costs;
- (c) adjourn the hearing conditionally or unconditionally; or
- (d) make any interim or other order as is considered just, and on the making of the order may, according to its practice and procedure, refer the proceedings for the winding up to an officer of the Court for inquiry and report and may authorize the officer of the Court to exercise such powers of the Court as are necessary for the reference.

Power of Court.

(2) Where the application is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the Court, if it is of the opinion—

- (a) that the applicants are entitled to relief either by winding up the company or by some other means; and
- (b) that in the absence of any other remedy it would be just and equitable that the company should be wound up,

shall make a winding up order, unless it is also of the opinion both that some other remedy is available to the applicants and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3) For the purposes of this section, “officer of the Court” means the Registrar of the Supreme Court or such other person determined by the Court.

Appoint-
ment of
trustee.

152.—(1) The Court, in making the winding up order, may appoint one or more persons as trustee of the company for the purpose of winding up its business and affairs and distributing its property.

(2) The Court may at any time fix the remuneration of the trustee.

(3) If a trustee appointed by the Court dies or resigns, or the office becomes vacant for any reason, the Court may by order fill the vacancy.

(4) A trustee appointed by the Court under this section shall forthwith give to the Registrar notice, in the prescribed form, of the trustee's appointment and shall, within twenty days after being appointed, publish the notice in the *Gazette* and one daily newspaper circulated throughout Jamaica.

Powers of
trustee in
winding up by
the Court.

153.—(1) A trustee in a winding up by the Court shall have power with the sanction either of the Court or the inspectors to—

- (a) bring or defend any action or other legal proceedings in the name and on behalf of the company;
- (b) carry on the business of the company, so far as may be necessary for the winding up of the company;
- (c) appoint an attorney-at-law or other agent to assist him in the performance of his duties;
- (d) pay any classes of creditors in full;
- (e) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, liquidated or unliquidated against the company or whereby the company may be rendered liable;
- (f) compromise all debts and liabilities capable of resulting in debts;
- (g) compromise all claims, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the company and any contributory, alleged

contributory or other debtor or person who may be liable to the company, and

- (h) compromise all questions in any way relating to or affecting the property of the company or the winding up of the company, upon the receipt of such sums payable at such times and generally upon such terms as are agreed, and the trustee may take any security for the discharge of such debts or liabilities referred to in this subsection and give a complete discharge in respect thereof.
- (2) The trustee in a winding up shall have power to—
- (a) sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
 - (b) do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the seal of the company;
 - (c) prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributor, for any balance against his estate and to receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;
 - (d) draw, accept, make, and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or endorsed by or on behalf of the company in the course of its business;
 - (e) raise on the security of the assets of the company, any money requisite;
 - (f) take out in his name, letters of administration to any deceased contributor, and to do in his name any other act necessary

for obtaining payment of any money due from a contributor or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purposes of enabling the trustee to take out the letters of administration or recover the money, be deemed to be due to the trustee himself;

- (g) appoint an agent to do any business which the trustee is unable to do himself; and
- (h) do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) Any creditor or contributor may apply to the Court with respect to any exercise or proposed exercise of any of the powers conferred on the trustee by subsection (1)(e), (f) or (g).

Removal of trustee.

154. The Court may, by order, remove for cause, a trustee appointed by it, and in such case shall appoint a replacement.

Costs and expenses.

155. The costs, charges and expenses of a winding up by order of the Court shall be assessed by the Court.

Commencement of winding up.

156. Where a winding up order is made by the Court without prior voluntary winding up proceedings, the winding up shall, unless a Court otherwise orders, be deemed to commence at the time of the service of notice of the application, and, where the application is made by the company, at the time the application is made.

Proceedings in winding up after order.

157.—(1) Where the Court makes a winding up order, proceedings for the winding up of the company shall be taken in the same manner and with the like consequences as provided for a voluntary winding up, except that all proceedings in the winding up are subject to the order and direction of the Court.

(2) On the making of a winding up order, a copy of the order shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute thereof in his books relating to the company.

(3) If default is made in forwarding a copy of a winding up order to the Registrar as required by subsection (2), every officer of the company or other person who knowingly and willfully authorizes or permits the default shall be liable to a fine not exceeding five hundred thousand dollars.

158. Where the Court makes a winding up order, the Court may—

Meetings of
share-
holders.

- (a) direct meetings of the shareholders of the company to be called, held and conducted in such manner as the Court thinks fit, for the purpose of ascertaining their wishes, and may appoint a person to act as chair of any such meeting and to report the result of it to the Court;
- (b) require any director, officer, employee, trustee, banker, agent or contributory of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the Court may direct, to the trustee any sum or balance, documents, records, estate or effects that are in that person's hands and to which the company may be entitled; and
- (c) make an order for the inspection of the documents and records of the company by its creditors and contributories, and any documents and records in the possession of the company may be inspected in conformity with the order.

159. After the commencement of a winding up by order of the Court and except by leave of the Court and subject to such terms as the Court imposes—

Proceedings
against
business
company
after Court
winding up.

- (a) no action or other proceedings shall be proceeded with or commenced against the company; and
- (b) no attachment, sequestration or execution shall be put in force against the estate or effects of the company.

160.—(1) Where the realization and distribution of the property of a company being wound up under a Court order has proceeded so far that, in the opinion of the Court, it is expedient that the trustee should be discharged, and that the property of the company remaining in the trustee's hands can be better realized and distributed by the Court, the

Provision for
discharge and
distribution
by the Court.

Court may make an order discharging the trustee and for payment, delivery and transfer into the Court or to such person as the Court directs, of such property, and it shall be realized and distributed by or under the Court's direction among the persons entitled thereto in the same way as nearly as may be as if the distribution were being made by the trustee.

(2) In any case to which subsection (1) applies, the Court may make an order directing how the documents and records of the company and of the trustee are to be disposed of, and may order that they be deposited in Court or otherwise as the Court thinks fit.

Order for
dissolution.

161.—(1) The Court may, at any time after the business and affairs of the company have been fully wound up, and upon the application of the trustee or any other person interested, make an order dissolving the company and it is dissolved on the date fixed in the order.

(2) The person on whose application the order was made shall, within ten days after it was made, file with the Registrar, a certified copy of the order, and shall forthwith, publish notice of the order in the *Gazette* and a daily newspaper circulated throughout Jamaica.

Application
of sections
163 to 176.

162. Sections 163 to 176 apply to companies being wound up voluntarily by order of the Court.

Appoint-
ment of
Government
Trustee
or other
person as
trustee.

163.—(1) Where there is no trustee the company shall be under the control of the Government Trustee until the appointment of a trustee.

(2) Upon the application of the Government Trustee or a shareholder of the company, the Court may appoint one or more persons as trustee.

(3) The following provisions with respect to trustees shall have effect on a winding up order being made—

- (a) the Government Trustee shall by virtue of his office become the provisional trustee and shall continue to act as such until he or another person becomes trustee and is capable of acting as such;

- (b) the Government Trustee shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the Court for appointing a trustee in the place of the Government Trustee;
- (c) the Court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the Court shall decide the difference and make such order thereon as the Court may think fit;
- (d) in a case where a trustee is not appointed by the Court, the Government Trustee shall be the trustee of the company; and
- (e) the Government Trustee shall by virtue of his office be the trustee during any vacancy.

(4) The Government Trustee may charge such fees as may be prescribed by the Minister for duties carried out by him as provisional trustee.

164. Upon a winding up, the proceeds realized from the property of a company shall be applied by the trustee in priority of payment in descending order in the following categories—

Ranking of claims on winding up.

- (a) Category 1, namely, in payment of obligations owed to any secured creditor whose security includes that property, and if there is more than one secured creditor, the proceeds shall be applied in accordance with the priorities of their respective securities in that property, and thereafter;
- (b) Category 2, namely, the costs of administration being—
 - (i) the expenses and fees of the trustee; and
 - (ii) legal costs;

(c) Category 3, namely,—

- (i) contributions payable (in respect of an employee who is resident in Jamaica) by the company, as an employer pursuant to—
 - (A) the *National Housing Trust Act*;
 - (B) the *National Insurance Act*;
 - (C) an approved superannuation fund or approved retirement scheme under the *Pensions (Superannuation Funds and Retirement Schemes) Act*;
 - (ii) claims for wages and salaries, of any employee (who is resident in Jamaica) for services rendered during the six months immediately preceding the winding up or appointment of the trustee, however the sum to which priority is to be given under this paragraph shall not, in the case of any particular claimant, exceed five hundred thousand dollars or such other amount as the Minister may, by order subject to affirmative resolution, prescribe;
 - (iii) redundancy payments (in respect of an employee who is resident in Jamaica) payable under the *Employment (Termination and Redundancy Payments) Act*, whether such payments fall due before or after the appointment of a trustee;
 - (iv) all taxes (including penalties and interest) imposed under the Laws of Jamaica and having become due and payable by the company within twelve months after the appointment of the trustee or the winding up, not exceeding in total one year's assessment, and thereafter;
- (d) Category 4, namely, the remaining property distributed rateably among the shareholders according to their rights and interests in the company.

165. Upon a winding up, all the powers of the directors cease upon the appointment of a trustee, except in so far as the trustee may sanction the continuance of such powers. Consequences of winding up.

166.—(1) A trustee may— Powers of trustee.

- (a) bring or defend any action, suit or prosecution, or other legal proceedings, civil or criminal, in the name of and on behalf of the company;
- (b) carry on the business of the company so far as may be required as beneficial for the winding up of the company;
- (c) sell the property of the company by public auction or private sale and receive payment of the purchase price either in cash or otherwise;
- (d) do all acts, and execute, in the name and on behalf of the company, all documents and for that purpose, use the seal of the company, if any;
- (e) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company;
- (f) raise, upon the security of the property of the company, any requisite money;
- (g) take out in the trustee's official name, letters of administration of the estate of any deceased contributor and do in the trustee's official name any other act that is necessary for obtaining payment of any money due from a contributory's estate and which act cannot be done conveniently in the name of the company; and
- (h) do and execute all such other things as are necessary for winding up the business and affairs of the company and distributing its property.

(2) The drawing, accepting, making or endorsing of a bill of exchange or promissory note by the trustee on behalf of a company has the same effect with respect to the liability of the company as if such bill

or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of carrying on its business.

(3) Where the trustee takes out letters of administration or otherwise uses the trustee's official name for obtaining payment of any money due from a contributory, such money shall be deemed, for the purpose of enabling the trustee to take out such letters or recover such money, to be due to the trustee rather than to the company.

(4) A trustee who acts in good faith is entitled to rely on—

- (a) financial statements of the company represented to the trustee by an officer of the company or in a written report of the auditor of the company to present fairly the financial position of the company in accordance with generally accepted accounting principles; or
- (b) an opinion, a report or a statement of an attorney-at-law, an accountant, an engineer, a valuer or other professional adviser retained by the trustee.

Acts by more than one trustee.

167. Where more than one person is appointed as trustee, any power conferred by sections 137 to 176 on a trustee may be exercised by one or more of such persons as may be determined by the resolution or order appointing them or, in default of such determination, by any number of them not fewer than two.

Deposit of money.

168.—(1) The trustee shall deposit all money that the trustee has belonging to the company and amounting to one hundred thousand dollars or more in a financial institution described in subsection (2).

(2) A financial institution referred to in subsection (1) is—

- (a) a bank or authorized foreign bank within the meaning of the *Banking Services Act*; or
- (b) a company licensed under the *Banking Services Act*.

(3) The deposit required by subsection (1) shall not be made in the name of the trustee individually, and a separate account shall be kept of the money belonging to the company in the trustee's name as trustee of the company and in the name of the inspectors, if any, and

such money shall be withdrawn only by order for payment signed by the trustee and one of the inspectors, if any.

(4) At every meeting of the shareholders of the company, the trustee shall produce a passbook or statement of account showing the amount of the deposits, the dates at which they were made, the amounts withdrawn and the dates of withdrawal, and mention of such production shall be made in the minutes of the meeting, and the absence of such mention is admissible in Court as evidence in the absence of evidence to the contrary, that the passbook or statement of account was not produced at the meeting.

(5) The trustee shall produce the passbook or statement of account whenever so ordered by the Court upon an application by the inspectors, if any, or of a shareholder of the company.

169. Upon the application of the trustee or of the inspectors, if any, or of any creditors, the Court, after hearing such parties as it directs to be notified, or after such steps as the Court prescribes have been taken, may, by order, give its direction in any matter arising in the winding up.

Application for
direction.

170.—(1) The Court may, at any time after the commencement of the winding up, summon to appear before the Court, a trustee, any director, officer or employee of the company or any other person known or suspected of having possession of any of the estate or effects of the company, or alleged to be indebted to it, or any person whom the Court thinks capable of giving information concerning its trade, dealings, estate or effects.

Examina-
tion of
persons as
to estate.

(2) Where, in the course of the winding up, it appears that a person who has taken part in the formation or promotion of the company or that a past or present director, officer, employee, trustee or receiver of the company has—

- (a) misapplied or retained in that person's own hands or become liable or accountable for, property of the company; or
- (b) committed any misfeasance or breach of trust in relation to the company,

the Court may, on the application of the trustee or of any creditor, shareholder or contributory, examine the conduct of that person and order the person to restore the property so misapplied or retained, or for which that person has become liable or accountable, or to contribute such sum to the property of the company by way of compensation in respect of such misapplication, retention, misfeasance or breach of trust, as the Court thinks just.

Proceedings
by share-
holders.

171.—(1) Where a shareholder of the company desires to cause any proceeding to be taken that, in the shareholder's opinion, would be for the benefit of the company, and the trustee, under the authority of the shareholders or of the inspectors, if any, refuses or neglects to take such proceeding after being required to do so, the shareholder may obtain an order of the Court authorizing the shareholder to take such proceeding in the name of the trustee or company, but at the shareholder's own expense and risk, upon such terms and conditions as to indemnity to the trustee or company as the Court prescribes.

(2) Any benefit derived from a proceeding under subsection (1) belongs exclusively to the shareholder causing the institution of the proceeding for the shareholder's benefit and that of any other shareholder who has joined together in causing the institution of the proceeding.

(3) If, before the order is granted, the trustee signifies to the Court the trustee's readiness to institute the proceeding for the benefit of the company, the Court shall make an order prescribing the time within which the trustee is to do so, and in that case, the advantage derived from the proceeding, if instituted within such time, belongs to the company.

Rights by Act
to be in
addition to
other powers.

172. The rights conferred by this Act are in addition to any other right to institute a proceeding against any contributory or debtor of the company, for the recovery of any sum due from such contributory or debtor or an estate thereof.

173. At any time during a winding up, the Court, upon the application of a shareholder, creditor or contributory and upon proof to its satisfaction that all proceedings in relation to the winding up ought to be stayed, may make an order staying the proceedings altogether or for a limited time on such terms and subject to such conditions as the Court thinks fit.

Stay of winding up proceedings.

174.—(1) Where the trustee is unable to pay all the debts of the company because a creditor is unknown or a creditor's whereabouts is unknown, the trustee may, by agreement with the Government Trustee, pay to the Government Trustee an amount equal to the amount of the debt due to the creditor to be held in trust for the creditor, and thereupon section 178(4) and (5) shall apply thereto.

Where creditor unknown.

(2) A payment under subsection (1) shall be deemed to be in satisfaction of the debt for the purposes of winding up.

175.—(1) Where the trustee is unable to distribute rateably the property of the company among the shareholders because a shareholder is unknown or the whereabouts of the shareholder is unknown, the share of the property of the company of that shareholder may, by agreement with the Government Trustee, be delivered or conveyed by the trustee to the Government Trustee to be held in trust for the shareholder and thereupon section 178(4) and (5) shall apply thereto.

Where shareholder unknown.

(2) A delivery or conveyance under subsection (1) shall be deemed to be a distribution to that shareholder of his rateable share for the purposes of the winding up.

176.—(1) Where a company has been wound up under sections 137 to 175 and is about to be dissolved, its documents and records and those of the trustee may be disposed of, as it by resolution, directs, in case of voluntary winding up, or as the Court directs, in case of winding up under an order.

Disposal of records, etc., after winding up.

(2) After the expiration of six years after the date of the dissolution of the company, no responsibility rests on it or the trustee, or anyone to whom the custody of the documents and records has been committed, by reason that the same or any of them are not forthcoming to any person claiming to be interested therein.

Voluntary
dissolution.

177. A company may be dissolved upon the authorization of—

- (a) a special resolution passed at a meeting of the shareholders of the company duly called for the purpose, by such other proportion of the votes cast as the articles provide, being not less than fifty per cent of the votes of all the shareholders entitled to vote at the meeting;
- (b) the consent in writing of all the shareholders entitled to vote at such meeting; or
- (c) all its incorporators or their personal representatives if the company has not commenced business and has not issued any shares.

Articles of
dissolution.

178.—(1) For the purpose of bringing the dissolution authorized under section 177(a) or (b) into effect, articles of dissolution shall follow the prescribed form and shall set out—

- (a) the name of the company;
- (b) that the dissolution of the company has been duly authorized under section 177(a) or (b);
- (c) that the company has no debts, obligations or liabilities or its debts, obligations or liabilities have been duly provided for in accordance with subsection (3) or its creditors or other persons having interests in its debts, obligations or liabilities consent to its dissolution;
- (d) that, after satisfying the interests of creditors in all its debts, obligations and liabilities, if any, the company has no property to distribute among its shareholders or that it has distributed its remaining property rateably among its shareholders according to their rights and interests in the company or in accordance with subsection (4) where applicable; and
- (e) that there are no proceedings pending in any Court against the company.

(2) For the purpose of bringing a dissolution authorized under section 177(c) into effect, articles of dissolution shall follow the prescribed form and shall set out—

- (a) the name of the company;
- (b) the date set out in its certificate of incorporation;
- (c) that the company has not commenced business;
- (d) that none of its shares has been issued;
- (e) that dissolution has been duly authorized under section 177(c);
- (f) that it has no debts, obligations or liabilities;
- (g) that, after satisfying the interests of creditors in all its debts, obligations and liabilities, if any, it has no property to distribute or that it has distributed its remaining property to the persons entitled thereto; and
- (h) that there are no proceedings pending in any Court against it or where proceedings are pending, the articles of dissolution shall indicate the nature of such proceedings.

(3) Where a company authorizes its dissolution and a—

- (a) creditor is unknown or a creditor's whereabouts is unknown, the company may, by agreement with the Government Trustee, pay to the Government Trustee an amount equal to the amount of the debt due to the creditor to be held in trust for the creditor, and such payment shall be deemed to be due provision for the debt for the purposes of subsection (1)(c); or
- (b) shareholder is unknown or a shareholder's whereabouts is unknown, it may, by agreement with the Government Trustee, deliver or convey the shareholder's share of the property to the Government Trustee to be held in trust for the shareholder, and such delivery or conveyance shall be deemed to be a

distribution to that shareholder of his rateable share for the purposes of the dissolution.

(4) If the share of the property so delivered or conveyed to the Government Trustee under subsection (3)(b) is in a form other than cash, the Government Trustee—

(a) may, at any time; and

(b) within ten years after such delivery or conveyance shall,

convert the share of the property into cash.

(5) If the amount paid under subsection (3)(a) or the share of the property delivered or conveyed under subsection (3)(b) or its equivalent in cash, as the case may be, is claimed by the person beneficially entitled thereto within ten years after it was so delivered, conveyed or paid, it shall be delivered, conveyed or paid to the person, but if it is not so claimed, it vests in the Government Trustee and, if the person beneficially entitled thereto, at any time thereafter, establishes a right thereto, to the satisfaction of the Accountant-General, an amount equal to the amount so vested in the Government Trustee shall be paid to the person.

Certificate
of
dissolution.

179.—(1) Upon receipt of the articles of dissolution, the Registrar shall issue, in accordance with section 215, a certificate which shall constitute the certificate of dissolution.

(2) Notwithstanding the provisions of section 215(1)(a), articles of dissolution for the purposes of section 178(2) shall be signed by all its incorporators or their personal representatives.

Cancellation
of
certificate.

180.—(1) Notwithstanding the imposition of any other penalty in respect thereof and in addition to any rights the Registrar may have under this or any other Act, the Registrar may, where sufficient cause is shown to him, and after giving the company an opportunity to be heard, by order upon such terms and conditions as the Registrar thinks fit,

cancel a certificate of incorporation or any other certificate issued under this Act and, in the case of the cancellation of—

- (a) a certificate of incorporation, the company is dissolved on the date fixed in the order; and
- (b) any other certificate, the matter that became effective upon the issue of the certificate ceases to be in effect from the date fixed in the order.

(2) In this section, “sufficient cause” with respect to the cancellation of a certificate of incorporation, includes—

- (a) a conviction of the company for an offence under a law in Jamaica, in circumstances where the cancellation of the certificate is in the public interest; and
- (b) conduct described in section 189(2).

181.—(1) Where the Registrar is notified by the Minister responsible for finance that a company is in default of complying with any tax or tax related Act under the laws of Jamaica, the Registrar shall give notice either by registered mail to the company, or by publication in the *Gazette*, or in a newspaper circulated throughout Jamaica that an order dissolving the company will be issued unless the company remedies its default within ninety days after the notice is given.

Other cause
for cancel-
lation of
certificate.

(2) Where the Registrar is notified by the Commission that a company has not complied with the provisions of the *Securities Act*, the Registrar may give notice either by registered mail to the company, or by publication in the *Gazette*, or a newspaper circulated throughout Jamaica, that an order dissolving the company will be issued unless the company complies with the provisions of the *Securities Act* within ninety days after the giving of the notice.

(3) Where a company fails to comply with a filing requirement under this Act, or fails to pay a fee required under this Act, the Registrar may give notice in accordance with section 207 to the company or by publication in the *Gazette* or in a newspaper circulated throughout Jamaica, that an order dissolving the company will be issued unless the

company, within ninety days after the notice is given, complies with the requirement or pays the fees.

(4) Upon default in compliance with the notice given under subsection (1), (2) or (3), the Registrar may, by order, cancel the certificate of incorporation and, subject to section 182(1), the company is dissolved on the date fixed in the order.

Restoration
of company.

182.—(1) Where a company or any predecessor of it is dissolved, the Registrar, on the application of any creditor, shareholder, director or licensed trustee (as defined within the meaning of the *Insolvency Act*) may, in his discretion, on the terms and conditions that the Registrar sees fit to impose, restore the company.

(2) Upon restoration of a company pursuant to subsection (1), the company, subject to the terms and conditions imposed by the Registrar and to the rights, if any, acquired by any person during the period of dissolution, shall be deemed for all purposes to have never been dissolved.

(3) The application referred to in subsection (1) shall not be made more than twenty years after the date of dissolution.

(4) The application referred to in subsection (1) shall be in the form of articles of restoration which shall be in prescribed form.

(5) Upon receipt of the articles of restoration referred to in subsection (4), the Registrar, subject to subsection (3), shall, in accordance with section 215, issue a certificate which shall constitute the certificate of restoration.

Actions after
dissolution.

183.—(1) Notwithstanding the dissolution of a company under this Act—

- (a) a civil, criminal or administrative action or proceeding commenced by or against the company before its dissolution may be continued as if the company had not been dissolved;
- (b) a civil, criminal or administrative action or proceeding may be brought against the company as if the company had not been dissolved;

- (c) any property that would have been available to satisfy any judgment or order if the company had not been dissolved remains available for such purpose; and
- (d) title to land belonging to the company immediately before the dissolution remains available to be sold in power of sale proceedings.

(2) In this section and section 185 “proceeding” includes the exercise of a power of sale relating to land commenced pursuant to a mortgage.

(3) For the purposes of this section, the service of any process on a company after its dissolution shall be deemed to be sufficiently made if it is made upon any person last shown on the records of the Registrar as being a director or officer of the company before its dissolution.

(4) A person who commences an action, suit or other proceeding against a company after its dissolution, shall serve the process by which the action, suit or other proceeding was commenced, on the Government Trustee in accordance with the rules that apply generally to service on a party to an action, suit or other proceeding.

(5) A person who commences a power of sale proceeding relating to land against a company after its dissolution, shall serve a notice of the proceeding on the Registrar of Titles or the Registrar General, as the case may be, in accordance with the *Conveyancing Act* and the *Registration of Titles Act* that apply in respect of a person with an interest in the land.

184.—(1) Notwithstanding the dissolution of a company, each shareholder to whom any of its property has been distributed, is liable to any person claiming under section 183, to the extent of the amount received by that shareholder upon the distribution, and an action may be brought to enforce such liability.

Liability of
shareholders
to creditors.

(2) The Court may order an action referred to in subsection (1) to be brought against the persons who were shareholders as a class, subject to such conditions as the Court thinks fit and, if the applicant

establishes a claim, the Court may appoint a person (in this section called a referee) who may—

- (a) add as a party to the proceedings before that officer, each person who was a shareholder found by the applicant;
- (b) determine, subject to subsection (1), the amount that each person who was a shareholder shall contribute towards satisfaction of the applicant's claim;
- (c) direct payment of the amounts so determined; and
- (d) carry out any other function ordered by the Court.

(3) In this section, "shareholder" includes the heirs and legal representatives of a shareholder.

Forfeiture of
undisposed
property.

185.—(1) Any property of a company that has not been disposed of at the date of its dissolution is immediately, upon such dissolution, forfeited to and vests in the Crown.

(2) Notwithstanding subsection (1), if a judgment is given or an order or decision is made or land is sold in an action, suit or proceeding commenced in accordance with section 183 and the judgment, order, decision or sale affects property belonging to the company before the dissolution, unless the applicant or mortgagee has not complied with section 183(4) or (5)—

- (a) the property shall be available to satisfy the judgment, order or other decision; and
- (b) title to the land shall be transferred to a purchaser free of the Crown's interest, in the case of a power of sale proceeding.

(3) Subject to subsection (4), a forfeiture of land under subsection (1) or any law in force before the enactment of that provision, is not effective against a purchaser for value of the land if the forfeiture occurred more than twenty years before the deed or transfer of the purchaser is registered in the Office of Titles.

(4) If a person commences a power of sale proceeding relating to land before the dissolution of a company but the sale of the

land is not completed until after the dissolution, the person is not required to serve the notice mentioned in section 183(5) and title to the land may be transferred to a purchaser free of the Crown's interest.

PART XIV—*Remedies, Offences and Penalties*

186. In this Part—

“action” means an action under this Act;

“complainant” means—

- (a) a registered holder or beneficial owner, or a former registered holder or beneficial owner, of a security of a company or any of its affiliates;
- (b) a director or an officer or a former director or officer of a company or of any of its affiliates;
- (c) any other person who, in the discretion of the Court, is a proper person to make an application under this Part.

Interpretation of Part XIV.

187.—(1) Subject to subsection (2), a complainant may apply to the Court for leave to bring an action in the name and on behalf of a company or any of its subsidiaries or associates, or intervene in an action to which any such company is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the company.

Derivative actions.

(2) No action may be brought and no intervention in an action may be made under subsection (1) unless the complainant has given fourteen days notice to the directors of the company or its subsidiary or associate, of the complainant's intention to apply to the Court under subsection (1) and the Court is satisfied that—

- (a) the directors of the company or its subsidiary or associate will not bring, diligently prosecute or defend or discontinue the action;
- (b) the complainant is acting in good faith; and
- (c) it appears to be in the interests of the company or its subsidiary or associate that the action be brought, prosecuted, defended or discontinued.

(3) A complainant is not required to give the notice referred to in subsection (2) if all of the directors of the company or its subsidiary or associate are defendants in the action.

(4) Where a complainant on an application—

- (a) made without notice can establish to the satisfaction of the Court that it is not expedient to give notice as required under subsection (2), the Court may make such interim order as it thinks fit, pending the complainant giving notice as required; or
- (b) can establish to the satisfaction of the Court that an interim order for relief should be made, the Court may make such order as it thinks fit.

Court order.

188. In connection with an action brought or intervened in under section 187, the Court may at any time make such order as it thinks fit, including, without limiting the generality of the foregoing, an order—

- (a) authorizing the complainant or any other person to control the conduct of the action;
- (b) giving directions for the conduct of the action;
- (c) directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former and present security holders of the company or its subsidiary or associate instead of to the company or its subsidiary or associate; and
- (d) requiring the company or its subsidiary or associate to pay reasonable legal fees and any other costs reasonably incurred by the complainant in connection with the action.

Oppression
remedy.

189.—(1) A complainant may apply to the Court for an order under this section.

(2) Where, upon an application under subsection (1), the Court is satisfied that in respect of a company or any of its affiliates—

- (a) any act or omission of the company or any of its affiliates effects or threatens to effect a result;
- (b) the business or affairs of the company or any of its affiliates are, have been or are threatened to be carried on or conducted in a manner; or
- (c) the powers of the directors of the company or any of its affiliates are, have been or are threatened to be exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer of the company, the Court may make an order to rectify the matters complained of.

(3) In connection with an application under this section, the Court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing, an order—

- (a) restraining the conduct complained of;
- (b) appointing a receiver or receiver manager;
- (c) regulating the affairs of the company by amending the articles;
- (d) directing an issue or exchange of securities;
- (e) appointing directors in place of or in addition to all or any of the directors then in office;
- (f) directing a company, subject to subsection (6), or any other person, to purchase securities of a security holder;
- (g) directing a company, subject to subsection (6), or any other person, to pay to a security holder any part of the money paid by the security holder for securities;

- (h) varying or setting aside a transaction or contract to which a company is a party and compensating the company or any other party to the transaction or contract;
- (i) requiring a company, within a time specified by the Court, to produce to the Court or an interested person, financial statements in the form required by section 97 or an accounting in such other form as the Court may determine;
- (j) compensating an aggrieved person;
- (k) directing rectification of the registers or other records of a company under section 191;
- (l) winding up the company under section 149;
- (m) directing that an investigation under Part X be made; and
- (n) requiring the trial of any issue.

(4) Where an order made under this section directs amendment of the articles of a company—

- (a) the directors shall forthwith comply with section 126(4); and
- (b) no other amendment to the articles which relates to the amendment directed by the order of the Court shall be made without the consent of the Court, until the Court otherwise orders.

(5) A shareholder is not entitled to dissent under section 125 if an amendment to the articles is effected under this section.

(6) A company shall not make a payment to a shareholder under subsection (3)(f) or (g) if there are reasonable grounds for believing that—

- (a) the company is or, after the payment, would be unable to pay its liabilities as they become due; or
- (b) the realizable value of the assets of the company would thereby be less than the aggregate of its liabilities.

190.—(1) An application made or an action brought or intervened in under this Part shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the company or its affiliates has been or may be approved by the shareholders of such company, but evidence of approval by the shareholders may be taken into account by the Court in making an order under section 149, 188 or 189. Discontin-
nuance and
settlement.

(2) An application made or an action brought or intervened in under this Part shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the Court, given upon such terms as the Court thinks fit, and, if the Court determines that the interests of any complainant may be substantially affected by such stay, discontinuance, settlement or dismissal, the Court may order any party to the application or action to give notice to the complainant.

(3) Other than a foreign complainant, a complainant is not required to give security for costs in any application made, or action brought, or intervened in under this Part.

(4) In an application made or an action brought or intervened in under this Part, the Court may, at any time, order the company or its affiliate to pay to the complainant, interim costs, including reasonable legal fees and disbursements, for which interim costs the complainant may be held accountable to the company or its affiliate upon final disposition of the application or action.

191.—(1) Where the name of a person, without sufficient cause, is alleged to be or has been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a company, the company, a security holder of the company or any aggrieved person may apply to the Court for an order that the registers or records be rectified. Rectifying
error in
entering
name, etc.

(2) In connection with an application under this section, the Court may make any order it thinks fit including, without limiting the generality of the foregoing, an order—

- (a) requiring the registers or other records of the company to be rectified;

- (b) restraining the company from calling or holding a meeting of shareholders, paying a dividend or making any other distribution or payment to shareholders before the rectification;
- (c) determining the right of a party to the proceedings to have the party's name entered or retained in, or deleted or omitted from, the registers or records of the company, whether the issue arises between two or more security holders or between the company and any security holders or alleged security holders; or
- (d) compensating a party who has incurred a loss.

Notice of refusal to issue certificate or other document.

192.—(1) Where the Registrar refuses to issue a certificate or any other document required by this Act to be issued by the Registrar before it becomes effective, the Registrar shall give written notice to the person who filed the articles or other document, of the Registrar's refusal, specifying the reasons therefor.

(2) Where, within three months after the filing of articles or other documents referred to in subsection (1) to the Registrar, the Registrar has not issued a certificate, the Registrar shall be deemed for the purposes of section 193 to have refused to issue such certificate.

Appeal from Registrar.

193.—(1) A person aggrieved by a decision of the Registrar to—

- (a) refuse to issue a certificate;
- (b) issue or refuse to issue a certificate of amendment under section 9;
- (c) refuse to issue a certificate of authorization under section 121;
- (d) issue an order under section 180,

may appeal to the Court of Appeal.

(2) Every appeal shall be by notice of appeal served on the Registrar within thirty days after the receipt of the notice of the decision.

(3) The Registrar shall certify to the Court—

- (a) the decision of the Registrar together with a statement of the reasons therefor;

- (b) the record of any hearing; and
- (c) all written submissions to the Registrar or other material that is relevant to the appeal.

(4) The Registrar is entitled to be heard, by an attorney-at-law or otherwise, upon the argument of an appeal under this section.

(5) Where an appeal is taken under this section, the Court may by order direct the Registrar to make such decision or to do such other act as the Registrar is authorized and empowered to do under this Act, and as the Court thinks proper, having regard to the material and submissions before it and to this Act, and the Registrar shall make such decision or do such act accordingly.

194.—(1) Where a company or any shareholder, director, officer, employee, agent, auditor, trustee, receiver and manager or receiver of a company does not comply with this Act, the regulations or articles, a complainant or a creditor of the company may, despite the imposition of any penalty in respect of such non-compliance and in addition to any other right the complainant or creditor has, apply to the Court for an order—

Orders for compliance.

- (a) directing the company or any person to comply with the order; or
- (b) restraining the company or any person from acting in breach of any provision thereof, and upon such application, the Court may so order and make any further order it thinks fit.

(2) In this section “trustee” means—

- (a) a person in whom legal title of trust assets are vested;
- (b) a person who is licensed and appointed as such under the *Insolvency Act*; or
- (c) the Government Trustee appointed under section 227 of the *Insolvency Act*.

Application
made without
notice.

195. Where this Act states that a person may apply to the Court, that person may apply for injunctive relief without notice as provided by rules of the Court.

Offences
relating to
misrepresentation.

196.—(1) In this section “misrepresentation” means—

- (a) an untrue statement of material fact; or
- (b) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made.

(2) Every person who—

- (a) makes, or assists in making, a statement in any material, evidence or information submitted or given under this Act or any regulations made hereunder to the Registrar or a delegate of the Registrar, or the Commission, or any person appointed to conduct an investigation or audit under this Act that, at the time, and in the light of the circumstances under which it is made, is a misrepresentation, commits an offence; or
- (b) makes, or assists in making, a statement in any application, articles, consent, financial statement, notice, report or other document required to be filed with, furnished or sent to the Registrar under this Act, or any regulations made hereunder, that, at the time, and in the light of the circumstances under which it is made, is a misrepresentation, commits an offence,

and is liable, on summary conviction, to the penalty specified in the Third Schedule.

Third
Schedule.

(3) A person has not committed an offence under subsection (2) if that person did not know and in the exercise of reasonable diligence, could not have known that the statement was a misrepresentation.

Offence of
failing to file
documents
with
Registrar.

197. Every person who fails to file with the Registrar, any document required by this Act or any regulations made hereunder, to be filed with the Registrar commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

198. Every person who fails to observe or to comply with any direction, decision, ruling, order or other requirement made by the Registrar under this Act or any regulations made hereunder, commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

Offence of failing to observe or comply with direction, etc., of Registrar. Third Schedule.

199. Every person who—

- (a) without reasonable cause uses a list of holders of securities in contravention of section 86(8) or 88 commits an offence;
- (b) knowingly causes the falsification of company records, or without reasonable cause refuses to make company records available to any person lawfully entitled to examine such records, in contravention of section 79(2) commits an offence;
- (c) knowing the company records to be untrue or inaccurate, makes the records available to a person under section 79(2)(b), commits an offence;
- (d) being a director of a company, fails without reasonable cause, to appoint an auditor or auditors, as the case may be, pursuant to section 90(1) commits an offence;
- (e) being an auditor or former auditor of a company, fails without reasonable cause to comply with section 95(1) commits an offence;
- (f) fails without reasonable cause to comply with section 96(1) commits an offence,

Offences relating to the provision and use of company documents, etc.

and is liable, on summary conviction, to the penalty specified in the Third Schedule.

200. Where a company commits an offence under section 196, 197, 198 or 199, every director or officer of the company who, without reasonable cause, authorized, permitted or acquiesced in such offence, commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

Liability of director or officer of company.

- Offence for which no penalty is provided. Second Schedule.
- 201.** Any person who commits an offence under this Act or any regulations made hereunder, in respect of which no penalty is expressly provided, shall be liable, on summary conviction, to the penalty specified in the Second Schedule.
- Offences and penalties. Third Schedule.
- 202.** The offence described in the first column of the Third Schedule shall, in respect of the section specified in the second column, incur the penalty set out in relation thereto in the third column.
- Fixed penalties. Fourth Schedule.
- 203.—**(1) This section shall apply to an offence specified in the Fourth Schedule.
- (2) The Registrar or the Commission, as the case may be, may give to any person which it has reason to believe has committed an offence to which this section applies, a notice in writing in the prescribed form, offering that person the opportunity to discharge any liability to conviction of that offence by payment of a fixed penalty under this section.
- (3) A person shall not be liable to be convicted of the offence if the fixed penalty is paid in accordance with this section and the requirement in respect of which the offence was committed is complied with before the expiration of the fifteen days following the date of the notice referred to in subsection (2) or such longer period (if any) as may be specified in that notice or before the date on which the proceedings are begun, whichever event last occurs.
- (4) Where a person is given notice under this section in respect of an offence, proceedings shall not be taken against the person for that offence until the end of the fifteen days following the date of the notice or such longer period (if any) as may have been specified therein.
- (5) In subsections (3) and (4) “proceedings” means any criminal proceedings in respect of the act or omission constituting the offence specified in the notice under subsection (2).
- (6) The payment of a fixed penalty under this section shall be made to the Collector of Taxes specified pursuant to subsection (7); and in any proceedings, a certificate that payment of a fixed penalty was, or was not made to the Collector of Taxes by a date specified in

the certificate shall, if the certificate purports to be signed by the Collector of Taxes, be admissible as evidence of the facts stated therein.

(7) A notice under subsection (2) shall—

- (a) specify the offence alleged;
- (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation;
- (c) state—
 - (i) the period (whether fifteen days or a longer period) during which by virtue of subsection (4), proceedings will not be taken for the offence; and
 - (ii) the amount of the fixed penalty and the Collector of Taxes to whom and the address at which it may be paid.

(8) The fixed penalty for the offences specified in the Fourth Schedule shall be a penalty specified therein in relation to such offences. Fourth
Schedule.

(9) In any proceedings for an offence to which this section applies, no reference shall be made after the conviction of the accused to the giving of any notice under this section or to the payment or non-payment of a fixed penalty thereunder unless, in the course of the proceedings, or in some document which is before the court in connection with the proceedings, reference has been made by or on behalf of the accused to the giving of such notice, or as the case may be, to such payment.

(10) Notwithstanding anything to the contrary contained in this Act or any other enactment, where in respect of an offence attracting a fixed penalty, a person is served with a fixed penalty notice under subsection (2), requiring that person to pay a fixed penalty or to appear at the court specified, but the person does not pay the fixed penalty and is proceeded against in court, if the person is convicted of the offence, the court may impose a fine that is more than the sum that is the fixed penalty attached to that offence, specified in the Fourth Schedule.

(11) The Minister may, by order, make provision as to any matter incidental to the operation of this section, and in particular, any such order may—

(a) prescribe—

- (i) the form of notice under subsection (2) and the Collector of Taxes to whom a fixed penalty is payable;
- (ii) the nature of the information to be furnished to the Collector of Taxes along with any payment; and
- (iii) the arrangements for the Collector of Taxes to furnish to the Registrar or the Commission, as the case may be, information with regard to any payment pursuant to a notice under this section; and

Fourth
Schedule.

(b) amend the Fourth Schedule.

(12) An order made under subsection 11(b) shall be subject to affirmative resolution.

Limitation.

204. All proceedings for an offence under this Act or any regulations made hereunder shall be commenced within six years after the facts constituting the offence are first known or discovered.

Civil remedy
not affected.

205. No civil remedy for an act or omission is suspended or affected by reason that the act or omission is an offence under this Act.

PART XV—*General*

Notice to
directors or
share-
holders.

206.—(1) A notice or document required by this Act, any regulations made hereunder, the articles to be sent to a shareholder or director of a company may be sent by prepaid mail addressed to, or may be delivered personally to a—

- (a) shareholder at the shareholder's latest address as shown in the records of the company or its transfer agent; and
- (b) director at his latest address as shown in the records of the company.

(2) A notice or document sent in accordance with subsection (1) to a shareholder or director of a company is deemed to be received by the addressee on the twenty-first day after mailing.

(3) A director named in the articles or the most recent return or notice filed under section 59(2), a predecessor thereof, is presumed for the purposes of this Act to be a director of the company referred to in the articles, return or notice.

(4) Where a company sends a notice or document to a shareholder in accordance with subsection (1) and the notice or document is returned on three consecutive occasions because the shareholder cannot be found, the company is not required to send any further notices or documents to the shareholder until the shareholder informs the company in writing of the shareholder's new address.

(5) Where it is impracticable or impossible to comply with subsection (1), a person may apply to the Court for such order as the Court thinks fit.

(6) A notice or document required or permitted to be sent under this section may be sent in accordance with the *Electronic Transactions Act*.

207.—(1) Except as otherwise provided in this Act, a notice or document required to be sent to a company may be sent by registered mail at its registered office as shown on the records of the Registrar or may be delivered personally to the company at that office. Notice to company.

(2) A notice or other document that is required or permitted by this Act or the regulations to be sent by the Registrar may be sent by ordinary mail, registered mail or any other method to an address referred to in section 206 or this section if there is a record by the person who has delivered it, that the notice or document has been sent.

(3) A notice or other document referred to in subsection (2) may be sent by telephone transmission of a facsimile of the notice or other document or by any other form of electronic transmission if there is a record that the notice or other document has been sent.

(4) A notice or other document sent by mail by the Registrar shall be deemed to have been received by the intended recipient on the earlier of—

- (a) the day the intended recipient actually receives it; or
- (b) the twenty-first day after the day it is mailed.

(5) A notice or other document sent by a method referred to in subsection (3) shall be deemed to have been received by the intended recipient on the earlier of—

- (a) the day the intended recipient actually receives it; or
- (b) the first business day after the day the transmission is sent by the Registrar.

Waiver of notice and abridgement of times.

208.—(1) Where a notice or document is required by this Act or any regulations made hereunder to be sent, the notice may be waived or the time for the sending of the notice or document may be waived or abridged at any time with the consent in writing of the person entitled thereto.

(2) The consent of a person entitled to waive the requirement for the sending of a notice or document or to waive or abridge the time for the sending of a notice or document under subsection (1) may be sent by electronic means pursuant to the *Electronic Transactions Act*.

(3) Nothing in this section shall limit the operation of section 48.

Delegation of functions of Registrar.

209.—(1) The Registrar may in writing, delegate any of his functions under this Act, other than the power of delegation.

(2) Where this Act requires or authorizes the Registrar to issue a certificate or to certify any fact, the certificate shall be signed by the Registrar or any other person designated by regulations made hereunder.

(3) A certificate referred to in subsection (2) or a certified copy thereof when introduced as evidence in any civil, criminal or administrative action or proceeding, is, in the absence of evidence to the contrary, proof of the facts so certified without personal appearance

to prove the signature or official position of the person appearing to have signed the certificate.

(4) For the purposes of subsections (2) and (3), any signature of the Registrar or any signature of an officer designated by regulations made hereunder may be printed or otherwise mechanically reproduced.

(5) Subsections (2), (3) and (4) do not apply to certificates which are in electronic form.

210.—(1) Subject to the articles, a certificate issued on behalf of a company stating any fact that is set out in the articles, a unanimous shareholder agreement, the minutes of meetings of the directors, a committee of directors or the shareholders, a trust indenture or other contract to which the company is a party, may be signed by a director, an officer or a transfer agent of the company.

Certificate
may be
signed by
directors, etc.

(2) When introduced as evidence in any civil, criminal or administrative action or proceeding a—

- (a) fact stated in a certificate referred to in subsection (1);
- (b) certified extract from a register of a company required to be maintained by this Act; or
- (c) certified copy of minutes or extract from minutes of a meeting of shareholders, directors or a committee of directors of a company,

is in the absence of evidence to the contrary, proof of the facts so certified.

(3) An entry in a securities register of, or a security certificate issued by, a company is, in the absence of evidence to the contrary, proof that the person in whose name the security is registered or whose name appears on the certificate is the owner of the securities described in the register or in the certificate, as the case may be.

211. The Registrar may require any fact relevant to the performance of the Registrar's duties under this Act or the regulations to be verified by affidavit or otherwise.

Proof by
affidavit.

Examination, etc., of documents.

212.—(1) A person who has paid the required fee is entitled, during usual business hours, to examine and to make copies of, or extracts from any document required by this Act or any regulations made hereunder to be sent to the Registrar, except a report sent to the Registrar under section 102(2) that the Court has ordered not to be made available to the public.

(2) Subject to section 102(1)(j), the Registrar shall furnish any person with a copy or a certified copy of a document required by this Act or any regulations made hereunder to be sent to the Registrar.

(3) Subsections (1) and (2) do not apply in respect of documents and financial statements required by this Act or any regulations made hereunder, to be filed with the Registrar with an application for exemption from the requirements of Part IX.

Regulations, etc.

213.—(1) The Minister may make regulations for the purpose of giving effect to the provisions of this Act, and in particular but without prejudice to the generality of the foregoing, such regulations may prescribe—

- (a) the forms for use under this Act; and
- (b) the form and content of any notices or documents required to be filed by this Act.

(2) Regulations made under this section shall be subject to negative resolution.

Power of Minister to amend penalties.

214. The Minister may by order, subject to affirmative resolution, amend any monetary penalty imposed by this Act.

Where articles to be filed with Registrar.

215.—(1) Where this Act requires that articles relating to a company be sent to the Registrar, unless otherwise specifically provided—

- (a) two originals of the articles shall be signed by a director or an officer of the company or, in the case of articles of incorporation, by all subscribers; and
- (b) upon receiving the originals of any articles in the prescribed form that have been executed in accordance with this Act any other required documents and the prescribed fees, the

Registrar shall, in his discretion as provided in sections 120(4) and 182(5) and subject to subsection (2) issue a certificate, setting out the day, month and year of incorporation and the company number.

(2) Subject to subsection (3), a certificate referred to in subsection (1) shall be dated as of the day the Registrar receives the originals of any articles together with all other required documents executed in accordance with this Act and the required fee, or, as of any later date acceptable to the Registrar and specified by the person who submitted the articles or by the Court.

(3) The effective date of the incorporation of a company shall be the date shown on the certificate issued by the Registrar.

(4) Notwithstanding subsections (1) and (2), if articles relating to a company are sent to the Registrar in a prescribed electronic format—

- (a) the articles shall set out an electronic signature of a director or officer of the company or, in the case of articles of incorporation, the electronic signature of all incorporators, unless any regulations hereunder otherwise provide; and
- (b) upon receipt of the articles in the prescribed electronic format completed in accordance with this Act and the required fee, the Registrar shall, subject to the Registrar's discretion as provided in section 120(4) and subject to subsection (5) of this section issue and send to the company or its representative a copy of the certificate in the prescribed form.

(5) A certificate referred to in subsection (4) shall be dated as of the day the Registrar received the articles in a prescribed electronic format completed in accordance with this Act and the required fee or as of any later date acceptable to the Registrar and specified by the person who submitted the articles or by the Court.

216. Despite any provision of this Act requiring the Registrar to issue a certificate, the Registrar shall not do so if a company is in default of a filing requirement or has any unpaid fees or outstanding penalties.

No certificate if business company in default.

Electronic
filing.

217.—(1) Information that is filed in an electronic form may be filed by a person who is authorized to do so by the Registrar or by a person who is a member of a class of persons that is authorized to do so.

(2) The Registrar may attach terms and conditions to an authorization given under subsection (1) and may require any person who applies for an authorization to enter into an agreement governing the making of filings in an electronic format.

Where error
in respect of
certificate.

218.—(1) Where a certificate issued by the Registrar under this Act contains an error—

- (a) the company, its directors, officers or shareholders may apply to the Registrar for a corrected certificate and shall surrender the certificate and related articles or documents; or
- (b) the company shall, upon the request of the Registrar, surrender the certificate and related articles and documents,

and, after giving the company an opportunity to be heard, if the Registrar is of the opinion that it is appropriate to do so, and is satisfied that such steps have been taken by the company as the Registrar required, the Registrar shall issue a corrected certificate.

(2) A corrected certificate issued under subsection (1) may bear the date of the certificate which it replaces.

(3) An appeal against the decision of the Registrar under subsection (1)(b) may be made in the Court which may order the Registrar to change the decision and make such further order as it thinks fit.

Records.

219.—(1) Records required by this Act to be prepared and maintained by the Registrar or Commission may be in bound, loose leaf, electronic or photographic film form, or may be entered or recorded by any means of mechanical or electronic storage data processing or by any other information storage device that is capable of reproducing any required information in an accurate and intelligible form within a reasonable time.

(2) Where records maintained by the Registrar are prepared and maintained other than in written form—

- (a) the Registrar shall furnish any copy required to be furnished under section 212(2) in intelligible written or other form; and
- (b) a report reproduced from those records, if certified by the Registrar is, without proof of the office or signature thereof, admissible in evidence.

(3) The Registrar is not required to produce any document where a copy of the document is furnished in compliance with subsection (2)(a).

221. This Act shall not apply to any company in existence and carrying out business in Jamaica on the appointed day. Non-appli-
cation.

FIRST SCHEDULE

(Section 4(1)(b)(ii))

*Bylaws for Management of a Company Limited
by Shares*

Matters that shall be included in bylaws—

1. Shares:
 - 1.1. Calls on shares.
 - 1.2. Transfer and transmission of shares.
 - 1.3. Forfeiture of shares.
2. Lien.
3. Alteration of capital.
4. General meetings:
 - 4.1 Notice of general meetings.
 - 4.2 Proceedings at general meetings,
 - 4.3 Votes of members.
5. Powers and duties of directors.
6. The seal.
7. Disqualification of directors.
8. Rotation of directors.
9. Proceedings of directors.
10. Dividends and reserve.
11. Accounts.
12. Audit.
13. Notices.

SECOND SCHEDULE

(Section 12(6))

*List of Activities of a Company which do not Constitute
carrying on Business in Jamaica*

1. The company has a physical presence in Jamaica operating with officers and other members of staff other than for the purpose of supplying goods or services to customers in Jamaica.
2. The company has an affiliate that operates in Jamaica with officers and other members of staff other than for the purpose of supplying goods or services to customers in Jamaica.
3. The company is a member of a group, one of the members of which operates in Jamaica with officers and other members of staff.
4. The company carries on business activities in Jamaica in association with another company incorporated in Jamaica only for the purpose of enabling the company to carry on its business with persons outside of Jamaica.
5. The company makes or maintains deposits with an entity licensed to carry on banking business within Jamaica.
6. The company holds investments through a securities dealer licensed under the *Securities Act*.
7. The company offers goods and services electronically from a place of business in Jamaica or through an internet or other electronic service provider located in Jamaica.
8. The company negotiates and concludes contracts in Jamaica as may be necessary for the carrying on of its business outside of Jamaica.
9. The company effects or concludes contracts or arrangements with persons in Jamaica for the supply of goods and services to the company necessary for the purposes of enabling the company to carry on its business with persons outside of Jamaica.
10. The company prepares or maintains books and records in Jamaica for itself or for clients who reside outside of Jamaica.
11. The company holds within Jamaica, meetings of its directors or members.
12. The company owns or leases property as lessee in Jamaica for the purposes of carrying on its business activities in Jamaica.

13. The company buys and sells shares, debt obligations or other securities in companies listed on a “recognized stock exchange” as defined in section 2 of the *Securities Act*.
14. The shares, debt obligations or other securities in the company are owned by any other company incorporated under this Act or the *Companies Act*.
15. The company owns a ship or vessel registered in Jamaica under the *Shipping Act*.
16. The company employs a person who is domiciled or ordinarily resident in Jamaica in connection with its operations.

THIRD SCHEDULE

(Section 203)

Offences in respect of which liability to conviction may be discharged by payment of a fixed penalty

First Column	Second Column	Third Column
Brief description of Offence	Relevant Section	Penalty
Company contravenes section 12(5)	12(8)	On summary conviction in a Parish Court, to a fine not exceeding ten million dollars.
Removes, withholds or destroys company records	79(5)	<p>On summary conviction in a Parish Court—</p> <p>(a) in the case of an individual, to a fine not exceeding one million dollars, or to imprisonment for a term not exceeding twenty-four months;</p> <p>(b) in the case of a company, to a fine not exceeding two million dollars.</p>
Knowing that the information in relation to a company is untrue, records or assists in the recording of the information	79(5)	On summary conviction in a Parish Court, to a fine not exceeding two million dollars.
Knowing that the information in relation	79(5)	On summary conviction in a Parish

Offences and Penalties

First Column	Second Column	Second Column
Brief description of Offences	Relevant Section	Penalty
to a company is untrue, makes the information available to a person lawfully entitled thereto under section 79(2)(b)		Court to a fine not exceeding two million dollars
Not keeping or maintaining records of the company	80(4)	On summary conviction in a Parish Court, to a fine not exceeding one million dollars.
Not keeping specified records of the company for at least seven years	80(4)	On summary conviction in a Parish Court, to a fine not exceeding one million five hundred thousand dollars.
Failure of company to prepare and maintain at its registered office, securities register	81(2)	On summary conviction in a Parish Court, to a fine not exceeding one million dollars.
Failure of company to prepare and maintain register of transfer	81(4)	On summary conviction in a Parish Court, to a fine not exceeding one million dollars.
Providing false or misleading information to be recorded in the Register of Beneficial Owners in contravention of section 130(6)	130(7)	On summary conviction in a Parish Court, to a fine not exceeding one million dollars.
Providing false or misleading information to be recorded in the	131(4)	On summary conviction in a Parish Court, to a fine not

Offences and Penalties

First Column Brief description of Offences	Second Column Relevant Section	Second Column Penalty
Register of Beneficial Owners in contravention of section 131(3)	196(2)(a)	exceeding one million dollars.
Makes or assists in making a statement in any material, evidence or information submitted or given under this Act or any regulations made under this Act to the Registrar or a delegate of the Registrar of the Commission or any person appointed to conduct an investigation or audit under this Act that is a misrepresentation	196(2)(a)	<p>On summary conviction in a Parish Court—</p> <p>(a) in the case of an individual, to a fine not exceeding two million dollars or to imprisonment for a term not exceeding twenty-four months;</p> <p>(b) in the case of a company, to a fine not exceeding five million dollars.</p>
Makes or assists in making a statement in any application, articles, consent, financial statement, notice, report or other document required to be filed with, furnished or sent to the Registrar under this Act or any regulations made under this Act that is a misrepresentation.	196(2)(b)	<p>On summary conviction in a Parish Court—</p> <p>(a) in the case of an individual, to a fine not exceeding two million dollars or to imprisonment for a term not exceeding twenty-four months;</p>

Offences and Penalties

First Column Brief description of Offences	Second Column Relevant Section	Second Column Penalty
Failure to file with the Registrar any document required by the Act or any regulations made under the Act	197	<p>(b) in the case of a company, to a fine not exceeding five million dollars.</p> <p>On summary conviction in a Parish Court—</p> <p>(a) in the case of an individual, to a fine not exceeding one million dollars;</p> <p>(b) in the case of a company, to a fine not exceeding two million dollars.</p>
Failure to observe or to comply with any direction, decision, ruling, order or other requirement made by the Registrar.	198	<p>On summary conviction in a Parish Court—</p> <p>(a) in the case of an individual, to a fine not exceeding one million dollars;</p> <p>(b) in the case of a company, to a fine not exceeding two million dollars.</p>
Without reasonable cause— (a) uses a list of registered	199(a)	<p>On summary conviction in a Parish Court—</p> <p>(a) in the case of</p>

Offences and Penalties

First Column Brief description of Offences	Second Column Relevant Section	Second Column Penalty
<p>holders of shares of a company in contravention of section 86(8); or</p> <p>(b) offering for sale or selling, purchasing or otherwise trafficking in a list or the copy of a list of holders of securities or warrants of a company in contravention of section 88.</p>	199(b)	<p>an individual, to a fine not exceeding one million dollars, or to imprisonment for a term not exceeding twenty-four months;</p> <p>(b) in the case of a company, to a fine not exceeding two million dollars.</p>
<p>Knowingly causing the falsification of company records</p>	199(b)	<p>On summary conviction in a Parish Court—</p> <p>(a) in the case of an individual, to a fine not exceeding two million dollars or to imprisonment for a term not exceeding twenty-four months;</p>

Offences and Penalties

First Column Brief description of Offences	Second Column Relevant Section	Second Column Penalty
Without reasonable cause, refusing to make company records available to person lawfully entitled to examine such records	199(b)	On summary conviction in a Parish Court, to a fine not exceeding two million dollars.
Being a director, fails, without reasonable cause, to appoint an auditor or auditors, as the case may be	199(d)	On summary conviction in a Parish Court, to a fine not exceeding one million five hundred thousand dollars.
Being an auditor or former auditor, fails, without reasonable cause, to comply with section 95(1)	199(e)	On summary conviction in a Parish Court, to a fine not exceeding three million dollars.
Fails without reasonable cause to comply with section 96(1)	199(f)	On summary conviction in a Parish Court, to a fine not exceeding two million dollars.
Offence for which no penalty is expressly provided	201	On summary conviction in a Parish Court, to a fine not exceeding five million dollars or to imprisonment for a term not exceeding thirty-six months.

FOURTH SCHEDULE (Section 203)

Offences in respect of which liability to conviction may be discharged by payment of a fixed penalty

Brief description of Offence	Relevant Section	Penalty
Not keeping or maintaining records of the company	80(4)	Five Hundred Thousand Dollars (\$500,000.00)
Not keeping specified records of the company for at least seven years	80(4)	One Million Dollars (\$1,000,000.00)
Failure of company to prepare and maintain at its registered office, securities register	81(2)	Five Hundred Thousand Dollars (\$500,000.00)
Failure of company to prepare and maintain register of transfers	81(4)	Five Hundred Thousand Dollars (\$500,000.00)
Failure to file with the Registrar any document required by the Act or any regulations made under the Act	197	In the case of an individual, Five Hundred Thousand Dollars (\$500,000.00) In the case of a company, One Million Dollars (\$1,000,000.00)
Failure to observe or to comply with any direction, decision, ruling, order or other requirement made by the Registrar	198	In the case of an individual, Two Hundred and Fifty Thousand Dollars (\$250,000.00) In the case of a company, One Million Dollars (\$1,000,000.00)

MEMORANDUM OF OBJECTS AND REASONS

The Government has created a statutory body called the Jamaica International Financial Services Authority (JIFSA) whose mandate, among other things, is to promote and develop Jamaica as a centre for international financial services. The International Business Companies Act ("the Act") serves as a key component of the priority legislation enacted to achieve this mandate. The Act provides for the establishment and operation of International Business Companies ("IBCs") in Jamaica, with the Registrar of Companies serving as the Registrar.

The Act provides that such IBCs be incorporated in Jamaica, but may only conduct business activities outside Jamaica (save for a limited number of activities as listed in the Act), and therefore may not compete in the domestic market. It is anticipated that IBCs will benefit from a lower tax rate than that levied upon domestic Jamaican companies.

The Act contains a number of sophisticated features which will prove attractive to international investors. These features include the amalgamation of IBCs, the continuance of foreign bodies corporate into Jamaica and the transfer of IBCs out of Jamaica. Although the registered office for an IBC must be situated in Jamaica, shareholders and directors may hold their respective meetings anywhere in the world.

The Act is designed to attract and facilitate a wide variety of international business activities. IBCs may serve as holding companies for international assets including intellectual property rights, real property and the shares of other companies. IBCs may be used for assets protection, licensing and franchising, to conduct international trade, investment activities and as special purpose vehicles in international financial transactions. They may buy and sell goods and services, hold bank accounts, operate businesses internationally and serve as the international headquarters for global business operations.

The Government shall earn incorporation, filing and annual renewal fees with respect to IBCs, and Jamaican professionals who provide accounting, legal and other services will benefit from business opportunities arising from the establishment and administration of these entities.

The objective of this Act is to provide the legislative framework to establish an international business companies regime which proves attractive to potential investors, and to fulfill our mandate to develop Jamaica as a world-class international financial services jurisdiction.

ANDREW HOLNESS
Prime Minister

A BILL

ENTITLED

AN ACT to Provide for the incorporation and operation of international business companies, and for connected matters.

As introduced by the Honourable Prime Minister.

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