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(Act 10 of 2004)

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SECOND SCHEDULE	Form of Statement in lieu of Prospectus to be delivered to Registrar by a Private Company on becoming a Public Company and Reports to be set out therein.
THIRD SCHEDULE	Matters to be specified in Prospectus and Reports to be set out therein.

FOURTH SCHEDULE	Form of Statement in lieu of Prospectus to be delivered to Registrar by a Company which does not issue a Prospectus or which does not go to allotment on a Prospectus issued, and Reports to be set out therein.
FIFTH SCHEDULE Amended by Companies (Amendment) Act, 2023.	Contents and Forms Required by (Sections 121, 377B, 377W and 392).
SIXTH SCHEDULE	Provisions which do not apply in the case of a winding up subject to supervision of the Court.
SEVENTH SCHEDULE	Financial Disclosure - Form and content of Company Accounts.
EIGHTH SCHEDULE	Matters to be expressly stated in Auditors Report.
NINTH SCHEDULE	Provisions referred to in Section 382. Amended by Companies (Amendment) Act, 2023
TENTH SCHEDULE	Procedure in cases of applications for licences under Section 16.
ELEVENTH SCHEDULE	Provisions of this Act applied to the Unregistered companies.
TWELFTH SCHEDULE	Exceptions referred to at paragraph (e) of subsection (1) of Section 25.
THIRTEENTH SCHEDULE	Exceptions referred to at subsection (3) of Section 25.
FOURTEENTH SCHEDULE	Provisions supplementing and interpreting Section 196.
FIFTEENTH SCHEDULE	Table of Fees.
SIXTEENTH SCHEDULE	Form BRF1

No. 10 — 2004

[L.S.]

I assent,

HOWARD F. COOKE,
Governor-General
25th day of March, 2004

AN ACT to Repeal and replace the Companies Act.

The date notified by the Minister
[]
bringing the Act into operation

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 with the authority of the same, as follows:—

PART I—*Preliminary*

1. This Act may be cited as the Companies Act, 2004, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title and commencement.

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

“accounts” includes a company’s group accounts whether prepared in the form of accounts or not;

Interpretation.

“accurate” in relation to information on beneficial ownership, means correct in all details, exact and without mistakes;

“adequate” in relation to information on beneficial ownership, means information that is sufficient to identify the individual who is the beneficial owner and the means and mechanisms by or through which that individual acquired beneficial ownership;

“affiliated” in relation to two or more companies means that—

- (a) one of them is the subsidiary of the other;
- (b) each of them is a subsidiary of the same company;
- (c) each of them is controlled directly or indirectly by the same person; or
- (d) each of them by virtue of paragraph (a), (b) or (c) has a relationship with the same company at the same time;

“agent” does not include a person’s counsel acting as such;

“annual beneficial ownership return” means the beneficial ownership return delivered annually, made up to a date not later than the company’s return date in accordance with section 377A(1)(c);

“annual return” means the return required to be made, in the case of a company having a share capital, under section 122, and, in the case of a company not having a share capital, under section 123;

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

“articles” means the articles of incorporation of a company as originally framed or as altered by

special resolution;

"associate" in relation to any person means—

- (a) a company or body corporate of which that person beneficially owns or controls, directly or indirectly, shares or debentures convertible into shares, that carry more than 20 percent of the voting rights—
 - (i) under all circumstances;
 - (ii) by reason of the occurrence of an event that is continuing; or
 - (iii) by reason of a currently exercisable option or right to purchase those shares or those convertible debentures;
- (b) a partner of that person acting on behalf of the partnership of which they are partners;
- (c) a trust or estate in which that person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity;
- (d) a spouse of that person;
- (e) a child, step-child or adopted child of that person;
- (f) an immediate relative of that person or of his spouse;

“attende” includes –

(a) a member;

(b) a proxy appointed in accordance with the articles of the company;

(c) an officer attending a meeting of the company; and

(d) an auditor appointed in accordance with section 154 of the Act;

“beneficial owner” means –

- (a) the individual who exercises whether directly or indirectly ultimate effective control and ultimate ownership of a company;
- (b) if there is no individual exercising both ultimate effective control and ultimate ownership of the company, the individual who exercises, whether directly or indirectly, either ultimate ownership or ultimate effective control;
- (c) the individual who exercises control or ownership in any of the ways stated in paragraph (a) or (b) over a company, body of persons, trust or other legal arrangement, who owns twenty-five percent or more of a company; or
- (d) in the absence of an individual referred to in paragraphs (a) or (b), an individual who is an officer of the company who exercises ultimate effective control of the management of the company;

“beneficial ownership return” means the return required to be made under section 377A;

“book and paper” and “book or paper” include accounts, deeds, writings and documents;

“computer” has the meaning assigned to it by section 2 of the Cybercrimes Act;

“computer service” has the meaning assigned to it by section 2 of the Cybercrimes Act;

“chain of ownership” in relation to a company, means the ownership of the company by a series of successive owners;

“Commissioner General” means the Commissioner General appointed under section 4 of the

Revenue Administration Act;

“Commissioner of Customs” means the Commissioner of Customs appointed under section 13 of the Revenue Administration Act;

“company” means a company formed and registered under this Act or an existing company;

“companies to which Part X applies” has the meaning assigned to it by section 362;

“competent authority” means the authority authorized, in writing, by the Minister under section 19(1)(g) of the Proceeds of Crime Act;

“the Court” used in relation to a company means the Supreme Court;

“debenture” includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

“designated authority” means the person designated, in writing, by the Minister under section 91(1)(h) of the Proceeds of Crime Act;

“designated non-financial institution” has the meaning assigned to it by paragraph 1(2) of the Fourth Schedule to the Proceeds of Crime Act;

“director” includes any person occupying the position of director by whatever name called;

“disaster” has the meaning assigned to it by section 2 of the Disaster Risk Management Act;

“document” has the meaning assigned to it by section 1A of the Evidence Act;

“electronic” has the meaning assigned to it by section 2 of the Electronic Transactions Act;

“electronic communication system” has the meaning assigned to it by section 2 of the Electronic Transactions Act;

“existing company” means a company formed and registered before the commencement of this Act under the Law in force before that date;

“file accounts” has the meaning assigned to that expression by subsection (4) of section 25;

“financial institution” has the meaning assigned to it by section 2(1) of the Proceeds of Crime Act;

“financial year” means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in general meeting is made up, whether that period is a year or not;

“functions” in relation to the Registrar, includes powers and duties;

["Government Trustee" has the meaning assigned to it under section 231;](#)

“hybrid meeting” means a meeting held simultaneously, by electronic means, as well as at a physical venue in which attendees, whether by electronic means or present in-person, simultaneously attend and participate in the proceedings of the meeting in real-time;

“issued generally” means, in relation to a prospectus, issued to persons who are not existing members or debenture holders of the company;

“immediate relative”, as respects any person, means his spouse, or his children (including step-children) and their spouses, his parents, his brother or sister;

“in-person meeting” means a meeting in which all attendees –

(a) are physically present together in one location; and

(b) participate in the business of the meeting and interact with each other, face to face;

“officer” in relation to a body corporate includes a director, manager or secretary;

“poll” includes a poll through or by electronic means;

“prescribed” means, as respects the provisions of this Act relating to procedure, winding up, and the costs and fees in connection therewith, prescribed by rules of court, and as respects the other provisions of this Act, prescribed by the Minister;

“procuring entity” has the meaning assigned to it by section 2 of the Public Procurement Act, 2015;

“prospectus” means any prospectus, notice, circular advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company;

“public entity” means –

- (a) Tax Administration Jamaica established under section 4 of the Tax Administration Jamaica Act;
- (b) the Public Procurement Commission established under section 9 of the Public Procurement Act, 2015; and
- (c) any statutory body that provides regulatory oversight in relation to any professional service, business or commercial enterprise or industry;

“Registrar” or “Registrar of Companies” means the public officer referred to in section 351;

“return date” means the date, that is –

- (a) in the case of a company incorporated under this Act, the anniversary of the company's incorporation;
- (b) in the case of a company incorporated outside Jamaica and carrying on business in Jamaica, the anniversary of the establishment of the company's place of business in Jamaica; or
- (c) if the company's last return delivered to the Registrar was made up to a different date, the anniversary of that date;

“rules” means rules provided for in this Act, and includes rules of court and forms;

“security interest” has the meaning assigned to it under the Security Interest in Personal Property Act;

“shadow director” in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act, so, however, that a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity;

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

“show of hands” includes a show of hands through or by electronic means;

“specified date” means the date of commencement of the Companies (Amendment) Act, 2017;

"stated capital" includes—

- (a) the total issue price (including consideration other than cash) of all classes of shares;
- (b) the full value of transfers to capital by the company from profit, or revenue reserves, including the total issue price of bonus shares issued upon a capitalization of profits or revenue reserves;

["Supervisor" has the meaning assigned to it under section 231;](#)

“Table A” means Table A in the First Schedule;

“tax identification number” means an identification number assigned to a person, pursuant to foreign law, in the jurisdiction of a foreign country or state, for a purpose analogous to the purpose of a tax registration number;

“tax registration number” means the registration number assigned under section 17D(4) of the Revenue Administration Act;

“time of the opening of the subscription lists” has the meaning assigned to that expression by subsection (2) of section 51;

["trustee" means a person who is licensed and appointed as such under the Insolvency Act or where the context otherwise provides, the Government Trustee;](#)

“ultimate effective control” means the control exercised by an individual, through means or mechanisms other than by direct control, who is in a position to determine the company’s policy or to make the final determination as to the decisions made by the company;

“ultimate ownership” means any circumstance in which the ownership of a company, by an individual, is exercised indirectly through a chain of ownership –

- (a) through companies, corporations or any other mechanisms;
- (b) by himself or jointly with another person;

“up-to-date” in relation to information, means current in all details and updated within fourteen days after any communication or the occurrence of any event which renders the information inaccurate or outdated;

“virtual-only meeting” means a meeting in which the attendees participate from numerous physical locations, whether inside or outside of Jamaica, through the facility of the internet or intranet by use of integrated audio and video, chat and messaging tools, and application-sharing software, by electronic means.”

(2) A person shall not be deemed, within the meaning of any provision in this Act, to be a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

(3) Wherever in this Act or in any rules a copy of an order of the Court is required to be served on or delivered to the Registrar the copy so to be served or delivered shall be an office copy.

(4) References in this Act to a body corporate or to a corporation shall be construed as not including a corporation sole but as including a company incorporated outside Jamaica.

(5) Any document filed with the Registrar shall be capable of being read.

(6) Where rules made under section 393(2)(b) require or permit articles of incorporation, forms, returns, notices or other documents to be sent to the registrar, to be created, stored or communicated electronically, references in this Act to signing shall, in relation thereto, include the use of electronic signatures. (2013 Amendments)

(10) Where the provisions of this Act require a member to be present in person or by proxy at a general meeting, or the casting of votes, whether by a show of hands by members or a poll by members and proxies, present at the meeting, such requirement is satisfied if the member or proxy attends and participates through or by electronic means at a general meeting held as a hybrid or virtual-only meeting, in accordance with the provisions of this Act, and such a person shall count to constitute a quorum.

(11) The provision of this Act shall apply, with any necessary modification, to hybrid meetings and virtual-only meetings.

Incorporation of Companies and Matters Incidental thereto

3.—(1) One or more persons may form a company by-

- (a) signing and sending to the Registrar
 - i. articles of incorporation;
 - ii. an application in the form set out as Form BRF 1 in the Sixteenth Schedule;
 - iii. a return of beneficial ownership containing accurate, adequate and up-to-date

particulars in respect of each member and beneficial owner of the company in accordance with section 377A; and

(b) otherwise complying with the requirements of this Act in respect of registration.

(2) Such a company may be either—

- (a) a company having the liability of its members limited by the articles to the amount, if any, unpaid on the shares respectively held by them (in this Act termed “a company limited by shares”);
- (b) a company having the liability of its members limited by the articles to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed “a company limited by guarantee”) whether or not such a company has a share capital; or
- (c) a company not having any limit on the liability of its members (in this Act termed “an unlimited company”).

4.—(1) A company has the capacity, and, subject to this Act, the rights, powers and privileges of an individual.

Capacity and Powers.

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

(3) It is not necessary for a bylaw to be passed to confer any particular power on a company or its directors.

(4) This section does not authorize any company to carry on any business or activity in breach of—

- (a) any enactment prohibiting or restricting the carrying on of the business or activity; or
- (b) any provision requiring any permission or licence for the carrying on of the business or activity.

5. A company shall not carry on any business or exercise any power that it is restricted by its articles from carrying on or exercising, nor shall a company exercise any of its powers in a manner contrary to its articles.

Powers Reduced.

6. For the avoidance of doubt, it is hereby declared that, unless otherwise specifically provided in this Act or any other enactment, an act of a company that is contrary to its articles (including any transfer of property to or by a company) shall not be invalid by reason only that the act is contrary to its articles.

Validity of acts.

7. No person shall be affected by, or presumed to have notice or knowledge 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 any office of the company.

Notice not presumed.

Form of Articles.

Articles of Incorporation

8.—(1) Articles of incorporation of a company shall be in the prescribed form and shall set out in respect of the company—

- (a) the name of the company with "limited" as the last word of the name in the case of a company limited by shares or by guarantee;
- (b) that the registered office of the company is to be situated in Jamaica;
- (c) in the case of a company having a share capital, the classes of shares, if any, and the maximum number of shares, if any, that the company is authorized to issue;
- (d) if the right to transfer shares in the company is to be restricted, a statement to that effect and giving the nature of the restriction;
- (e) the number of directors, or the maximum or minimum number of directors of the company;
- (f) any restrictions on the business that the company may carry on.

(2) Articles shall—

- (a) be printed or typewritten or be in some legible form or other form acceptable to the Registrar;
- (b) be divided into paragraphs numbered consecutively;
- (c) bear the same stamp as if they were contained in a deed;
- (d) be signed by each subscriber of the articles in the presence of at least one witness who must attest the signature.

(3) Nothing in this section shall operate to prevent the inclusion in the articles of a company, of provisions with respect to any matter not required by this section to be included in the articles.

(4) The articles of a company referred to in section 11 (a) and (b) shall state that the liability of its members is limited.

(5) The articles of a private company shall contain the matters specified in section 25 (1).

(6) As applicable to the case, the articles of---

- (a) a company limited by shares may include the articles specified in Table A of the First Schedule;
- (b) a company limited by guarantee and not having a share capital may include the articles specified in Table B of the First Schedule;
- (c) a company limited by guarantee and having a share capital may include, as appropriate, the articles specified in Table A or Table B of the First Schedule; and
- (d) an unlimited company having a share capital may include the articles specified in Table D of the First Schedule, except to the extent that they are excluded in whole or in part or modified.

(7) A company having a share capital shall, where applicable, file a document with the Registrar setting out the following—

(a) if two or more classes of shares are issued, the rights, privileges, restrictions and conditions attaching to each class of shares; and

(b) if a class of shares may be issued in a series, the authority given to the directors to fix the number of shares in, and to determine the designation of, and the rights, privileges, restrictions and conditions attaching to the shares of each series.

9.—(1) In the case of an unlimited company or a company limited by guarantee the articles must state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered.

(2) Where an unlimited company or a company limited by guarantee has increased the number of its members beyond the registered number, it shall, within fifteen days after the increase was resolved on or took place, give to the Registrar notice of the increase, and the Registrar shall record the increase.

(3) If default is made in complying with subsection (2), the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

10.—(1) Subject to the provisions of this Act, a company may by special resolution alter or add to its articles.

Alteration of articles by special resolution.

(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

Registration

11. The articles shall be delivered to the Registrar who shall—

Registration of articles.

(a) retain and register them if the articles comply, with the provisions of this Act; or

(b) where the articles are not in compliance, require that they be amended to ensure such compliance.

12.—(1) On the registration of the articles of a company the Registrar shall certify under his hand that the company is incorporated and, in the case of a limited company, that the company is limited.

Effect of registration.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the articles, together with such other persons as may from time to time become members of the company, shall be a company by the name contained in the articles, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

13.—(1) A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters

Certificate of incorporation to be conclusive evidence.

Regulations required in case of unlimited company or company limited by guarantee.

precedent and incidental thereto have been complied with, and that the company authorized to be registered and has been duly registered under this Act.

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14.—(1) Subject to the provisions of this section, a company registered as unlimited may register under this Act as limited, or a company already registered as a limited company may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of the company before the registration, and those rights or liabilities may be enforced as provided by this Act in the same manner in all respects as if no such change of registration had taken place.

Registration of unlimited company as limited.

(2) On registration in pursuance of this section the Registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act.

(3) Where a company limited by shares re-registers as a company limited by guarantee, the amount of the guarantee shall not be less than the amount remaining unpaid on the shares.

Provisions with respect to Names of Companies

15.—(1) No company shall be registered by a name which in the opinion of the Registrar is undesirable having regard to such provisions as may be prescribed.

(2) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name is registered by a name which in the opinion of the Registrar too closely resembles the name by which a company in existence is previously registered, the firstmentioned company may, with the sanction of the Registrar, change its name, and shall, if the Registrar so directs within six months of its being registered by that name, change its name within six weeks of the date of such direction or within such longer period as the Registrar may think fit to allow.

(3) If at any time after a company has been registered it appears to the Registrar that the name under which it is registered is undesirable, the Registrar may notify the company accordingly and may in such notification direct the company to change its name, and the company shall change its name within six weeks of such direction unless within that time it has lodged an appeal to the Court against such direction.

(4) The Court shall thereupon either cancel or confirm such direction and its decision shall be final and conclusive.

(5) If the direction is confirmed the company shall change its name within six weeks of such confirmation.

(6) If a company makes default in complying with a direction under subsection (2) or, except where an appeal has not been disposed of, under subsection (3), it shall be liable to a fine not exceeding one thousand dollars for every day during which the default continues.

Prohibition of registration of companies by undesirable names.

(7) Subsections (3), (4) and (5) of section 17 shall apply to a change of name under this section as they apply to a change of name under that section.

Power to dispense with "limited" in name of charitable and other companies.

16.—(1) Where it is proved to the satisfaction of the Minister that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Minister may by licence direct that the association may be registered as a company with limited liability, without the addition of the word "limited" to its name, and the association may be registered accordingly and shall, on registration enjoy all the privileges and (subject to the provisions of this section) be subject to all the obligations of limited companies.

(2) Where it is proved to the satisfaction of the Minister—

(a) that the objects of a company registered under this Act as a limited company or of an existing company, being a limited company, is restricted to the matters specified in subsection (1) and to objects incidental or conducive thereto; and

(b) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members,

the Minister may by licence authorize the company to make by special resolution a change in its name including or consisting of the omission of the word "limited", and subsections (4), (5) and (6) of section 17 shall apply to a change of name under this subsection as they apply to a change of name under that section.

(3) A licence by the Minister under this section may be granted on such conditions and subject to such regulations as the Minister thinks fit, and those conditions and regulations shall be binding on the body to which the licence is granted, and, where the grant is under subsection (1), shall, if the Minister so directs, be inserted in the articles.

(4) A body to which a licence is granted under this section shall be exempted from the provisions of this Act relating to the use of the word "limited" as any part of its name, the publishing of its name and the sending of lists of members to the Registrar.

(5) A licence under this section may at any time be revoked by the Minister, and upon revocation the Registrar shall enter upon the register the word "limited" at the end of the name of the body to which it was granted, and the body shall cease to enjoy the exemptions and privileges or, as the case may be, the exemptions granted by this section:

Provided that, before a licence is so revoked, the Minister shall give to the body notice in writing of his intention, and shall afford the body an opportunity of being heard in opposition to the revocation.

(6) Where a body in respect of which a licence under this section is in force alters the provisions of its articles with respect to its business, the Minister may (unless he sees fit to revoke the licence) vary the licence by making it subject to such conditions and regulations as the Minister thinks fit, in lieu of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.

(7) Where a licence granted under this section to a body the name of which contains the words “Chamber of Commerce” is revoked, the notice to be given under the proviso to subsection (5) shall include a statement of the effect of the provisions of subsection (2) of section 17.

(8) The procedure in cases of applications for licences under this section shall be in accordance with that set out in the Tenth Schedule.

Tenth
Schedule.

17.—(1) A company may, by special resolution and with the approval of the Registrar signified in writing, change its name.

Change of
Name.

(2) Where a licence granted pursuant to section 16 to a body the name of which contains the words “Chamber of Commerce” is revoked, the body shall, within a period of six weeks from the date of the revocation or such longer period as the Registrar may think fit to allow, change its name to a name which does not contain those words.

(3) If such a body makes default in complying with the requirements of subsection (2), it shall be liable to a fine not exceeding two thousand dollars for every day during which the default continues.

(4) Where a company or a body changes its name under this section the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.

(5) The change of name shall not affect any rights or obligations of the company or body, or render defective any legal proceedings by or against it, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

(6) Where a company or body changes its name under this section it shall cause notice of the change of name to be published in the Gazette and in a daily newspaper printed and circulating in Jamaica within thirty days after the date on which the Registrar approves the change and if default is made in complying with this subsection the company or body and every director, manager, secretary or other officer of the company or body who knowingly and wilfully authorizes or permits the default shall be liable to a fine not exceeding fifty thousand dollars.

18. The Registrar may, upon request and upon payment of the prescribed fee, reserve for 90 days a name for an intended company or for a company about to change its name.

Reservation of
Name.

General Provisions with respect to Articles

19.—(1) Subject to the provisions of this Act, the articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the articles.

(2) All money payable by any member to the company under the articles shall be a debt due from him to the company, and in this Island be of the nature of a specialty debt.

Effect of
Articles.

Provisions as
to articles of
companies
limited by
guarantee.

20.—(1) In the case of a company limited by guarantee and not having a share capital, every provision in the articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void unless such provision was in existence at the appointed day.

(2) For the purpose of the provisions of this Act relating to the articles of a company limited by guarantee and of this section, every provision in the articles or in any resolution, of a company limited by guarantee purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital notwithstanding that the number of the shares or interests is not specified thereby.

21. Notwithstanding anything in the articles of a company, no member of the company shall be bound by an alteration made in the articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company:

Alterations of articles increasing liability to contribute to share capital not to bind existing members without consent.

Provided that this section shall not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby.

22.—(1) A company shall, on being so required by any member, send to him a copy of the articles, subject to payment of such sum as may be prescribed.

Copies of articles to be given members.

(2) If a company makes default in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding two thousand dollars.

Membership of Company

23.—(1) The following persons are members of a company and shall be entered as members on its register of members—

Definition of member.

- (a) persons who subscribe to the company's articles whose names shall, on the registration of the company, be entered in the company's register;
- (b) the personal representatives of a deceased member and the trustee in bankruptcy of a bankrupt member;
- (c) persons named as a principal account holder or subsidiary account holder, as the case may be, during any period in respect of which eligible securities carrying voting rights are entered against their names in the register of the licensed central securities depository for that company's shares."

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

(3) For the purposes of this section—

"licensed central securities depository" means a company licensed under section 67B of the Securities Act to operate a central securities depository;

"principal account holder" means a person who maintains an account with a licensed central securities depository;

"subsidiary account holder" means the person in whose name a subsidiary account is opened and maintained by the principal account holder."

23A. No company incorporated under this Act shall have a nominee shareholder.

Nominee
shareholders
prohibited.

24.—(1) Except in the cases hereafter in this section mentioned, a body corporate cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.

Membership of
holding
company.

(2) Nothing in this section shall apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(3) This section shall not prevent—

(a) a subsidiary which is, on the appointed day, a member of its holding company; or

(b) a company which, being a member of another company, becomes a subsidiary of that company,

from continuing to be a member but, subject to subsection (2), the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof.

(4) Subject to subsection (2), subsections (1) and (3) shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references in subsections (1) and (3) to such a body corporate included references to a nominee for it.

(5) In relation to a company limited by guarantee or unlimited which is a holding company, the reference in this section to shares, whether or not it has a share capital, shall be construed as including a reference to the interest of its members as such, whatever the form of that interest.

Private Companies

25.—(1) For the purposes of this Act, the expression "private company" means a company which by its articles—

(a) restricts the right to transfer its shares; and

(b) limits the number of its members to twenty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company were, while in that employment, and have continued after the determination of that employment to be, members of the company; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company; and

(d) prohibits any invitation to the public to deposit money for fixed periods or payable on call whether bearing or not bearing interest; and

(e) subject to the exceptions provided for in the Twelfth Schedule, prohibits any person other than the holder from having any interest in any of the company's shares.

(2) Where two or more persons hold one or more shares of a company jointly, they shall, for the purposes of this section, be treated as a single member.

(3) Subject to subsection (4), a private company shall not be obliged to file accounts unless, but shall be so obliged if, any of its shares is held by a body corporate, so, however, that any obligation to file accounts imposed upon a private company by virtue of this subsection shall be subject to the exceptions provided for in the Thirteenth Schedule.

Thirteenth
Schedule.

(4) In this Act the expression "file accounts" in relation to a company means to include in its annual return pursuant to subsection

(3) of section 124 the documents and information mentioned in that subsection.

(5) The provisions of paragraph (b) of subsection (1) shall not apply to a company which is a foreign sales corporation operating under the Foreign Sales Corporations Act.

(6) For the purposes of this Act a public company is a company that is not a private company.

26.—(1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section 25, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after that date, deliver to the Registrar for registration a prospectus or a statement in lieu of prospectus in the form and containing the particulars set out in Part I of the Second Schedule and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule:

Statement in
lieu of
prospectus to
be delivered by
company
ceasing to be
private
company.

Provided that a statement in lieu of prospectus need not be delivered under this subsection if within the period of fourteen days aforesaid a prospectus relating to the company which complies with the Third Schedule is issued and is delivered to the Registrar as required by section 40.

(2) Every statement in lieu of prospectus delivered under subsection (1) shall, where the persons making any such reports as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of Part III of the Second Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(3) If default is made in complying with subsection (1) or (2) the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

(4) Where a statement in lieu of prospectus delivered to the Registrar under subsection (1) includes any untrue statement, any person who authorized the delivery of the statement in lieu of prospectus

for registration shall be liable—

- (a) on conviction on indictment, to imprisonment with or without hard labour for a term not exceeding two years or a fine not exceeding fifty thousand dollars, or both such fine and imprisonment; or
- (b) on summary conviction before a Resident Magistrate, to imprisonment with or without hard labour for a term not exceeding three months or a fine not exceeding fifty thousand dollars or both such fine and imprisonment, unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

(5) For the purposes of this section—

- (a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
- (b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

27. Where the articles of a company include the provisions which under section 25 are required to be included in the articles of a company in order to constitute it a private company but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in subsection (3) of that section, and thereupon those provisions shall apply to the company as if it were not a private company:

Provided that the Court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may on the application of the company or any other person interested and on such terms and conditions as may seem to the Court just and expedient, order that the company be relieved from such consequences as aforesaid.

Collective Investment Scheme Companies

27A.—(1) For the purposes of this Act, a collective investment scheme company means a company –

- (a) having a share capital;
- (b) incorporated for the purpose of investing the moneys of its members for their mutual benefit;
- (c) stating in its articles that it is a collective investment scheme;
- (d) having the power to redeem or purchase for the cancellation of its shares without reducing its authorized share capital; and
- (e) registered as a collective investment scheme as provided by the Securities Act.

(2) The articles of a collective investment scheme company shall state that –

Consequences of default in complying with conditions constituting company a private company.

Collective Investment Scheme Companies.

- (a) the company intends to issue investors' shares; and
- (b) the rights attached to those shares.

(3) For the purposes of this section, "investors' shares" means shares that are issued by a collective investment scheme company –

- (a) the capital paid upon which and the assets derived therefrom, and all profits, gains and losses referable thereto, are pooled, invested and managed (directly or indirectly) by the company on behalf of persons holding the investors' shares;
- (b) which do not form part of the permanent share capital of the company; and
- (c) which may be purchased or redeemed by the company at their net asset value, in accordance with the company's articles and any regulations governing collective investment schemes.

(4) The redemption or purchase by a collective investment scheme company of investors' shares in that collective investment scheme company shall not be taken as increasing or reducing the company's authorized share capital.

(5) The powers of a collective investment scheme company under subsection (4) shall be exercisable by its directors, or in accordance with the policies and procedures established by its directors.

(6) No investors' shares in a collective investment scheme company shall be redeemed by the company or purchased by another collective investment scheme company unless those shares are fully paid.

(7) Notwithstanding anything contained in this Act or any other law to the contrary concerning the proof and ranking of claims with respect to companies that are being wound up, the holders of investors shares in a collective investment scheme company shall be entitled to any surplus assets available for distribution on a winding up of the collective investment scheme company, ahead of any other shareholders in the company.

(8) A company shall not issue investors' shares unless the company complies with this section and the provisions with respect to collective investment schemes set out in the Securities Act and any regulations made thereunder.

(9) Where a company which contravenes subsection (8), the officers of the company or any other person responsible for the contravention commit an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two million dollars.

(10) A collective investment scheme company shall be exempt, in the manner herein described, from the following provisions of this Act –

- (a) sections 34 and 35, as respects the provisions relating to an authorized minimum;
- (b) all of sections 38 and 39;
- (c) all of sections 40 to 47 (inclusive);
- (d) all of sections 48 and 49;
- (e) all of sections 52, 56, 57, 58, 59, 60, 62, 67, 79, 109, 112, 113, 120, 121, 122, 124, and 144 to 153 (inclusive);
- (f) all of section 158;

(g) all of sections 372 to 377 (inclusive).

(11) The Financial Services Commission may, by order published in the Gazette, amend subsection (10) so as to add or remove any provision, as the Commission considers appropriate for the more efficient and prudent operation of collective investment scheme companies."

Contracts, etc.

28.—(1) Contracts on behalf of a company may be made as follows—

Form of
contracts.

- (a) a contract which if made between private persons would be by law required to be in writing and if made according to the law of Jamaica to be under seal, may be made on behalf of the company in writing under the common seal of the company;
- (b) a contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith may be made on behalf of the company in writing signed by any person acting under its authority express or implied;
- (c) a contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied.

(2) A contract made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto.

(3) A contract made according to this section may be varied or discharged in the same manner in which it is authorized by this section to be made.

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

(2) Within a reasonable time after a company comes into existence, it may, by any action or conduct signifying its intention to be bound thereby, adopt an oral or written agreement or contract made in its name or on its behalf before it came into existence.

(3) When a company adopts an agreement or contract under subsection (2)—

- (a) the company is bound by the agreement or 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 it; and
- (b) a person who purported to act in the name of the company or on its behalf ceases, except as provided in subsection (4), to be bound by or entitled to the benefits of the agreement or contract.

(4) Except as provided in subsection (5), whether or not an oral or written agreement or contract

made before the company came into existence is adopted by the company, a party to the agreement or 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 or among the company and a person who purported to act in the name of the company or on its behalf, and the court may, upon the application, make any order it thinks fit.

(5) If expressly so provided in an agreement or contract, a person who purported to act for or on behalf of a company before it came into existence is not in any event bound by the agreement or contract or entitled to the benefits thereof.

30. A bill of exchange or promissory note shall be deemed to have been made, accepted or indorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

Bills of exchange and promissory notes.

31.—(1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situated in Jamaica.

Execution of deeds abroad.

(2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.

32.—(1) A company whose business requires or comprises the transaction of business out of Jamaica may, if authorized by its articles, have for use in any territory, district, or place not situated in Jamaica, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.

Company may have official seal for use abroad.

(2) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

(3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorize any person appointed for the purpose in that territory, district or place to affix the official seal to any deed or other document to which the company is party in that territory, district or place.

(4) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is so mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(5) The person affixing any such official seal shall, by writing under his hand, certify on the deed or other instrument to which the seal is affixed, the date on which and the place at which it is affixed.

Authentication of Documents

33. A document or proceeding requiring authentication by a company may be signed by a director,

Authentication of documents.

Minimum share capital.

secretary or other authorized officer of the company, and need not be under its common seal.

PART II—Share Capital and Debentures

34.—(1) A company registered as a public company having a share capital on its original incorporation shall not do business or exercise any borrowing powers unless the Registrar has issued it with a certificate under this section or the company is re-registered as a private company.

(2) The Registrar shall issue a company with such a certificate if, on an application by the company in the prescribed form, he is satisfied that the value of the company's allotted share capital is not less than the authorized minimum, and there is delivered to the Registrar a statutory declaration in accordance with subsection (3).

(3) The statutory declaration shall be in the prescribed form and be signed by a director or secretary of the company and shall—

- (a) state that the value of the company's allotted share capital is not less than the authorized minimum;
- (b) specify the amount paid up, at the time of the application, on the company's allotted share capital;
- (c) specify the amount, or estimated amount, of the company's preliminary expenses and the persons by whom any of those expenses have been paid or are payable; and
- (d) specify the amount or benefit paid or given, or intended to be paid or given, to any promoter of the company, and the consideration for the payment or benefit.

35.—(1) In section 34 "authorized minimum" means five hundred thousand dollars or such other sum as the Minister may, by order, prescribe.

(2) An order under subsection (1) which increases the authorized minimum may—

- (a) require any public company having an allotted share capital of which the value is less than the amount specified in the order as the authorized minimum to increase that value to not less than that amount or make application to be reregistered as a private company;
- (b) make, in connection with any such requirement, provision for any of the matters for which provision is made by this Act relating to—
 - (i) a company's registration, re-registration or change of name;
 - (ii) payment for any share comprised in a company's capital and offers of shares in or debentures of a company to the public, including provision as to the consequences (whether in criminal law or otherwise) of a failure to comply with any requirement of the order; and
- (c) contain such supplemental and transitional provisions as the Minister thinks appropriate, make different provisions for different cases and in particular, provide for any provision of the order to come into operation on different days for different purposes.

(3) An order under this section shall be subject to affirmative resolution.

Authorized
minimum.

Nature of shares.

36. Subject to section 37—

- (a) from the appointed day shares in a company shall be issued without nominal or par value;
- (b) a share with a nominal or par value issued before the appointed day shall be deemed to be a share without nominal or par value.

Election to retain par value shares.

37.—(1) An existing company may by ordinary resolution within six months of the appointed day, elect under this section to retain its existing shares with a nominal or par value and may continue to issue shares with a nominal or par value.

(2) An existing company which fails to make an election pursuant to subsection (1), shall be deemed to have converted at the end of the six months period referred to in that subsection, its existing shares to shares without nominal or par value and any shares issued thereafter shall be issued without a nominal or par value.

(3) An existing company which makes an election pursuant to subsection (1) shall serve the Registrar with notice of that Resolution.

(4) Where an existing company makes an election pursuant to subsection (1)—

- (a) the provisions of the repealed Act specified in subsection (5) shall, to the extent that they are relevant to the shares having a nominal or par value (and to that extent only), continue to apply to that company; and
- (b) the provisions of this Act which provide for a determination of the value of shares without reference to a nominal or par value shall not apply to that company.

(5) The provisions of the repealed Act mentioned in subsection (4) (a) are as follows—

Section 56 (Application of premiums received on issue of shares);

Section 57 (Power to issue redeemable preference shares);

Section 58 (Power to issue shares at a discount);

Section 64 (Power of unlimited company to provide for reserve share capital on registration);

Section 66 (Special resolution for reduction of share capital);

Section 67 (Application to Court for confirming order objections by creditors, and settlement of list of objecting creditors);

Section 68 (Order confirming reduction and powers of Court on making such order);

Section 69 (Registration of order and minute of reduction);

TABLE A

Paragraph 11 (First and paramount lien);

Paragraphs 15—21 (Calls on shares).

(6) Where an existing company has made an election pursuant to subsection (1), that company shall at the end of eighteen months from the date of the election, be deemed to have converted its existing

shares to shares without a nominal or par value and any shares issued thereafter shall be shares issued without a nominal or par value.

38.—(1) A share may be paid for—

- (a) in money; or
- (b) in property or past service rendered for value that is the fair equivalent of the money that the company would have received if the share had been issued for money.

Consideration.

(2) In determining whether property or past service is the fair equivalent of money consideration, the directors may take into account reasonable charges and expenses of organization and reorganization, and payments for property and past services reasonably expected to benefit the company.

(3) For the purposes of this section “property” does not include a debt security other than—

- (a) a debt security of a company as part of a merger, acquisition, amalgamation or scheme of arrangement, reorganization or reconstruction.
- (b) promises to pay that are comprised of government securities or debt instruments that are guaranteed by a financial institution.

(4) Subject to this section, no allotment by a company 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 it will be credited as paid up by virtue of it;

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

- (a) where the consideration consists of services, have a qualified accountant estimate the value of the services to the company in money terms; or
- (b) in any other case, have the consideration valued by a qualified accountant, valuer or surveyor.

(6) No allotment as aforesaid shall be made unless, not more than one hundred and twenty days before the allotment, the accountant, or as the case may be, valuer or surveyor reports that in his opinion the value of the services to the company in money terms or the value of the other consideration in question is worth at least as much as the amount which will be credited as paid up on the shares to be allocated in respect of those services or that consideration.

(7) Where, pursuant to a pre-incorporation arrangement, consideration other than cash is made for any allotment, the nature and value of that consideration shall be stated in the company’s articles and the allotment shall be approved by a general meeting of the company.

(8) In subsection (3) (b)—
“financial institution” means—

- (a) a company licensed under the [Banking Services Act](#) or the Securities Act; or

- (b) a society registered under the Co-operative Societies Act or incorporated under the Building Societies Act;

"Government securities" include securities by a body corporate that is owned or controlled by the Government.

Stated capital accounts.

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

(2) A company shall add to the appropriate stated capital account, the full amount of the consideration received by it for any shares issued by the company.

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

(4) A company shall not, in respect of a share issued by it, add to a stated capital account, an amount greater than the amount of the consideration received by the company for the share.

(5) When a company proposes to add an amount to a stated capital account maintained by it in respect of a class or series of shares, that addition to the stated capital account shall be approved by special resolution if—

- (a) bonus shares are not being apportioned rateably among all shareholders; and
- (b) the effect of the bonus issue on voting rights is such that the holders of one class of shares assume control of the company or are able to pass a resolution which, prior to the bonus issue, they did not have sufficient voting rights to carry if the other shareholders were against it.

(6) Notwithstanding section 38 and subsection (2) of this section—

- (a) when, in exchange for property, a company issues shares—
 - (i) to a body corporate that was an affiliate of the company immediately before the exchange; or
 - (ii) to a person who controlled the company immediately before the exchange,

the company, subject to subsection (4), may add to the stated capital accounts that are maintained for the shares of the classes or series issued, the amount agreed, by the company and the body corporate or person, to be the consideration for the shares so exchanged;

- (b) when a company issues shares in exchange for shares of a body corporate referred to in paragraph (a) (i) the company may, subject to subsection (4), add to the stated capital accounts maintained for the shares of the classes or series issued, the whole or any part of the consideration it received in exchange; or
- (c) when a company issues shares in exchange for shares of a body corporate that becomes the company's affiliate because of the exchange, the company may, subject to subsection (4), add to the stated capital accounts that are maintained for the classes or series issued, an amount that is not less than the amount set out, in respect of the

acquired shares of the body corporate, in the stated capital or equivalent accounts of the body corporate immediately before the exchange.

(7) When a company which was incorporated before the appointed day continues in existence after that date then, notwithstanding subsection (2), it is not required to add to a stated capital account, any consideration received by it before that date, unless the shares in respect of which consideration is received are issued after that date.

Prospectus

40.—(1) A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated.

(2) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless before the date of its issue—

(a) there has been delivered to the Registrar for the purpose of securing registration of the prospectus a copy thereof signed by every person who is named therein as director or proposed director of the company or by his agent authorized in writing; and

(b) pursuant thereto registration has been effected.

(3) Every prospectus shall state on the face of it that the prospectus has been registered as required by subsection (2).

(4) The Registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section, and he may refuse to register it as a prospectus if-

(a) in any case where he considers that on the face of it the prospectus is misleading, within fourteen days of the delivery of the copy of the prospectus (or such longer period as may be prescribed) he by notice in writing informs the company or any other person who has delivered the copy of the prospectus pursuant to this section that in his opinion the prospectus is misleading for the reasons stated in the notice; or

(b) in any case where he considers it necessary or expedient for him to carry out an investigation as to whether the prospectus is misleading, he by notice in writing—

(i) within fourteen days of the delivery of the copy of the prospectus (or such longer period as may be prescribed) so informs the company or any other person as aforesaid; and

(ii) within six weeks of the delivery of the copy of the prospectus (or such longer period as may be prescribed) informs the company or any other person as aforesaid that in his opinion the prospectus is misleading for the reasons stated in the notice.

(5) In any case where the Registrar acting under the power given by paragraph (a) or (b) of subsection (4) refuses to register a prospectus, the company or any other person who has delivered the copy of the prospectus pursuant to this section may apply to the Court, which, after hearing the applicant and the Registrar, and such evidence as they may call, may either order the Registrar to register the prospectus or may dismiss the application.

(6) Whenever the Registrar has registered a prospectus under this section he shall in writing inform the company or any other person who has delivered the copy of the prospectus pursuant to this section of the fact of registration and the date thereof, and every prospectus issued by or on behalf of a company or in relation to an intended company shall show on its face, in addition to the date required by subsection (1), the date of registration.

(7) If a prospectus is issued without having been registered as required by this section, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding five thousand dollars for every day from the date of the issue of the prospectus until it is withdrawn in a manner which either is reasonable having regard to all the circumstances of the case or accords with the reasonable directions of the Registrar.

41.—(1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state the matters specified in Part I of the Third Schedule and set out the reports specified in Part II of that Schedule.

Specific requirements as to particulars in prospectus.

Third Schedule

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus shall be void.

(3) It shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section: Provided that this subsection shall not apply if it is shown that the form of application was issued either—

- (a) in connection with a *bona fide* invitation to a person to enter in to an underwriting agreement with respect to the shares or debentures; or
- (b) in relation to shares or debentures which were not offered to the public.

(4) If any person acts in contravention of the provisions of subsection (3), he shall be liable to a fine not exceeding five thousand dollars for every day during which the contravention continues.

(5) In the event of non-compliance with or contravention of any of the requirements of this section a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

- (a) as regards any matter not disclosed, he proves that he was not cognizant thereof; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which in the opinion of the Court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matter specified in paragraph 16 of the Third Schedule, no director or other person shall incur any liability

Third Schedule

in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(6) This section shall not apply to the issue, to existing members or debenture holders of a company, of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

(7) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

42.—(1) A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by an expert shall not be issued unless—

- (a) he has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included; and
- (b) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

(2) If any prospectus is issued in contravention of this section, the company and every person who is knowingly a party to the issue thereof shall be liable to a fine not exceeding one hundred thousand dollars.

(3) In this section the expression “expert” includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

43.—(1) A company limited by shares or a company limited by guarantee and having a share capital shall not, prior to the statutory meeting, vary the terms of a contract referred to in the prospectus, or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

(2) This section shall not apply to a private company.

(3) If default is made in complying with the provisions of subsection (1), the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

44.—(1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement included therein, that is to say—

- (a) every person who is a director of the company at the time of the issue of the prospectus;
- (b) every person who has authorized himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;

Expert's consent to issue of prospectus containing statement by him.

Restriction on alternation of terms mentioned in prospectus or statement in lieu of prospectus.

Civil liability for statements in prospectus.

- (c) every person who is a promoter of the company; and
- (d) every person who has authorized the issue of the prospectus:

Provided that where, under section 42, the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not by reason of his having given it be liable under this subsection as a person who has authorized the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.

(2) No person shall be liable under subsection (1) if he proves—

- (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
 - (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
 - (c) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor;
- or
- (d) that —

or

- i. as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and
- ii. as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by section 42 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder; and
- iii. as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that this subsection shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 42, as a person who has authorized the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(3) A person who, apart from this subsection, would under subsection (1) be liable, by reason of his having given a consent required of him by section 42, as a person who has authorized the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert shall not be

so liable if he proves—

- (a) that, having given his consent under that section to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration; or
- (b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal, and of the reason therefor; or
- (c) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true.

(4) Where—

- (a) the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof; or
- (b) the consent of a person is required under section 42 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

the directors of the company, except and without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof shall be liable to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof:

Provided that a person shall not be deemed for the purposes of this subsection to have authorized the issue of a prospectus by reason only of his having given the consent required by section 42 to the inclusion therein of a statement purporting to be made by him as an expert.

(5) For the purposes of this section—

- (a) “expert” has the same meaning as in section 42; and
- (b) “promoter” means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

45.—(1) Where a prospectus issued after the appointed day includes any untrue statement, any person who authorized the issue of the prospectus shall be liable—

- (a) on conviction on indictment, to imprisonment with or without hard labour for a term

Criminal liability for misstatements in prospectus.

not exceeding two years, or a fine or both such imprisonment and fine; or

- (b) on summary conviction before a Resident Magistrate, to imprisonment with or without hard labour for a term not exceeding three months, or a fine not exceeding one hundred thousand dollars, or both such imprisonment and fine,

unless he proves either that the statement was immaterial or that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

(2) A person shall not be deemed for the purposes of this section to have authorized the issue of a prospectus by reason only of his having given the consent required by section 42 to the inclusion therein of a statement purporting to be made by him as an expert.

46.—(1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public—

- (a) any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company; and
- (b) all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses,

shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of misstatements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—

- (a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or
- (b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section 40 as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and section 41 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

- (a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and
- (b) the place and time at which the contract under which those shares or debentures have been or

are to be allotted may be inspected.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorized in writing.

47. For the purposes of the foregoing provisions of this Part—

- (a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
- (b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Interpretation of provisions relating to prospectuses.

Allotment

48.—(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors must be raised by the issue of share capital in order to provide for the matters specified in paragraph 4 of the Third Schedule has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.

Prohibition of allotment unless minimum subscription received.

Third Schedule.

(2) For the purposes of subsection (1), a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(3) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as “the minimum subscription”.

(4) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of six *per centum* per annum from the expiration of the forty-eighth day:

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

49.—(1) A company having a share capital which does not issue a prospectus on or with reference to

Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar.

its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the Registrar for registration a statement in lieu of prospectus, signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing, in the form and containing the particulars set out in Part I of the Fourth Schedule and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and those Parts shall have effect subject to the provisions contained in Part III of that Schedule.

(2) Every statement in lieu of prospectus delivered under subsection (1) shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the Fourth Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(3) This section shall not apply to a private company.

(4) If a company acts in contravention of subsection (1) or (2), the company and every director of the company who knowingly authorizes or permits the contravention shall be liable to a fine not exceeding fifty thousand dollars.

(5) Where a statement in lieu of prospectus delivered to the Registrar under subsection (1) includes any untrue statement, any person who authorized the delivery of the statement in lieu of prospectus for registration shall be liable—

- (a) on conviction on indictment, to imprisonment with or without hard labour for a term not exceeding two years or a fine or both such imprisonment and fine; or
- (b) on summary conviction before a Resident Magistrate, to imprisonment with or without hard labour for a term not exceeding three months or a fine not exceeding one hundred thousand dollars, or both such imprisonment and fine,

unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

(6) For the purposes of this section—

- (a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
- (b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

50.—(1) An allotment made by a company to an applicant in contravention of the provisions of sections 48 and 49 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or, in any case where the company is

not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes, or permits or authorizes the contravention of, any of the provisions of sections 48 and 49 with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby:

Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

51.—(1) No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus.

Applications
for and
allotment of
shares and
debentures.

(2) The beginning of the third day or such later time as aforesaid is hereafter in this Act referred to as “the time of the opening of the subscription lists”.

(3) In subsection (1) the reference to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first so issued as a newspaper advertisement:

Provided that, if it is not so issued as a newspaper advertisement before the third day after that on which it is first so issued in any other manner, the reference shall be construed as referring to the day on which it is first so issued in any manner.

(4) The validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section but, in the event of any such contravention, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

(5) In the application of this section to a prospectus offering shares or debentures for sale, subsections (1), (3) and (4) shall have effect with the substitution of references to sale for references to allotment, and with the substitution for the reference to the company and every officer of the company who is in default of a reference to any person by or through whom the offer is made and who knowingly and wilfully authorizes or permits the contravention.

(6) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the third day after the time of the opening of the subscription lists, or the giving before the expiration of that third day, by some person responsible under section 44 for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

52.—(1) Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall within one month thereafter deliver to the Registrar for registration—

Return as to
allotments.

- (a) a return of the allotments stating the number of shares comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount, if any, paid or due and payable on each share; and
- (b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(1A) The return of allotment delivered to the Registrar shall be accompanied by an accurate, adequate and up-to-date beneficial ownership return in accordance with section 377B.

(1B) In the case of companies incorporated, established or formed outside of Jamaica, that is to say, companies to which Part X applies, the return of allotment delivered to the Registrar shall be accompanied by a copy of the certificate of incorporation or similar document however described, providing evidence of the incorporation, establishment or formation of the company and the copy shall be certified in accordance with section 377AD(2).

(2) Where such a contract is not reduced to writing, the company shall within one month after the allotment deliver to the Registrar for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Duty Act.

(3) If default is made in complying with this section, every officer of the company who is in default shall be liable to a fine not exceeding one thousand dollars for every day during which the default continues:

Provided that, in the case of default in delivering to the Registrar within one month after the allotment any document required to be delivered by this section, the company, or any person liable for the default, may apply to the Court for relief and the Court, if satisfied that the omission to deliver the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the Court may think proper.

Commissions, etc.

53.—(1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company if—

- (a) the payment of the commission is authorized by the articles; and
- (b) the commission paid or agreed to be paid does not exceed ten per centum of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less; and
- (c) the amount or rate per centum of the commission paid or agreed to be paid is—

Power to pay certain commissions and prohibition of payment of all other commissions etc.

- (i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or
 - (ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the Registrar for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice; and
- (d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditional, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

(4) A vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

(5) A company which contravenes any of the provisions of this section and every officer of the company who knowingly authorizes or permits the contravention shall be liable to a fine not exceeding fifty thousand dollars.

54.—(1) Where a company has paid any sums by way of commission in respect of any shares or debentures, as the total amount so paid, or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

Statement in balance sheet, as to commissions.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

Construction of References to Offering Shares or Debentures to the Public

55.—(1) Any reference in this Act to offering shares or debentures to the public shall, subject to any provision to the contrary contained therein, be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner, and references in

Construction of references to offering shares or debentures to the public.

this Act or in a company's articles to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be similarly construed.

(2) Subsection (1) shall not be taken as requiring any offer or invitation to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result, directly, or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it, and in particular—

- (a) a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded as aforesaid; and
- (b) the provisions of this Act relating to private companies shall be construed accordingly.

Issue of Redeemable Shares

56.—(1) Subject to this section, a company may, if so authorized by its articles, issue shares which by the terms of the issue will be redeemed or, at the option of the company, may be redeemed.

(2) No redeemable shares may be issued at a time when there are no issued shares of the company which are not redeemable.

(3) Redeemable shares may not be redeemed unless they are fully paid and the terms of redemption must provide for payment on redemption.

(4) Notwithstanding anything in the company's articles—

- (a) no shares issued as provided in subsection (1) shall be redeemed except out of the company's profits or revenue reserves which would otherwise be available for the payment of dividends, or out of proceeds of a fresh issue of shares made for the purpose of the redemption; and
- (b) the minimum premium (if any) payable on redemption shall be provided out of the company's profits or revenue reserves which would otherwise be available for the payment of dividends or out of a fresh issue of shares before the shares are redeemed.

(5) If a company acts in contravention of this section, the company and every officer thereof who knowingly authorizes the contravention shall be liable to a fine not exceeding fifty thousand dollars.

57.—(1) Subject to this Act, redemption of shares may be effected on such terms and in such manner as may be provided by the company's articles.

(2) Where shares are redeemed under this section, the voting rights attaching to those shares shall be suspended and the amount of the company's issued share capital shall be diminished by the value attributed to those shares in the stated capital account accordingly, but the redemption of shares by a company is not to be taken as reducing the amount of the company's authorized number of shares.

(3) Without prejudice to subsection (1), where a company is about to redeem shares, it has power to

Power to issue
redeemable
shares.

Financing etc. of
redemption..

issue shares up to the value of the shares to be redeemed as if those shares had never been issued.

58.—(1) Subject to subsection (4) and its articles, a company may purchase or otherwise acquire shares issued by it.

(2) Section 57 shall apply to the purchase by a company under this section of its own shares as it applies to the redemption of redeemable shares, save that the terms and manner of purchase need not be determined by the articles as required by section 57 (1).

(3) A company may not under this section purchase its shares if as a result of the purchase there would no longer be any member of the company holding shares other than redeemable shares.

(4) A company shall not make any payment to purchase or otherwise acquire shares issued by it unless a statutory declaration is made by not less than seventy-five percent of the company's directors in accordance with this Act and lodged with the Registrar, to the effect that there are no reasonable grounds for believing that—

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

(5) The statutory declaration under subsection (4) shall be based on –

- (a) the company's audited accounts made up no more than 12 months before the date of the statutory declaration;
- (b) the company's unaudited accounts made up no more than 45 days before the date of the statutory declaration; and
- (c) any other relevant facts of which the directors are aware.

(6) This section does not apply to a purchase or acquisition of a kind referred to in section 59.

(7) The directors of a company who willfully or recklessly make a declaration under subsection (4), a statement which is false in any material particular, shall be liable on summary conviction before a Resident Magistrate, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

59.—(1) Subject to subsection (3) and if permitted by its articles, a company may purchase or otherwise acquire shares issued by it—

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

(2) Section 57 shall apply to the purchase or other acquisition by a company under this section of its own shares as it applies to the redemption of redeemable shares, save that the terms and manner of

Alternative acquisition of company's own shares.

Power of company to purchase own shares.

purchase or other acquisition need not be determined by the articles as required by section 57 (1).

(3) A company may purchase or otherwise acquire shares issued by it to comply with an order under section 213.

(4) A company shall not make any payment to purchase or acquire under subsection (1) shares issued by it unless a statutory declaration is made by the company's directors and lodged with the Registrar for registration to the effect that there are no reasonable grounds for believing that—

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

(b) the realizable value of the company's assets would after the payment be less than the aggregate of its liabilities and the amount required for payment on a redemption or in a winding up of all shares the holders of which have the right to be paid prior to or rateably with the holders of the shares to be purchased or acquired.

(5) The declaration under subsection (4) shall be based on—

(a) the company's audited accounts made up no more than 12 months before the date of the statutory declaration;

(b) the company's unaudited accounts made up no more than 45 days before the date of the statutory declaration; and

(c) any other relevant facts of which the directors are aware.

(6) A company may accept from any shareholder a share in 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 71.

(7) The directors of a company who wilfully or recklessly make a declaration under subsection (4), a statement which is false in any material particular, shall be liable on summary conviction before a Resident Magistrate, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

60. A company shall, within thirty days of the purchase or other acquisition of any of its issued shares, notify its shareholders and the Registrar of—

(a) the number of shares it has purchased or acquired;

(b) the names of the shareholders from whom it has purchased the shares or acquired;

(c) the price paid for the shares;

(d) if the consideration was other than cash, the nature of the consideration and the value attributed to it; and

(e) the balance, if any, remaining due to shareholders or those shareholders from whom it purchased or acquired the shares.

61.—(1) If the articles so provide, no shares or a class of shares may be issued unless the shares have first been offered to the shareholders of the company holding shares of that class.

(2) The shareholders mentioned in subsection (1) have a preemptive right to acquire the offered shares in proportion to their holding at such price and on such terms as those shares are to be offered to others.

(3) Notwithstanding that the articles provide the pre-emptive right referred to in subsection (1), the shareholders of the company have no pre-emptive right in respect of shares to be issued by the company—

(a) for consideration other than cash;

(b) pursuant to the exercise of conversion privileges, options or rights previously granted by the company.

62.—(1) Subject to the provisions of this section, a company limited by shares may, if so authorized by its articles, issue preference shares which are, or at the option of the company, are to be liable to be redeemed:

Power to issue redeemable preference shares.

Provided that—

(a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares for the purposes of the redemption;

(b) no such shares shall be issued unless they are fully paid;

(c) the premium, if any, payable on redemption, must have been provided for out of the company's profits before the shares are redeemed;

(d) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits that would otherwise have been available for dividend be transferred to a reserve fund to be called "the capital redemption reserve fund", a sum equal to the amount of the shares to be redeemed, and the provisions of this Act relating to the reduction of a company's share capital shall, except as provided in this section, apply as if the capital redemption reserve fund were the company's paid up share capital.

(2) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles.

(3) The redemption of preference shares by a company under this section shall not be taken as reducing the amount of the company's stated capital.

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the company's share capital shall not for the purposes of the Stamp Duty Act be deemed to be increased by the issue of shares in pursuance of this subsection:

Provided that, where new shares are issued before the redemption of the old shares, the new shares, shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this section unless the old shares are redeemed within a month after the issue of the new shares.

(5) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up the company's unissued shares to be issued to the company's members as fully paid bonus shares.

(6) If a company acts in contravention of this section, the company and every officer of the company who knowingly authorizes or permits the contravention shall be liable to a fine not exceeding fifty thousand dollars.

Miscellaneous Provisions as to Share Capital

63. A company, if so authorized by its articles, may do any one or more of the following—

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;
- (c) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

64. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon the portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

65.—(1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorized by its articles, may alter the conditions of its articles as follows, that is to say, it may—

- (a) increase its share capital by new shares of such amount as it thinks expedient;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (c) convert all or any of its paid up shares into stock, and reconvert that stock into paid up shares of any denomination;
- (d) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the articles, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not

Power of company to arrange for different amounts being paid on shares.

Reserve liability of limited company.

Power of company limited by shares to alter its share capital.

been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section must be exercised by the company in general meeting.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

66.—(1) If a company having a share capital has—

- (a) consolidated and divided its share capital into shares of larger amount than its existing shares; or
- (b) converted any shares into stock; or
- (c) re-converted stock into shares; or
- (d) subdivided its shares or any of them; or
- (e) redeemed any redeemable preference shares; or
- (f) cancelled any shares, otherwise than in connection with a reduction of share capital under section 71,

Notice of Registrar of consolidation of share capital, conversion of shares into stock.

it shall within one month after so doing give notice thereof to the Registrar specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock reconverted.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

67.—(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall within fifteen days after the passing of the resolution authorizing the increase, give to the Registrar notice of the increase, and the Registrar shall record the increase.

Notice of increase of share capital.

(2) The notice to be given as aforesaid shall include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and there shall be forwarded to the Registrar together with the notice and a copy of the resolution authorizing the increase.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

68. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following, namely—

- (a) increase the amount of its share capital by increasing the amount of its shares, subject to the condition that no part of the increased capital shall be capable of being called up except

Power of unlimited company to provide for reserve capital share on registration.

in the event and for the purposes of the company being wound up;

(b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

69.—(1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions mentioned in this section, and may charge the sum so paid by way of interest to capital as part of the cost of construction of the work or building, or the provision of plant:

Power of company to pay interest on capital in certain cases.

Provided that—

- (a) no such payment shall be made unless it is authorized by the articles or by special resolution;
- (b) no such payment, whether authorized by the articles or by special resolution, shall be made without the previous sanction of the Minister;
- (c) before sanctioning any such payment the Minister may, at the expense of the company, appoint a person to inquire and report to him as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry;
- (d) the payment shall be made only for such period as may be determined by the Minister, and that period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided;
- (e) the rate of interest shall in no case exceed six *per centum* per annum or such other rate as may for the time being be prescribed by the Minister;
- (f) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate.

(2) If default is made in complying with proviso (f) to subsection (1), the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

70.—(1) A company limited by shares may, if so authorized by its articles, purchase its own shares out of profits available for distribution or out of a fresh issue of shares for that purpose and in accordance with the provisions of this section.

(2) Where a company, in the operation of an employee share ownership plan approved under the Employee Share Ownership Plan Act—

- (a) purchases its shares and such shares are thereupon either cancelled or transferred to the trustees of the plan; or
- (b) otherwise cancels its shares,

in the exercise of the company's rights or obligations under that Act or any plan thereunder, such purchase or cancellation of its shares by the company shall not be deemed to be a reduction of the company's capital.

Redemption or cancellation of share under Employee Share Ownership Plan Act.

(3) The purchase of shares in accordance with this section shall not be taken as reducing the amount of the company's stated capital.

Reduction of Share Capital

71.—(1) Subject to subsection (3), a company may by special resolution—

- (a) extinguish or reduce a liability in respect of an amount unpaid on any shares;
- (b) reduce its stated capital by an amount that is not represented by realizable assets; or
- (c) return to its shareholders any of its assets which are in excess of the wants of the company.

(2) The stated capital of a company shall be reduced in accordance with any resolution under subsection (1) which reduces or has the effect of reducing the stated capital.

(3) A company shall not reduce its stated capital under subsection (1) (a) or return assets pursuant to subsection (1) (c) unless a statutory declaration is made by the directors of the company to the effect that there were no reasonable grounds for believing—

- (a) that after the reduction or, as the case may be, return, the company would be unable to pay its liabilities as they become due; or
- (b) that the realizable value of the company's assets would thereby be less than the aggregate of its liabilities and the stated capital remaining after the reduction in accordance with subsection (2).

(4) The declaration under subsection (3) shall be based on—

- (a) the company's audited accounts made up no more than 12 months before the date of the statutory declaration;
- (b) the company's unaudited accounts made up no more than 45 days before the date of the statutory declaration; and
- (c) any other relevant facts of which the directors are aware.

(5) A company shall at two intervals at least seven days apart, give notice in a daily newspaper circulating in Jamaica of—

- (a) any reduction of its stated capital pursuant to subsection (1) (b); or
- (b) any intention to reduce its stated capital under subsection (1) (a) or (c).

(6) A company shall not return assets to shareholder under subsection (1) (c) until the expiration of one hundred and eighty days after the publication of the second notice required under subsection (5).

(7) A director of a company who wilfully or recklessly makes, in any declaration under subsection

(3), a statement which is false in a material particular shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Effect of
Redemption
purchase etc.

72.—(1) Subject to subsection (2), no redemption, purchase, acquisition or forfeiture by a company of its shares nor the cancellation of shares so redeemed, purchased, acquired or forfeited shall operate to reduce the authorized number of shares of the company.

(2) The stated capital of a company shall be reduced by the amount by which a redemption of redeemable shares is made out of a fresh issue of shares made for the purpose of the redemption not more than twelve months before the date of the redemption.

(3) Subject to this section, a company may not reduce its stated capital except as provided in section 71.

(4) The provisions of section 71 shall not apply to a redemption, purchase, acquisition or forfeiture.

Variation of Shareholders' Rights

73.—(1) If in the case of a company the share capital of which is divided into different classes of shares—

Rights of
holders of
special classes
of shares.

(a) provision is made by the articles for authorizing the variation of the rights attached to any class of shares in the company, subject to—

- (i) the consent of any specified proportion of the holders of the issued shares of that class; or
- (ii) the sanction of a resolution passed at a separate meeting of the holders of those shares; and

(b) in pursuance of the said provision the rights attached to any such class of shares are at any time varied,

the holders of not less in the aggregate than fifteen *per centum* of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the Court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the Court.

(2) An application under this section must be made within twenty-eight days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the Court on any such application shall be final.

(5) The company shall within fifteen days after the making of an order by the Court on any such application forward a copy of the order to the Registrar, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

(6) In this section the expression "variation" includes abrogation, and for the purposes of this Act any resolution of a company the implementation of which would have the effect of diminishing the proportion of the total votes exercisable at a general meeting of the company by the holders of the existing shares of a class, or of reducing the proportion of the dividends or distributions payable at any time to the holders of the existing shares of a class, shall be deemed to be a variation of the rights of that class.

Transfer of Shares and Debentures, Evidence of Title, etc.

74.—(1) The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

75.—(1) Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company:

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

(2) If a company contravenes the provisions of this section the company and every officer of the company who knowingly authorizes or permits the contravention shall be liable to a fine not exceeding fifty thousand dollars.

76. On the application of the transfer of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

77.—(1) If a company refuses to register a transfer of any shares or debentures, the company shall, within three months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding two thousand dollars for every day during which the default continues.

78.—(1) The certification by a company of any instrument of transfer of shares in or debentures of the company shall be taken as a representation by the company to any person acting on the faith of

Nature and numbering of shares.

Transfer not to be registered except on production of instrument of transfer.

Registration of transfer on request of transferor.

Notice of refusal to register transfer.

Certification of transfers.

the certification that there have been produced to the company such documents as on the face of them show a *prima facie* title to the shares or debentures in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares or debentures.

(2) Where any person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability to him as if the certification had not been made fraudulently.

(3) For the purposes of this section—

- (a) an instrument of transfer shall be deemed to be certificated if it bears the words “certificate lodged” or words to the like effect;
- (b) the certification of an instrument of transfer shall be deemed to be made by a company if—
 - (i) the person issuing the instrument is a person authorized to issue certificated instruments of transfer on the company’s behalf; and
 - (ii) the certification is signed by a person authorized to certify transfers on the company’s behalf or by any officer or servant either of the company or of a body corporate so authorized;
- (c) a certification shall be deemed to be signed by any person if—
 - (i) it purports to be authenticated by his signature or initials (whether handwritten or not); and
 - (ii) it is not shown that the signature or initials was or were placed there neither by himself nor by any person authorised to use the signature or initials for the purpose of certifying transfers on the company’s behalf.

79.—(1) Every company shall, within two months after the allotment of any of its shares, debentures, or debenture stock and within three months after the date on which a transfer of any such shares, debentures, or debenture stock, is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide.

Duties of company with respect to issue of certificates.

(2) In subsection (1) “transfer” means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(3) If default is made in complying with this section, the company and every officer who is in default shall be liable to a fine not exceeding fifty thousand dollars.

(4) If any company on whom a notice has been served requiring the company to make good any default in complying with the provisions of subsection (1) fails to make good the default within ten days after the service of the notice, the Court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by

the company or by any officer of the company responsible for the default.

80. A certificate, under the common seal of the company, specifying any shares held by any member, shall be *prima facie* evidence of the title of the member to the shares.

Certificate evidence of title.

81. The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant.

Evidence of grant of probate.

82 Repealed by 2017 Amendments.

83. If any person falsely and deceitfully personates any owner of any share or interest in any company, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner, he commits an offence, and shall on conviction on indictment be liable to be imprisoned for a term not exceeding fourteen years or to a fine.

Issue and effect of share

Penalty for personation of shareholders.

Special Provisions as to Debentures

84.—(1) A company which issues or has issued debentures shall keep, in one or more books, a register of holders of debentures and shall enter therein the following particulars—

Register of debenture holders.

- (a) the names and addresses of the debenture holders;
- (b) the debentures held by each debenture holder, together with the amount paid or agreed to be considered as paid thereon, and any other prescribed particulars;
- (c) the date at which each person was entered in the register as a debenture holder; and
- (d) the date at which any person ceased to be a debenture holder:

Provided that—

- (i) in the application of paragraph (b) to debenture stock and holders thereof it shall not be necessary for the register to show the amount paid or agreed to be considered as paid on such stock; and
- (ii) nothing in this subsection shall apply in relation to debentures which are transferable by delivery.

(2) The register of holders of debentures shall be kept at the registered office of the company:

Provided that—

- (a) if the work of making it up is done at another office of the company, it may be kept at that other office; and
- (b) if the company arranges with some other person for the making up of the register to be undertaken on behalf of the company by that other person, it may be kept at the office of that other person at which the work is done,

so, however, that it shall not be kept at a place outside Jamaica.

(3) Every company shall send notice to the Registrar of the place where its register of holders of debentures is kept and of any change in that place:

Provided that a company shall not be bound to send notice under this subsection where the register has, at all times since it came into existence or, in the case of a register in existence on the appointed day, at all times since then been kept at the registered office of the company.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

85. Where, by virtue of proviso (b) to subsection (2) of section 84, the register of holders of debentures is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with subsection (3) of that section or section 86 or with any of the requirements of this Act as to the production of the register, that other person shall be liable to the same penalties as if he were an officer of the company who was in default, and the power of the Court under subsection (6) of section 86 shall extend to the making of orders against that other person and his officers and servants.

Consequences of failure to comply with requirements as to register of debenture holders owing to agent's default.

86.—(1) Every register of holders of debentures of a company shall, except when duly closed, be open to the inspection without charge of the registered holder of any such debentures and of any holder of shares in the company and, on payment of fifty dollars or such less sum as the company may specify for each inspection, of any other person, but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day shall be allowed for inspection.

Inspection of register debenture holders.

(2) For the purposes of subsection (1), a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole thirty days in any year, as may be therein specified.

(3) Any person may require a copy of the register of holders of debentures of the company or any part thereof on payment of twenty dollars for every page required to be copied.

(4) A copy of any trust deed or other document securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment of twenty dollars for every page required to be copied.

(5) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

(6) Where a company is in default as aforesaid, the Court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

87.—(1) The provisions of section 115 (except subsection (4)) and sections 116 and 117 shall apply to and in relation to registers of holders of debentures as they apply to and in relation to registers of members.

Application to registers of debenture holders of certain provisions relating to registers of members.

(2) The provisions of sections 118 and 119 shall apply to and in relation to the keeping by companies (whether having a share capital or not) whose business comprise the transaction of business in countries outside Jamaica of branch registers of holders of debentures resident outside Jamaica and the registering of holders of debentures therein as they apply to and in relation to the keeping by companies referred to in section 118 of branch registers of members so resident and the registering of members therein, so, however, that—

- (a) so much of subsection (2) of section 119 as relates to advertisement before closing a register shall not apply; and
- (b) there shall be substituted for the reference in subsection (7) of section 119 to proviso (b) to subsection (2) of section 109 a reference to proviso (b) to subsection (2) of section 84.

88.—(1) Subject to the following provisions of this section, any provision contained in a trust deed for securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying him against liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

(2) Subsection (1) shall not invalidate—

- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
- (b) any provision enabling such a release to be given—
 - (i) on the agreement thereto of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and
 - (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.

(3) Subsection (1) shall not operate—

- (a) to invalidate any provision in force on the appointed day so long as any person then entitled to the benefit of that provision or afterwards given the benefit thereof under subsection (4) remains a trustee of the deed in question; or
- (b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.

(4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by subsection (3), the benefit of that provision may be given either—

- (a) to all trustees of the deed, present and future; or
- (c) to any named trustees or proposed trustees thereof, by resolution passed by a majority of

not less than three-fourths in value of the debenture holders present in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose in accordance with the provisions of the deed or, if the deed makes no provision for summoning meetings, a meeting summoned for the purpose in any manner approved by the Court.

89. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the appointed day, shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

Perpetual debentures.

90.—(1) Where either before or after the appointed day a company has redeemed any debentures previously issued, then—

Power to reissue redeemed debentures in certain cases.

- (a) unless any provision to the contrary whether express or implied, is contained in the articles or in any contract entered into by the company; or
- (b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) On a re-issue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has power to re-issue debentures which have been redeemed, particulars with respect to the debentures which can be so re-issued shall be included in every balance sheet of the company.

(4) Where a company has either before or after the appointed day deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(5) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the appointed day, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(6) Where any debentures which have been redeemed before the appointed day are re-issued subsequently to that date, the re-issue of the debentures shall not prejudice any right or priority which any person would have had under or by virtue of any mortgage or charge created before that date.

Specific performance of contracts to subscribe for debentures.

91. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

Payment of certain debts out of assets subject to floating charge in priority to claims under the charge.

92.—(1) Where either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debentures of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

PART III—REGISTRATION OF CHARGES

Registration of Charges with Registrar

Registration of charges.

93.—(1) Every charge created after the appointed day by a company registered in Jamaica, being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the trustee and any creditor of the company, unless the prescribed particulars of the charge, together with the original or a copy certified in the prescribed manner of the instrument, if any, by which the charge is created or evidenced, are delivered to or received by the Registrar for registration in the manner required by this Act prior to the commencement of the winding up of the company, but without prejudice to any contract or obligation for repayment of the money secured; and when a charge becomes void under this section, the money secured thereby shall immediately become payable.

(2) Where—

- (a) a charge to which subsection (3) applies is registered within twenty-one days of its creation, that charge shall for the purposes of priority (and subject to any agreement altering priorities) rank in priority to any charge created after it;
- (b) a charge to which subsection (3) applies is created and is not registered until after twenty-one days after its creation, that charge shall for purposes of priority (and subject to any agreement altering priorities) be deemed to have been created on the date of registration.

(3) This section applies to a charge on land (wherever situated) or any interest therein but not to a charge for any rent or any periodical sum issuing out of land.

(4) Where a charge is created outside of Jamaica comprising property situated outside Jamaica, for the purpose of calculating the period for registration, the twenty-one days shall commence after the date on which the instrument or copy would, in due course of post, and if dispatched with due diligence, have been received in Jamaica.

(5) Where a charge is created in Jamaica but comprises property outside Jamaica, the instrument creating or purporting to create the charge or the copy thereof, as the case may be, may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

~~(6) Where a negotiable instrument has been given to secure the payment of any book debts of a company the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a charge on those book debts.~~

~~(7) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall for the purposes of this section be sufficient if there are delivered to or received by the Registrar within twenty one days after the execution of the deed containing the charge or if there is no such deed, after the execution of any debentures of the series, the following particulars—~~

~~(a) — the total amount secured by the whole series; and~~

~~(b) — the dates of the resolutions authorizing the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and~~

~~(c) — a general description of the property charged; and~~

~~(d) — the names of the trustees, if any, for the debenture holders.~~

~~together with a copy of the deed containing the charge, certified to be a true copy by an attorney at law or an officer of the company, or, if there is no such deed, one of the debentures of the series:— Provided that, where more than one issue is made of debentures in the series, there shall be sent to the Registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.~~

~~(8) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate *per centum* of the commission, discount, or allowance so paid or made, but omission to do this shall not affect the validity of the debentures issued:—~~

~~Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this subsection be treated as the issue of the debentures at a discount.—Repealed by SIPP Act 2013.~~

(9) If default is made in complying with subsection (1), the company and every officer thereof who is in default shall be liable to a fine not exceeding fifty thousand dollars.

(10) In this Part the expression “charge” includes mortgage.

94. ~~(1) Where a charge requiring registration under this Act is created then~~

~~(a) the registration of that charge in accordance with this Act shall constitute notice to the world of the existence of that charge;~~

~~(b) where a subsequent charge is registered in accordance with this Act in respect of the same property or undertaking and written notice thereof is given to the prior chargee, the amount secured by the prior charge shall not be increased to the prejudice of the later charge notwithstanding any provision to the contrary contained in the document creating the earlier charge.~~

Effect of registration.

~~(2) Where the amount secured by a charge is increased after the charge is registered, the particulars of the increase shall be sent to the Registrar for registration in the prescribed manner.~~

Repealed by SIPP Act 2013

95.—(1) It shall be the duty of a company to send to the Registrar for registration the particulars of every charge created by the company and to which section 93 applies, but registration of any such charge may be effected on the application of any person interested therein.

Duty of company to register charges created by company.

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar on the registration.

(3) If any company makes default in sending to the Registrar for registration the particulars of any charge created by the company, then, unless the registration has been effected on the application of some other person, the company and every officer of the company who is in default shall be liable to a default fine not exceeding fifty thousand dollars.

96.—(1) Where after the appointed day a company registered in Jamaica acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the Registrar for registration in manner required by this Act within twenty-one days after the date on which the acquisition is completed:

Duty of company to register charges existing on property acquired.

Provided that, if the property is situated and the charge was created outside Jamaica, twenty-one days after the date on which the copy of the instrument could in due course of post, and if dispatched with due diligence, have been received in Jamaica shall be substituted for twenty-one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the Registrar.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine not exceeding fifty thousand dollars.

Registrar to keep register of charges.

97.—(1) The Registrar shall keep, with respect to each company, a register in the prescribed form of all the charges to which section 93 applies and shall, on payment of the prescribed fee, enter in the register with respect to such charges the following particulars—

- (a) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property;
- (b) the amount secured by the charge;
- (c) short particulars of the property charged;
- (d) the persons entitled to the charge.

(2) The Registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee for each inspection.

(4) The Registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the charges entered in the register.

Indorsement of certificate of registration on debentures.

~~**98.**—(1) The company shall cause a copy of every certificate of registration given under section 97 to be indorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered:~~

~~Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any charge so given to be indorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.~~

~~(2) If any person knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have indorsed on it a copy of a certificate of registration without the copy being so indorsed upon it, he shall, without prejudice to any other liability, be liable to a fine not exceeding fifty thousand dollars.~~

Repealed by SIPP Act 2013.

Entries of satisfaction and release of property from charge.

99. The Registrar, on evidence being given to his satisfaction with respect to any registered charge—

- (a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) that part of the property charged has been released from the charge or has ceased to form part of the company's property,

may enter on the register a memorandum of satisfaction in whole or in part, or of the fact that part of the property has been released from the charge or has ceased to form part of the company's property and where he enters a memorandum of satisfaction in whole he shall, if required, furnish the company with a copy thereof.

Rectification of register charges.

100. The Court, on being satisfied that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction was accidental, or due to inadvertence or to

some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the Court just and expedient, order that the omission or mis-statement shall be rectified.

101.—(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give notice of the fact to the Registrar and the Registrar shall, on payment of the prescribed fee enter the fact in the register of charges.

Registration of enforcement of security.

(2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument, ceases to act as such receiver or manager, he shall, on so ceasing, give the Registrar notice to that effect, and the Registrar shall enter the notice in the register of charges.

(3) If any person makes default in complying with the requirements of this section he shall be liable

Provisions as to Company's Register of Charges and as to Copies of Instruments creating Charges

102.—(1) Every company shall cause a copy of every instrument creating any charge requiring registration under this Part to be certified in the prescribed manner and kept at the registered office of the company.

Copies of instruments creating charges to be kept by company.

(2) If default is made by a company in complying with subsection (1), the company and every officer of the company who is in default shall be liable to a fine not exceeding two thousand dollars.

103.—(1) Every limited company shall keep at the registered office of the company a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge, and, except in the case of securities to bearer, the names of the persons entitled thereto.

Company's register of charges.

(2) If any officer of the company knowingly and wilfully authorizes or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding one hundred thousand dollars.

104.—(1) The copies of instruments creating any charge requiring registration under this Part with the Registrar, and the register of charges kept in pursuance of section 103 shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection) to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding fifty dollars for each inspection, as the company may specify.

Right to inspect copies of instruments creating charges and company's register of charges.

(2) If inspection of the said copies or register is refused, any officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars and where the default continues to a further fine not exceeding two thousand dollars for every day during which the refusal continues.

(3) If any such refusal occurs in relation to a company, the Court may by order compel an immediate inspection of the copies or register.

Application of Part III to Companies incorporated outside Jamaica

105. The provisions of this Part shall extend to charges on property in Jamaica which are created, and to charges on property in Jamaica which is acquired, after the appointed day, by a company (whether a company within by the meaning of this Act or not) incorporated outside Jamaica which has an established place of business in Jamaica.

PART IV—MANAGEMENT AND ADMINISTRATION

Registered Office and Name

106.—(1) A company shall have a registered office to which all communications and notices may be addressed and notice thereof shall be included in the form set out as Form BRF1 in the Sixteenth Schedule.

(2) Notice of any change in the situation of the registered office shall be given to the Registrar in the prescribed form within fourteen days of any change in such situation; and the Registrar shall record the change or cause the change to be recorded.

2A. The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by subsection (2).

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

107.—(1) Every company—

(a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;

(b) shall have its name engraven in legible characters on its seal;

(c) shall have its name mentioned in legible characters in all business letters of the company and in all notices and other official publications of the company, and in all bills of exchange, promissory notes, indorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

(2) If a company does not paint or affix its name in manner directed by this Act, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars, and if a company does not keep its name painted or affixed in manner so directed, the company and every officer of the company who is in default shall be liable to a fine not exceeding two thousand dollars for every day during which the default continues.

(3) If a company fails to comply with paragraph (b) or paragraph (c) of subsection (1), the company shall be liable to a fine not exceeding fifty thousand dollars.

(4) If an officer of a company or any person on its behalf—

Application of Part III to charges created, and charges on property subject to charges acquired, by company incorporated outside Jamaica.

Registered office of company.

Publication of name by company.

- (a) uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid; or
- (b) issues or authorizes the issue of any business letter of the company or any notice or other official publication of the company, or signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, indorsement, cheque or order for money or goods wherein its name is not mentioned in the manner aforesaid; or
- (c) issues or authorizes the issue of any bill of parcels, invoice, receipt or letter of credit of the company wherein its name is not mentioned in the manner aforesaid,

he shall be liable to a fine not exceeding fifty thousand dollars, and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount thereof unless it is duly paid by the company.

108.—(1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless—

Restriction on commencement of business.

- (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and
- (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and
- (c) there has been delivered to the Registrar for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that the conditions specified in paragraphs (a) and (b) have been complied with.

(2) Where a company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless—

- (a) there has been delivered to the Registrar for registration a statement in lieu of prospectus; and
- (b) every director has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash;
- (c) there has been delivered to the Registrar for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that paragraph (b) has been complied with.

(3) The Registrar shall, on the delivery to him of the statutory declaration, and, in the case of a company which is required by this section to deliver a statement in lieu of prospectus, of such a

statement, certify that the company is entitled to commence business; and that certificate shall be conclusive evidence that the company is so entitled.

(4) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(5) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(6) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty thousand dollars for every day during which the contravention continues.

(7) Nothing in this section shall apply to a private company.

Register of Members

109.—(1) Every company shall keep in one or more documents a register of its members, enter therein accurate, adequate and up-to-date particulars, in respect of the following—

(a) in respect of each member and beneficial owner of the company, the particulars in subsection (1A);

(b) the date at which each person was entered in the register as a member or as a beneficial owner;

(c) the date at which any person ceased to be a member or a beneficial owner:

Provided that where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the register shall show the amount of stock held by each member and each beneficial owner instead of the amount of shares and the particulars relating to shares specified in paragraph (a).

(1A) The particulars referred to in subsection (1)(a), to be included in the register of members, in respect of each member and beneficial owner of the company are as follows—

(a) in respect of individuals—

(i) name, date of birth and nationality;

(ii) address and occupation;

(iii) taxpayer registration number or other tax identification number; and

(iv) if the number referred to in paragraph (a)(iii) is not applicable or available, the number, place of issue and expiry date of any valid passport or driver's licence held, issued in Jamaica or any other jurisdiction; and

(b) In respect of members who are not individuals—

(i) the member's name and date of incorporation, registration or establishment;

- (ii) country, state or jurisdiction of incorporation, registration or establishment;
 - (iii) registered address or address of principal place of business; and
 - (iv) taxpayer registration number, or other tax identification number;
- (c) in the case of a company having a share capital, a statement of shares held by the member—
- (i) distinguishing each share by its number;
 - (ii) the amount paid or agreed to be considered as paid on the shares of each member; and
 - (iii) the voting rights of that member;
- (d) in respect of each member and beneficial owner, the dates on which membership and beneficial ownership were acquired, commenced or ceased; and
- (e) where shares are held jointly, the interest held by each joint holder, and the date on which joint ownership commenced.

(1B) Where an allotment is made of shares, or shares transferred, in an amount comprising twenty-five percent or more of the issued share capital of the company, the name of the allottee or transferee of such shares shall not be entered in the register of members unless the particulars specified in subsection (1)(a), in respect of that person and the beneficial owner thereof, is furnished to the company.

(2) The register of members shall be kept at the registered office of the company:

Provided that—

- (a) if the work of making it up is done at another office of the company, it may be kept at that other office; and
- (b) if the company arranges with some other person for the making up of the register to be undertaken on behalf of the company by that other person, it may be kept at the office of that other person at which the work is done,

so, however, that it shall not be kept at a place outside Jamaica.

(3) Every company shall send notice to the Registrar of—

- (a) the place where its register of members is kept and any change in that place:

Provided that a company shall not be bound to send notice under this subsection where the register has, at all times since it came into existence or, in the case of a register in existence at the appointed day, at all times since then been kept at the registered office of the company; and

- (b) subject to subsection (4), any change in the particulars referred to in subsection (1A) not later than fourteen days after the change occurs.

(4) Subsection (3)(b) shall not apply to changes in the particulars referred to in subsection (1A) in

relation to the membership of a public company or company limited by guarantee and not having a share capital.

(5) The company and every officer of the company who fails to comply with subsection (1) —

- (a) to keep a register of members; or
- (b) to maintain accurate, adequate and up-to-date particulars in the register of members, for a period of not less than twenty-one days after the date on which the company had notice of any information concerning or affecting the particulars of the register of members,

commits an offence.

(6) Where an offence is committed under subsection (5) —

- (a) the company is liable on summary conviction in a Parish Court to a fine not exceeding five million dollars; and
- (b) every officer of the company who is in default is liable on summary conviction in a Parish Court to a fine not exceeding three million dollars.

(7) The company and every officer who fails to comply with subsection (1B) or subsection (3)(a) or (b), commits an offence and is liable on summary conviction in a Parish Court—

- (a) in the case of an individual, to a fine not exceeding three million dollars;
- (b) in the case of a company, to a fine not exceeding five million dollars.

110.—(1) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members and beneficial owners of the company and shall, within fourteen days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

Index of members of company.

(2) The index, which may be in the form of a card index, shall in respect of each member contain a sufficient indication to enable the account of that member and beneficial owner in the register to be readily found.

(3) The index shall at all times be kept at the same place as the register of members.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

111 Repealed by 2017 Amendments.

112.—(1) The register of members and beneficial owners, commencing from the date of the registration of the company, and the index of the names of members, except when the register is closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge and of any other person on payment of fifty dollars, or such less sum as the company may specify, for each

Provisions as to entries in register in relation to share warrants.

inspection.

(2) Any member or other person may request a copy of the register, or of any part thereof, on payment of fifty dollars, or such less sum as the company may specify, for every hundred words or fractional part thereof required to be copied. The company shall cause any copy so required by any person to be sent to that person within a period of ten days commencing on the day next after the day on which the request is received by the company.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding one milliondollars.

(4) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the register and index or direct that the copies required shall be sent to the persons requiring them.

113. Where, by virtue of paragraph (b) of the proviso to section 109(2) the register of members is kept at the office of an agent of the company, and by reason of the default of that agent the company fails to comply with—

- (a) section 109(3), section 110(3), section 112(1) or section 113A (1), (2) or (3); or
- (b) any requirements of this Act as to the production and inspection of the register,

that agent shall be liable to the same penalties as if he were an officer of the company who was in contravention, and the power of the Court under sections 109(7), 112(4) and 113A(5) shall extend to the making of orders against that agent and his officers.

113A. —(1) Upon receipt by the company of a notice under section 113B, the register of members shall, without restriction or charge, be open to inspection by the Registrar.

(2) The Registrar shall be entitled to be furnished, upon request, with a copy of the register of members, or any excerpt therefrom.

(3) Where the company has any documents in its possession substantiating or purporting to substantiate the particulars of the entries made in the register of members upon giving notice in accordance with subsection 113B, the Registrar—

- (a) shall, subject to law, have the right to inspect any such documents and to be furnished with or permitted to make copies thereof; and
- (b) may, at the request of the company, permit the company to produce the documents for inspection, and for the making of any copies thereof, within such period, not exceeding seven days, as may be specified by the Registrar.

(4) If inspection, or a copy or excerpt of the register of members is refused—

- (a) the company commits an offence and is liable on summary conviction in a Parish Court

Consequences of failure to comply with requirements as to register owing to agent's default.

Inspection of register of members by Registrar

to—

- (i) a fine not exceeding three million dollars; and
- (ii) in the case of a second offence or subsequent offence, to a fine not exceeding five million dollars; and

(b) every officer of the company and a person referred to in paragraph (b) of the proviso to section 109(2), commits an offence and is liable on summary conviction in a Parish Court to—

- (i) a fine not exceeding two million dollars or to a term of imprisonment not exceeding one year, or to both such fine and imprisonment; and
- (ii) in the case of a second offence or subsequent offence, to a fine not exceeding three million dollars or to a term of imprisonment not exceeding five years, or to both such fine and imprisonment.

(5) Where a company is in contravention as aforesaid—

- (a) the Registrar may apply to the Court for an order, and the Court may, if it sees fit, compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them;
- (b) the Parish Court, during a proceeding under subsection (4), may, if it sees fit, compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

Notice of
inspection of
register of
members

113B. Where the Registrar intends to inspect the register of members, the Registrar shall give, not less than seven days notice in writing to the company, prior to conducting the inspection.

113C. —(1) It shall be the duty of all officers, employees and agents, or former officers, employees and agents of the company and the auditor, or the former auditor for the company whose register of members is inspected under section 113A to—

- (a) produce, within a period not exceeding seven days, to the Registrar, all documents relating to the beneficial ownership of the company which are in their possession, including documents substantiating or purporting to substantiate the particulars of the entries made in the register of members;
- (b) permit access to, inspection and examination by the Registrar of the documents referred to in paragraph (a) at the registered office, place of business or at the premises of such other office where the register of members is kept, and otherwise to give to the Registrar all assistance in connection with the inspection of the register of members of the company.

(2) Any person who—

- (a) wilfully obstructs, hinders or impedes the Registrar, an officer of the department or a person authorized by the Registrar in the execution of his duties; or
- (b) refuses to produce any document substantiating or purporting to substantiate the

Entry to
company
premises,
production of
documents,
etc.

particulars of the entries made in the register of members to be produced, which it is his duty to produce,

commits an offence.

(3) A person who commits an offence under subsection (2), is liable on summary conviction in a Parish Court—

- (a) in the case of an individual, to a fine not exceeding one million dollars or to a term of imprisonment not exceeding one year, or to both such fine and imprisonment; and
- (b) in the case of a body corporate, to a fine not exceeding three million dollars.

113D. After inspection of the register of members and other relevant documents, the Registrar shall, in writing—

- (a) certify the register of members of the company, at the date specified in the certificate, as having been inspected;
- (b) if an entry, or a particular in relation to an entry, in the register of members is inaccurate, inadequate or not up-to-date—
 - (i) give notice to the company that an entry or particular in the register is inaccurate, inadequate or not up-to-date, and direct the company to rectify the register within a period of thirty days after the date of the notice; and
 - (ii) advise the company of the consequences pursuant to section 113E, 117A and section 377I of such non-compliance, if the company fails to rectify the register of members.

113E. —(1) Upon receipt of a notice under section 113D(b), the company shall rectify the register of members within the thirty-day period specified in the notice.

(2) If the company contravenes subsection (1), the company commits an offence and is liable on summary conviction in a Parish Court—

- (a) to a fine not exceeding three million dollars; and
- (b) in the case of a second offence or subsequent offence, to a fine not exceeding five million dollars.

113F. For the purpose of determining whether the information in the register of members is accurate, adequate or up-to-date, the Registrar may make a request, in writing, to—

- (a) the company;
- (b) any public entity;
- (c) any entity in a foreign state or country which carries out functions analogous to the functions of a public entity in that state or country, for information on the measures used for verification, including substantiating documents used to verify the accuracy of the information that was submitted to the Registrar in accordance with section

Certification
of inspection

Rectification
of register of
members

Registrar may
request
information

377A(c).

Power to close register.

114. A company may, on giving notice by advertisement in a daily newspaper printed and circulating in Jamaica close the register of members for any time or times not exceeding in the whole thirty days in each year.

Power of Court to rectify register.

115.—(1) If—

- (a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or
- (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(2) Where an application is made under this section, the Court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Act to send a list of its members to the Registrar, the Court when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the Registrar.

116. Where a company has notice of any trust, whether express, implied, resulting or constructive, affecting the membership of the company, the company shall enter the particulars of the beneficial owner in the register as specified in section 109.

Notice of trusts.

117. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorized to be inserted therein.

Register to be evidence.

Registrar may strike off company for default in keeping of register of members.

117A.—(1) If a company has been convicted for contravention of section 113E and the Registrar is satisfied that, after the date of conviction of the company, the Registrar having given notice under subsection (4), the company has not rectified the register of members within the period specified in the notice given under subsection (4), the Registrar shall publish in the *Gazette* and in a daily newspaper circulating in Jamaica; and send by post to the company, a notice (referred to hereinafter as the published notice) that at the expiration of three months from the date of that notice the name of the company mentioned therein shall, unless cause is shown to the contrary, be struck off the register and the company shall be dissolved.

(2) At the expiration of the three-month period after the published notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and

shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of that notice the company shall be dissolved, so, however, that—

- (a) the liability, if any, of the company, every officer and member of the company shall continue and may be enforced as if the company has not been dissolved; and
- (b) nothing in this subsection shall affect the power of a Court to wind up a company, the name of which has been struck off the register.

(3) If a company or any member or creditor thereof is aggrieved by the company having been struck off the register, on an application made by the company, a member or creditor to the Registrar before the expiration of twenty years from the publication in the *Gazette* of the notice referred to in subsection (2), the Registrar may, if satisfied that—

- (a) the membership and beneficial ownership entries in the company's register of members was compliant with the requirements of this Act at the time of the striking off; or
- (b) otherwise that it is just that the company be restored to the register,

order the name of the company to be restored to the register and upon such registration, the company shall be deemed to have continued in existence as if its name had not been struck off.

(4) If the Registrar is satisfied that a company, after conviction for contravention of section 113E(1), has not rectified the register of members, the Registrar shall—

- (a) give notice to the company of the non-compliance, specifying a period within which to rectify the register of member in compliance with section 113E, and in the case of a company to which Part X applies, the period specified in the notice shall not be a period less than three months; and
- (b) in the notice referred to in paragraph (a), advise the company of the Registrar's power to strike off the company under this section.

(5) A notice, or any other document, to be sent under this section—

- (a) to a trustee, may be addressed to the trustee at his last known place of business;
- (b) to the company, shall be addressed to—
 - (i) the company at its registered office;
 - (ii) a director or other officer of the company, or if there is no director or other officer whose name and address are known to the Registrar, to each of the person who subscribed the articles, addressed to him at the address mentioned in the articles; and
 - (iii) in the case of a company to which Part X applies, to the person named under section 363(1)(d), authorized to accept service of process on behalf of that company.

(6) This section shall apply with any necessary modification to the striking off from their register of companies of the name of a company to which Part X applies.

Branch Register

118.—(1) A company having a share capital which carries on business in any country outside Jamaica may cause to be kept in that part of any such country in which it transacts business, a

Power for company to keep branch register.

register of members resident in such part (in this Act called a “branch register”).

(2) The company shall give to the Registrar notice of the situation of the office where any branch register is kept and of any change in its situation, and if it is discontinued of its discontinuance, and any such notice shall be given within fourteen days of the opening of the office or of the change or discontinuance, as the case may be.

(3) If default is made in complying with subsection (2), the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

119.—(1) A branch register shall be deemed to be part of the company’s register of members (in this section called “the principal register”).

Regulations as
to branch
register.

(2) The branch register shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in a newspaper circulating in the district where the branch register is kept, and that any competent court in the country where the register is kept may exercise the same jurisdiction of rectifying the register as is under this Act exercisable by the Court.

(3) The company shall transmit to its registered office a copy of every entry in its branch register as soon as may be after the entry is made, and shall cause to be kept at the place where the company’s principal register is kept, duly entered up from time to time, a duplicate of its branch register and every such duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a branch register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a branch register shall, during the continuance of that registration, be registered in any other register.

(5) A company may discontinue to keep a branch register, and thereupon all entries in that register shall be transferred to some other branch register kept by the company in the country concerned or to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles, make such provisions as it may think fit respecting the keeping of branch registers.

(7) If default is made in complying with subsection (3)—

- (a) the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars; and
- (b) where, by virtue of proviso (b) to subsection (2) of section 109, the principal register is kept at the office of some person other than the company and by reason of any default of that other person the company fails to comply with the requirements of subsection (3) of this section relating to the keeping of a duplicate of its branch register, he shall be liable to the same penalty as if he were an officer of the company who was in default.

(8) An instrument of transfer of a share registered in a branch register shall be deemed to be a

transfer of property situated out of Jamaica, and unless executed in this Island, shall be exempt from stamp duty chargeable in Jamaica.

120. If by virtue of the law in force in any country, outside Jamaica companies incorporated under that law have power to keep in Jamaica branch registers of their members resident in Jamaica, the Minister may by order direct that sections 112 and 115 shall, subject to any modifications and adaptations specified in the order, apply to and in relation to any such branch registers kept in Jamaica as they apply to and in relation to the registers of companies within the meaning of this Act.

Annual Returns

121.—(1) Every company shall deliver to the Registrar successive annual returns each of which is made up to a date not later than the date which is from time to time the company's return date.

(2) Each return shall—

- (a) be in the prescribed form as set out in Part II of the Fifth Schedule;
- (b) contain the information required by or under the provisions of sections 122, 123 and 124 and shall be delivered to the Registrar within 28 days after the date to which it is made up.

(3) A company that contravenes subsection (1) commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding five million dollars.

122.—(1) Every company having a share capital shall make a return stating the date to which it made up and containing a list of all persons who, on the date of the return, are members of the company, and of all persons who have ceased to be members since the date of the last return or, in the case of the first return, of the incorporation of the company.

Annual return to be made by a company having a share capital.

(2) The list shall—

- (a) state the names, nationalities, addresses and occupations of all past and present members therein mentioned;
- (b) state the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or, in the case of the first return, of the incorporation of the company by persons who have ceased to be members, respectively and the dates of registration of the transfers; and
- (c) if the names therein are not arranged in alphabetical order, have annexed to it an index sufficient to enable the name of any person in the list to be readily found:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the list shall state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares hereinbefore required.

(3) The return shall contain with respect to the registered office of the company, registers of members and debenture holders, shares and debentures indebtedness, and persons who are directors of the

Fifth Schedule.

Provisions as branch registers of companies incorporated abroad and kept in Jamaica.

Duty to deliver annual returns.

company, the matters specified in Part I of the Fifth Schedule and shall be in accordance with the form set out in Part II of that Schedule or as near thereto as circumstances permit.

(4) In the case of a company keeping a branch register, the particulars of the entries in that register shall, so far as they relate to matters which are required to be stated in the return, be included in the return made next after copies of those entries are received at the registered office of the company.

123.—(1) Every company not having a share capital shall make a return stating—

- (a) the date to which it is made up;
- (b) the address of the registered office of the company;
- (c) all particulars with respect to the persons who at the date of the return are the directors of the company as are by this Act required to be contained with respect to directors on the register of directors of a company.

Annual return to be made by a company not having a share capital.

(2) There shall be annexed to the return a statement containing particulars of the total indebtedness of the company in respect of all mortgages which are required to be registered under this Act and all security interests registered under in the Security Interests in Personal Property Act.

124.—(1) The annual return shall be contained in a separate part of the register of members.

General provisions as to annual return.

(3) The annual return shall, in the case of every company which is not a private company and every private company which is obliged to file accounts, include a written copy, certified by a director, the manager or secretary of the company to be a true copy, of the last balance sheet and profit and loss account laid before the company in general meeting, including every document required by law to be annexed thereto, together with a copy of the report of the auditors thereon certified as aforesaid, and if any such balance sheet is in a foreign language, there shall also be annexed to it a translation thereof in English, certified in the prescribed manner to be a correct translation:

Provided that, if the balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets, there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet in order to make it comply with those requirements, and the fact that the copy has been so amended shall be stated thereon.

125. A private company shall send with the annual return required by section 121—

- (a) a certificate signed both by a director and by the secretary of the company that the company has not since the date of the last return, or since, in the case of a first return, the date of the incorporation of the company or, in the case of an existing company which became a private company, the date on which it became a private company, issued any invitation to the public to subscribe for any shares or debentures of the company or to deposit money for fixed periods whether bearing or not bearing interest;
- (b) where the annual return discloses the fact that the number of members of the

Certificates to be sent by private company with annual return.

company exceeds twenty, also a certificate so signed that the excess consists wholly of persons who under paragraph (b) of subsection (1) of section 25 are not to be included in reckoning the number of twenty;

Twelfth
Schedule.

- (c) a certificate signed by the persons aforesaid that, to the best of their knowledge and belief, no person other than the holder thereof except in cases provided for in the Twelfth Schedule has had any interest in any of the company's shares since the date of the last return or since, in the case of a first return, the date of the incorporation of the company or, in the case of an existing company which became a private company, the date on which it became a private company;
- (d) where the company claims to be a private company which is not obliged to file accounts, a certificate signed by the persons aforesaid in the prescribed form.

Meetings and Proceedings

Annual general
meeting.

126.—(1) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that, so long as a company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(2) If default is made in holding a meeting of the company in accordance with subsection (1), the Minister may, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as he may think expedient, including directions modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company's articles; and it is hereby declared that the directions that may be given under this subsection include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(3) A general meeting held in pursuance of subsection (2) shall, subject to any directions of the Minister be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated.

(4) Where a company resolves that a meeting shall be so treated, a copy of the resolution shall, within fifteen days after the passing thereof, be forwarded to the Registrar and recorded by him.

(5) If default is made in—

- (a) holding a meeting of the company in accordance with subsection (1); or
- (b) complying with any directions of the Minister under subsection (2);
- (c) complying with subsection (4),

the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

127.—(1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called “the statutory meeting”.

Statutory
meeting and
statutory report.

(2) The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Act referred to as “the statutory report”) to every member of the company.

(3) The statutory report shall be certified by not less than two directors of the company or where there are less than two directors, by the sole director and shall state—

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case, the consideration for which they have been allotted;
- (b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;
- (c) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;
- (d) the names, addresses and descriptions of the directors, auditors, if any, managers, if any, and secretary of the company; and
- (e) the particulars of any contract the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be delivered to the Registrar for registration forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous

notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequent to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) In the event of any default in complying with the provisions of this section, every director of the company who is knowingly and wilfully guilty of the default or, in the case of default by the company, every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

(10) This section shall not apply to a private company.

Convening of
extraordinary
general meeting
on requisition.

128.—(1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members of the company holding, at the date of the deposit of the requisition, not less than one-tenth of such of the paid up capital of the company, as at the date of the deposit, which carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at that date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition shall state the objects of the meeting, and shall be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from that date.

(4) A meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(6) For the purposes of this section the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as required by section 138.

129.—(1) Any provision of a company's articles shall be void in so far as it provides for the calling of a meeting of the company, (other than an adjourned meeting) by a shorter notice than—

Length of notice
for calling
meetings.

(a) in the case of the annual general meeting, twenty-one days' notice in writing; and

(b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, fourteen days' notice in writing in the case of a company other than an unlimited company and seven days' notice in writing in the case of an unlimited company.

(2) Save in so far as the articles of a company make other provision in that behalf (not being a provision avoided by subsection (1)) a meeting of the company (other than an adjourned meeting) may be called—

(a) in the case of the annual general meeting by twenty-one days' notice in writing; and

(b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, by fourteen days' notice in writing in the case of a company other than an unlimited company and by seven days' notice in writing in the case of an unlimited company.

(3) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in subsection (2) or in the company's articles, as the case may be, be deemed to have been duly called if it is so agreed—

(a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

(b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority, together holding not less than ninety-five *per centum* in value of the shares giving a right to attend and vote at the meeting, or, in the case of a company not having a share capital, together representing not less than ninety-five *per centum* of the total voting rights at that meeting of all the members.

130.—(1) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf—

(a) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A and for the purpose of this paragraph the expression "Table A" means that Tables as for the time being in force;

(b) two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five *per centum* in number of the members of the company may call a meeting;

(c) in the case of a private company two members, and in the case of any other company three members, present in-person or participating by electronic means shall be a quorum;

- (d) any member elected by the members present at a meeting may be chairman thereof;
- (e) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each thousand dollars of stock held by him, and in any other case every member shall have one vote.

(2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in a manner prescribed in the Company's articles, the Court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

(3) It is hereby declared that the directions that may be given under subsection (2) include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(4) Where by any provision contained in this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than twenty-one days before the meeting:

Provided that if, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-

Proxies. eight days or less after the notice has been given, the notice, though not given within the time required by this subsection, shall be deemed to have been properly given for the purposes thereof.

131.—(1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and a proxy appointed to attend and vote instead of a member (or, where more than one proxy has been so appointed, one of their number named by the member for the purpose) shall also have the same right as the member to speak at the meeting:

Proxies.

Provided that, unless the articles otherwise provide—

- (a) this subsection shall not apply in the case of a company not having a share capital; and
- (b) a member shall not be entitled to appoint more than one proxy to attend on the same occasion; and
- (c) a proxy shall not be entitled to vote except on a poll.

(2) In every notice calling a meeting of a company having a share capital there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of him, and that a proxy need not also be a member and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

(3) Any provision contained in a company's articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than forty-eight hours before a meeting or adjourned meeting in order that the appointment may be effective there at.

(4) Where any such instruments or documents appointing or relating to proxies as are mentioned in subsection (3) are received by or on behalf of a company, any person entitled, in his own right or as proxy for another member or members or partly in one way and partly in another to more than ten *per centum* of the total voting rights of all the members having a right to vote at the meeting or adjourned meeting affected, and also any person authorized in writing in that behalf by any person, or by any number of persons together, so entitled, shall have the right, at any time during business hours prior to the conclusion of the meeting but subject to such reasonable restrictions as the company may impose, to inspect such instruments or documents.

(5) If for the purpose of any meeting of a company invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense—

- (a) to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy; or
- (b) without being accompanied by forms for the appointment of a proxy which entitle the members to direct the proxy to vote either for or against each resolution,

every officer of the company who knowingly and wilfully authorizes or permits their issue as aforesaid shall be liable to a fine not exceeding fifty thousand dollars:

Provided that an officer shall not be liable under this subsection by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(6) This section shall apply to meetings of any class of members of a company as it applies to general meetings of the company.

132.—(1) Any provision contained in a company's articles shall be void in so far as it would have the effect either—

- (a) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or

- (b) of making ineffective a demand for a poll on any such question which is made either—
 - (i) by not less than five members having the right to vote at the meeting; or
 - (ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
 - (iii) by a member or members holding shares in the company, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right; or
 - (iv) by a member holding shares in the company as a trustee of an approved employee share ownership plan as defined in section 2 of the Employees Share Ownership Plan Act, being shares conferring a right to vote at the meeting.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of subsection (1) a demand by a person as proxy for a member shall be the same as a demand by the member.

133. On a poll taken at a meeting of a company or a meeting of any class of members of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

Voting on a poll.

133A.—(1) Subject to subsection (2), unless the articles of a company otherwise provide, a company may hold a general meeting as a virtual- only meeting or a hybrid meeting.

Companies may hold virtual-only or hybrid meeting.

(2) A company shall not cause a general meeting to be held as a hybrid meeting or a virtual-only meeting, unless satisfied that each attendee is able to attend and fully participate in the meeting, if held in such manner.

133B.—(1) For the purposes of sections 133B to 133F, the laws of Jamaica shall apply to a hybrid meeting or virtual-only meeting held by a company.

Hybrid and virtual-only meeting of same effect as in-person meeting, etc.

(2) Subject to subsection (3) and section 133E, a hybrid meeting or virtual-only meeting shall have full effect, in all respects and to the same extent, as if that hybrid meeting or virtual-only meeting was held in Jamaica, as an in-person meeting.

(3) Subsection (2) shall not apply to a hybrid meeting or a virtual-only meeting that is not conducted in a manner so as to enable—

- (a) each attendee to participate in the conduct of the business of the company at that meeting,

- including the voting by members entitled to attend and vote;
- (b) each attendee to see, to be seen by, to hear, to be heard by, to be identified by, and to be able to identify other attendees;
- (c) effective communication with the chairman or other officer, and among attendees during the meeting;
- (d) communication between an attendee and the chairman or other officer of any failure of any electronic communications system or computer service enabling virtual participation, which deprives the attendee of the ability to—
 - (i) participate in the meeting;
 - (ii) identify other attendees;
 - (iii) be identified by others; or
 - (iv) effectively communicate under paragraphs (a) and (b);
- (e) confirmation of the attendees and quorum required for the meeting; and
- (f) a proper record, including an electronic record, of the business of the meeting to enable and verify compliance with the requirements of the articles of the company, and the provisions of this Act.

133C. Without prejudice to section 130, where a general meeting is to be held as a hybrid meeting or a virtual-only meeting, the company—

- (a) may cause any document, including the notice referred to in paragraph (b), required for the conduct of the business of the company at the meeting to be delivered by electronic means; and
- (b) shall give notice of the meeting and the notice shall –
 - (i) provide instructions for attendance and participation, including voting by members and proxies entitled to attend and vote, electronically, and an electronic link for attendees; and
 - (ii) in the case of a hybrid meeting, specify the venue.

Proceedings for hybrid or virtual-only meeting

133D. Where a company holds a hybrid meeting or virtual-only meeting, the company shall –

- (a) cause the identity of all attendees participating in the meeting to be verified and the participatory acts, including a vote cast of any attendees participating in the meeting, electronically, to be confirmed, to ensure that the conduct of the business of the company is in compliance with the articles of the company and prescribed requirements; and
- (b) establish procedures and restrictions to secure the conduct of the business of the meeting, including voting.

Verification of identity of attendees, etc.

133E.—(1) Subject to subsections (2) and (4), where a general meeting is held by a company as a hybrid meeting or virtual-only meeting and during the meeting a number of the attendees participating, by electronic means, cease to be able to participate in the meeting, at any time and for any period during the meeting, in such numbers that the quorum requirement for that meeting is not met, the chairman of the meeting shall adjourn the meeting to a date and time, consented to by the attendees, who are able to fully participate in the meeting.

Effect on quorum of inability to participate in hybrid or virtual-only meeting.

(2) Unless otherwise stated in the articles of a company, where a general meeting is held by a company as a hybrid meeting or virtual-only meeting, the inability of the attendees to participate by

electronic means in the meeting, due to the failure of any electronic communication system or computer service, enabling virtual participation, shall not affect the quorum of the meeting, if such attendees are reconnected to the meeting within such reasonable period that the reconnected attendees are able to fully participate in the meeting.

(3) The chairman of the meeting shall determine the reasonableness of the period referred to in subsection (2), upon consideration of the business being conducted at the time of the failure of the electronic communication system or computer service and the duration of the absence of the attendees, who have ceased to fully participate in the meeting, and the chairman shall notify all attendees of his decision.

(4) Where the quorum requirement for a meeting is not met, all business transacted at that meeting, including matters put to a vote and any resolutions passed, shall be void.

133F.—(1) Notwithstanding anything contained in this Act or the articles of a company, where an annual general meeting is due to be held and cannot be held, as a result of events and conditions that are the subject of—

- (a) an order under section 26(2) of the Disaster Risk Management Act declaring the area in which the meeting is to be held to be a disaster area or a threatened area, as the case may be; or
- (b) a Proclamation under section 20 of the Constitution of Jamaica, declaring a period of public disaster or a period of public emergency, a director of the company or a member who is entitled to vote at the meeting, may cause an application to be made, in writing, to the Registrar, in the form set out as Form 26 in the Seventeenth Schedule, for approval to hold such meeting, as soon as practicable, or at a later proposed date.

(2) Subject to subsection (3), an application for the postponement of an annual general meeting under subsection (1), shall be submitted to the Registrar not less than thirty days prior to the date on which the annual general meeting is due to be held.

(3) The applicant may propose a later date for the holding of the annual general meeting, which shall be a date within a period of not less than one hundred and twenty days, or within such longer period as the Registrar may determine, after the date due for holding the annual general meeting.

(4) On receipt of an application made under subsection (1), the Registrar may refuse to approve, giving the reasons therefor, or approve the application.

134.—(1) A corporation, whether a company within the meaning of this Act or not may—

- (a) if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;
- (b) if it is a creditor (including a holder of debentures) of another corporation, being a

Application for extension of time for holding annual general meeting.

Representation of companies at meetings of other companies and of creditors.

company within the meaning of this Act, by resolution of its directors or other governing body, authorize such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorized as aforesaid shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor, or holder of debentures, of that other company.

135.—(1) A company shall at its own expense on the request in writing of any member entitled to attend and vote at an annual general meeting, include in the notice of that annual general meeting notice of any resolution consisting of not more than five hundred words which may properly be moved and is intended to be moved at that meeting:

Circulation of members' resolutions.

Provided that if the proposed resolution is not passed at that meeting the same resolution or one substantially to the same effect shall not be moved at any annual general meeting within three years thereafter unless the directors shall otherwise agree or unless the request within three years is supported in writing by members of the company representing between them not less than one-twentieth of the total voting rights of all the members having at the date of the request a right to vote on the resolution to which the request relates.

(2) A company shall not be bound to give notice of any such resolution unless the written request or requests, signed by the member or members concerned, together with the resolution are deposited at the registered office of the company not less than six weeks before the meeting:

Provided that if, after any such resolution has been deposited, an annual general meeting is called for a date six weeks or less thereafter, the resolution shall be deemed to have been properly deposited.

136.—(1) A company shall, at the request in writing of any member entitled to attend and vote at an annual general meeting but (unless the company otherwise resolves or section 135 applies) at the expense of that member, circulate to members of the company a statement (whether in the form of a resolution or not) of not more than one thousand words with respect to any business to be dealt with at that meeting.

Circulation of circulars.

(2) Such a statement shall be circulated to members of the company in any manner permitted for service of notice of the annual general meeting, and, so far as practicable, at the same time as notice of the meeting, or, if that is impracticable, as soon as possible after the circulation of such notice.

(3) A company shall not be bound to circulate such a statement unless—

- (a) the written request, signed by the member concerned, together with the statement, is deposited at the registered office of the company not less than ten days before the meeting; and
- (b) there is also deposited with the request a sum reasonably sufficient to meet the company's expenses in giving effect thereto.

137.—(1) A company shall not be bound under either section 135 or section 136 to circulate any resolution or statement 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 those sections are being abused to

secure needless publicity for 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 member making the request, notwithstanding that he is not a party to the application.

(2) In the event of any default in complying with section 135 or section 136, every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

Provisions as to extraordinary and special resolutions.

138.—(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given:

Provided that, if ninety-five *per centum* of the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

(3) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed a poll shall be taken to be effectively demanded, if demanded—

- (a) by such number of members for the time being entitled under the articles to vote at the meeting as may be specified in the articles, so, however, that it shall not in any case be necessary for more than five members to make the demand; or
- (c) if no provision is made by the articles with respect to the right to demand the poll, by three members so entitled or by one member or two members so entitled, if that member holds or those two members together hold not less than fifteen *per centum* of the paid up share capital of the company.

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by virtue of this Act or of the articles of the company.

(6) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by this Act or articles.

139.—(1) A copy of every resolution or agreement to which this section applies shall, within fifteen days after the passing or making thereof, be forwarded to the Registrar and recorded by him.

Registration and copies of certain resolutions and agreements.

(2) Where articles have been registered, a copy of every such resolution or agreement for the time

being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a copy of every such resolution or agreement shall be forwarded to any member at his request, on payment of fifty dollars or such less sum as the company may direct.

(4) This section shall apply to—

- (a) special resolutions;
- (b) extraordinary resolutions;
- (c) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special resolutions or as extraordinary resolutions;
- (d) resolutions or agreements which have been agreed to by all the members of some class of shareholders, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;
- (e) resolutions requiring a company to be wound up voluntarily, passed under paragraph (a) of subsection (1) of section 272.

(5) If a company fails to comply with subsection (1) the company and every officer of the company who is in default shall be liable to a default fine of fifty thousand dollars.

(6) If a company fails to comply with subsection (2) or subsection (3) the company and every officer of the company who is in default shall be liable to a fine not exceeding one thousand dollars for each copy in respect of which default is made.

(7) For the purposes of subsections (5) and (6) a trustee of the company shall be deemed to be an officer of the company.

40. Where after the appointed day a resolution is passed at an adjourned meeting of—

- (a) a company;
- (b) the holders of any class of shares in a company;
- (c) the directors of a company,

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Participation by electronic means.

141.—(1) Unless the articles of a company otherwise provides, a director may if all the directors of the company consent, participate in a meeting of directors of the company or of a committee of the directors by means of such telephone or other communicating facilities as permit all persons participating in the meeting to hear each other.

(2) A director who participates in a meeting of directors by such means as are described in subsection (1), is, for the purposes of this Act, present at the meeting, and unless the articles so provide, shall count to constitute a quorum.

(3) For the purposes of this section, the laws of Jamaica shall apply to any meeting of directors of a company incorporated in Jamaica and the meeting is deemed to take place in Jamaica.

Minutes of proceedings of meetings of company and of directors and managers.

142.—(1) Every company shall cause minutes of all proceedings of general meetings, all proceedings at meetings of its directors and, where there are managers, all proceedings at meetings of its managers, to be entered in books kept for the purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers, or trustees, shall be deemed to be valid.

(4) If a company fails to comply with subsection (1), the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

143.—(1) The books containing the minutes of proceedings of any general meeting of a company held after the appointed day shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding fifty dollars for every hundred words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding two thousand dollars and further to a default fine of fifty thousand dollars.

(4) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

Accounts and Audit

144.—(1) Every company shall cause to be kept proper books and documents of account with respect to—

Books and documents of account.

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the company;
- (c) the assets and liabilities of the company.

(2) For the purposes of subsection (1), proper books and documents of account shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such books and documents as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

(3) Subject to the provisions of subsection (4) relating to books and documents of account kept outside Jamaica, books and documents of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

(4) If books and documents of account are kept at a place outside Jamaica there shall be sent to, and kept at a place in Jamaica and be at all times open to inspection by the directors such accounts and returns with respect to the business dealt with in the books and documents of account so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding six months and will enable to be prepared in accordance with this Act the company's balance sheet, its profit and loss account or income and expenditure account, and any document annexed to any of those documents giving information which is required by this Act and is thereby allowed to be so given:

Provided that the Minister, if, having regard to the nature and volume of the business done in Jamaica by any company, he is satisfied that it is just to do so, may by order grant, subject to such conditions as may be specified in the order, exemption from any of the obligations imposed by this subsection.

(5) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be liable on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding six months or to a fine not exceeding fifty thousand dollars:

Provided that—

- (a) in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty; and
- (b) a person shall not be sentenced to imprisonment for such an offence unless, in the

opinion of the Court dealing with the case, the offence was committed wilfully.

Profit and loss
account and
balance sheet.

145.—(1) The directors of every company shall, at some date not later than eighteen months after the incorporation of the company and subsequently at least once in every calendar year, lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months, or, in the case of a company carrying on business or having interests abroad by more than twelve months:

Provided that the Minister, if for any special reason he thinks fit so to do, may, in the case of any company, extend the period of eighteen months aforesaid, and in the case of any company and with respect to any year extend the periods of nine and twelve months aforesaid.

(2) The directors shall cause to be made out in every calendar year, and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account, or the income and expenditure account, as the case may be, is made up and there shall be attached to every such balance sheet a report by the directors with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to the reserve fund, general reserve or reserve account shown specifically on the balance sheet, or to a reserve fund, general reserve or reserve account to be shown specifically on a subsequent balance sheet.

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be liable on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding six months or to a fine not exceeding fifty thousand dollars:

Provided that—

- (a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty; and
- (b) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the Court dealing with the case, the offence was committed wilfully.

146.—(1) Subject to the provisions of the Seventh Schedule, the accounts of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year.

General
provisions as to
content and
form of
accounts.

(2) The accounts of a company shall comply with the requirements of the Seventh Schedule, so far as applicable thereto.

(3) Save as expressly provided in the following provisions of this section or in the Seventh Schedule the requirements of section 145 and the Seventh Schedule shall be without prejudice either to the general requirements of subsection (1) or to any other requirements of this Act.

(4) The Minister may, on the application or with the consent of a company's directors, modify in relation to that company any of the requirements of this Act as to the matters to be stated in a

company's balance sheet or profit and loss account (except the requirements of subsection (1)) for the purpose of adapting them to the circumstances of the company.

(5) Subsections (1) and (2) shall not apply to a company's profit and loss account if—

- (a) the company has subsidiaries; and
- (b) the profit and loss account is framed as a consolidated profit and loss account dealing with all or any of the company's subsidiaries as well as the company and—
 - (i) complies with the requirements of this Act relating to consolidated profit and loss accounts; and
 - (ii) shows how much of the consolidated profit or loss for the financial year is dealt with in the accounts of the company.

(6) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects any accounts laid before the company in general meeting with the provisions of this section and with the other requirements of this Act as to the matters to be stated in accounts, he shall, in respect of each offence, be liable on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding six months or to a fine not exceeding fifty thousand dollars:

Provided that—

- (a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that those provisions or those other requirements, as the case may be, were complied with and was in a position to discharge that duty; and
- (b) a person shall not be sentenced to imprisonment for any such offence unless, in the opinion of the Court dealing with the case, the offence was committed wilfully.

(7) For the purposes of this section and the following provisions of this Act, except where the context otherwise requires—

- (a) any reference to a balance sheet or profit and loss account shall include any notes thereon or document annexed thereto giving information which is required by this Act and is thereby allowed to be so given; and
- (b) any reference to a profit and loss account shall be taken, in the case of a company not trading for profit, as referring to its income and expenditure account, and references to profit or to loss and, if the company has subsidiaries, references to a consolidated profit and loss account shall be construed accordingly.

Obligation to lay group accounts before holding company.

147.—(1) Where at the end of its financial year a company has subsidiaries, accounts or statements (in this Act referred to as “group accounts”) dealing as hereinafter mentioned with the state of affairs and profit or loss of the company and the subsidiaries shall, subject to subsection (2), be laid before

the company in general meeting when the company's own balance sheet and profit and loss account are so laid.

(2) Notwithstanding anything in subsection (1)—

- (a) group accounts shall not be required where the company is at the end of its financial year the wholly owned subsidiary of another body corporate incorporated in Jamaica; and
- (b) group accounts need not deal with a subsidiary of the company if the company's directors are of opinion that—
 - (i) it is impracticable, or would be of no real value to members of the company, in view of the insignificant amounts involved, or would involve expense or delay out of proportion to the value to members of the company; or
 - (ii) the result would be misleading, or harmful to the business of the company or any of its subsidiaries; or
 - (iii) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking, and, if the directors are of such an opinion about each of the company's subsidiaries, group accounts shall not be required:

Provided that the approval of the Minister shall be required for not dealing in group accounts with a subsidiary on the ground that the result would be harmful or on the ground of the difference between the business of the holding company and that of the subsidiary.

(3) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects the company with the provisions of this section, he shall, in respect of each offence, be liable on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding six months or to a fine not exceeding fifty thousand dollars:

Provided that—

- (a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty; and
- (b) a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the Court dealing with the case, the offence was committed wilfully.

(4) For the purposes of this section a body corporate shall be deemed to be the wholly owned subsidiary of another if it has no members except that other and that other's wholly owned subsidiaries and its or their nominees.

148.—(1) Subject to subsection (2), the group accounts laid before a holding company shall be consolidated accounts comprising—

Form of group accounts.

- (a) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in group accounts;
- (b) a consolidated profit and loss account dealing with the profit or loss of the company and those subsidiaries.

(2) If the company's directors are of opinion that it is better for the purpose—

- (a) of presenting the same or equivalent information about the state of affairs and profit or loss of the company and those subsidiaries; and
- (b) of so presenting it that it may be readily appreciated by the company's members,

the group accounts may be prepared in a form other than that required by subsection (1), and in particular may consist of more than one set of consolidated accounts dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries or of separate accounts dealing with each of the subsidiaries, or of statements expanding the information about the subsidiaries in the company's own accounts, or any combination of those forms.

(3) The group accounts may be wholly or partly incorporated in the company's own balance sheet and profit and loss account.

149.—(1) The group accounts laid before a company shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with thereby as a whole, so far as concerns members of the company.

Contents of group accounts.

(2) Where the financial year of a subsidiary does not coincide with that of the holding company, the group accounts shall, unless the Minister on the application or with the consent of the holding company's directors otherwise directs, deal with the subsidiary's state of affairs as at the end of its financial year ending with or last before that of the holding company, and with the subsidiary's profit or loss for that financial year.

(3) Without prejudice to subsection (1), the group accounts, if prepared as consolidated accounts, shall comply with the requirements of the Seventh Schedule so far as applicable thereto, and if not so prepared shall give the same or equivalent information:

Provided that the Minister may, on the application or with the consent of a company's directors, modify those requirements in relation to that company for the purpose of adapting them to the circumstances of the company.

150.—(1) A holding company's directors shall secure that except where in their opinion there are good reasons against it, the financial year of each of its subsidiaries shall coincide with the company's own financial year.

(2) Where it appears to the Minister desirable for a holding company or a holding company's

Seventh Schedule.

Financial year of holding company and subsidiary.

subsidiary to extend its financial year so that the subsidiary's financial year may end with that of the holding company, and for that purpose to postpone the submission of the relevant accounts to a general meeting from one calendar year to the next, the Minister may on the application or with the consent of the directors of the company whose financial year is to be extended direct that, in the case of that company, the submission of accounts to a general meeting, the holding of an annual general meeting or the making of an annual return shall not be required in the earlier of those calendar years.

151.—(1) For the purposes of this Act, a company shall, subject to the provisions of subsection (3), be deemed to be a subsidiary of another if, but only if—

- (a) that other either—
 - (i) is a member of it and controls the composition of its board of directors; or
 - (ii) holds more than half in value of its equity share capital; or
- (b) the first mentioned company is a subsidiary of any company which is that other's subsidiary.

(2) For the purposes of subsection (1), the composition of a company's board of directors shall be deemed to be controlled by another company, if, but only if, that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say—

- (a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid; or
- (b) that a person's appointment thereto follows necessarily from his appointment as director of that other company; or
- (c) that the directorship is held by that other company itself or by a subsidiary of it.

(3) In determining whether one company is a subsidiary of another—

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to paragraphs, (c) and (d) any shares held or power exercisable—
 - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity); or
 - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity, shall be treated as held or exercisable by that other;
- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;

Meaning of
"holding
company" and
"subsidiary".

- (d) any shares or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) For the purpose of this Act, a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

(5) In this section the expression "company" includes any body corporate, and the expression "equity share capital" means, in relation to a company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any rights to participate beyond a specified amount in a distribution.

152.—(1) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company or, if there is only one director, by that director.

Requirements relating to balance sheets.

(2) In the case of a banking company the balance sheet shall be signed by the secretary and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all directors.

(3) The profit and loss account and, so far as not incorporated in the balance sheet or profit and loss account, any group accounts laid before the company in general meeting, shall be annexed to the balance sheet, and the auditors' report shall be attached thereto.

(4) Any accounts annexed pursuant to subsection (3) shall be approved by the board of directors before the balance sheet is signed on their behalf.

(5) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published, or if any copy of a balance sheet is issued circulated or published without having annexed thereto a copy of the profit and loss account or any group accounts required by this section to be so annexed, or without having attached thereto a copy of the auditors' report, the company, and every officer of the company who is in default shall be liable to a fine not exceeding one hundred thousand dollars.

153.—(1) In the case of every company, a copy of every balance sheet, including every document required by law to be annexed thereto which is to be laid before the company in general meeting, together with a copy of the auditors' report, shall, not less than twenty-one days before the date of the meeting, be sent to every member of the company (whether or not he is entitled to receive notice of general meetings of the company), every holder of debentures of the company (whether or not he is so entitled) and all persons other than members or holders of debentures of the company, being persons so entitled.

(2) In the case of a company not being a private company any member of the company, and any holder of debentures of the company, shall be entitled to be furnished on demand without charge with a copy of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy of the auditors' report on the balance sheet.

Right to receive copies of balance sheets and auditor's report.

(3) If default is made in complying with subsection (1), the company and every officer of the company who is in default, shall be liable to a fine not exceeding one hundred thousand dollars, and if, where any person makes a demand for a document with which he is by virtue of subsection (2) entitled to be furnished, default is made in complying with the demand within ten days after the making thereof, the company and every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding two thousand dollars for every day during which the default continues, unless it is proved that that person has already made a demand for and been furnished with a copy of the document.

(4) In the case of a private company, any member of the company and any holder of debentures thereof shall be entitled to be furnished, within ten days after he has made a request in that behalf to the company, with a copy of the balance sheet and auditors' report at a charge not exceeding two hundred dollars or such amount as may be prescribed by regulations made by the Minister.

(5) If default is made in furnishing such a copy to any member of the company or, as the case may be, any holder of debentures thereof who demands it and tenders to the company the amount of the proper charge therefor, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

154.—(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that, until the conclusion of the next, annual general meeting.

(2) At any annual general meeting a retiring auditor, however appointed, shall be reappointed without any resolution being passed unless—

- (a) he is not qualified for reappointment; or
- (b) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be reappointed; or
- (c) he has given the company notice in writing of his unwillingness to be reappointed:

Provided that where notice is given of an intended resolution to appoint some person or persons in place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with, the retiring auditor shall not be automatically reappointed by virtue of this subsection.

(3) Where at an annual general meeting no auditors are appointed or reappointed, the Minister may appoint a person to fill the vacancy.

(4) The company shall, within seven days of the Minister's power under subsection (3) becoming exercisable, give him notice of that fact, and if a company fails to give notice as required by this subsection the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

(5) Special notice shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be reappointed.

(6) On receipt of notice of such an intended resolution as aforesaid, the company shall forthwith send a copy thereof to the retiring auditor (if any).

(7) Where notice is given of such an intended resolution as aforesaid and the retiring auditor makes with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it do so—

- (a) in any notice of the resolution given to the members of the company, state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company),

and if a copy of the representations is not sent as aforesaid because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations 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 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 auditor, notwithstanding that he is not a party to the application.

(8) Subsection (7) shall apply to a resolution to remove the first auditors by virtue of subsection (9) as it applies in relation to a resolution that a retiring auditor shall not be reappointed.

(9) Subject as hereinafter provided, the first auditors of a company may be appointed by the directors at any time before the first annual general meeting, and the auditors so appointed shall hold office

until the conclusion of that meeting:

Provided that—

- (a) the company may at a general meeting of which notice has been served on the auditors in the same manner as on members of the company remove any such auditors and appoint in their place any other persons being persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than seven days before the date of the meeting; and
- (b) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon those powers of the directors shall cease.

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

(11) The remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine, except that the remuneration of an auditor appointed before the first annual general meeting, or of an auditor appointed to fill a casual vacancy, may be fixed by the directors, and that the remuneration of an auditor appointed by the Minister may be fixed by the Minister.

(12) For the purposes of this subsection, any sums paid or to be paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

155. A person shall not be qualified for appointment as auditor of a company which is not a private company or of a private company which is obliged to file accounts unless he is a registered public accountant as defined in section 2 of the Public Accountancy Act.

Qualification for appointment as auditor.

156. None of the following persons shall be qualified for appointment as auditor of a company—

Disqualification for appointment as auditor.

- (a) an officer or servant of the company;
- (b) a person who is a partner of or in the employment of an officer or servant of the company;
- (c) a body corporate.

157.—(1) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet, every profit and loss account and all group accounts laid before the company in general meeting during their tenure of office, and the report shall contain statements as to the matters mentioned in the Seventh and Eighth Schedules.

Auditor's report and right of access to books and to attend and be heard at general meetings.

(2) The auditors' report shall be read before the company in general meeting and shall be open to inspection by any member.

Seventh and Eighth Schedules.

(3) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the officers of the company such information and explanation as he thinks necessary for the performance of the duties of the auditors.

(4) The auditors of a company shall be entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which any member of the company is entitled to receive and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

(5) If any person makes default in complying with any of the requirements of this section, he shall be liable to a fine not exceeding one hundred thousand dollars.

158.—(1) Subject to this section, a company may, in general meeting, declare dividends in respect of any year or other period.

(2) Where, pursuant to the articles of a company, the recommendation of the directors of a company with respect to the declaration of a dividend is rejected or varied by the company in general meeting, a statement to that effect shall be included in the relevant directors' annual report.

(3) No dividend shall be payable to the shareholders of a company except out of profits.

(4) A company shall not declare or pay a dividend if there are reasonable grounds for believing that—

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

159.—(1) A company, which meets the criteria specified in paragraph 7 of Part II of the Seventh Schedule in a given financial year and in respect of which a resolution is passed in accordance with subsection (2) and is not—

- (a) a public company;
- (b) a private company whose articles provide otherwise;
- (c) a bank as defined under the Banking Services Act;
- (d) a merchant bank as defined under the Banking Services Act;
- (e) an insurance company registered under the Insurance Act;
- (f) a company licensed under the Securities Act;
- (g) a building society as defined under the Banking Services Act;
- (h) a society registered under the Co-operative Societies Act and which carries on credit union business;
- (i) an insurance company registered under the Insurance Act;
- (j) a subsidiary of a company, falling within any of the categories in paragraphs (a) to (i)

shall be exempt from providing audited financial statements and an auditor's report as required under this Act with respect to that financial year.

Disqualification
for appointment
as auditor.

Exemption
from the
provisions of
audited reports.
Seventh
Schedule.

(2) A resolution referred to in subsection (1) shall be a resolution passed unanimously at a general meeting of the company in relation to the financial year referred to in that subsection.

Inspection

160.—(1) The Minister may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as he may direct—

Investigation of a company's affairs on application of members.

- (a) in the case of a company having a share capital, on the application either of not less than two hundred members or of members holding not less than one-tenth of the shares issued;
- (b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members.

(2) The application shall be supported by such evidence as the Minister may require for the purpose of showing that the applicants have good reason for requiring the investigation, and the Minister may, before appointing an inspector, require the applicants to give security, to an amount not exceeding two hundred thousand dollars, for payment of the costs of the investigation.

161. Without prejudice to his powers under section 164 the Minister—

- (a) shall appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as he may direct, if—
 - (i) the company by special resolution; or
 - (ii) the Court by order,

Investigation of a company's affairs in other cases.

declares that its affairs ought to be investigated by an inspector appointed by the Minister; and

- (b) may do so if it appears to the Minister that there are circumstances suggesting—
 - (i) that its business is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members or that it was formed for any fraudulent or unlawful purpose; or
 - (ii) that persons concerned with its formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members; or
 - (iii) that its members have not been given all the information with respect to its affairs which they might reasonably expect.

162. If an inspector appointed under either section 160 or section 161 to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of any other body corporate which is or has at any relevant time been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary, he shall have power so to do, and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the firstmentioned

Power of inspectors to carry investigation into affairs of related companies.

company.

163.—(1) It shall be the duty of all officers and agents of the company and of all officers and agents of any other body corporate whose affairs are investigated by virtue of section 162 to produce to the inspectors all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power and otherwise to give to the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(2) An inspector may examine on oath the officers and agents of the company or other body corporate in relation to its business, and may administer an oath accordingly.

(3) If any officer or agent of the company or other body corporate refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company or other body corporate, as the case may be, the inspectors may certify the refusal under their hand to the Court, and the Court may thereupon inquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the Court.

(4) If an inspector thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath should be so examined, he may apply to the Court and the Court may if it sees fit order that person to attend and be examined on oath before it on any matter relevant to the investigation, and on any such examination—

- (a) the inspector may take part therein either personally or by an attorney-at-law;
- (b) the Court may put such questions to the person examined as the Court thinks fit;
- (c) the person examined shall answer all such questions as the Court may put or allow to be put to him, but may at his own cost employ an attorney-at-law who shall be at liberty to put to him such questions as the attorney-at-law may deem just for the purpose of enabling him to explain or qualify any answers given by him,

and notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him:

Provided that, notwithstanding anything in paragraph (c) of this subsection, the Court may allow the person examined such costs as in its discretion it may think fit, and any costs so allowed shall be paid as part of the expenses of the investigation.

(5) In this section, any reference to officers or to agents shall include past, as well as present, officers or agents, as the case may be, and for the purposes of this section the expression “agents”, in relation to a company or other body corporate shall include the bankers and attorneys of the company or other body corporate and any persons employed by the company or other body corporate as auditors, whether or not those persons are officers of the company or other body corporate.

164.—(1) The inspectors may, and, if so directed by the Minister, shall, make interim reports to the

Inspectors’
report.

Minister, and on the conclusion of the investigation shall make a final report to the Minister.

(2) Any such report shall be written or printed, as the Minister may direct.

(3) The Minister shall—

- (a) forward a copy of any report made by the inspectors to the registered office of the company;
- (b) if the Minister thinks fit, furnish a copy thereof on request and on payment of the prescribed fee to any other person who is a member of the company or of any other body corporate dealt with in the report by virtue of section 162 or whose interests as a creditor of the company or of any such other body corporate as aforesaid appear to the Minister to be affected;
- (c) where the inspectors are appointed under section 160, furnish, at the request of the applicants for the investigation, a copy to them; and
- (d) where the inspectors are appointed under section 161 in pursuance of an order of the Court, furnish a copy to the Court,

and may also cause the report to be printed and published.

165.—(1) If from any report made under section 164 it appears to the Minister that any person has, in relation to the company or to any other body corporate whose affairs have been investigated by virtue of section 162 been guilty of any offence for which he is criminally liable, the Minister shall, if it appears to him that the case is one in which the prosecution ought to be undertaken by the Director of Public Prosecutions refer the matter to him.

Proceedings on
inspector's
report.

(2) If, where any matter is referred to the Director of Public Prosecutions under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company or other body corporate as aforesaid, as the case may be (other than the defendant in the proceedings), to give him all assistance in connection with the prosecution which they are reasonably able to give.

(3) Subsection (5) of section 163 shall apply for the purposes of this subsection as it applies for the purposes of that section.

(4) If, in the case of any body corporate liable to be wound up under this Act, it appears to the Minister from any such report as aforesaid that it is expedient so to do by reason of any such circumstances as are referred to in sub-paragraph (i) or (ii) of paragraph

(b) of section 161, the Minister may, unless the body corporate is already being wound up by the Court, present [an application](#) for it to be so wound up if the Court thinks it just and equitable that it should be wound up or [an application](#) for an order under section 213 or both.

(5) If from any such report as aforesaid it appears to the Minister that proceedings ought in the public interest to be brought by any body corporate dealt with by the report for the recovery of damages in

respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that body corporate or the management of its affairs, or for the recovery of any property of the body corporate which has been misapplied or wrongfully retained, the Minister may himself bring proceedings for that purpose in the name of the body corporate.

(6) The Minister shall indemnify the body corporate against any costs or expenses incurred by it or in connection with any proceedings brought by virtue of subsection (5).

Expenses of investigation of company's affairs.

166.—(1) The expenses of and incidental to an investigation by an inspector appointed by the Minister under the foregoing provisions of this Act shall be defrayed in the first instance by the Minister, but the following persons shall, to the extent mentioned, be liable to repay the Minister—

- (a) any person who is convicted on a prosecution instituted as a result of the investigation by the Director of Public Prosecutions, or who is ordered to pay damages or restore any property in proceedings brought by virtue of subsection (5) of section 165, may in the same proceedings be ordered to pay the expenses to such extent as may be specified in the order;
- (b) any body corporate in whose name proceedings are brought as aforesaid shall be liable to the amount or value of any sums or property recovered by it as a result of those proceedings; and
- (c) unless as a result of the investigation a prosecution is instituted by the Director of Public Prosecutions—
 - (i) any body corporate dealt with by the report, where the inspector was appointed otherwise than of the Minister's own motion, shall be liable, except so far as the Minister otherwise directs; and
 - (ii) the applicants for the investigation, where the inspector was appointed under section 162, shall be liable to such extent (if any) as the Minister may direct, and any amount for which a body corporate is liable by virtue of paragraph (b) of this subsection shall be a first charge on the sums or property mentioned in that paragraph.

(2) The report of an inspector appointed otherwise than of the Minister's own motion may, if the inspector thinks fit, and shall, if the Minister so directs, include a recommendation as to the directions (if any) which the inspector thinks appropriate, in the light of his investigation, to be given under paragraph (c) of subsection (1).

(3) For the purposes of this section, any costs or expenses incurred by the Minister in or in connection with proceedings brought by virtue of subsection (5) of section 165 (including expenses incurred by virtue of subsection (6) thereof) shall be treated as expenses of the investigation giving rise to the proceedings.

(4) Any liability to repay the Minister imposed by paragraphs (a) and (b) of subsection (1) shall, subject to satisfaction of the Minister's right to repayment, be a liability also to indemnify all persons against liability under paragraph (c) thereof, and any such liability imposed by paragraph (a) shall,

subject as aforesaid, be a liability also to indemnify all persons against liability under paragraph (b); and any person liable under paragraph (a) or (b) or either sub-paragraph of paragraph (c) shall be entitled to contribution from any other person liable under the same paragraph or subparagraph, as the case may be, according to the amount of their respective liabilities thereunder.

(5) The expenses incurred by the Minister under this section shall, so far as not recovered thereunder, be paid out of moneys provided by Parliament.

167. A copy of any report of any inspectors appointed under the foregoing provisions of this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Inspectors' report to be evidence.

168.—(1) Where it appears to the Minister that there is good reason so to do, he may appoint one or more competent inspectors to investigate and report on the membership of any company and otherwise with respect to the company for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence the policy of the company.

Appointment and powers of inspectors to investigate ownership of company.

(2) The appointment of an inspector under this section may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a company is made to the Minister by members of the company, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under section 160, the Minister shall appoint an inspector to conduct the investigation unless he is satisfied that the application is vexatious, and the inspector's appointment shall not exclude from the scope of his investigation any matter which the application seeks to have included therein, except in so far as the Minister is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of an inspector's appointment his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(5) For the purposes of any investigation under this section, sections 162 to 164 shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, so, however, that—

- (a) those sections shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be; and

- (b) the Minister shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if he is of opinion that there is good reason for not divulging the contents of the report or of parts thereof, but shall cause to be kept by the Registrar a copy of any such report or, as the case may be, the parts of any such report, as respects which he is not of that opinion.

(6) The expenses of any investigation under this section shall be paid out of moneys provided by Parliament.

169.—(1) Where it appears to the Minister that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, he may require any person whom he has reasonable cause to believe—

- (a) to be or to have been interested in those shares or debentures; or
- (b) to act or have acted in relation to those shares or debentures as the attorney or agent of someone interested therein,

to give to the Minister any information which such person has or can reasonably be expected to obtain as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture if he has any right to acquire

or dispose of the share or debenture or any interest therein or to vote in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.

(3) Any person who fails to give any information required of him under this section, or who in giving any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be liable on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding six months or to a fine not exceeding fifty thousand dollars or to both such imprisonment and fine.

170.—(1) Where in connection with an investigation under either section 168 or 169 it appears to the Minister that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Act, the Minister may by order direct that the shares shall until further order be subject to the restrictions imposed by this section.

(2) So long as any shares are directed to be subject to the restrictions imposed by this section—

Power to require information as to persons interested in shares of debentures.

Power to impose restrictions on shares or debentures.

- (a) any transfer of those shares, or in the case of unissued shares any transfer of the right to be issued therewith and any issue thereof, shall be void;
- (b) no voting rights shall be exercisable in respect of those shares;
- (c) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof;
- (d) except in a liquidation no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(3) Where the Minister makes an order directing that shares shall be subject to the said restrictions, or refuses to make an order directing that shares shall cease to be subject thereto, any person aggrieved thereby may apply to the Court, and the Court may, if it sees fit, direct that the shares shall cease to be subject to those restrictions.

(4) Any order (whether of the Minister or of the Court) directing that shares shall cease to be subject to restrictions which is expressed to be made with a view to permitting a transfer of those shares may continue the restrictions mentioned in paragraphs (c) and (d) of subsection (2), either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

(5) Any person who—

- (a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to those restrictions or of any right to be issued with any such shares; or
- (b) votes in respect of any such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or
- (c) being the holder of any such shares, fails to notify of their being subject to those restrictions any person whom he does not know to be aware of that fact but knows to be entitled, apart from the restrictions, to vote in respect of those shares whether as holder or proxy,

shall be liable on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding six months or to a fine not exceeding fifty thousand dollars or to both such imprisonment and fine.

(6) Where shares in any company are issued in contravention of the restrictions, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

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(7) A prosecution shall not be instituted under this section by any person other than the Director of Public Prosecutions except by or with the consent of the Minister.

(8) This section shall apply in relation to debentures as it applies in relation to shares.

171. Nothing in the foregoing provisions of this Part shall require disclosure to the Minister or to any inspector appointed by him—

Saving for attorneys and bankers.

- (a) by an attorney of any privileged communication made to him in that capacity, except as respects the name and address of his client; or
- (b) by a company's bankers as such of any information as to the affairs of any of their customers other than the company.

Directors and other Officers

172.—(1) A private company shall have at least one director, but a public company shall have at least three directors, at least two of whom are not employees of the company or any of its affiliates.

Number of directors and secretary.

(1A) No company incorporated under this Act shall appoint a nominee director.

(2) Every company shall have a secretary.

(3) A sole director of a company shall not also be secretary thereof and no company shall—

- (a) have as secretary to the company, a corporation the sole director of which is a sole director of the company; or
- (b) have as sole director of the company, a corporation the sole director of which is secretary to the company.

(4) It is the duty of the directors of a public company to take all reasonable steps to ensure that the secretary or each joint secretary of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company.

(5) Anything required or authorized to be done by or to the secretary of a company may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary, or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorized generally or specially in that behalf by the directors.

(6) Notice of the appointment of a secretary to a company shall be given to the Registrar in the prescribed form within fourteen days after the date of that appointment.

(7) Where a company fails, subject to subsection (8), to comply with subsection (1), (1A) or subsection (2), the company shall be liable to a default fine not exceeding five hundred thousand dollars.

(8) Subsection (7) shall not apply in respect of a vacancy of the office of director or secretary for a period of less than three months.

173. A provision requiring or authorizing a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place

Avoidance of acts done by persons in dual capacity as director and secretary.

of, the secretary.

174.—(1) Every director and officer of a company in exercising his powers and discharging his duties shall— Duty of care.

- (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, including, but not limited to the general knowledge, skill and experience of the director or officer.

(2) A director or officer of a company shall not be in breach of his duty under this section if the director or officer exercised due care, diligence and skill in the performance of that duty or believed in the existence of facts that, if true, would render the director's or officer's conduct reasonably prudent.

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

(4) In determining what are the best interests of the company, a director or officer may have regard to the interests of the company's shareholders and employees and the community in which the company operates.

(5) The duties imposed by subsection (1) on the directors or officers of a company is owed to the company alone.

(6) Where pursuant to a contract of service with a company, a director or officer is required to perform management functions, the terms of that contract may require the director or officer in the exercise of those functions, to observe a higher standard than that specified in subsection (1).

174A. ---(1) Subject to subsection (9), it shall be the duty of the director of a company to avoid circumstances which, whether directly or indirectly, constitute a conflict of interest or may result in a conflict of interest with the interests of the company.

(2) A director who is directly or indirectly interested in a matter which may constitute a conflict of interest or may result in a conflict of interest with the interests of the company---

- (a) shall disclose the nature of his interest at a meeting of the directors;
- (b) shall not take part in any deliberations at the meeting of the directors in respect of that matter.

(3) The duty under subsection (1) applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity).

(4) The duty referred to in subsection (1) is not infringed ---

- (a) if the circumstances cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- (b) if the matter giving rise to the circumstances has been approved by the directors.

(5) The approval referred to in subsection (4)(b) may be given by the directors, where---

- (a) the company is a private company and nothing in the company's articles invalidates such approval, by the matter being proposed to and approved by the directors in accordance with the company's articles; or
- (b) the company is a public company and its articles include a provision enabling the directors to approve the matter, by the matter being proposed to and approved by them in accordance with the company's articles.

(6) The approval of the directors is effective only if---

- (a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director; and
- (b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.

(7) A director of a company shall not accept a benefit from a third party conferred by reason of---

- (a) his being a director; or
- (b) his doing or not doing an act as a director, unless the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

(8) Any reference in this section to a "conflict of interest" includes, a conflict of interest and duty and a conflict of duties.

(9) In this section, "third party" means a person other than the company, its holding company or subsidiary company or any person acting on behalf of the company, its holding company or subsidiary company.

(10) This section does not apply where the company has only one director and only one shareholder, who is the same individual.

175.—(1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus delivered to the Registrar by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the delivery of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorized in writing—

- (a) signed and delivered to the Registrar for registration a consent in writing to act as such director; and
- (b) either—
 - (i) signed the articles for a number of shares not less than his qualification, if any; or

- (ii) taken from the company and paid or agreed to pay for his qualification shares, if any; or
- (iii) signed and delivered to the Registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any; or
- (iv) made and delivered to the Registrar for registration a statutory declaration to the effect that a number of shares, not less than his qualification, if any, are registered in his name.

(2) Where a person has signed and delivered as aforesaid an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the articles for that number of shares.

(3) 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, and if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding one hundred thousand dollars.

(4) This section shall not apply to—

- (a) a company not having a share capital; or
- (b) a private company; or
- (c) a company which was a private company before becoming a public company; or
- (d) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

176. The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

Validity of acts of directors.

177.—(1) Without prejudice to the restrictions imposed by section 175, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

Share qualifications of directors.

(2) Repealed by 2017 Amendments.

(3) The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of that period or shorter time he ceases at any time to hold his qualification.

(4) A person vacating office under this section shall be incapable of being reappointed director of the company until he has obtained his qualification.

(5) If after the expiration of the period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding two thousand dollars for every day between the expiration of the period or shorter time or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

178.—(1) At a general meeting of a company other than a private company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

Appointment of directors to be voted on individually.

(2) A resolution moved in contravention of this section shall be void, whether or not its being so moved was objected to at the time:

Provided that—

- (a) this subsection shall not be taken as excluding the operation of section 176; and
- (b) where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment shall apply.

(3) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

(4) Nothing in this section shall apply to a resolution altering the company's articles.

179.—(1) A company may by ordinary resolution remove a director before the expiration of his period of office notwithstanding anything in its articles or in any agreement between it and him:

Provided that this subsection shall not, in the case of a private company, authorize the removal of a director holding office for life on the 5th of February, 1963, whether or not subject to retirement under an age limit by virtue of the articles or otherwise.

(2) Special notice shall be required of any resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed, and on receipt of 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.

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

- (a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company),

Removal of directors.

and if a copy of the representations is not sent as aforesaid because received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations 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 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.

(4) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(5) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.

(6) Nothing in this section shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

180.—(1) Where, pursuant to subsection (2), a complaint is made to the Registrar by—

- (a) shareholders of a company;
- (b) members of the board of directors of a company or creditors of a company, as the case may be; or
- (c) the trustee of the company, or the Trustee,

Court
disqualified
directors.

that person is unfit to be concerned in the management of a company, the Registrar shall act in accordance with subsection (3).

(2) A complaint referred to in subsection (1) shall be in writing and shall state the grounds on which it is made.

(3) Upon receipt of such a complaint the Registrar shall—

- (a) investigate the matter and afford to the complainants an opportunity to be heard; and
- (b) if satisfied that there are sufficient grounds for a hearing of the matter by the Court, issue a certificate to that effect to the shareholders, trustee, Trustee, members or creditors, as the case may be, who shall, subject to subsection (7), have the right to make an application to the Court on the matter.

(4) Any shareholder, member or creditor, as the case may be, who is aggrieved by a refusal of the Registrar to issue a certificate referred to in subsection (3) (b), may appeal against that decision to the Master in Chambers.

(5) Where the Registrar is satisfied that a person is unfit to be concerned in the management of a company, the Registrar may make an application to the Court on the matter.

(6) Where, on an application made pursuant to subsection (3) (b) or (5), it is made to appear to the Court that a person is unfit to be concerned in the management of a company, the Court may order that, without the prior leave of the Court, that person may not be a director of the company, or in any way, directly or indirectly, be concerned with the management of the company for such period as may be specified in the order—

- (a) beginning with the date of the order or, if the person is serving, or is to serve, a term of imprisonment and the Court so directs, beginning with the date on which he completes that term of imprisonment or is otherwise released from prison; and
- (b) not exceeding five years.

(7) In determining whether or not to make an order under subsection (6) the Court shall have regard to the following—

- (a) any misfeasance or breach of any fiduciary or other duty by the director in relation to the company;
- (b) any misapplications or retention by the director of, or any conduct by the director giving rise to an obligation to account for, any money or other property of the company;
- (c) the extent of the director's responsibility for any failure by the company to comply with the provisions of this Act in relation to the keeping and maintenance of accounting records;
- (d) whether the director has knowingly been party to carrying on the business of the company in a manner for which he may be liable (whether he has been convicted or not) under section 322;
- (e) such other circumstances as may be prescribed.

(8) Before making an application under this section in relation to any person, the Registrar or any other person intending to apply shall give to the person concerned not less than ten days' notice of the intention to make the application.

(9) On the hearing of an application made under this section or, as the case may be, an application for leave as mentioned in subsection (6), any person concerned with the application may appear and call attention to any matters that are relevant, and may give evidence, call witnesses and be represented by an attorney-at-law.

181.—(1) If any person being an undischarged bankrupt acts as director of, or directly or indirectly takes part in, or is concerned in the management of, any company except with the leave of the Court, he shall be liable on conviction on indictment to imprisonment with or without hard labour for a term not exceeding two years, or on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding two years or to a fine not exceeding two

hundred thousand dollars, or to both such imprisonment and fine:

Provided that a person shall not be guilty of an offence under this section by reason that he, being an undischarged bankrupt, has acted as director of, or taken part or been concerned in the management of a company, if he was on the appointed day acting as director of, or taking part or being concerned in the management of, that company and has continuously so acted, taken part, or been concerned since that date and the bankruptcy was prior to that date.

(2) Leave of the Court for the purposes of this section shall not be given unless notice of intention to apply therefor has been served on the Trustee, and it shall be the duty of the Trustee, if he is of opinion that it is contrary to the public interest that any such application should be granted, to attend on the hearing of and oppose the granting of the application.

(3) In this section the expression “company” includes an unregistered company and a company incorporated outside Jamaica which has an established place of business within Jamaica.

182.—(1) The Court may make a disqualification order against a person where it appears to the Court that he has been persistently in default in relation to provisions of this Act requiring any return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the Registrar.

Disqualification
for persistent
breaches of Act.

(2) On an application to the Court for an order to be made under this section, the fact that a person has been persistently in default in relation to such provisions as are mentioned in subsection (1) may be conclusively proved by showing that in the five years ending with the date of the application he has been adjudged guilty (whether or not on the same occasion) of three or more defaults in relation to those provisions.

(3) A person is to be treated under subsection (2) as being adjudged guilty of a default in relation to any provision as aforesaid if—

- (a) he is convicted (whether on indictment or summarily) of an offence consisting in a contravention of or failure on his part to comply with that provision; or
- (b) a default order is made against him under any provision of this Act requiring the submission of returns, notices or other documents to the Registrar, in respect of any such contravention of or failure on his part to comply with that provision.

(4) In this section “Court” means any court having jurisdiction to wind up any of the companies in relation to which the offence or other default has been or is alleged to have been committed.

(5) A disqualification order may be made under this section for a period not exceeding five years.

183.—(1) Every company shall keep at its registered office a register of its directors or managers and secretary containing with respect to each of them the following particulars, that is to say—

Register of
Directors.

- (a) in the case of an individual-
 - i. his Christian name;
 - ii. his surname;

- iii. his usual address;
 - iv. his nationality, and, if that nationality is not the nationality of origin, his nationality of origin,
 - v. his business occupation, if any, or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and
- (b) in the case of a corporation, its corporate name and registered or principal office.

(2) The company shall, within the periods respectively mentioned in this subsection, send to the Registrar a return in the prescribed form containing the particulars specified in the register and a notification in the prescribed form of any change among its directors or in any of the particulars contained in the register specifying the date of the change.

(3) A company shall, within fourteen days of any change of in the appointment of a director, give notice to the Registrar of the change in the prescribed form.

(3A) the inclusion in the annual return of a company of a statement of the names of a company's directors shall not be taken to satisfy the obligation imposed by subsection (3).

(4) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of fifty dollars, or such less sum as the company may specify, for each inspection.

(5) If any inspection required under this section is refused or if default is made in complying with subsection (1) or subsection (2), the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

(6) In the case of any such refusal, the Court may by order compel an immediate inspection of the register.

(7) For the purposes of this section, a shadow director shall be deemed to be a director and officer of the company.

184.—(1) Where circumstances prejudicial to the company exist,

- (a) to a shareholder, director, officer or employee of the company or affiliated company, or to an associate of any such person for any purpose; or
- (b) to any person for the purpose of, or in connection with, a purchase of a share issued or to be issued by the company or a company with which it is affiliated.

(2) Circumstances prejudicial to the company exist in respect of financial assistance mentioned in subsection (1) where there are reasonable grounds for believing that—

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

- (b) the realizable value of the company's assets, excluding the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee, would, after giving the financial assistance, be less than the aggregate of the company's liabilities and stated capital of all classes.

(3) For the avoidance of doubt, a contract made by a company or by a person giving financial assistance in contravention of this section shall not, by reason only of that contravention, be rendered void, or unenforceable by the company or person giving financial assistance.

(4) An officer of a company who acts in contravention of this section shall, on summary conviction before a Resident Magistrate be liable to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment and the Resident Magistrate may order that officer to restore to the company, an amount equal to the value of the financial assistance given in contravention of this section.

185. Subject to the provisions of this Act and the company's articles, a company may give financial assistance to any person by means of a loan, guarantee or otherwise— Permitted loans.

- (a) in the ordinary course of business, if the lending of money is part of the ordinary business of the company;
- (b) on account of expenditure incurred or to be incurred on behalf of the company;
- (c) to a holding body corporate if the company is a wholly owned subsidiary of the holding body corporate;
- (d) to any of the company's subsidiaries;
- (e) to employees of the company to enable them to purchase shares in an employee share ownership plan approved under the Employee Share Ownership Plan Act.

186.—(1) It shall not be lawful for a company to make to any director of the company any payment by way of compensation for loss of office, or as consideration for or to in connection with his retirement from office, without particulars with respect to the proposed payment (including the amount thereof) being disclosed to members of the company and the proposal being approved by the company. Approval of company requisite for payment in connection with transfer of property to director for loss of office, etc.

(2) If any payment is made to a director of a company in contravention of this section the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

187.—(1) It is hereby declared that it is not lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment (including the amount thereof) have been disclosed to the members of the company and the proposal approved by the company. Approval of company requisite for any payment re transfer of its property to director for loss of office, etc.

(2) Where a payment which is hereby declared to be illegal is made to a director of the company, the amount received shall be deemed to have been received by him in trust for the company, so, however, that in any proceeding instituted by virtue of this subsection for the recovery of any payment, the Court shall have power when justice so requires to order that any sum found to be payable by a director shall be restored in whole or in part to members or former members of the company instead of to the company itself and in that event may order that the necessary inquiries shall be made to ascertain the identity of the members and former members and may give such consequential directions as may be necessary or expedient.

188.—(1) Where, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from—

- (a) an offer made to the general body of shareholders;
- (b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company;
- (c) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the company; or
- (d) any other offer which is conditional on acceptance to a given extent,

Duty of director to disclose payment for loss of office; etc. made in connection with transfer of shares in company.

a payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment (including the amount thereof) shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(2) If—

- (a) any such director fails to take reasonable steps as aforesaid; or
- (b) any person who has been properly required by any such director to include the said particulars in or send them with any such notice as aforesaid fails so to do, he shall be liable to a fine not exceeding fifty thousand dollars.

(3) If—

- (a) the requirements of subsection (1) are not complied with in relation to any such payment as is therein mentioned; or
- (b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of those shares,

any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made, and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and

not retained out of that sum.

(4) Where the shareholders referred to in paragraph (b) of subsection (3) are not all the members of the company and no provision is made by the articles for summoning or regulating such a meeting as is mentioned in that paragraph, the provisions of this Act and of the company's articles relating to general meetings of the company shall, for that purpose, apply to the meeting either without modification or with such modifications as the Minister on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

(5) If at a meeting summoned for the purpose of approving any payment as required by paragraph (b) of subsection (3) a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall be deemed for the purposes of that subsection to have been approved.

189.—(1) Where in proceedings for the recovery of any payment as having, by virtue of subsections (1) and (2) of section 186 or subsections (1) and (3) of section 187, been received by any person in trust, it is shown that—

- (a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement or the offer leading thereto; and
- (b) the company or any person to whom the transfer was made was privy to that arrangement,

the payment shall be deemed, except in so far as the contrary is shown, to be one to which the subsections apply.

(2) If in connection with any such transfer as is mentioned in either section 187 or 188—

- (a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares; or
- (b) any valuable consideration is given to any such director,

the excess or the money value of the consideration, as the case may be, shall, for the purposes of that section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(3) It is hereby declared that references in sections 186, 187 and 188 to payments made to any director of a company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, do not include any *bona fide* payment by way of damages for breach of contract or by way of pension in respect of past services, and for the purposes of this subsection the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in section 186 or 187 shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are therein mentioned or with respect to any other like payments made or to be made to the directors of a company.

190.—(1) In any accounts of a company laid before it in general meeting, or in a statement annexed thereto, there shall, subject to and in accordance with the provisions of this section, be shown so far as the information is in the company's books and papers or the company has the right to obtain it from the persons concerned—

- (a) the aggregate amount of the directors' emoluments;
- (b) the aggregate amount of directors' or past directors' pensions; and
- (c) the aggregate amount of any compensation to directors or past directors in respect of loss of office.

(2) The amount to be shown under paragraph (a) of subsection (1)—

- (a) shall include any emoluments paid to or receivable by any person in respect of his services as director of the company or in respect of his services, while director of the company, as director of any subsidiary thereof or otherwise in connection with the management of the affairs of the company or any subsidiary thereof; and
- (b) shall distinguish between emoluments in respect of services as director whether of the company or its subsidiary, and other emoluments.

(3) The amount to be shown under paragraph (b) of subsection (1)—

- (a) shall not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions thereunder are substantially adequate for the maintenance of the scheme, but save as aforesaid shall include any pension paid or receivable in respect of any such services of a director or past director of the company as are mentioned in subsection (2), whether to or by him or, on his nomination or by virtue of dependence on or other connection with him, to or by any other person; and
- (b) shall distinguish between pensions in respect of services as director, whether of the company or its subsidiary, and other pensions.

(4) The amount to be shown under paragraph (c) of subsection (1)—

- (a) shall include any sums paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while director of the company or on or in connection with his ceasing to be a director of the company, of any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary thereof; and
- (b) shall distinguish between compensation in respect of the office of director, whether of the company or its subsidiary, and compensation in respect of other offices, and for the purposes of this section references to compensation for loss of office shall include

sums paid as consideration for or in connection with a person's retirement from office.

- (5) The amounts to be shown under each paragraph of subsection (1)—
- (a) shall include all relevant sums paid by or receivable from—
 - (i) the company; and
 - (ii) the company's subsidiaries; and
 - (iii) any other person,
except sums to be accounted for to the company or any of its subsidiaries or, by virtue of section 188, to past or present members of the company or any of its subsidiaries or any class of those members; and
 - (d) shall distinguish, in the case of the amount to be shown under paragraph (c) of subsection (1), between the sums respectively paid by or receivable from the company, the company's subsidiaries and persons other than the company and its subsidiaries.

(6) The amounts to be shown under this section for any financial year shall be the sums receivable in respect of that year, whenever paid, or, in the case of sums not receivable in respect of a period, the sums paid during that year, so, however, that where—

- (a) any sums are not shown in the accounts for the relevant financial year on the ground that the person receiving them is liable to account therefor as mentioned in paragraph (a) of subsection (5), but the liability is thereafter wholly or partly released or is not enforced within a period of two years; or
- (b) any sums paid by way of expenses allowance are charged to income tax after the end of the relevant financial year,

those sums shall, to the extent to which the liability is released or not enforced or they are charged as aforesaid, as the case may be, be shown in the first accounts in which it is practicable to show them or in a statement annexed thereto and shall be distinguished from the amounts to be shown therein apart from this provision.

(7) Where it is necessary so to do for the purpose of making any distinction required by this section in any amount to be shown thereunder, the directors may apportion any payments between the matters in respect of which they have been paid or are receivable in such manner as they think appropriate.

(8) If in the case of any accounts the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report thereon, so far as they are reasonably able to do so, a statement giving the required particulars.

(9) In this section—

- (a) "contribution", in relation to a pension scheme, means any payment (including an insurance premium) paid for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions will or may become payable under the scheme, except that it does not include any payment in respect of two or more persons if the amount paid in

respect of each of them is not ascertainable;

(b) “emoluments”, in relation to a director, means the gross sum subject to income tax payable to him as emoluments and includes fees and percentages, any sums paid by way of expenses allowance insofar as those sums are charged to income tax, any contribution paid in respect of him under any pension scheme and the estimated money value of any other benefits received by him otherwise than in cash;

(c) “income tax” means the tax payable by individuals and companies under the law for the time being relating to income tax;

(d) “pension” includes any superannuation allowance, superannuation gratuity or similar payment;

(e) “pension scheme” means a scheme for the provision of pensions in respect of services as director or otherwise is maintained in whole or in part by means of contributions

(f) any reference to a company’s subsidiary—

i. in relation to a person who is or was, while a director of the company, a director also, by virtue of the company’s nomination, direct or indirect, of any other body corporate, shall, subject to subparagraph (ii), include that body corporate, whether or not it is or was in fact the company’s subsidiary; and

ii. shall for the purposes of subsections (2) and (3) be taken as referring to a subsidiary the services were rendered, and for the purposes of subsection (4) be taken as referring to a subsidiary immediately before the loss of office as director of the company;

191.—(1) The accounts which, in pursuance of this Act, are to be laid before every company in general meeting shall, subject to the provisions of this section, contain particulars showing—

Particulars in accounts of loans to officers etc.

(a) the amount of any loans made during the company’s financial year to—

(i) any officer of the company;

(ii) any person who, after the making of the loan, became during that year an officer of the company,

by the company or a subsidiary thereof or by any other person under a guarantee from or on a security provided by the company or a subsidiary thereof (including any such loans which were repaid during that year); and

(b) the amount of any loans made in manner aforesaid to any such officer or person as aforesaid at any time before the company’s financial year and outstanding at the expiration thereof.

(2) Subsection (1) shall not require the inclusion in accounts of particulars of—

- (a) a loan made in the ordinary course of its business by the company or a subsidiary thereof, where the ordinary business of the company or, as the case may be, the subsidiary, includes the lending of money; or
- (b) a loan made by the company or a subsidiary thereof to an employee of the company or subsidiary, as the case may be, if the loan does not exceed five hundred thousand dollars and is certified by the directors of the company or subsidiary, as the case may be, to have been made in accordance with any practice adopted or about to be adopted by the company or subsidiary with respect to loans to its employees, not being, in either case, a loan made by the company under a guarantee from or on a security provided by a subsidiary thereof or a loan made by a subsidiary of the company under a guarantee from or on a security provided by the company or any other subsidiary thereof.

(3) If in the case of any such accounts as aforesaid the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(4) References in this section to a subsidiary shall be taken as referring to a subsidiary at the end of the company's financial year (whether or not a subsidiary at the date of the loan).

192.—(1) It shall be the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purposes of sections 189 and 190 except so far as it relates to loans made by the company or by any other person under a guarantee from or on a security provided by the company, to an officer thereof.

(2) Any such notice given for the purposes of section 189 shall be in writing and, if it is not given at a meeting of the directors, the director giving it shall take reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given.

(3) Subsection (1) shall apply—

- (a) for the purposes of section 192, in relation to officers other than directors; and
- (b) for the purposes of sections 191 and 192, in relation to persons who are or have at any time during the preceding five years been officers,

as it applies in relation to directors.

(4) Any person who makes default in complying with the foregoing provisions of this section shall be liable to a fine not exceeding fifty thousand dollars.

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

- (a) a party to a contract or proposed contract with the company; or
- (b) a director or an officer of any body or has an interest in any body that is a party to a contract or proposed contract with the company; or

General duty to make disclosure for purposes for sections 189 and 190.

Disclosure by directors of interest in contracts.

- (c) an associate of a person who is a party to a contract, proposed contract or has an interest in any body that is a party to a contract or proposed contract 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 his interest.

(2) The contract referred to in subsection (1) shall be subject to the approval of the board of directors of the company and, subject to the provisions of the First Schedule, the director concerned shall not be present during any proceedings of the board in connection with that approval.

First schedule.

(3) A record of such contract shall be kept at the registered office of the company.

(4) The disclosure required by subsection (1) shall be made—

(a) in the case of a director of a company—

- (i) at the meeting at which a proposed contract is first considered;
- (ii) if the director was not then interested in a proposed contract, at the first meeting after he becomes so interested; or
- (iii) if a person who is interested in a contract later becomes a director of the company, at the first meeting after he becomes a director;

(b) in the case of an officer of the company who is not a director—

- (i) forthwith after he becomes aware that the contract or proposed contract is to be considered, or has been considered, at a meeting of directors of the company;
- (ii) if the officer becomes interested after a contract is made, forthwith after he becomes so interested; or
- (iii) if a person who is interested in a contract later becomes an officer of the company, forthwith after he becomes an officer;
- (iv) if the director becomes interested after a contract is made, at the first meeting after he becomes so interested.

(5) If a contract or proposed contract is one that, in the ordinary course of the company's business, would not require approval by the directors or shareholders of the company, a director or officer of 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 his interest forthwith after the director or officer becomes aware of the contract or proposed contract.

(6) For the purposes of this section, a general notice to the directors of a company by a director or an officer of the company declaring that he is a director or officer of, or has an interest in, another body, and is to be regarded as interested in any type of contract with that body, is a sufficient declaration of interest in relation to any such contract.

(7) A contract between a company and one or more of its directors or officers, or between a company and another body of which a director or officer of the company is a director or officer, or in which he has an interest, is neither void nor voidable—

- (a) by reason only of that relationship;
- (b) by reason only that a director with an interest in the contract is present at, or is counted to determine the presence of a quorum at a meeting of directors or a committee of directors that authorized the contract,

if the director or officer disclosed his interest in accordance with this section and the contract was approved by the directors and was reasonable and fair to the company at the time it was approved.

(8) Where a director or officer of a company fails to disclose in accordance with this section, his interest in a material contract made by the company, the Court may, upon the application of the company, set aside the contract on such terms as the Court thinks fit.

194.—(1) Every company to which this section applies shall, in all trade catalogues, trade circulars, showcards and business letters on or in which the company's name appears and which are issued or sent by the company to any person whether within or without Jamaica, state in legible characters with respect to every director being a corporation, the corporate name, and with respect to every director being an individual, the following particulars—

Particulars with respect to directors in trade catalogues, circulars, etc.

- (a) his present Christian name, or the initials thereof, and present Surname; and
- (b) any former Christian names, and Surnames:

Provided that, if special circumstances exist which render it in the opinion of the Minister expedient that such an exemption should be granted, the Minister may by order grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by this subsection.

(2) This section shall apply to—

- (a) every company registered under this Act and every existing company; and
- (b) every company incorporated outside Jamaica which has an established place of business within Jamaica.

(3) If a company makes default in complying with this section every officer of the company who is in default shall be liable on summary conviction before a Resident Magistrate for each offence to a fine not exceeding fifty thousand dollars, and for the purposes of this subsection, where a corporation is an officer of the company, any officer of the corporation shall be deemed to be an officer of the company:

Provided that no proceedings shall be instituted under this section by any person other than the Director of Public Prosecutions except by, or with the consent of, the Minister.

(4) For the purposes of this section—

- (a) “director” includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act and the expression “officer” shall be construed accordingly;
- (b) “initials” includes a recognized abbreviation of a Christian name; and
- (c) “showcards” means cards containing or exhibiting articles dealt with, or samples or representations thereof.

195.—(1) Subject to this section, every company shall keep at an appropriate place—

- (a) in the case of each director whose contract of service with the company is in writing, a copy of that contract;
- (b) in the case of each director whose contract of service with the company is not in writing, a written memorandum setting out its terms; and
- (c) in the case of each director who is employed under a contract of service with a subsidiary of the company, a copy of that contract or, if it is not in writing, a written memorandum setting out its terms.

Director’s
service
contracts to be
open to
inspection.

(2) All copies and memoranda kept by a company in pursuance of subsection (1) shall be kept at the same place and for the purposes of subsection (1) the following places are appropriate—

- (a) the company’s registered office;
- (b) the place where its register of members is kept (if other than its registered office);
- (c) its principal place of business in Jamaica.

(3) Every company shall send notice in the prescribed form to the Registrar of the place where copies and memoranda are kept in compliance with subsection (1) and of any change in that place, save in a case in which they have at all times been kept at the company’s registered office.

(4) Subsection (1) shall not apply to a director’s contract of service with the company or with any of its subsidiaries if that contract required him to work wholly or mainly outside Jamaica; but the company shall keep, at the same place where copies and memoranda are kept in accordance with subsection (1), a memorandum—

- (a) in the case of a contract of service with the company, giving the director’s name and setting out the provisions of the contract relating to its duration;
- (b) in the case of a contract of service with a subsidiary, giving the director’s name and the name and place of incorporation of the subsidiary, and setting out the provisions of the contract relating to its duration.

(5) For the purposes of this section, a shadow director shall be treated as a director.

(6) Every copy and memorandum required to be kept by subsection (1) or (4) shall during business hours, be open to inspection by members of the company without charge.

(7) If—

- (a) default is made in complying with subsection (1) or (5);
- (b) an inspection required under subsection (6) is refused; or
- (c) default is made for fourteen days in complying with subsection (3),

the company and every officer thereof who is in default is liable on summary conviction before a Resident Magistrate to a fine not exceeding two hundred thousand dollars.

(8) In the case of a refusal of an inspection of a copy or memorandum required under subsection (6), the Court may by order compel an immediate inspection thereof.

(9) Subsections (1) and (4) shall apply to a variation of a director's contract of service as they apply to the contract.

(10) This section does not require that there be kept a copy of, or memorandum setting out the terms of, a contract (or its variation) at a time when the unexpired portion of the term for which the contract is to be in force is less than twelve months, or at a time at which the contract can, within the next ensuing twelve months, be terminated by the company without payment of compensation.

196.—(1) A person who becomes a director of a company and at the time when he does so he is interested in shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company, (hereinafter in this section referred to as a specified body corporate) is under obligation to notify the company in writing of—

- (a) the subsistence of his interests at that time; and
- (b) the number of shares of each class in, and the amount of debentures of each class of, the company or other such body corporate in which each interest of his subsists at that time.

(2) A director of a company is under obligation to notify the company in writing of the occurrence, while he is a director, of any of the following events—

- (a) any event in consequence of whose occurrence he becomes, or ceases to be, interested in shares in, or debentures of the company or any specified body corporate;
- (b) the entering into by him of a contract to sell any such shares or debentures;
- (c) the assignment by him of a right granted to him by the company to subscribe for shares in, or debentures of, the company; or

(d) the grant to him by a specified body corporate, of a right to subscribe for shares in, or debentures of, that specified body corporate, the exercise of such a right granted to him and the assignment by him of such a right, and notification to the company shall state the number or amount and class of, shares or debentures involved.

(3) Subsections (1) and (2) shall have effect subject to such exceptions as may be prescribed in regulations made under this Act and the provisions of the Fourteenth Schedule shall have effect in relation to those subsections.

(4) Subsection (2) does not require a person to notify a company of the occurrence of any event which comes to his knowledge after he has ceased to be a director.

(5) This section shall apply to a shadow director as to a director but nothing in this section shall be construed as imposing an obligation with respect to shares in a body corporate which is the wholly owned subsidiary of another body corporate.

(6) A person who—

- (a) fails, within the proper period, to discharge an obligation to which he is subject under subsection (1) or (2); or
- (b) in purported discharge of such an obligation, makes to the company a statement which he knows to be false, or recklessly makes to it a false statement,

is guilty of an offence and liable on conviction thereof to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(7) The provisions of this section shall not apply to a director of a company licensed under the Securities Act and to whom sections 54 and 55 of that Act apply.

197.—(1) Every company shall keep a register for the purposes of section 196.

(2) A company is under obligation to enter in the register, against a director's name, the following information—

- (a) any information received by the company from that director, being information given in fulfilment of an obligation imposed on him by section 196 and the date of the entry;
- (b) information concerning the grant by a company to that director of a right to subscribe for shares in, or debentures of, the company, that is to say—
 - (i) the date on which the right was granted;
 - (ii) the period during which, and a time at which, it is exercisable;

Register of interests notified under section 196.

- (iii) the consideration for the grant (or, if there is not consideration, that fact); and
- (iv) the description of shares or debentures involved and the number or amount of them, and the price to be paid for them (or the consideration, if otherwise than in money).

(3) Whenever such a right as mentioned in subsection (2) (b) is exercised by a director, the company is under obligation to enter in the register against his name that fact (identifying the right), the number or amount of shares or debentures in respect of which it is exercised and, if they were registered in his name, that fact and, if not, the name or names of the person or persons in whose name or names they were registered and, if they were registered in the names of two or more persons, the number or amount of the shares or debentures registered in the name of each of them.

Fourteenth
Schedule.

(4) Part IV of the Fourteenth Schedule shall have effect with respect to the register to be kept under this section, the way in which entries in it are to be made, the right of inspection and generally.

(5) For the purposes of this section, a shadow director shall be treated as a director.

(6) The company may, on giving notice by advertisement in a daily newspaper circulating in Jamaica, close the register for any time not exceeding a total of thirty days in each year.

Sanctions for
non-
.....

198.—(1) The following provisions of this section shall apply with respect to defaults in complying with, and contraventions of, section 197 and Part IV of the Fourteenth Schedule.

(2) If default is made in complying with—

- (a) subsection (1), (2) or (3) of section 197;
- (b) paragraph 18, 19 or 25 of the Fourteenth Schedule,

the company and every officer thereof who is in default is liable to a fine not exceeding two thousand dollars in respect of every day during which the default continues.

(3) If an inspection of the register required under paragraph 22 of the Fourteenth Schedule is refused, or a copy required under paragraph 23 is not sent within the proper period, the company and every officer thereof who is in default is liable to a daily default fine not exceeding two thousand dollars in respect of every day during which the default continues.

(4) If default is made for fourteen days in complying with paragraph 24 of the Fourteenth Schedule (notice to the Registrar of where register is kept), the company and every officer thereof who is in default is liable to a fine not exceeding four thousand dollars in respect of every day during which the default continues.

(5) If default is made in complying with paragraph 23 of the Fourteenth Schedule (register to be produced at annual general meeting), the company and every officer thereof is liable to a default fine not exceeding two thousand dollar.

(6) In the case of a refusal of an inspection of the register required under paragraph 22 of the

Fourteenth Schedule, the Court may, by order compel an immediate inspection of it; and in the case of failure to send, within the proper period, a copy required under paragraph 26, the Court may, by order, direct that the copy be sent to the person requiring it.

Application of section 194 to spouse and child.

199.—(1) For the purpose of section 196—

- (a) an interest of the wife, husband or minor child of a director of a company (not being herself or himself a director thereof) in shares or debentures shall be treated as the director's interest;
- (b) a contract, assignment or right of subscription entered into, exercised or made by, or a grant made to, the wife, husband or minor child of a director of a company (not being herself or himself a director thereof) shall be treated as having been entered into, exercised or made by, or, as the case may be, as having been made to, the director.

(2) A director of a company is under obligation to notify the company in writing of the occurrence while he or she is a director, of either of the following events, namely—

- (a) the grant by the company to his or her spouse or minor child, of a right to subscribe for shares in, or debentures of, the company; and
- (b) the exercise by his or her spouse or minor child of such a right granted by the company to the wife, husband or minor child.

(3) A notice given to the company under subsection (2) shall state—

- (a) in the case of the grant of a right, the like information as is required by section 196 to be stated by the director on the grant to him by another body corporate of a right to subscribe for shares in, or debentures of, that other body corporate; and
- (b) in the case of the exercise of a right, the like information as is required by that section to be stated by the director on the exercise of a right granted to him by another body corporate to subscribe for shares in, or debentures of, that other body corporate.

(4) An obligation imposed by subsection (2) on a director shall be fulfilled by him before the end of five days beginning with the day following that on which the occurrence of the event giving rise to it comes to his knowledge.

(5) A person who—

- (a) fails to fulfil, within the proper period, an obligation to which he is subject under subsection (4) is guilty of an offence and liable on conviction to a fine not exceeding two hundred thousand dollars; or
- (b) in purported fulfilment of such an obligation, makes to a company a statement which he knows to be false, or recklessly makes to a company a false statement, is guilty of an offence and liable on conviction thereof to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(6) For the purposes of section 197, an obligation imposed on a director by this section shall be treated as if it were imposed by section 196.

200. If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of that provision shall, notwithstanding anything to the contrary contained in that provision, be of no effect unless and until it is approved by a special resolution of the company.

Provisions as to assignment of office by directors.

201.—(1) Except in respect of an action by or on behalf of a company or body corporate to obtain a judgment in its favour, a company may indemnify—

Indemnifying directors, etc.

- (a) a director or officer of the company or a person employed by the company as an auditor;
- (b) a former director, officer or auditor of the company; or
- (c) a person who acts or acted at the company's request as a director or officer of a body corporate of which the company is or was a shareholder or creditor,

and his legal representatives, against all costs, charges and expenses (including an amount paid to settle an action or satisfy a judgment) reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being, or having been, a director or officer of that company or body corporate, or any person employed by a company or body corporate as an auditor.

(2) Subsection (1) does not apply unless the director or officer to be so indemnified—

- (a) acted honestly and in good faith with a view to the best interests of the company; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that his conduct was lawful.

(3) The provisions of subsection (2) shall apply to any person employed to the company as an auditor if the act or omission for which he is to be indemnified did not arise due to a breach of duty on his part.

202. A company may with the approval of the Court indemnify person referred to in section 201 in respect of an action—

- (a) by or on behalf of the company or body corporate to obtain a judgment in its favour; and
- (b) to which he is made a party by reason of being or having been a director or an officer of the company or body corporate,

against all costs, charges and expenses reasonably incurred by him in connection with the action, if he fulfils the conditions set out in subsection

For derivative action.

(2) of section 201.

Right to indemnity.

203. Notwithstanding anything in section 201 or 202, a person described in section 201 is entitled to indemnity from the company in respect of all costs, charges and expenses reasonably incurred by him in connection with the defence of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being, or having been, a director or officer of the company or body corporate, if the person seeking indemnity—

- (a) was substantially successful on the merits in his defence of the action or proceeding;
- (b) qualified in accordance with the standards set out in section 201 or 202; and
- (c) is fairly and reasonably entitled to indemnity.

Insurance of directors, etc.

204. A company may purchase and maintain insurance for the benefit of any person referred to in section 201 against any liability incurred by him in his capacity as a director or officer of the company other than liability for fraud.

205.—(1) A company or person referred to in section 201 may apply to the Court for an order approving an indemnity under section 202; and the Court may so order and make any further order it thinks fit.

Court approval of indemnity.

(2) An applicant under subsection (1) shall give the Registrar notice of the application; and the Registrar may appear and be heard in person or by an attorney-at-law.

(3) An application under subsection (1) in the case of a public company, shall give to the Financial Services Commission notice of the application, and the Financial Services Commission may appear and be heard.

(4) Upon an application under subsection (1), the Court may order notice to be given to any interested person; and that person may appear and be heard in person or by an attorney-at-law.

205 A.—Sections 206 to 211 of this relation to Act may be applied in conjunction or together with Part III of the Insolvency Act, but where a notice of intention to make a proposal or a proposal is filed under the Insolvency Act in respect of a company, any compromise or arrangement between a company and its creditors, or with any class of them, shall be effected only in accordance with the Insolvency Act.

Applications in relation to proposals under Insolvency Act.

Arrangements and Reconstructions

206.—(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or with creditors between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the trustee, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs.

Power to compromise with creditors and members.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at

the meeting agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the trustee and contributories of the company.

(3) An order made under subsection (2) shall have no effect until a copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the articles of the company issued after the order has been made.

(4) If a company makes default in complying with subsection

(3) the company and every officer of the company who is in default shall be liable to a fine not exceeding one thousand dollars for each copy in respect of which default is made.

(5) In this section and in section 207—

“arrangement” includes a reorganization of the share capital of the company by the consolidation of shares of different classes or by the division of shares of different classes or by both those methods;

“company” means any company liable to be wound up under this Act.

207.—(1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section 206 there shall—

(a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon, of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and

(b) in every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company’s directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(4) Where a company makes default in complying with any requirements of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars, and for the purpose of this subsection any trustee of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer

of the company:

Provided that a person shall not be liable under this subsection if that person shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

(5) It shall be the duty of any director of the company and of any trustee for debenture holders of the company to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section, and any person who makes default in complying with this subsection shall be liable to a fine not exceeding fifty thousand dollars.

Provisions for
facilitating
reconstruction
and
amalgamation
of companies.

208.—(1) Where an application is made to the Court under section 206 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are and mentioned in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as “a transferor company”) is to be transferred to another company (in this section referred to as “the transferee company”) the Court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters—

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (d) the dissolution, without winding up, of any transferor company;
- (e) the provision to be made for any person, who within such time and in such manner as the Court may direct, dissent from the compromise or arrangement;
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a copy thereof to be delivered to the Registrar for registration within seven days after the making of the order, and if default is made in complying with this subsection, the company and every

officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

(4) In this section the expression “property” includes property, rights and powers of every description, and the expression “liabilities” includes duties.

(5) Notwithstanding the provisions of subsection (5) of section 206, the expression “company” in this section does not include any company other than a company within the meaning of this Act.

209.—(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as “the transferor company”) to another company, whether a company within the meaning of this Act or not (in this section referred to as “the transferee company”), has, within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary)—

Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.

- (a) the transferee company may, at any time within two months after the expiration of the four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares; and
- (b) when such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company:

Provided that where shares in the transferor company of the same class or classes as the shares whose transfer is involved are already held as aforesaid to a value greater than one-tenth of the aggregate of their value and that of the shares (other than those already held as aforesaid) whose transfer is involved, the foregoing provisions of this subsection shall not apply unless—

- (a) the transferee company offers the same terms to all holders of the shares (other than those already held as aforesaid) whose transfer is involved, or, where those shares include shares of different classes, of each class of them; and
- (b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three-fourths in number of the holders of those shares.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include nine-tenths in value of the shares in the firstmentioned company or of any class of those shares, then—

- (a) the transferee company shall within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be,

who have not assented to the scheme or contract; and

- (b) any such holder may within three months from the giving of the notice to him require the transferee company to acquire the shares in question,

and where a shareholder gives notice under paragraph (b) of this subsection with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed or as the Court on the application of either the transferee company or the shareholder thinks fit to order.

(3) Where a notice has been given by the transferee company under subsection (1) and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of—

- (a) transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company; and
- (b) pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire,

and the transferor company shall thereupon register the transferee company as the holder of those shares.

(4) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which those sums or other consideration were respectively received.

(5) In this section the expression “dissenting shareholder” includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

(6) In relation to an offer made by the transferee company to shareholders of the transferor company before the appointed day, this section shall have effect—

- (a) with the substitution, in subsection (1), for the words “the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary),” of the words “the shares affected” and with the omission of the proviso to that subsection;
- (b) with the omission of subsection (2); and
- (c) with the omission, in subsection (3) of the words “together with an instrument of

transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company” and of the proviso to that subsection.

Scheme of arrangement re company and connected person.

210.—(1) Without prejudice to the operation of sections 206 to 209—

- (a) the provisions of subsection (2) of this section shall apply in any case where a compromise or arrangement is proposed in relation to a company which is a member of a group of connected bodies corporate in respect of any or all of which a compromise or arrangement is proposed; and
- (b) for the purposes of this section, a group of connected bodies corporate shall be deemed to exist where the same persons or individuals have the effective control, direction or management of the members of the group or have had such effective control, direction or management at any time within the period of twenty-four months immediately preceding—
 - (i) the date on which the compromise or arrangement is proposed; or
 - (ii) the date of appointment, pursuant to any enactment, of a temporary manager or trustee, as the case may be, in relation to any member of the group.

(2) A compromise or arrangement in relation to a company may provide that—

- (a) the assets and liabilities of the company and any or all of the connected bodies corporate be combined as if the company and the connected person were a single undertaking; and
- (b) the members and creditors of the company and any or all of the connected bodies corporate were members and creditors of that single undertaking.

211. The Court may, in respect of an application for the sanctioning of a compromise or arrangement in respect of a company, order that the assets of that company be combined with the assets of any other body corporate, if the Court is satisfied that—

Power of court to order pooling of assets.

- (a) the assets of the company are so intermingled with the assets of the other body corporate that it is just and equitable that they should be treated as a single undertaking; or
- (b) the same persons or individuals have the effective control, direction or management of the company and the other body corporate or have had such effective control, direction or management at any time during the period of twenty-four months immediately preceding—
 - (i) the date on which the compromise or arrangement is proposed; or
 - (iii) the date of appointment pursuant to any enactment of a temporary manager or trustee, as the case may be, in relation to the company or other body corporate.

212.—(1) Subject to subsection (2), a complainant may, for the purpose of prosecuting, defending or discontinuing an action on behalf of a company, apply to the Court for leave to bring a derivative action in the name and on behalf of the company or any of its subsidiaries, or intervene in an action to which any such company or any of its subsidiaries is a party.

Derivative actions.

(2) No action may be brought, and no intervention in an action may be made under subsection (1) unless the Court is satisfied that—

- (a) the complainant has given reasonable notice to the directors of the company or its subsidiary of his intention to apply to the Court under subsection (1) if the directors of the company or its subsidiary do 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 that the action be brought, prosecuted, defended or discontinued.

(3) In this section and section 213 and 213A, “complainant” means—

- (a) a shareholder or former shareholder of a company or an affiliated company;
- (b) a debenture holder or former debenture holder of a company or an affiliated company;
- (c) a director or officer or former director or officer of a company or an affiliated company.

213.—(1) The Court may, in connection with an action brought or intervened in under section 212, make such interim or final order as it thinks fit, including an order—

- (a) authorizing the complainant, the Registrar 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 be paid, in whole or in part, directly to former and present shareholders or debenture holders of the company or its subsidiary, instead of to the company or its subsidiary; or
- (d) requiring the company or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

(2) An action brought or intervened in under section 212 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 subsidiary has been or may be approved by the shareholders, but evidence of approval by the shareholders may be taken into account by the Court in making an order under that section.

Court powers.

213A.—(1) A complainant may apply to the Court for an order under this section.

(2) If upon an application under subsection (1), the Court is satisfied that in respect of a company or of any of its affiliates—

- (a) any act or omission of the company or any of its affiliates effects a result;
- (b) the business or affairs of the company or any of its affiliates are or have been carried on or conducted in a manner;
- (c) 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 unfairly disregards the interest of, any shareholder or debenture holder, creditor, director or officer of the company, the Court may make an order to rectify the matters complained of.

(3) The Court may, in connection with an application under this section make any interim or final order it thinks fit, including an order—

- (a) restraining the conduct complained of;
- (b) appointing a receiver or receiver-manager;
- (c) to regulate a company's affairs by amending its articles, or creating or amending a unanimous shareholder agreement;
- (d) directing an issue or exchange of shares or debentures;
- (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 (4), or any other person to purchase the shares or debentures of a holder thereof;
- (g) directing a company, subject to subsection (4), or any other person to pay to a shareholder or debenture holder any part of the moneys paid by him for his shares or debentures;
- (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 the time specified by the Court, to produce to the Court or an interested person, financial statements or an accounting in such forms as the Court may determine;
- (j) compensating an aggrieved person;
- (k) directing rectification of the registers or other records of the company;
- (l) liquidating and dissolving the company;
- (m) directing an investigation to be made; or
- (n) requiring the trial of any issue.

(4) A company shall not make a payment to a shareholder under paragraph (f) or (g) of subsection (3) if there are reasonable grounds for believing that—

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

Non-application to companies that are insolvent under Insolvency Act.

PART V—WINDING UP

(i) PRELIMINARY

213B.—Except for sections 214 to 220 and sections 272 and 273, the provisions of this Act with respect to winding-up, including Part IX, shall under not apply in respect of a company or unregistered company within the meaning of section 355 that is an insolvent person within the meaning of the Insolvency Act.

Modes of Winding Up

214.—(1) The winding up of a company may be either—

- (a) by the Court; or
- (b) voluntary; or
- (c) subject to the supervision of the Court.

Modes of winding up.

(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.

Contributories

215.—(1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the following qualifications—

- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
- (c) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (d) in the case of a company limited by shares, no contribution shall be required from any

Liability as contributories of present and past members.

member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;

- (e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of subsection (2), be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
- (f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;
- (g) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Definition of contributory.

216. The term “contributory” means every person liable to contribute to the assets of a company in the event of it being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Nature of liability contributory.

217. The liability of a contributory shall create a debt in the nature of a specialty accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Contributories in case of death of member.

218.—(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment out of the money due.

Contributories in case of bankruptcy of member.

219. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories—

- (a) the [trustee of his estate](#) shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

- (b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

(ii) WINDING UP BY THE COURT

Cases in which Company may be wound up by Court

220. A company may be wound up by the Court if—

- (a) the company has by special resolution resolved that the company be wound up by the Court;
- (b) default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;
- (c) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- ~~(d) the company is unable to pay its debts;~~
- (e) the Court is of opinion that it is just and equitable that the company should be wound up.

Circumstances in which companies may be wound up by Court.

~~**221.** A company shall be deemed to be unable to pay its debts—~~

- ~~(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred thousand dollars then due, has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or~~
 - ~~(b) if execution or other process issued on a judgment, decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or~~
 - ~~(c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.~~
- Repealed by the Insolvency Act 2014

Definition of inability to pay debts.

Application for Winding Up and Effects thereof

222.—(1) An application to the Court for the winding up of a company shall be by application, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors) contributory or contributories, or by all or any of those parties, together or separately:

Provisions as to applications for winding up.

Provided that—

- (a) a contributory shall not be entitled to present a winding up application unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and

- (b) a winding up [application](#) shall not, if the ground of the [application](#) is default in delivering the statutory report to the Registrar or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and
- (c) ~~the Court shall not give a hearing to a winding up petition presented by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the Court; and~~
- (d) in a case falling within subsection (4) of section 165, a winding up [application](#) may be presented by the Minister.

(2) Where a company is being wound up voluntarily or subject to supervision, a winding up [application](#) may be presented by the [Supervisor](#) as well as by any other person authorized in that behalf under the other provisions of this section, but the Court shall not make a winding up order on the [application](#) unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

223.—(1) On hearing a winding up [application](#) the Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(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 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) Where the [application](#) is presented on the ground of default in delivering the statutory report to the Registrar in holding the statutory meeting, the Court may—

- (a) instead of making a winding up order, direct that the statutory report shall be delivered or that a meeting shall be held; and
- (b) order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

Power of Court on hearing application.

Power to stay or restrain proceedings against company.

224. At any time after the presentation of a winding up [application](#), and before a winding up order has been made, the company, or any creditor or contributory, may, where any action or proceeding is pending against the company, apply to the Court to restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

Avoidance of dispositions of property, etc. after commencement of winding up.

225. In a winding up by the Court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.

226. Where any company is being wound up by the Court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

Avoidance of attachments, etc.

Commencement of Winding Up

227.—(1) Where before the presentation of an [application](#) for the winding up of a company by the Court a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of passing of the resolution, and unless the Court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

Commencement of winding up by the Court.

(2) In any other case, the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the [application](#) for the winding up.

Consequences of Winding Up Order

228.—(1) 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.

Copy of order to be forwarded to Registrar.

(2) If default is made in forwarding a copy of a winding up order to the Registrar as required by subsection (1), every officer of the company or other person who knowingly and wilfully authorizes or permits the default shall be liable to a fine not exceeding fifty thousand dollars.

229. When a winding up order has been made, or a provisional trustee has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose.

Actions stayed on winding up order.

230. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint [application](#) of a creditor and of a contributory.

Effect of winding up order.

Trustee in Bankruptcy

231. For the purposes of this Act—

“Government Trustee” means the person appointed as such under the Insolvency Act.

“Supervisor” means the person designated under the Insolvency Act as the Supervisor of Insolvency.

Meaning of “Government Trustee” and “Supervisor”.

232.—(1) Where the Court has made a winding up order or appointed a provisional trustee, there shall, unless the Court thinks fit to order otherwise and so orders, be made out and submitted to the

Statement of company's affairs to be submitted to trustees.

Trustee a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the Trustee may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at the date the secretary or other chief officer of the company, or by such of the persons hereinafter mentioned in this subsection as the Trustee, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons—

- (a) who are or have been directors or officers of the company;
- (b) who have taken part in the formation of the company at any time within one year before the relevant date;
- (c) who are in the employment of the company, or have been in the employment of the company within that year, and are in the opinion of the Trustee capable of giving the information required;
- (d) who are or have been within that year officers of or in the employment of a company, which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the relevant date, or within such extended time as the Trustee or the Court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the Trustee or provisional trustee, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Trustee may consider reasonable, subject to an appeal to the Court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding two thousand dollars for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall, on the application of the trustee or of the Trustee, be punishable accordingly.

(8) In this section the expression “the relevant date” means in a case where a provisional trustee is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding up order.

Report by
Trustee.

233.—(1) In a case where a winding up order is made, the Trustee shall, as soon as practicable after receipt of the statement to be submitted under section 232, or, in a case where the Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court—

- (a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company, or the conduct of the business thereof.

(2) The Trustee may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court.

(3) If the Trustee states in any such further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the Court shall have the further powers provided in sections 265 and 266.

Trustees

Power of
Court to
appoint
trustees.

234. For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a trustee or trustees.

Appointment
and powers of
provisional
trustee.

235.—(1) Subject to the provisions of this section, the Court may appoint a trustee provisionally at any time after the presentation of a winding up [application](#), and either the Trustee or any other fit person may be appointed.

(2) Where a trustee is provisionally appointed by the Court, the Court may limit and restrict his powers by the order appointing him.

Appointment
and style, etc.
of trustees.

236.—(1) The following provisions with respect to trustees shall have effect on a winding up order being made—

- (a) the 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 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 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 Trustee shall be the trustee of the company;
- (e) the Trustee shall by virtue of his office be the trustee during any vacancy;
- (f) a trustee shall be described, where a person other than the Government Trustee is trustee, by the style of "the Trustee", and, where the Government Trustee is trustee, by the style of "the Government Trustee and Trustee", of the particular company in respect of which he is appointed, and not by his individual name.

(2) The Trustee may charge such fees as may be prescribed by the Minister for duties carried out by him as provisional trustee.

237.—(1) Where in the winding up of a company by the Court a person other than the Trustee is appointed trustee, that person—

- (a) shall not be capable of acting as trustee until he has notified his appointment to the Registrar and given security in such manner as the Court may direct;
- (b) shall give the Trustee such information and such access to and facilities for inspecting the books and documents of the company and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

Provisions where person other than Trustee is appointed trustee.

(2) If a trustee contravenes the provisions of paragraph (b) of subsection (1), he shall be liable to a fine not exceeding fifty thousand dollars.

238.—(1) A trustee appointed by the Court may resign or, on cause shown, be removed by the Court.

(2) Where a person other than the Trustee is appointed trustee, he shall receive such salary or remuneration by way of percentage or otherwise as the Court may direct, and, if more than one such person are appointed trustees, their remuneration shall be distributed among them in such proportions as the Court directs.

General provisions as to trustees.

(3) A vacancy in the office of a trustee appointed by the Court shall be filled by the Court.

(4) If more than one trustee is appointed by the Court, the Court shall declare whether any act by this Act required or authorized to be done by the trustee is to be done by all or any one or more of the persons appointed.

(5) Subject to the provisions of section 325, the acts of a trustee shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

239. Where a winding up order has been made or where a provisional trustee has been appointed, the trustee, or the provisional trustee, as the case may be, shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.

Custody of company's property.

Vesting of company's property in trustee.

240. Where a company is being wound up by the Court, the Court may on the application of the trustee by order direct that all or any part of the property of whatever description belonging to the company or held by trustees on its behalf shall vest in the trustee by his official name, and thereupon the property to which the order relates shall vest accordingly, and the trustee may, after giving such indemnity, if any, as the Court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

Powers of trustee.

241.—(1) The trustee in a winding up by the Court shall have power with the sanction either of the Court or of the committee of inspection—

- (a) to bring or defend any action or other legal proceeding 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 beneficial 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) 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, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
 - (e) to compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such debt, liability or claim, and give a complete discharge in respect thereof.
- (2) The trustee in a winding up by the Court shall have power-
- (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;
 - (ii) 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 company's seal;
 - (iii) 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;

- (iv) to draw, accept, make, and indorse 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 indorsed by or on behalf of the company in the course of its business;
- (v) to raise on the security of the assets of the company any money requisite;
- (vi) to take out in his official name letters of administration to any deceased contributory, and to do in his official 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 purpose of enabling the trustee to take out the letters of administration or recover the money, be deemed to be due to the trustee himself;
- (vii) to appoint an agent to do any business which the trustee is unable to do himself;
- (viii) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the trustee in a winding up by the Court of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

242.—(1) Subject to the provisions of this Act, the trustee of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories, at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

Exercise and control of trustee's powers.

(2) The trustee may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the trustee or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

(3) The trustee may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the trustee shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) Any person aggrieved by any act or decision of the trustee, may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Books to be kept by trustee.

243.—(1) Every trustee of a company which is being wound up by the Court shall keep, in the prescribed manner, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

(2) If a trustee fails to keep proper books as required by subsection (1) or refuses to allow any inspection permitted thereby, he shall be liable to a fine not exceeding fifty thousand dollars.

Payments of trustee into bank.

244.—(1) Every trustee of a company which is being wound up by the Court shall pay the money received by him into such bank as the Court may direct.

(2) If any such trustee at any time retains for more than ten days a sum exceeding one hundred thousand dollars, or such other amount as the Court in any particular case authorizes him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty *per centum* per annum, and shall be liable to disallowance of all or such part of his remuneration as the Court may think just, and to be removed from his office by the Court, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A trustee of a company which is being wound up by the Court shall not pay any sums received by him as trustee into his private banking account.

(4) If a trustee contravenes the provisions of subsection (3), he shall be liable to a fine not exceeding fifty thousand dollars.

Audit of trustee's accounts.

245.—(1) Every trustee of a company which is being wound up by the Court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Registrar an account of his receipts and payments as trustee.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by an affidavit or a statutory declaration in the prescribed form.

(3) The Registrar shall cause the account to be audited and for the purpose of the audit the trustee shall furnish the Registrar with such vouchers and information as the Registrar may require, and the Registrar may at any time require the production of and inspect any books or accounts kept by the trustee.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Registrar, and the other copy shall be delivered to the Court for filing, and each copy shall be open to the inspection of any creditor or of any person interested.

(5) The Registrar shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

(6) If a trustee fails to comply with any of the duties imposed upon him by this section, he shall be liable to a fine not exceeding fifty thousand dollars.

246.—(1) The Registrar shall take cognizance of the conduct of trustees of companies which are

Control of Registrar over trustees.

being wound up by the Court, and, if a trustee does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Registrar by any creditor or contributory in regard thereto, the Registrar shall inquire into the matter, and take such action thereon as he may think expedient.

(2) The Registrar may at any time require any trustee of a company which is being wound up by the Court to answer any inquiry in relation to any winding up in which he is engaged, and may if the

Registrar thinks fit, apply to the Court to examine him or any other person on oath concerning the winding up.

(3) The Registrar may also direct an investigation to be made of the books and vouchers of the trustee.

247.—(1) When the trustee of a company which is being wound up by the Court has realized all the property of the company, or so much thereof as can, in his opinion, be realized without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Registrar shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Registrar, shall take into consideration the report, and any objection which may be urged by any creditor or contributory or person interested against the release of the trustee, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the Court.

Release of trustee.

(2) Where the release of a trustee is withheld, the Court may, on the application of any creditor or contributory, or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Registrar releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Committees of Inspection

248.—(1) When a winding up order has been made by the Court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the Court for appointing a trustee in place of the Trustee, to determine further whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the trustee and who are to be members of the committee if appointed.

Meetings of creditors and contributories to determine whether committee of inspection shall be appointed.

(2) 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 matters aforesaid the Court shall decide the difference and make such order thereon as the Court may think fit.

249.—(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the Court.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month and the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the trustee.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee the trustee shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another creditor or contributory to fill the vacancy:

Provided that if the trustee, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled he may apply to the Court which may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

250. Where in the case of a winding up there is no committee of inspection, the Minister may, on the application of the trustee, do any act or thing or give any direction or permission which is by this Act authorized or required to be done or given by the committee.

General Powers of Court in case of Winding up by Court

251.—(1) The Court may at any time after an order for winding up, on the application either of the trustee, or the Trustee, or any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time on such terms and conditions as the Court thinks

Constitution and proceedings of committee of inspection.

Powers of Minister where no committee of inspection.

Power to stay winding up.

fit.

(2) On any application under this section the Court may, before making an order, require the Trustee to furnish to the Court a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.

252.—(1) As soon as may be after making a winding up order, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities:

Settlement of list of contributories and application of assets.

Provided that, where it appears to the Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

253. The Court may, at any time after making a winding up order, require any contributory for the time being on the list of contributors, and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to the trustee any money, property, or books and papers in his hands to which the company is *prima facie* entitled.

Delivery of property to trustee.

254.—(1) The Court may, at any time after making a winding up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

Payment of debts due by contributory to company and extent to which set-off allowed.

(2) The Court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

255.—(1) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories, among themselves, and make an order for payment of any calls so made.

Power of Court to make calls.

(2) On making a call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Payment into bank of moneys due to company.

256.—(1) The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into a bank to the account of the trustee instead of to the trustee, and any such order may be enforced in the same manner as if it had directed payment to the trustee.

(2) All moneys and securities paid or delivered into such bank in the event of a winding up by the Court shall be subject in all respects to the orders of the Court.

Order on contributory conclusive evidence.

257.—(1) An order made by the Court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

Appointment of special manager.

258.—(1) Where in any proceedings the Trustee becomes the trustee of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court, and the Court may on such application appoint a special manager of that estate or business to act during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the Court.

(2) The special manager shall give such security and account in such manner as the Court directs.

(3) The special manager shall receive such remuneration as may be fixed by the Court.

Power to exclude creditors not proving in time.

259. The Court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

Adjustment if rights of contributories.

260. The Court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

Inspection of books by creditors and contributories.

261.—(1) The Court may, at any time after making a winding up order, make such order for inspection of the books and papers of the company by creditors and contributories as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

(2) Nothing in this section shall be taken as excluding or restricting any statutory rights of a Government Department or person acting under the authority of a Government Department.

Power to order application by trustee for assignment under Insolvency.

262. The Court may, in the event order of the assets being insufficient to satisfy the liabilities, make an order that the trustee shall, forthwith, apply to the Supervisor for an assignment in accordance with the Insolvency Act and thereafter proceed in accordance with the provisions of the Insolvency

Act.

263.—(1) The Court may, at any time after the appointment of a provisional trustee or the making of a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company, or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs, or property of the company.

Power to summon persons suspected of having company property.

(2) The Court may examine him on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The Court may require him to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.

264. Where an order has been made for winding up a company by the Court, and the Trustee has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the Court may, after consideration of the report, direct that the person, director or officer shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.

Power to order public examination of promoters, directors, etc.

265.—(1) The Trustee shall take part in the examination, and for that purpose may, if specially authorized by the Court in that behalf, employ an attorney-at-law.

Procedure at examination.

(2) The trustee, where the Trustee is not the trustee, and any creditor or contributory, may also take part in the examination either personally or by an attorney-at-law.

(3) The Court may put such questions to the person examined as the Court thinks fit.

(4) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him.

(5) A person ordered to be examined shall at his own cost, before his examination, be furnished with a copy of the Trustee's report, and may at his own cost employ an attorney-at-law, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that, if any such person applies to the Court to be exculpated from any charges made or

suggested against him, it shall be the duty of the Trustee to appear on the hearing of the application and call the attention of the Court to any matters which appear to the Trustee to be relevant, and if the Court, after hearing any evidence given or witnesses called by the Trustee, grants the application, the Court may allow the applicant such costs as in its discretion it may think fit.

(6) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(7) The Court may, if it thinks fit, adjourn the examination from time to time.

Power to
arrest
absconding
contributory.

266. The Court, at any time either before or after making a winding up order, on proof of probable cause for believing that a contributory is about to quit Jamaica or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and movable personal property to be seized, and him and them to be safely kept until such time as the Court may order.

Powers of
Court
cumulative.

267. Any powers by this Act conferred on the Court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Delegation to
trustee of
certain powers
of Court.

268. Provision may be made by rules for enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Act in respect of the following matters—

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;
- (c) the paying, delivering, conveyance, surrender or transfer of money, property, books or papers to the trustee;
- (d) the making of calls;
- (e) the fixing of a time within which debts and claims must be proved, to be exercised or performed by the trustee as an officer of the Court, and subject to the control of the Court:

Provided that the trustee shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

Dissolution of
company.

269.—(1) When the affairs of a company have been completely wound up, the Court, if the trustee makes an application in that behalf, shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) The order shall within fourteen days from the date thereof be forwarded by the trustee to the Registrar who shall make in his books a minute of the dissolution of the company.

(3) If the trustee makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding two thousand dollars for every day during which he is in default.

Enforcement of, and appeal from, orders

270. Orders made by the Court under this Act may be enforced in the same manner as orders made in any action pending therein.

Power to enforce orders.

271. Subject to rules of court, an appeal from any order or decision made or given in the winding up of a company by the Court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the Court.

Appeal from orders.

(iii) VOLUNTARY WINDING UP

Resolutions for, and Commencement of, Voluntary Winding Up

272.—(1) A company may be wound up voluntarily—

(a) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

Circumstances in which company may be wound up voluntarily.

(b) if the company resolves by special resolution that the company be wound up voluntarily;

~~(c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.~~

(2) In this Act the expression “a resolution for voluntary winding up” means a resolution passed under any of the provisions of subsection (1).

273.—(1) When a company has passed a resolution for voluntary winding up, it shall, within fourteen days after the passing of the resolution, give notice of the resolution by advertisement in the *Gazette* and in writing to the Registrar.

Notice of resolution to wind up voluntarily.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine not exceeding one hundred thousand dollars, and for the purposes of this subsection the trustee of the company shall be deemed to be an officer of the company.

274. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

Consequences of voluntary wind up.

Consequences of Voluntary Winding Up

Effect of voluntary winding up on business and status of company.

275. In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Notice of resolution to wind up voluntarily.

276. Any transfer of shares not being a transfer made to or with the sanction of the trustee, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

Declaration of Solvency

Statutory declaration of solvency in case of proposal to wind up voluntarily.

277.—(1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors, may, at a meeting of the directors make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding twelve months from the commencement of the winding up as may be specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless—

- (a) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the Registrar for registration before that date; and
- (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be liable to imprisonment with or without hard labour for a period not exceeding six months or to a fine not exceeding fifty thousand dollars or to both such imprisonment and fine; and if the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

(4) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as “a members’ voluntary winding up”, and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as “a creditors’ voluntary winding up”.

Provisions applicable to a Members' Voluntary Winding Up

278. The provisions contained in sections 280 to 286 (inclusive) shall apply in relation to a members' voluntary winding up.

Provisions to be applicable to members' winding up

279.—(1) The company in general meeting shall appoint one or more trustees for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

Power of company to appoint and fix remuneration of trustees.

(2) On the appointment of a trustee all the powers of the directors shall cease, except so far as the company in general meeting, or the trustee, sanctions the continuance thereof.

280.—(1) If a vacancy occurs by death, resignation, or otherwise in the office of trustee appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

Power to fill vacancy in office of trustee.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more than one trustee, by the continuing trustees.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing trustees, be determined by the Court.

281.—(1) Where a company is proposed to be, or is in the course of being wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called "the transferee company") the trustee of the first-mentioned company (in this section called "the transferor company") may—

Power of trustee to accept shares etc., as consideration for sale of property of company.

(a) with the sanction of a special resolution of that company, conferring either a general authority on the trustee or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company; or

(b) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company, and where the whole or part of the compensation or benefit accruing to the members of the transferor company in respect of any such sale or arrangement consists of fully paid shares in the transferee company each such member shall be deemed to have agreed with the transferee company for the acceptance of the fully paid shares to which he is entitled under the distribution referred to in subsection (1).

(3) If any member of the transferor company who did not vote in favour of the special resolution

express his dissent therefrom in writing addressed to the trustee, and left at the registered office of the company within seven days after the passing of the resolution, he may require the trustee either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by the Arbitration Act.

(4) If the trustee elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved, and be raised by the trustee in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing trustees, but, if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court.

282.—(1) If, in the case of a winding up commenced after the appointed day, the trustee is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 277, he shall forthwith [apply to the Supervisor for an assignment in accordance with the Insolvency Act and thereafter proceed in accordance with the provisions of the Insolvency Act.](#)

(2) If the trustee fails to comply with this section, he shall be liable to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

283.—(1) Subject to the provisions of section 286, in the event of the winding up continuing for more than one year, the trustee shall summon a general meeting of the company at the end of the first year from the commencement of the winding up and of each succeeding year, or at the first convenient date within three months (or such longer period as the Minister may allow) from the end of the year, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the trustee fails to comply with this section, he shall be liable to a fine not exceeding fifty thousand dollars.

284.—(1) Subject to the provisions of section 285, as soon as the affairs of the company are fully wound up, the trustee shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in the *Gazette* and in one daily newspaper printed and circulating in Jamaica, specifying the time, place, and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the trustee shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection the trustee shall be liable to a fine not exceeding two thousand dollars for every day during which the default continues:

Duty of trustee to call creditors' meeting in case of insolvency.

Duty of trustee to call general meeting at end of each year.

Final meeting and dissolution.

Provided that, if a quorum is not present at the meeting, the trustee shall, in lieu of the return as aforesaid, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

(4) The Registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration of the return, the company shall be deemed to be dissolved:

Provided that the Court may, on the application of the trustee or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within seven days after the making of the order, to deliver to the Registrar a copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding two thousand dollars for every day during which the default continues.

(6) If the trustee fails to call a general meeting of the company as required by this section, he shall be liable to a fine not exceeding fifty thousand dollars.

~~285. Where section 282 has effect, sections 293 and 294 shall apply to the winding up to the exclusion of sections 283 and 284, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up:-~~

~~Provided that the trustee shall not be required to summon a meeting of creditors under section 293 at the end of the first year from the commencement of the winding up, unless the meeting held under section 282 is held more than three months before the end of that year.-~~

Provisions applicable to a Creditors' Voluntary Winding Up

~~286. The provisions contained in sections 287 to 294 (inclusive) shall apply in relation to a creditors' voluntary winding up.-~~

~~287. (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.-~~

~~(2) The company shall cause notice of the meeting of the creditors to be advertised once in the Gazette and once at least in one daily newspaper printed and circulating in Jamaica.-~~

~~(3) The directors of the company shall —~~

~~(a) — cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid~~

Final meeting and dissolution.

Final meeting and dissolution.

Meeting of creditors.

~~before the meeting of creditors to be held as aforesaid; and~~

~~(b) — appoint one of their number to preside at that meeting.~~

~~(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.~~

~~(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.~~

~~(6) If default is made —~~

~~(a) — by the company in complying with subsections (1) and (2);~~

~~(b) — by the directors of the company in complying with subsection (3);~~

~~(c) — by any director of the company in complying with subsection (4).~~

~~the company, directors or director, as the case may be, shall be liable to a fine not exceeding fifty thousand dollars, and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.~~

~~288. The creditors and the company at their respective meetings mentioned in section 287 may nominate a person to be trustee for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be trustee, and if no person is nominated by the creditors the person, if any, nominated by the company shall be trustee.~~

Appointment
of trustee.

~~Provided that in the case of different persons being nominated any director, member, or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as trustee by the company shall be trustee instead of or jointly with the person nominated by the creditors, or appointing some other person to be trustee instead of the person appointed by the creditors.~~

~~289. (1) The creditors at the meeting to be held in pursuance of section 287 or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number.~~

Appointment
of committee
of inspection.

~~Provided that —~~

~~(a) — the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection; and~~

~~(b) — if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee; and~~

~~(c) — on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.~~

~~(2) Subject to the provisions of this section and to rules, the provisions of section 249 (except subsection (1)) shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the Court.~~

~~290. — (1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the trustee or trustees.~~

~~(2) On the appointment of a trustee, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.~~

~~291. If a vacancy occurs, by death, resignation or otherwise, in the office of a trustee, other than a trustee appointed by, or by the direction of, the Court, the creditors may fill the vacancy.~~

~~292. The provisions of section 281 shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the trustee under that section shall not be exercised except with the sanction either of the Court or of the committee of inspection.~~

~~293. — (1) In the event of the winding up continuing for more than one year, the trustee shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months (or such longer period as the Minister may allow) from the end of the year, and shall lay before the meetings, an account of his acts and dealings and of the conduct of the winding up during the preceding year.~~

~~(2) If the trustee fails to comply with this section, he shall be liable to a fine not exceeding fifty thousand dollars.~~ Repealed by the Insolvency Act 2014.

294.—(1) As soon as the affairs of the company are fully wound up, the trustee shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors, for the purpose of laying the account before the meetings, and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement in the *Gazette* and in one daily newspaper printed and circulating in Jamaica specifying the time, place, and object thereof, and published one month at least before the meeting.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the trustee shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent

Final meeting and dissolution.

Appointment of committee of inspection.

Power to fill vacancy in office of trustee.

Application of section 281 to creditors' winding up.

Duty of trustee to call meetings of company and of creditors at end of each year.

or the return is not made in accordance with this subsection the trustee shall be liable to a fine not exceeding two hundred dollars for every day during which the default continues:

Provided that, if a quorum is not present at either such meeting, the trustee shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The Registrar on receiving the account and in respect of each such meeting either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved:

Provided that the Court may, on the application of the trustee or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within seven days after the making of the order, to deliver to the Registrar a copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding two thousand dollars for every day during which the default continues.

(6) If the trustee fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be liable to a fine not exceeding fifty thousand dollars.

Provisions Applicable to every Voluntary Winding up

295. The provisions contained in sections 294 to 298 (inclusive) shall apply to every voluntary winding up whether a members' or a creditors' winding up.

296. Subject to the provisions of the [Insolvency Act](#) as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu*, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

297.—(1) The trustee may—

- (a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of either the Court or the committee of inspection, exercise any of the powers given by paragraphs (d), (e) and (f) of subsection (1) of section 239 to a trustee in a winding up by the Court;
- (b) without sanction, exercise any of the other powers by this Act given to the trustee in a winding up by the Court;
- (c) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;

Provision applicable to every voluntary winding up.

Distribution of company's property.

Power and duties of trustee in voluntary winding up.

- (d) exercise the power of the Court of making calls;
- (e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

(2) The trustee shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several trustees are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

298.—(1) If from any cause whatever there is no trustee acting, the Court may appoint a trustee.

Power of court to appoint and remove trustee in voluntary winding up.

(2) The Court may, on cause shown, remove a trustee and appoint another trustee.

299.—(1) The trustee shall, within twenty-one days after his appointment, publish in the *Gazette* and in one daily newspaper printed and circulating in Jamaica, and deliver to the Registrar for registration a notice of his appointment in the prescribed form.

Notice by trustee of his appointment.

(2) If the trustee fails to comply with the requirements of this section he shall be liable to a fine not exceeding two thousand dollars for every day during which the default continues.

~~**300.**—(1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject~~

Arrangement when binding on creditors.

~~(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.~~ Repealed by the Insolvency Act 2014.

301.—(1) The trustee or any contributory or creditor may apply to the Court to determine any question arising in the winding up of a company, or to exercise as respects the enforcing of calls, or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

Power to apply to Court to have questions determined or powers exercised.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

(3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.

302. All costs, charges and expenses properly incurred in the winding up, including the remuneration of the trustee, shall be payable out of the assets of the company in priority to all other claims.

Costs of voluntary wind up.

Savings for rights of creditors and contributories.

303. The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, but in the case of an application by a contributory the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

(iv) WINDING UP SUBJECT TO SUPERVISION OF COURT

Power to order winding up subject to supervision.

304. When a company has passed a resolution for voluntary winding up, the Court may make an order that the voluntary winding up shall continue but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally on such terms and conditions, as the Court thinks just.

Effect of application for winding up subject to supervision.

305. An [application](#) for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over actions, be deemed to be an [application](#) for winding up by the Court.

Application of sections 225 and 226 to winding up subject to supervision.

306. A winding up subject to the supervision of the Court shall, for the purposes of sections 225 and 226, be deemed to be a winding up by the Court.

Power of Court to appoint or remove trustees

307.—(1) Where an order is made for a winding up subject to supervision, the Court may by that or any subsequent order appoint an additional trustee.

(2) A trustee appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of trustees in a voluntary winding up.

(3) The Court may remove any trustee so appointed by the Court or any trustee continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

Effect of supervision order.

308.—(1) Where an order is made for a winding up subject to supervision, the trustee may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily:

Provided that the powers specified in paragraphs (d), (e) and (f) of subsection (1) of section 241 shall not be exercised by the trustee except with the sanction of the Court or, in a case where before the order the winding up was a creditors' voluntary winding up, with the sanction of either the Court or the committee of inspection or (if there is no such committee) a meeting of the creditors.

(2) A winding up subject to the supervision of the Court is not a winding up by the Court for the purpose of the provisions of this Act which are set out in the Sixth Schedule, but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes be deemed to be an order for winding up by the Court:

Provided that where the order for winding up subject to supervision was made in relation to a creditors' voluntary winding up in which a committee of inspection had been appointed, the order shall be deemed to be an order for winding up by the Court for the purpose of section 249 (except subsection (1) thereof) except in so far as the operation of that section is excluded in a voluntary winding up by rules.

(v) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP
Proof and Ranking of Claims

309. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages or for some other reason do not bear a certain value.

Debts of all description to be proved.

~~**310.** In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.~~

Application of bankruptcy rules in winding up of insolvent companies.

311.— In every winding up of a claims fur company, section 202 of the Insolvency Act (which relates to the ranking of claims for payment from the proceeds of a debtor's property) shall apply.

Ranking of claims for distribution.

Effect of Winding Up on Antecedent and other Transactions

312.—(1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, or a fraudulent conveyance, assignment, transfer, sale or disposition, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, or a fraudulent conveyance, assignment, transfer, sale or disposition, as the case may be, and be invalid accordingly.

Fraudulent preference.

(2) For the purposes of this section, the commencement of the winding up shall be deemed to correspond with the presentation of the bankruptcy [application](#) in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

313.—(1) Where, in the case of a company wound up in Jamaica, anything made or done after the appointed day is void under section 312 as a fraudulent preference of a person interested in property mortgaged or charged ([including a security interest in personal property](#)) to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.

Liabilities and rights of certain fraudulently preferred person.

(2) The value of that person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all incumbrances other than those to which the charge ([including a security interest in personal property](#)) for the company's debt was then subject.

(3) On any application made to the Court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

(4) Subsection (3) shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.

~~**314.** Where a company is being wound up, a floating charge on the undertaking or property of the company created within twelve months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of six *per centum per annum* or such other rate as may for the time being be prescribed by order of the Minister.~~ Repealed by the Insolvency Act 2014.

315.—(1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, unprofitable contracts, or any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the Court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the Court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the trustee within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court thinks just.

(4) The trustee shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the trustee has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the Court, given

Effect of
floating-
charge-

Disclaimer of
onerous
property.

notice to the applicant that he intends to apply to the Court for leave to disclaim, and, in the case of a contract, if the trustee, after such an application as aforesaid, does not within that period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The Court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee by demise, except upon the terms of making that person—

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or
- (b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event (if the case so require) as if the lease had comprised only the property comprised in the vesting order.

(7) And any mortgagee or under-lessee declining to accept a vesting order upon the terms referred to in paragraphs (a) and (b) of the proviso to subsection (6) shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(8) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

316.—(1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in the winding up of

Restriction of rights if creditor as to execution or attachment.

the company unless he has completed the execution or attachment before the commencement of the winding up:

Provided that—

- (a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purposes of the foregoing provision be substituted for the date of the commencement of the winding up;
- (b) a person who purchases in good faith under a sale by a bailiff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the trustee; and
- (c) the rights conferred by this subsection on the trustee may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court may think fit.

(2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt and an execution against land shall be deemed to be completed from the date of the order for sale or by seizure as the case may be, and, in the case of an equitable interest, by the appointment of a receiver.

(3) In this section and in section 317 the expression “goods” includes all chattels personal, and the expression “bailiff” includes any officer charged with the execution of a writ or other process.

317.—(1) Subject to the provisions of subsection (3), where any goods of a company are taken in execution, and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that a provisional trustee has been appointed or that a winding up order has been made or that a resolution for voluntary winding up has been passed, the bailiff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the trustee, but the costs of the execution shall be a first charge on the goods or money so delivered, and the trustee may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Subject to the provisions of subsection (3), where under an execution in respect of a judgment for a sum exceeding two hundred thousand dollars the goods of a company are sold or money is paid in order to avoid sale, the bailiff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of an [application](#) for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the bailiff shall pay the balance to the trustee, who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the trustee may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

Offences Antecedent to or in Course of Winding up

318.—(1) If any person, being a past or present officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the

Duties of bailiff as to goods taken in execution.

Offences by officers of companies in liquidation.

Court or voluntarily, or is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up—

- (a) does not to the best of his knowledge and belief fully and truly discover to the trustee all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or
- (b) does not deliver up to the trustee, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or
- (c) does not deliver up to the trustee, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or
- (d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of five thousand dollars or upwards, or conceals any debt due to or from the company; or
- (e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of five thousand dollars or upwards; or
- (f) makes any material omission in any statement relating to the affairs of the company; or
- (g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the trustee thereof; or
- (h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or
- (i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of, any book or paper affecting or relating to the property or affairs of the company; or
- (j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or
- (k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulent parting with, altering, or making any omission in, any document affecting or relating to the property or affairs of the company; or
- (l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or

expenses; or

- (m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or
- (n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or
- (o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges, or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company; or
- (p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

he shall be guilty of an offence.

(2) A person convicted of an offence—

- (a) under paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l) or (p) of subsection (1) shall be liable—
 - (i) on conviction in a Circuit Court, to a fine or to imprisonment for a term not exceeding two years or to both such fine and imprisonment;
 - (ii) on summary conviction before a Resident Magistrate, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment;
- (b) under paragraph (m), (n) or (o) of that subsection shall be liable—
 - (i) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment;
 - (ii) on summary conviction before a Resident Magistrate, to a fine not exceeding five million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

(3) It shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (n) and (o), if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(4) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (o) of subsection (1), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid shall be guilty of an offence, and shall be liable—

- (a) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment;

- (b) on summary conviction before a Resident Magistrate to a fine not exceeding three million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

(5) For the purposes of this section, the expression “officer” shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

319. If any officer or contributory of any company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of an offence and on conviction thereof he shall be liable to a fine not exceeding two million dollars or to imprisonment with or without hard labour for a term not exceeding two years or to both such fine and imprisonment.

Penalty for falsification of books.

320. If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up—

Fraud by officers of companies which have gone into liquidation.

- (a) has by false pretences or by means of any other fraud induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on [\(including a security interest in personal property\)](#), or has caused or connived at the levying of any execution against, the property of the company;
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company,

he shall be guilty of an offence and shall be liable—

- (i) on conviction in a Circuit Court to a fine or to imprisonment with or without hard labour for a term not exceeding two years or to both such fine and imprisonment; or
- (ii) on summary conviction before a Resident Magistrate to a fine not exceeding three million dollars or to imprisonment with or without hard labour for a term not exceeding twelve months or to both such fine and imprisonment.

321.—(1) If where a company is wound up it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is the shorter, every officer of the company who was knowingly a party to or connived at the default of the company shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the default was excusable, be guilty of an offence and shall be liable—

Liability where proper accounts not kept.

- (a) on conviction in a Circuit Court to a fine or to imprisonment with or without hard labour for a term not exceeding one year; or
- (b) on summary conviction before a Resident Magistrate to a fine not exceeding two million dollars or to imprisonment for a term not exceeding six months.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

322.—(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company, creditors of any other person or for any fraudulent purpose, the Court, on the application of the Trustee, or the trustee or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court may direct.

(2) On the hearing of an application under subsection (1) the Trustee or the trustee, as the case may be, may himself give evidence or call witnesses.

(3) Where the Court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the person liable or any company or person acting on his behalf, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

(4) For the purpose of subsection (3), the expression “assignee” includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(5) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business in manner aforesaid, shall be liable on conviction on indictment to imprisonment with or without hard labour for a term not exceeding two years or to a fine not exceeding fifty thousand dollars or to both such imprisonment and fine.

(6) The provisions of this section shall have effect notwithstanding that the person concerned may be

Responsibility
for fraudulent
trading of
persons
concerned.

criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration under subsection (1) is made in the case of a winding up, the declaration shall be deemed to be a final judgment within the meaning of paragraph (h) of section 19 of the Bankruptcy Act.

323.—(1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present officer or trustee of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the Trustee, or of the trustee, or of any creditor or contributory, examine into the conduct of the promoter, trustee, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the mis-application, retainer, misfeasance, or breach of trust as the Court thinks just.

Power of Court to assess damages against delinquent directors, etc.

(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) Where in the case of a winding up an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of paragraph (h) of section 19 of the Bankruptcy Act.

324.—(1) If it appears to the Court in the course of a winding up by, or subject to the supervision of, the Court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the trustee to refer the matter to the Director of Public Prosecutions.

Prosecution of delinquent officers and members of company.

(2) If it appears to the trustee in the course of a voluntary winding up that any past or present officer, or any member, of a company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Director of Public Prosecutions, and shall furnish to the Director such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the trustee and relating to the matter in question, as the Director may require.

(3) Where any report is made under subsection (2) to the Director of Public Prosecutions, he may, if he thinks fit, refer the matter to the Minister for further enquiry, and the Minister shall thereupon investigate the matter and may, if he thinks it expedient, apply to the Court for an order conferring on the Minister or any person designated by the Minister for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court.

(4) If it appears to the Court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the trustee to the Director of Public Prosecutions under subsection (2), the Court may, on the application of any person interested in the winding up or of its own motion, direct the trustee to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of

subsection (2).

(5) Where any matter is reported or referred to the Director of Public Prosecutions under this section, if he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of the trustee and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

(6) For the purposes of subsection (5) the expression “agent” in relation to a company shall be deemed to include any banker or attorney-at-law of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(7) If any person fails or neglects to give assistance in manner required by subsection (5), the Court may, on the application of the Director of Public Prosecutions, direct that person to comply with the requirements of that subsection, and where any such application is made with respect to a trustee the Court may, unless it appears that the failure or neglect to comply was due to the trustee not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the trustee personally.

Supplementary Provisions as to Winding up

~~**325.** A body corporate shall not be qualified for appointment as trustee of a company, whether in a winding up by or under the supervision of the Court or in a voluntary winding up, and—~~

~~(a) any appointment made in contravention of this provision shall be void; and~~

~~(b) any body corporate which acts as trustee of a company shall be liable to a fine not exceeding fifty thousand dollars.~~ Repealed by the Insolvency Act 2014.

326.—(1) If any trustee, who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the Court may, on an application made to the Court by any contributory or creditor of the company or by the Registrar, make an order directing the trustee to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the trustee.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a trustee in respect of any such default as aforesaid.

327.—(1) Where a company is being wound up, whether by or under the supervision of the Court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a trustee of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this section the company and every officer of the company,

Disqualification for appointment as trustee.

Enforcement of duty trustee to make returns, etc.

Notification that company is in liquidation.

and every trustee of the company and every receiver or manager, who knowingly and wilfully authorizes or permits the default shall be liable to a fine not exceeding fifty thousand dollars.

328.—(1) In the case of a winding up by the Court, or of a creditors' voluntary winding up, of a company—

Exemption of certain documents from stamp duty on winding up of companies.

- (a) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other incumbrance on, or any estate, right or interest in, any real or personal property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and
- (b) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceeding under any such winding up,

shall be exempt from duties chargeable under the enactments relating to stamp duties.

(2) In subsection (1) the expression "assurance" includes deed, conveyance, assignment, transfer and surrender.

329. Where a company is being wound up, all books and papers of the company and of the trustees shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

Books of company to be evidence.

330.—(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the trustees may be disposed of as follows, that is to say—

Disposal of books and papers of company.

- (a) in the case of a winding up by or subject to the supervision of the Court, in such way as the Court directs;
- (b) in the case of a members' voluntary winding up, in such way as the company by extraordinary resolution directs, and, in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, the trustees, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) Provision may be made by rules for enabling the Court to prevent, for such period (not exceeding five years from the dissolution of the company) as the Court thinks proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to make representations to the Court.

(4) If any person acts in contravention of any rules made for the purposes of this section or of any direction of the Court thereunder, he shall be liable to a fine not exceeding three thousand dollars.

Information as to pending liquidations.

331.—(1) If the winding up of a company is not concluded within one year after its commencement, the trustee shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom.

(3) If a trustee fails to comply with this section, he shall be liable to a fine not exceeding five hundred dollars for each day during which the default continues, and any person untruthfully stating himself as aforesaid to be a creditor or contributory shall be guilty of a contempt of court, and shall, on the application of the trustee or of the Trustee, be punishable accordingly.

332.—(1) If it appears either from any statement sent to the Registrar under section 331 or otherwise that a trustee has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt or any money held by the company in trust in respect of dividends or other sums due to any person as a member of the company, the trustee shall forthwith pay that money into Court, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

Unclaimed assets.

(2) Any person claiming to be entitled to any money paid into Court in pursuance of this section may apply to the Court for payment thereof, and the Court may, on a certificate by the trustee that the person claiming is entitled, make an order for the payment to that person of the sum due.

333. Where after the appointed day a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Resolutions passed at adjourned meetings of creditors and contributories.

Supplementary Powers of Court

334.—(1) The Court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

Meetings to ascertain wishes of creditors or contributories.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

335.—(1) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in Jamaica, or elsewhere within the Commonwealth, before any court, judge, or person lawfully authorized to take and receive affidavits, or, in any place outside the Commonwealth, before any of Her Majesty's consuls or vice-consuls or a notary public, subject to the like restrictions as apply in relation to the power of a notary public in a foreign state or country under section 152 of the

Affidavits, etc.

Registration of Titles Act to attest instruments and powers of attorney under that Act.

(2) All courts, judges justices, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge, person, consul, vice-consul or notary public attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

Provisions as to Dissolution

336.—(1) Where a company has been dissolved, the Court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the trustee of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, or such further time as the Court may allow, to deliver to the Registrar for registration a copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding two thousand dollars for every day during which the default continues.

337.—(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the *Gazette* and in a daily newspaper circulating in Jamaica with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the *Gazette* and in a daily newspaper circulating in Jamaica, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no trustee is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the trustee have not been made for a period of six consecutive months, the Registrar shall publish in the *Gazette* and send to the company or the trustee, if any, a like notice as is provided in subsection (3).

(5) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of that notice the company shall be dissolved:

Power of Court to declare dissolution of company void.

Registrar may strike defunct company off register.

Provided that—

- (a) the liability, if any, of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) nothing in this subsection shall affect the power of the Court to wind up a company the name of which has been struck off the register.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Registrar on an application made by the company or member or creditor before the expiration of twenty years from the publication in the *Gazette* of the notice aforesaid may, if satisfied that—

- (a) the company was at the time of the striking off, carrying on business or in operation; or
- (b) otherwise that it is just that the company be restored to the register,

order the name of the company to be restored to the register and upon such registration, the company shall be deemed to have continued in existence as if its name had not been struck off.

(7) A notice to be sent under this section to a trustee may be addressed to the trustee at his last known place of business, and a letter or notice to be sent under this section to a company shall be addressed—

- (a) to the company at its registered office and to some director or other officer of the company; or
- (b) if there is no director or other officer whose name and address are known to the Registrar, to each of the persons who subscribed the articles, addressed to him at the address mentioned in the articles; and
- (c) in the case of a company to which Part X applies, to the person named under section 363(1)(d), authorized to accept service of process on behalf of that company.

(8) This section shall apply—

- (a) with any necessary modification to the striking off from the register of companies of the name of a company to which Part X applies;
- (b) save and except that in relation to a company to which Part X applies, the Registrar need not inquire as to whether the company is carrying on business or in operation and shall send to the company and the person referred to in subsection (7)(c), a notice—
 - (i) not less than three months before sending by post to the company and the publication in the *Gazette* and a newspaper circulating in the Island, the notice referred to in subsection (3);
 - (ii) advising the company to which Part X applies that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be removed from the register.

338.—(1) Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the Court under section 336 or by the Registrar under section 337—

- (a) prior to the expiration of two years referred to in section 336 (1) be held on trust by the Crown for the members of that company for the duration of two years; or
- (b) prior to the expiration of the period of twenty years referred to in section 337 (6) be held on trust by the Crown for the members of that company for the duration of the twenty years; and
- (c) after the expiration of the relevant period be deemed to be *bona vacantia* and shall accordingly belong to the Crown, and shall vest and may be dealt with in the same manner as other *bona vacantia* accruing to the Crown.

(2) Where a company is restored, the trust referred to in subsection (1) shall be extinguished and the property shall revert to the company.

(3) Where the Crown holds property for a dissolved Company on trust, the Crown shall not be liable—

- (a) to manage the property;
- (b) for any loss or damage to the property;
- (c) for waste; or
- (d) in respect of any claim by a third party.

(4) Where the Crown holds property for a dissolved company on trust in the case of—

- (a) real property, it shall be held by the Commissioner of Lands;
- (b) personalty, it shall be held by the Accountant General.

339.—(1) Where any property vests in the Crown under section 338 (i) (c) the Crown's title thereto under that section may be disclaimed by a notice signed by the Administrator-General.

(2) Where a notice of disclaimer under this section is executed as respects any property, that property shall be deemed not to have vested in the Crown under section 338 (i) (c), and subsections

(2) and (6) of section 315 shall apply in relation to the property as if it had been disclaimed under subsection (1) of that section immediately before the dissolution of the company.

(3) The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Crown either expressly or by taking possession or other act evincing that intention.

(4) A notice of disclaimer under this section shall be of no effect unless it is executed within twelve months of the date on which the vesting of the property as aforesaid came to the notice of the Administrator-General or, if an application in writing is made to the Administrator-General by any person interested in the property requiring him to decide whether he will or will not disclaim, within a period of three months after the receipt of the application or such further period as may be allowed by the Court.

(5) A statement in a notice of disclaimer of any property under this section that the vesting of the property came to the notice of the Administrator-General on a specified date or that no such application as aforesaid was received by him with respect to the property before a specified date shall, until the contrary is proved, be sufficient evidence of the fact stated.

(6) A notice of disclaimer under this section shall be delivered to the Registrar and retained and registered by him, and copies thereof shall be published in the *Gazette* and sent to any persons who have given the Administrator-General notice that they claim to be interested in the property.

Rules and Fees

340.—(1) The Rules Committee of the Supreme Court established by section 3 of the Judicature (Rules of Court) Act, may, with the concurrence of the Minister, make rules for carrying into effect the objects of this Act so far as relates to the winding up of companies, and all such rules shall be judicially noticed and shall have effect as if enacted in this Act.

Rules and fees for winding up.

(2) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies such fees as the Rules Committee may, with the sanction of the Minister responsible for finance, by order direct, and that Minister may direct by whom and in what manner the same are to be collected and accounted for.

(3) All rules made under subsection (1) and all orders made under subsection (2) shall be subject to negative resolution.

(4) Sections 185 to 20 I of the Insolvency Act shall, with such modifications as the circumstances require, apply to the administration of every winding up of a company.

(5) Notwithstanding anything to the contrary, the Judicature (Rules of Court) Act shall not apply in relation to any matter for which provision is made in this section.

PART VI—RECEIVERS AND MANAGERS

~~**341.**—(1) A body corporate shall not be qualified for appointment as receiver of the property of a company and any body corporate which acts as such a receiver shall be liable to a fine not exceeding fifty thousand dollars.~~

Disqualification for appointment as receiver and for acting as receiver or manager.

~~(2) If any person being an undischarged bankrupt acts as receiver or manager of the property of a company on behalf of debenture holders, he shall, subject to subsection (3), be liable on conviction on indictment to imprisonment with or without hard labour for a term not exceeding two years, or on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding six months or to a fine not exceeding fifty thousand dollars or to both such imprisonment and fine.~~

~~(3) Subsection (2) shall not apply to a receiver or manager where—~~

~~(a) — the appointment under which he acts and the bankruptcy were both before the appointed day; or~~

~~(b) — he acts under an appointment made by order of a court.~~

~~342. Where an application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the Court, the Trustee may be so appointed.~~ Repealed by the Insolvency Act 2015

343.—(1) Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the trustee of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with the requirements of this section, the company and every officer of the company, and every trustee of the company, and every receiver or manager, who knowingly and wilfully authorizes or permits the default, shall be liable to a fine not exceeding fifty thousand dollars.

344.—(1) The Court may, on an application made to the Court by the trustee of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company.

(2) The power of the Court under subsection (1) shall, where no previous order has been made with respect thereto under that subsection—

- (a) extend to fixing the remuneration for any period before the making of the order or the application therefor; and
- (b) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application therefor; and
- (c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order:

Provided that the power conferred by paragraph (c) shall not be exercised as respects any period before the making of the application for the order unless in the opinion of the Court there are special circumstances making it proper for the power to be so exercised.

(3) The Court may from time to time on an application made either by the trustee or by the receiver or manager, vary or amend an order made under subsection (1).

(4) This section shall apply whether the receiver or manager was appointed before or after the appointed day, and to periods before, as well as to periods after, such day.

Power of Court to fix remuneration on application of trustee.

Power to appoint Trustee as receiver for debenture holders or creditors.
Notification that receiver or manager appointed.

Provisions as to information where receiver or manager appointed.

345.—(1) Where a receiver or manager of the whole or substantially the whole of the property of the company (hereafter in this section and in section 346 referred to as “the receiver”) is appointed on behalf of the holders of [security interest registered under the Security Interests in Personal Property Act](#), then subject to the provisions of this section and section 346—

- (a) the receiver shall forthwith send notice to the company of his appointment; and
- (b) there shall, within fourteen days after receipt of the notice, or such longer period as may be allowed by the Court or by the receiver, be made out and submitted to the receiver in accordance with section 346 a statement in the prescribed form as to the affairs of the company; and
- (c) the receiver shall within two months after receipt of that statement send—
 - (i) to the Registrar and to the Court, a copy of the statement and of any comments he sees fit to make thereon and in the case of the Registrar also a summary of the statement and of his comments (if any) thereon; and
 - (ii) to the company, a copy of any such comments as aforesaid or, if he does not see fit to make any comment, a notice to that effect; and
 - (iii) to any trustees for the debenture holders on whose behalf he was appointed and, so far as he is aware of their addresses, to all such debenture holders, a copy of the said summary.

(2) The receiver shall within two months, or such longer period as the Court may allow, after the expiration of the period of twelve months from the date of his appointment and of every subsequent period of twelve months, and within two months or such longer period as the Court may allow after he ceases to act as receiver or manager of the property of the company, send to the Registrar, to any trustees for debenture holders of the company on whose behalf he was appointed, to the company and (so far as he is aware of their addresses) to all such debenture holders an abstract in the prescribed form showing his receipts and payments during that period of twelve months, or where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.

(3) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect—

- (a) with the omission of the references to the Court in subsection (1); and
- (b) with the substitution for the references to the Court in subsection (2) of references to the Registrar.

(4) Subsection (1) shall not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act, except that, where that subsection applies to a receiver or manager who dies or ceases to act before it has been fully complied with, the references in paragraphs (b) and (c) thereof to the receiver shall

(subject to subsection (5)) include references to his successor and to any continuing receiver or manager.

(5) Nothing in subsection (4) shall be taken as limiting the meaning of the expression “the receiver” where used in, or in relation to, subsection (2).

(6) This section and section 346, where the company is being wound up, shall apply notwithstanding that the receiver or manager and the trustee are the same person, but with any necessary modifications arising from that fact.

(7) Nothing in subsection (2) shall be taken to prejudice the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times at which, he may be required to do so apart from that subsection.

(8) If the receiver makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding two thousand dollars for every day during which the default continues.

346.—(1) The statement as to the affairs of a company required by section 345 to be submitted to the receiver (or his successor) shall show as at the date of the receiver’s appointment the particulars of the company’s assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.

Special provisions as to statement submitted to receiver.

(2) The statement shall be submitted by, and be verified by affidavit of, one or more of the persons who are at the date of the receiver’s appointment the directors and by the person who is at that date the secretary of the company, or by such of the persons hereafter in this subsection mentioned as the receiver (or his successor), subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons—

- (a) who are or have been officers of the company;
- (b) who have taken part in the formation of the company at any time within one year before the date of the receiver’s appointment;
- (c) who are in the employment of the company, or have been in the employment of the company within that year, and are in the opinion of the receiver capable of giving the information required;
- (d) who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company to which the statement relates.

(3) Any person making the statement and affidavit shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the Court.

(4) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect with the substitution for references to the Court of references to the Registrar and for references to an affidavit of references to a statutory declaration.

(5) If any person without reasonable excuse makes default in complying with the requirements of this

section, he shall be liable to a fine not exceeding three thousand dollars for every day during which the default continues.

(6) References in this section to the receiver's successor shall include a continuing receiver or manager.

347.—(1) Except where subsection (2) of section 345 applies, every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month, or such longer period as the Registrar may allow, after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, deliver to the Registrar for registration an abstract in the prescribed form showing his receipts and his payments during that period of six months, or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.

Delivery to Registrar of accounts of receivers and managers.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding two thousand dollars for every day during which the default continues.

348.—(1) If any receiver or manager of the property of a company—

- (a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver or manager is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so; or
- (b) having been appointed under the powers contained in any instrument, has, after being required at any time by the trustee of the company so to do, failed to render proper accounts of his receipts and payments and to vouch the same and to pay over to the trustee the amount payable to him,

the Court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as may be specified in the order.

(2) In the case of any such default as is mentioned in paragraph (a) of subsection (1) an application for the purposes of this section may be made by any member or creditor of the company or by the Registrar, and in the case of any such default as is mentioned in paragraph (b) of that subsection the application shall be made by the trustee, and in either case the order may provide that all costs of and incidental to the application shall be borne by the receiver or manager, as the case may be.

(3) Nothing in this section shall be taken to prejudice the operation of any enactments imposing penalties on receivers or managers in respect of any such default as is mentioned in subsection (1).

349.—(1) A receiver or manager of the property of a company appointed under the powers contained in any instrument shall, to the same extent as if he had been appointed by order of a court, be personally liable on any contract entered into by him in the performance of his functions, except in so

Enforcement of duty of receivers and managers to make returns, etc.

Liability of receiver for contracts, etc.

far as the contract otherwise provides, and entitled in respect of that liability to indemnity out of the assets; but nothing in this subsection shall be taken as limiting any right to indemnity which he would have apart from this subsection, or as limiting his liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.

(2) This section shall apply whether the receiver or manager was appointed before or after the appointed day but subsection (1) shall not apply to contracts entered into before that day.

350. It is hereby declared that, except where the context otherwise requires—

- (a) any reference in this Act to a receiver or manager of the property of a company, or to a receiver thereof, includes a reference to a receiver or manager, or (as the case may be) to a receiver, of part only of the property and to a receiver only of the income arising from that property or from part thereof; and
- (b) any reference in this Act to the appointment of a receiver or manager under powers contained in any instrument includes a reference to an appointment made under powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument.

PART VII—REGISTRATION OFFICE AND FEES

351.—(1) For the purposes of this Act there shall be a Registrar of Companies whose office shall be a public office, and the Minister shall establish in Jamaica a registration office of companies.

Registrar of
Companies and
registration
office.

(2) The Registrar may in writing authorize any officer of his department to execute, subject to the Registrar's directions and to prescribe conditions (if any), functions assigned to the Registrar by any enactment.

(3) Anything executed by any officer to whom authority is given under this section and in accordance with such authority shall be as valid and effectual as if it were executed by the Registrar.

(4) Notice of any authority given under this section and of any extension or revocation of such authority shall be published in the *Gazette* but failure to publish such notice shall not affect the validity of the authority conferred, or any extension or revocation thereof, as the case may be.

351 A.—(1) Where the Registrar receives an application in the form set out as BRF1 in the Sixteenth Schedule, the Registrar shall—

Powers of the
Registrar re:
form BRF1.
Sixteenth
Schedule.

- (a) use such information on the form BRF1 as is relevant to the functions of the Registrar under the Companies Act or Registrar under the Companies Act or Registration of Business Names Act; and
- (b) transmit the relevant portions of the information to each public body that is by law required to perform the function for which the applicant is applying, as is indicated on the duly completed Form BRF1.

(2) The deliver to the Registrar of the duly completed form BRF1 shall be an application for such of the following as is required by applicant in the Form—

- (a) a taxpayer registration number under the Revenue Administration Act or any

Construction
of references
to receivers
and managers.

- subsidary legislation made thereunder;
- (b) registration under the General Consumption Tax Act or any subsidiary legislation made thereunder to facilitate the payment of general consumption tax.
- (c) Registration under the National Insurance Act;
- (d) Registration under the National Housing Act as an employer;
- (e) A tax compliance certificate for a new company under the Revenue Administration Act; and
- (f) Such other application as may be made under the form

(3) Except as may be required under any other law or as provided for in paragraph (b) of subsection (1), the Registrar shall not disclose the information referred to in that paragraph in any other circumstance.

352.—(1) Subject to subsection (1A) and (1D), any person may inspect the documents kept by the Registrar on payment of the prescribed fees, and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar, on payment of the prescribed fees.

Inspection, production, evidence and retention of documents kept by Registrar.

(1A) The register of beneficial owners or any other document providing beneficial ownership information of an intended company, a company or a former company, including a company struck-off the register and dissolved shall not be made available for inspection under subsection (1) —

- (a) except with the written consent of the beneficial owner, or former beneficial owner, to whom the information relates;
- (b) upon the written request of the person desirous of inspecting the register of beneficial owners or any other document providing beneficial ownership information kept by the Registrar; and
- (c) otherwise in accordance with subsection (1D).

(1B) Subject to subsection (5), upon the written request of an authority referred to in subsection (1C), the Registrar shall—

- (a) permit an officer authorized by the authority which made the request, to inspect documents kept by the Registrar;
- (b) provide, certified by the Registrar, any copy or extract of any document requested;
- (c) furnish, in a timely manner, to the authority, any requested information.

(1C) An authority that may make a request to the Registrar referred to in subsection (1B) is as follows—

- (a) a competent authority;
- (b) an authority of a foreign state or country carrying out functions analogous to the functions of a competent authority;
- (c) the designated authority;
- (d) a constable not below the rank of Sergeant;
- (e) the Commissioner of Customs;
- (f) the Commissioner General;
- (g) the Director of Public Prosecutions.

(1D) The register of beneficial owners shall be available for inspection by any of the following persons—

- (a) a competent authority;
- (b) upon request to the Registrar, in writing, by a procuring entity;
- (c) upon request to the Registrar, in writing, and with the consent of the beneficial owner—
 - (i) a financial institution;
 - (ii) a designated non-financial institution.

(2) No process for compelling the production of any document kept by the Registrar shall issue from any Court except with the leave of that Court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the Court.

(3) A copy of or extract from any document—

- (a) registered and kept by the Registrar for the registration of companies;
- (b) inspected by the Registrar,

certified to be a true copy under the hand of the Registrar (whose official position it shall not be necessary to prove), shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

(4) The Minister may make rules subject to affirmative resolution, prescribing the maximum period for which the Registrar is required to retain any documents or category thereof kept and registered at the office.

(5) The Registrar may refuse a request made under subsection (1B) by an authority of a foreign state or country, if any disclosure of information made by the Registrar pursuant to the request is prohibited by law or an order of the court.

352A. No action, suit, prosecution or other proceedings shall be brought or instituted personally against the Registrar or any officer authorized under section 351(2) and 377M, in respect of any lawful act done, in good faith, in pursuance or execution or intended execution of the provisions of sections 113A, 113C, 352 and Part XIA.

Protection of Registrar and authorized officers.
Part XIA.

352B. —(1) Every person having an official duty under this Act, or being employed or otherwise concerned in the administration of this Act shall regard and deal with as secret and confidential all documents and information, except that no disclosure made by a concerned person in proceedings for an offence under this Act or under the Perjury Act shall be deemed inconsistent with any duty imposed under this subsection.

Duty of secrecy.

(2) The obligation as to secrecy and confidentiality imposed under this section, in relation to any documents or information obtained under this Act continues to apply to a person despite that person having ceased to have an official duty, be employed or otherwise concerned in the administration of this Act.

(3) Every person who is required under subsection (1) or (2) to deal with matters specified therein as secret and confidential who at any time communicates any such document or information referred to in subsection (1) disclosed to him in the execution of any official duties or otherwise in the administration of the Act to any person—

- (a) other than a person to whom he is authorized by law to communicate the document or information;
- (b) otherwise than for the purpose of this Act,

commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding one million dollars or to term of imprisonment not exceeding one year.

353.—(1) If a company, having made default in complying with any provision of this Act which requires it to file with, or deliver or send to, the Registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, a Judge in Chambers may, on an application made to him by any member or creditor of the company or by the Registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order:

Enforcement of duty of company to make returns to Registrar.

Provided that the Judge may refer the application for hearing in open Court.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

PART VIII—APPLICATION OF ACT TO EXISTING COMPANIES

354. In the application of this Act to existing companies it shall apply in the same manner—

Application of Act to existing companies.

- (a) in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares;
- (b) in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and
- (c) in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company:

Provided that reference, express or implied, to the date of registration or recording shall be construed as a reference to the date at which the company was registered or recorded before the commencement of this Act.

PART IX—WINDING UP OF UNREGISTERED COMPANIES

355. For the purposes of this Part, the expression “unregistered company” shall not include a friendly society registered and established under the Friendly Societies Act, or a society established under the Building Societies Act, but shall include any partnership whether limited or not, association or company not registered under the law relating to companies before the commencement of this Act or under this Act, so, however, that any such partnership, association or company which is not a foreign partnership, association or company shall consist of not less than eight members, and all the provisions of this Act with respect to winding up shall apply to such a company, with the following exceptions and additions, that is to say—

- (a) no unregistered company shall be wound up under this Act voluntarily or subject to supervision;
- (b) the circumstances in which an unregistered company may be wound up are as follows, that is to say—
- i. if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
 - ii. ~~if the company is unable to pay its debts;~~
 - iii. if the Court is of opinion that it is just and equitable that the company should be wound up;
- (c) ~~an unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—~~
- i. ~~if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding two hundred thousand dollars then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has, for three weeks after the service of the demand, neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;~~
 - ii. ~~if any action or other proceeding has been instituted against any member for any debt or demand due or claimed to be due from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, the company has not, within ten days after service of the notice, paid, secured, or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages, and expenses to be incurred by him by~~

Meaning and winding up of unregistered company.

reason of the same;

- ~~iii. if execution or other process issued on a judgment, decree, or order obtained in the Court in favour of a creditor against the company, or any member thereof as such, or any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied;~~
- ~~iv. if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.~~

Contributories in winding up of unregistered company.

356.—(1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

(2) In the event of the death or bankruptcy of any contributory, the provisions of this Act with respect to the personal representatives of deceased contributories, and to the trustees of bankrupt contributories, shall apply.

Power of Court to stay or restrain proceedings.

357. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of an [application](#) for winding up and before the making of a winding up order, shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Power of Court to stay or restrain proceedings.

358. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

Winding up company incorporated outside Island.

359. Where a company incorporated outside Jamaica which has been carrying on business in Jamaica ceases to carry on business in Jamaica, it may be wound up as an unregistered company under this Part, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

Provisions of Part IX cumulative.

360. The provisions of this Part with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Act contained with respect to winding up companies by the Court, and the Court or trustee may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

Provisions of Part IX cumulative.

361. In the case of a limited partnership the provisions of this Act with respect to winding up shall apply with such modifications, if any, as may from time to time be prescribed by the Minister and with the substitution of general partners for directors.

PART X—COMPANIES INCORPORATED OUTSIDE JAMAICA CARRYING ON BUSINESS WITHIN JAMAICA

Companies to which Part X applies.

362. This Part shall apply to all companies incorporated outside Jamaica which, after the appointed day, establish a place of business within Jamaica, and to all companies incorporated outside Jamaica which have, before the appointed day, established a place of business within Jamaica and continue to have an established place of business within Jamaica after the appointed day (referred to as companies to which Part X applies).

363.—(1) Companies incorporated outside Jamaica which after the appointed day establish a place of business within Jamaica, shall within one month (or, in the case of any of the documents mentioned in paragraph (a) of this subsection, such longer period not exceeding four months as the Minister may allow) from the establishment of the place of business, deliver to the Registrar for registration—

Documents etc. to be delivered to Registrar by companies carrying on business in Jamaica.

- (a) a certified copy of the charter, statutes or articles of the company, or other instrument constituting or defining the constitution and containing the name of the company, and, if the instrument is not written in the English language, a certified translation thereof;
- (b) a list of the directors of the company, containing such particulars with respect to the directors as are by this Act required to be contained with respect to directors in the register of the directors of a company;
- (c) a list of members and any beneficial owners, containing such particulars as are by this Act required to be entered in the register of members of a company.
- (d) the names and addresses of some one or more persons resident in Jamaica authorized to accept on behalf of the company service of process and any notices required to be served on the company.

(2) The provisions of subsection (1) shall apply in relation to companies to which this Part applies, other than companies mentioned in that subsection, as they apply in relation to companies so mentioned with the substitution for the words “one month” of the words “three months”, for the words “four months” of the words “six months”, and for the words “the establishment of the place of business” of the words “the appointed day”.

(3) If within six months of the delivery to the Registrar pursuant to subsection (1) by any such company as is mentioned in that subsection of the instrument containing the name of the company it appears to the Registrar that such name too closely resembles the name registered in respect of any other company (whether incorporated within or outside Jamaica) in the documents registered at the office for the registration of companies, the Registrar may direct such first-mentioned company within six weeks of the date of the direction (or within such longer period as the Registrar may think fit to allow) in addition to or in place of its principal name to take an alternative name approved by the Registrar as the name in which it proposes to carry on business in Jamaica.

(4) Where a direction has been given to a company pursuant to subsection (3) the company shall—

- (a) on or before the expiration of the time given by the Registrar notify in writing to the Registrar for the purpose of registration by him the approved alternative name taken

by the company pursuant to the direction; and

(d) after the date of such notification carry on business in Jamaica solely in that alternative name.

363A. A company incorporated outside Jamaica which established a place of business within Jamaica, shall keep in Jamaica—

- (a) a register of members, to be referred to as the “overseas branch register” to which sections 109 to 117A shall apply; and
- (b) a register of directors to be referred to as the “overseas register of directors” to which section 183 shall apply.

363B. No company to which Part X applies shall have a nominee shareholder or appoint a nominee director.

364. A company incorporated outside Jamaica shall have the same power to hold lands in Jamaica as if it were a company incorporated under this Act.

365.—(1) If in the case of any company to which this Part applies any alteration is made in—

- (a) the charter, statutes, or articles of the company or any such instrument as aforesaid;
- (b) the directors of the company or the particulars contained in list of the directors;
- (c) a list of members and beneficial owners of the company or the particulars entered in the register of members; or
- (d) the names or addresses of the persons authorized to accept service on behalf of the company,

the company shall, within twenty-eight days after the date on which the alteration was made, deliver to the Registrar for registration a return containing the prescribed particulars of the alteration and a certified copy of the alteration made.

(2) Where an alteration made to the name of any company to which this Part applies is shown in a return delivered to the Registrar for registration pursuant to subsection (1), the provisions of subsections (3) and (4) of section 363 shall apply with the necessary modifications in relation to the name of the company as altered as they apply in relation to the name of a company contained in the relevant instrument delivered to the Registrar pursuant to paragraph (a) of subsection (1) of that section.

(3) In this section, “certified” means certified by not less than two directors, or a director and a secretary, or a notary public, to be a true copy.

Registers to be kept by companies incorporated outside Jamaica.

Nominee directors and nominee shareholders prohibited. Part X.

Powers of companies incorporated outside island to hold lands.

Return to be delivered to Registrar where documents etc., altered.

Accounts of company carrying on business in Island.

366.—(1) Subject to the provisions of this section, every company to which this Part applies shall within eighteen months of the registration of the company, and thereafter, in every calendar year make out a balance sheet and profit and loss account and, if the company is a holding company, group accounts in such form, and containing such particulars and including such documents, as under the provisions of this Act it would, if it had been a company incorporated under this Act, have been required to make out and lay before the company in general meeting, and deliver a copy of those documents to the Registrar for registration.

(2) Subject to the provisions of this section, a company to which this Part applies may within eighteen months of the registration of the company, and thereafter, in every calendar year., at the option of the company, in lieu of complying with the requirements of subsection (1) in relation to that year, deliver to the Registrar for registration a copy of its balance sheet and profit and loss account or, if the company is a subsidiary company, a copy of the balance sheet of its holding company, prepared in the form required under the law of the place of the company's incorporation, but in the event of exercising the option given by this subsection the company shall also deliver to the Registrar for registration—

- (a) a profit and loss account, prepared in the English language and to the satisfaction of the Registrar made out as nearly as may be in the form and containing the particulars required by this Act in relation to the profit and loss account of a company incorporated under this Act, on the company's operations in Jamaica as if such operations had been conducted by a separate company incorporated under this Act, so, however, that the company shall be entitled to make such apportionments and to add such notes and explanations as shall in its opinion be necessary or desirable to give a true and fair view of the profit or loss on its operations in Jamaica and for this purpose may debit a reasonable rate of interest on capital employed in Jamaica;
- (b) a statement as at the date to which the company's profit and loss account is made up prepared in the English language and showing the company's assets locally situated in Jamaica classified, distinguished and valued in accordance with the provisions of this Act affecting the classifying, distinguishing and valuing of the assets of a company incorporated under this Act and the nature and amount of any specific charges on such assets;
- (c) a report prepared in the English language on the account and statement referred to in paragraphs (a) and (b) by an accountant qualified under this Act for appointment as auditor of a company which is not a private company or of a private company which is obliged to file accounts stating that in his opinion and to the best of his information such account and statement are in accordance with the books and records of the company and give the information required by this Act in the manner therein required and give a true and fair view of the matters therein stated.

(3) Subject to subsection (5), if any document mentioned in subsection (1), or if any document mentioned in subsection (2) which is not required by subsection (2) to be in the English language, is not in the English language, there shall be annexed thereto a certified translation thereof.

(4) In relation to the balance sheets, accounts and statements referred to in this section the Minister shall have the same powers to modify any of the requirements imposed by virtue of this section as he

has to modify the requirements imposed by this Act in relation to the balance sheets and profit and loss accounts of a company incorporated under this Act.

(5) The Minister, if, having regard to the nature and volume of the business done in Jamaica by the company or class of companies affected, he is satisfied that it is expedient so to do, may by order grant, to such extent and subject to such conditions as may be specified in the order, exemption—

- (a) to any holding company, or class of holding companies, to which this Part applies, from the provisions of subsection (1) requiring the making out of group accounts, and the delivery to the Registrar of a copy of any documents relating to such accounts; and
- (b) to any company, or class of companies, to which this Part applies, from the provisions of subsection (3) requiring the annexing of a certified translation to any document.

367.—(1) Every company to which this Part applies shall—

- (a) in every prospectus inviting subscriptions for its shares or debentures in Jamaica state the country in which the company is incorporated; and
- (b) conspicuously exhibit on every place where it carries on business in Jamaica the name of the company and the country in which the company is incorporated; and
- (c) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices and other official publications of the company; and
- (d) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every such prospectus as aforesaid and in all bill-heads, letter paper, notices and other official publications of the company in Jamaica, and to be affixed on every place where it carries on its business.

Obligation to state the name of company whether limited and country where incorporated.

(2) In their application to any company in respect of which there has been registered an alternative name pursuant to the provisions of subsections (3) and (4) of section 363 or by virtue of the provisions of subsection (2) of section 365, the provisions of paragraphs (b) and

(c) of subsection (1) of this section requiring the exhibiting and stating of the name of the company shall be taken to require the exhibiting and stating of the alternative name as well as the principal name of the company on the places and in the documents specified in those paragraphs in the manner respectively so specified.

368. Any process or notice required to be served on a company to which this Part applies shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar under this Part and left at or sent by post to the address which has been so delivered:

Service on company to which Part X applies.

Provided that—

- (a) where any such company makes default in delivering to the Registrar the name and address of a person resident in Jamaica who is authorized to accept on behalf of the company service of process or notices; or
- (b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served,

a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Jamaica.

369. If any company to which this Part applies ceases to have a place of business in Jamaica it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given the obligation of the company to deliver any document to the Registrar under this Act shall cease:

Part X company ceasing to have a place of business in Jamaica.

Provided that in case the Registrar is satisfied by any other means that the company has ceased to have a place of business in Jamaica it shall be lawful for him to close the file of the company unless it is necessary to maintain the file for the purposes of the Transfer Tax Act, and upon such closure the obligation of the company to deliver any document to the Registrar under this Act shall cease.

369A. The name of a company to which Part X applies may be struck off the register of companies pursuant to sections 117A, 337 and 377H, respectively.

Striking off of name of Part X company. Part X.

370. If any company to which this Part applies fails to comply with any of the foregoing provisions of this Part for which no other penalty is provided the company, and every officer or agent of the company who knowingly or wilfully authorizes or permits the default shall be liable to a fine not exceeding two million dollars.

Penalties.

371. For the purposes of this Part—

- “certified” means certified in the manner prescribed to be a true copy or a correct translation;
- “director” in relation to a company includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;
- “place of business” includes a share transfer or share registration office;
- “principal name” means—

- (a) in relation to a company to which a direction has been given pursuant to subsection (3) of section 363, the name of the company contained in the relevant instrument delivered to the Registrar pursuant to paragraph (a) of subsection (1) of that section; and
- (b) in relation to a company to which a direction has been given by virtue of the provisions of subsection (2) of section 365, the altered name of the company as shown in the return delivered to the Registrar pursuant to subsection (1) of that section;

“prospectus” has the same meaning as when used in relation to a company incorporated under this Act.

PART XI—RESTRICTIONS ON SALE OF SHARES AND OFFERS OF SHARES FOR SALE

Provisions with respect to prospectuses of foreign companies inviting subscriptions for shares or offering shares for sale.

372.—(1) The provisions of subsections (2) to (6) of this section shall have effect in relation to the issuing, circulating or distributing in Jamaica by any person of any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Jamaica, whether the company has or has not established, or when formed will or will not establish, a place of business in Jamaica.

(2) Every such prospectus shall be dated.

(3) No such prospectus shall be issued, circulated or distributed in Jamaica unless before the date of such issue, circulation or distribution—

- (a) there has been delivered to the Registrar for the purpose of securing registration of the prospectus a copy thereof certified by the chairman and two other directors of the company as having been approved by resolution of the managing body; and
- (b) pursuant thereto registration has been effected.

(4) Every such prospectus shall state on the face of it that the prospectus has been registered as required by this subsection.

(5) The Registrar shall not register any such prospectus unless it is dated, and the copy thereof certified, in manner required by this section and there is endorsed on or attached to the copy—

- (a) any consent to the issue of the prospectus required by section 374;
- (b) a copy of any contract required by paragraph 11 of the Third Schedule to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and

(e) where the persons making any report required by Part II of that Schedule have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 21 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(6) The reference in paragraph (b) of subsection (5) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a foreign language, be taken as a reference to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation.

(7) The provisions of subsection (4) of section 40 which relate to the power of the Registrar to refuse to register prospectuses and the provisions of subsection (5) of that section shall, with the necessary modifications, apply in relation to prospectuses referred to in subsection (1) of this section as they apply in relation to prospectuses referred to in that section.

Third Schedule.

(8) Whenever the Registrar has registered a prospectus under this section he shall in writing inform the company or any other person who has delivered the copy of the prospectus pursuant to this section, of the fact of registration and the date thereof, and every prospectus referred to in subsection (1) issued, circulated or distributed in Jamaica by any person shall show on its face, in addition to the date required by subsection (2), the date of registration.

(9) It shall not be lawful for any person to issue to any person in Jamaica a form of application for shares in or debentures of such a company or intended company as is mentioned in subsection (1) unless the form is issued with a prospectus which complies with this Part and the issue whereof does not contravene the provisions of section 374:

Provided that this subsection shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(10) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

373.—(1) Any such prospectus as is mentioned in subsection (1) of section 372 shall also—

- (a) contain particulars with respect to the following matters—
 - (i) any restrictions on the business that the company can conduct;
 - (ii) the instrument constituting or defining the constitution of the company;
 - (iii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;
 - (iv) an address in Jamaica where those instruments, enactments or provisions, or copies thereof, and if, the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected;
 - (v) the date on which and the country in which the company was incorporated;
 - (vi) whether the company has established a place of business in Jamaica, and, if so, the address of its office in Jamaica:

Additional requirements as to prospectus.

Provided that the provisions of sub-paragraphs (i), (ii), (iii) and (iv) shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business;

- (b) subject to the provisions of this section, state the matters specified in Part I of the Third Schedule and set out the reports specified in Part II of that Schedule:

Provided that in paragraph 1 of the Third Schedule a reference to the constitution of the company shall be substituted for the reference to the articles.

(2) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

- (a) as regards any matter not disclosed, he proves that he was not cognizant thereof; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that—

- (a) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed; and
- (b) in paragraph 2 of the Third Schedule a reference to the constitution of the company shall be substituted for the reference to the articles.

(4) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(5) Nothing in this section or section 372 shall limit or diminish any liability which any person may incur under the general law or this Act, apart from those sections.

374.—(1) It shall not be lawful for any person to issue, circulate or distribute in Jamaica any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Jamaica, whether the company has or has not established, or when formed will or will not establish, a place of business in Jamaica—

- (a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or
- (b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions (other than

Provisions as to expert's consent and allotment.

penal provisions) of section 51 as far as applicable.

(2) In this section the expression “expert” includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him, and for the purposes of this section a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

375. Any person who is knowingly responsible for the issue, circulation or distribution of a prospectus, or for the issue of a form of application for shares or debentures, in contravention of any of the provisions of sections 372, 373 and 374 shall be liable to a fine not exceeding fifty thousand dollars.

Penalty for contravention of sections 372, 373 and 374.

376. Section 44 shall extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Jamaica, whether the company has or has not established, or when formed will or will not establish, a place of business in Jamaica, with the substitution, for references to section 42 of references to section 374.

Civil liability for misstatements in prospectus.

377.—(1) Where any document by which any shares in or debentures of a company incorporated outside Jamaica are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 46 to be a prospectus issued by the company, that shall be deemed to be, for the purposes of this Part, a prospectus issued by the company.

Interpretation of provisions as to prospectuses.

(2) An offer of shares or debentures for subscription or sale to any person whose ordinary business is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this Part.

(3) In this Part the expressions “prospectus”, “shares” and “debentures” have the same meanings as when used in relation to a company incorporated under this Act.

PART XIA. *Beneficial Ownership*

377A.—(1) In respect of the beneficial ownership of a company, or an intended company, a beneficial ownership return shall be made—

Duty to make beneficial ownership return.

- (c) pursuant to section 3(1)(a)(iii), in relation to an intended company;
- (d) upon delivery of a return of allotments under section 52, in respect of each allottee named therein;
- (e) by a company and delivered to the Registrar annually, made up to a date not later than the date which is from time to time the company’s return; and
- (f) within fourteen days after any change of beneficial ownership information that occurs before the next annual filing of the return is due.

(2) Where there is a chain of ownership, every beneficial owner of the company, including those whose beneficial ownership is acquired or held pursuant to a chain of ownership shall be included in the beneficial ownership return.

(3) A company that fails to deliver a beneficial ownership return in accordance with subsection (1)(b), (c) or (d) commits an offence and is liable to a fine not exceeding five million dollars.

377B. Each beneficial ownership return shall—

- (a) be made, as appropriate, in the form set out as Form A or Form B in Part III to the Fifth Schedule;
- (b) contain the information required under section 377C;
- (c) in the case of companies to which Part X applies, be accompanied by a copy of the certificate of incorporation or similar document, however described., providing evidence of the incorporation, establishment or formation of the company, upon the first occasion on which the beneficial ownership return is made by a company to which Part X applies, and thereafter at the request of the Registrar; and
- (d) be delivered to the Registrar within twenty-eight days after the date to which it is made up.

377C.—(1) The information referred to in section 377B(b) to be contained in beneficial ownership return is as follows—

- (a) the date to which it is made up;
- (b) the name of the company, address of the registered office and, in the case of a company to which Part X applies, its principal place of business.
- (c) an accurate, adequate and up-to-date list of all persons who, on the date of the return, are members and beneficial owners of the company, and all persons who have ceased to be members and beneficial owners since the date of the last return or, in the case of the first return, of the incorporation of the company.

(2) In the case of a public company, the list referred to in subsection (1), to be contained in the annual beneficial ownership return, may exclude the names of all past and present members of the company.

377D.—(1) The list referred to in section 377C(1)(c) shall—

- (a) state, in respect of each member, who is an individual and each beneficial owner—
 - (i) name, date of birth and nationality;
 - (ii) address and occupation;
 - (iii) tax registration number or other tax identification number; and
 - (iv) if the number referred to in paragraph(a)(iii) is not applicable or available, the number, place of issue and expiry date of the valid passport or driver's licence held and in the case of a past member or beneficial owner, the last valid passport or driver's licence held prior to cessation of membership or ownership of the company, as the case may be;
- (b) state, in respect of each member who is not an individual, the member's name, date or establishment, address and tax registration number, or other tax identification number; and
- (c) in the case of a company having shares, state the number of shares held by each of the existing members and beneficial owners at the date of return, specifying the shares transferred since the date of the last return or, in the case of the first return, of the incorporation of the company by persons who have ceased to be members or beneficial

owners, respectively, and the dates of registration of transfers.

(2) If the names in the list contained in the return are not arranged in alphabetical order, the company shall have annexed to the list an index sufficient to enable the name of any person in the list to be readily found.

Verification by Registrar of beneficial ownership information.

377E.—(1) The Registrar shall verify the accuracy of the beneficial ownership particulars in a beneficial ownership return delivered to the Registrar in compliance with this Act.

(2) For the purposes of subsection (1), the Registrar may make a request, in writing, to—

- (a) the company;
- (b) any public entity;
- (c) any entity in a foreign state or country which carries out function analogous to the functions of a public entity in that state or country,

for information on the measures used for verification, including substantiating documents used to verify the accuracy of the information that was submitted to the Registrar.

Failure to deliver or inaccurate, etc., annual beneficial ownership return.

377F. —(1) Where an annual beneficial ownership has not been delivered to the Registrar or the annual beneficial ownership return delivered is not accurate, adequate or up-to-date in accordance with section 377C(1)(c), and the company is in default for a period of not less than nine months after the company's return date, the Registrar shall—

- (a) give notice to the company in default, requiring the company to deliver—
 - (i) the outstanding annual beneficial ownership return, not later than thirty days after the date of the notice; or
 - (ii) an annual beneficial ownership return that is adequate, accurate and up-to-date, within such period not being less than thirty days, in accordance with section 377G;
- (b) if the company has not delivered the required return within the period specified in the notice given under paragraph (a), give a final notice to the company, requiring the company to deliver the outstanding annual beneficial ownership return not later than sixty days after the date of this final notice,

and if the company has not delivered the outstanding annual beneficial ownership return within the sixty-day period specified in a final notice given under paragraph (b), the name of the company, unless cause is shown to the contrary, may be struck off the register and the company dissolved under section 377H.

(2) In the case of a financial holding company or financial institution, the name of the company shall not be struck-off, without the Registrar holding consultations with the Supervisor and, in the case of a financial institution providing insurance business and insurance related financial services, without the Registrar holding consultation with the Financial Services Commission.

(3) In this section—

“financial holding company” has the meaning assigned to it by section 2 of the Banking Services

Act;

“financial institution” has the meaning assigned to it by section 2 of the Banking Services Act;

“Financial Services Commission” means the body established under section 3 of the Financial Services Commission Act;

“Supervisor” has the meaning assigned to it by section 2 of the Banking Services Act.

377G.—(1) Where a company delivers to the Registrar an annual beneficial ownership return that, as at the return date applicable to that annual beneficial ownership return—

(a) does not contain any information required under section 377C(1); or

(b) contains a list of the membership and beneficial ownership that is inaccurate, inadequate or not up-to-date,

the Registrar shall give notice to the company and the company shall, within thirty days after the date of the notice, or such longer period as the Registrar may allow, deliver to the Registrar an annual beneficial ownership return that is accurate, adequate and up-to-date.

(2) A notice under subsection (1) shall—

(a) be given in writing;

(b) specify, as applicable, the information omitted from the annual beneficial ownership return, or the information that is inaccurate, inadequate or not up-to-date; and

(c) advise the company of the period, not being less than thirty days from the date of the notice, within which the company is to deliver to the Registrar an annual beneficial ownership return that is accurate, adequate and up-to-date.

377H. —(1) Where the Registrar is satisfied that a company has not delivered, within the sixty-day period specified in a final notice under section 377F(1)(b), an outstanding annual beneficial ownership return or has been delivered, within the period specified in section 377G(2)(c), an annual beneficial ownership return that is not accurate, adequate or up-to-date, the Registrar shall publish in the *Gazette* and in a daily newspaper circulating in Jamaica, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company shall be dissolved.

(2) At the expiration of the three-month period the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of that notice, the company shall be dissolved, so, however that—

(a) the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and

(b) nothing in this subsection shall affect the power of the Court to wind up a company the name of which has been struck off the register,

(3) If a company or any member or creditor thereof is aggrieved by the company having been struck off the register, the Registrar on an application made by the company or member or creditor before the expiration of twenty years from the publication in the *Gazette* of the notice referred to in subsection (2) may, if satisfied that—

Notice of inaccurate, etc., annual beneficial ownership return..

Registrar may strike off company for failure to deliver or inaccurate, etc., annual beneficial ownership return.

- (a) the outstanding annual beneficial ownership return or the accurate, adequate and up-to-date annual beneficial ownership return was delivered within the sixty-day period specified in a final notice given under section 377F(1)(b) or within the period specified in section 377G(2)(c) as the case may be, at the time of striking off; or
- (b) otherwise that it is just that the company be restored to the register,

order the name of the company to be restored to the register and upon such registration, the company shall be deemed to have continued in existence as if its name had not been struck off.

(4) A notice, or any other document, to be sent under this section—

- (a) to a trustee, may be addressed to the trustee at his last know place of business;
- (b) to the company, shall be addressed to —
 - (i) the company at its registered office;
 - (ii) a director or other officer of the company, of if there is no director or other officer whose name and address are known to the Registrar, to each of the persons who subscribed the articles, addressed to him at the address mentioned in the articles; and
 - (iii) in the case of a company to which Part X applies, to the person named under section 363(1)(d), authorized to accept service of process on behalf of that company.

Part X.

(5) This section shall apply with any necessary modification to the striking off from the register of companies of the name of a company to which Part X applies.

Part X.

377I—(1) With effect as at the date of a notice issued under section 113D(b) or 377F(1)(a), the following restrictions apply—

- (a) the member shall not effect any transfer of any shares held;
- (b) a director shall not exercise the power to borrow money under the articles, until the information relating to the membership and beneficial ownership is accurate, adequate and up-to-date in compliance with this Act.

Restrictions on share transfers and exercise of power to borrow.

(2) A member who contravenes a restriction under subsection (1)(a) or a director who contravenes a restriction under section 91)(b) commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding one million dollars or to a term of imprisonment not exceeding one year.

(3) Notwithstanding subsection (1), the Court may, on an application made by a person aggrieved, make an order, on the terms specified in subsection (4), for the purpose of protecting the rights or interests of the aggrieved person, if the Court is satisfied that—

- (a) a restriction under subsection (1) unfairly affects the rights or interests of the aggrieved person; and
- (b) it is not possible for the company to ascertain the information necessary to address the matters of which notice has been given by the Registrar and the company intends to do any one of the following—
 - (i) in the case of a transfer of shares, to purchase the shares held by the member and beneficial owner; or
 - (ii) the relevant interest affected by the restriction is to be transferred for valuable

consideration.

(4) An order under subsection (3), may, subject to such terms and conditions, including any limitation on the application of the order to a specific person or transaction, or certain class of person or transactions, as the Court thinks fit—

- (a) declare that certain acts shall not constitute a breach of a restriction imposed under subsection (1);
- (b) in the interests of fairness to the aggrieved person, approve the transfer of shares or the exercise of borrowing powers.

(5) For the avoidance of doubt, this section shall not apply to transactions which commenced, and have not yet concluded, prior to, on or by the date of the notice referred to in subsection (1).

377J—(1) The Registrar shall cause to be established and maintained an accurate, adequate and up-to-date register beneficial owners, in respect of companies, and the register shall, in respect of each company entered in the register of companies, and the register shall, in respect of each beneficial owner, include the following particulars—

Duty of Registrar to keep register of beneficial owners of companies.

- (a) name, date of birth and nationality;
- (b) address and occupation;
- (c) taxpayer registration number or other tax identification number;
- (d) if the number referred to in paragraph (c) is not applicable or available, the number, place of issue and expiry date of the valid passport or driver's licence held, and in the case of a past beneficial owner, the last valid passport or driver licence held prior to the cessation of membership or ownership of the company, as the case may be; and
- (e) in relation to the beneficial ownership—
 - (i) the company owned and the shares interest held;
 - (ii) the name, address and nationality of the member holding the legal interest on behalf of the beneficial owner.

(2) The annual beneficial ownership returns shall be contained in a separate part of the register of beneficial owners.

(3) The register of beneficial owners shall be available for inspection in accordance with section 352(1A).

377K. The register of beneficial owners shall be *prima facie* evidence of any matters by this Act directed of authorized to be inserted therein.

Register of beneficial owners to be evidence.

377L. —(1) For the purpose of the discharge of the Registrar's functions in relation to the register of beneficial owners and the accuracy, adequacy of, and the keeping of up-to-date beneficial ownership information by a company and, without prejudice to any other power conferred on the Registrar under this Act, the Registrar shall—

Powers of Registrar in relation to accuracy, etc., of beneficial ownership information.

- (a) take such steps as are necessary to ensure that appropriate standards of conduct and performance are maintained in relation to the keeping of accurate, adequate and up-to-date beneficial ownership information by companies in accordance with this Act and any rules or

regulations made under this Act;

- (b) at such times as the Registrar may determine examine, in such manner and such frequency as the Registrar thinks fit, the records and procedures of a company for the purpose of being satisfied that the company is compliant with the provisions of this Act in relation to the beneficial ownership of the company.

(2) Within ninety days after the completion of an examination under subsection (1), the Registrar shall report to the company the results of every such examination and any such report may contain such recommendations as the Registrar considers necessary to address any inaccuracy, inadequacy or other deficiency in the company's records or procedures in relation to the beneficial ownership of the company discovered in the examination.

377M. —(1) The Registrar may authorize, in writing, such number of officers of the department or other persons, subject to the Registrar's directions and to prescribed conditions (if any), for the purposes of section 113A and this Part.

(2) Anything done or executed by an officer of the department to whom authority is given under this section and in accordance with such authority shall be valid and effectual as if executed by the Registrar.

377N. For the purpose of the execution of duties by the Registrar under 113A or this Part, it shall be lawful, for the Registrar, to enter on to the premises of such other office where the register of members is kept, on the days Monday to Friday, in each week, between the hours of 8:30 a.m. and 5:00 p.m.

377O. —(1) The Registrar may, in the performance of the functions conferred on the Registrar under this Act, work in co-operation with any person or body as the Registrar may deem appropriate.

(2) A person or body shall co-operate with the Registrar in the exercise of the functions conferred on the Registrar under this Act.

(3) Subject to the provisions of this section, the Registrar may, with the approval of the Minister, enter into a memorandum of understanding or other agreement or arrangement with a foreign law enforcement agency, regarding the exchange of information relevant to the functions of the Registrar under this Act.

(4) Nothing in this section authorizes a disclosure by the Registrar unless—

- (a) the Registrar is satisfied that the foreign law enforcement agency is subject to adequate legal restrictions on further disclosures of the information provided, including the provision to the Registrar of—

- (i) an undertaking of confidentiality on the part of the foreign law enforcement agency; or
(ii) an undertaking by the foreign law enforcement agency not to disclose the information provided, without the consent of the Registrar; and

- (b) the Registrar is satisfied that the information requested by the foreign law enforcement agency is required for the purposes of that agency's functions, including the conduct of criminal proceedings to enforce laws administered by that agency.

Register of
beneficial
owners to be
evidence.

Right to
enter for
inspection or
examination.

Co-operation.

(5) Where, pursuant to a request for the exchange of information, the Registrar in accordance with this section supplies information to a requesting foreign law enforcement agency, the information supplied shall be deemed to be lawfully given under this Act and every person liable to be proceeded against on the ground that such information was unauthorized or unlawfully given, or that the person was otherwise acting illegally or improperly for any such reason only, is hereby acquitted, freed, discharged and indemnified against all persons whatsoever and whomsoever, from liability arising from the supply of that information.

(6) In this section, a “foreign law enforcement agency” means any entity having, under the laws of a foreign state or country, functions analogous to the functions performed in Jamaica by the Registrar.

377P.—(1) For the avoidance of doubt—

Minor inconsistencies,

- (a) a person shall not be liable to be proceeded under this Act; and
- (b) the name of a company shall not be struck off or removed from the register of companies,

for any minor inconsistency in the particulars referred to in section 109, to be included in the register of members, in respect of each member and beneficial owner of the company, or a beneficial ownership return made to the Registrar.

(2) An inconsistency that is minor in nature—

- (a) the inadvertent omission or inclusion of a letter, symbol, number or other character of text in particulars of the list of persons contained in the beneficial ownership return; and
- (b) such other inconsistency as may be specified by the Registrar.

377Q.—(1) Without prejudice to any other provision of the this Act for the service of documents, a notice or notification under this Part may be served either—

- (a) personally, by handing it to or leaving it with the member;
- (b) by post, by a letter properly addressed and prepaid; or
- (c) by facsimile transmission, or other means of electronic communication.

(2) A notice or notification served in accordance with subsection (1), shall be deemed to have been received by the intended recipient, in the case of delivery—

- (a) by post, at the time at which the notice would have been delivered in the ordinary course of the post;
- (b) by facsimile or electronic means, twenty-four hours after the time the notice was so sent, if there is no notification of a failure of delivery during that period.

(3) The calculation of time by reference to the giving of a notice served under this section shall commence on the day immediately succeeding the day on which it was received or deemed to have been received.

377R.—(1) The records kept and maintained by a company in accordance with section 390A of the beneficial ownership of the company (referred to as beneficial ownership information) shall include a record of the measures used for verification and the substantiating documents used to verify the

Company to keep records of its actions in relation to beneficial ownership information.

Service of notices.

accuracy of the beneficial information taken by the company and its officers in relation to the keeping of such beneficial ownership in compliance with the provisions of this Act.

(2) The company and every officer who contravenes subsection (1) commits an offence and is liable on summary conviction in a Parish Court—

- (a) in the case of an individual, to a fine not exceeding three million dollars;
- (b) in the case of a company, to a fine not exceeding five million dollars.

377S.—(1) Where a company has notice of a change in the beneficial ownership of the company, or of any change in the particulars of any such beneficial owner, and it has not been notified by a member or the beneficial owner, the company shall, in writing, notify the member and beneficial owner of their respective obligations under sections 377U and 377V, and the notification shall advise the member or beneficial owner or both, as the case may be, to furnish to the company the required beneficial ownership information, within such period as specified in the notification.

Duty of company to obtain beneficial ownership information.

(2) Notwithstanding subsection (1), a company shall once per year, or at such times as the Registrar may direct, in writing, or as may be prescribed, notify in writing, the member and beneficial owner of their respective obligations under sections 377U and 377V, and the notification shall direct the member or beneficial owner or both, as the case may be, to furnish to the company the required beneficial ownership information, within such period as specified in the notification.

(3) In the case of an unlimited company or a company limited by shares, prior to the allotment or transfer of shares, the company shall be furnished with the beneficial ownership information required under this Act in respect of the intended allottee or transferee of the shares.

(4) A company and every officer who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction in a Parish Court—

- (a) in the case of an individual, to a fine not exceeding three million dollars;
- (b) in the case of a company, to a fine not exceeding five million dollars.

377T.—(1) The company shall, in relation to the beneficial ownership information furnished by a member and beneficial owner, verify the identity of the individual the company records as its beneficial owner, and the basis on which such individual was identified as a beneficial owner of the company.

Company's duty to verify beneficial ownership information.

(2) The company shall appoint an officer, or such number of officers, who shall be responsible for conducting the verification of the beneficial ownership information furnished to the company and notifying its members and beneficial owners in relation thereto, in accordance with provisions of this Part.

(3) A company and every officer who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction in a Parish Court—

- (a) in the case of an individual, to a fine not exceeding three million dollars;
- (b) in the case of a company, to a fine not exceeding five million dollars.

Duty of member to provide company with information.

377U.—(1) A subscriber to the articles—

- (a) who upon becoming a member of the company at the time of incorporation will own twenty-five percent or more interest in the company;
- (b) shall notify the persons forming the company of the identity of the beneficial owner of the interest to be held by that member at the time of the formation of the company, as well as the basis on which such individual is identified as the beneficial owner.

(2) A member who owns twenty-five percent or more interest in the company, shall notify the company of the identity of the beneficial owner of the interest held by that member, as well as the basis on which such individual is identified as the beneficial owner—

- (a) in the case of a member who is a shareholder, at the time of the allotment or transfer of shares, and otherwise at the time of the acquisition of the member's interest in the company, or any subsequent change in that member's interest in the company; and
- (b) at the time of any other change in beneficial ownership of the interest held by the member of the company.

(3) A member who refuses to notify the beneficial owner of the interest held by that member in contravention of the provisions of this section, commits an offence and is liable on summary conviction in a Parish Court—

- (a) in the case of an individual, to a fine not exceeding three million dollars;
- (b) in the case of body corporate, to fine not exceeding five million dollars.

377V.—(1) A beneficial owner, shall notify the company of—

- (a) the particulars of the beneficial owner as specified in section 377B(b), and whether the beneficial ownership is by means of shares held by a member on behalf of the beneficial owner or by exercise of control and the basis on which such individual is identified as the beneficial owner; and
- (b) any subsequent change in relation to the legal or beneficial ownership of the company, or the particulars referred to in paragraph (a).

(2) Where a beneficial owner has ultimate effective control of a company or an ownership interest of twenty-five percent or more in the company, in aggregate, by virtue of separate ownership interests in more than one body corporate, and each such body corporate is a member of the company owning less than twenty-five percent interest in the company, that beneficial owner of the company shall notify each body corporate that is a member of the company of which each body corporate is a member.

(3) A person who will become a beneficial owner of the company at the time of incorporation shall notify the persons forming the company of the interest to be held or the control to be exercised by that person at the time of formation of the company.

(4) The beneficial owner shall notify the company of the interest in the company held by the beneficial owner—

Duty of member to provide company with information.

- (a) in the case of a shareholder, at the time of the allotment or transfer of shares, and otherwise at the time of the acquisition of the beneficial owner's interest in the company, or at the time of any subsequent change in that beneficial owner's interest in the company; and
- (b) at any time the particulars for inclusion in the register of members under section 109(1A) in relation to that beneficial owner changes.

(5) A beneficial owner who refused to notify the company or a body corporate of the interest held by that beneficial owner in that company or body corporate, as the case may be, in contravention of subsection (1), (2) or (4) commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding three million dollars.

377W. —(1) The company shall notify the Registrar of changes in the beneficial ownership of the company within fourteen days after any change occurs in the beneficial ownership information, any changes in the particulars of a beneficial owner required under section 109(1A) to be contained in the register of members, or since delivery to the Registrar of the last beneficial ownership return, and the notification shall be made in the form set out as Form C in Part III of the Fifth Schedule.

Change in beneficial ownership to be notified to Registrar.

Form C.
Part III.
Fifth Schedule.

(2) If default is made in complying with subsection (1) to notify the Registrar of changes in beneficial ownership, or in the particulars of beneficial ownership, the company and every officer of the company who is in default commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding one million dollars.

377X—(1) Where pursuant to section 377S (1) or (2) a company has notified a member of a beneficial owner to furnish the company with the required beneficial information, and the member or beneficial owner has failed to furnish the required information within the period specified in that notification—

Re-purchase of shares from non-compliant member or beneficial owner.

- (a) the company shall proceed in accordance with subsection (2); and
- (b) thereafter, in the case of an unlimited company or a company limited by shares and subject to subsection (3), the company may repurchase the shares held by the member.

(2) In the circumstances referred to in subsection (1), the company shall give notice, on not less than three occasions, to the member or beneficial owner directing that member or beneficial owner to furnish to the company the required beneficial ownership information within the specified periods as follows—

- (a) in relation the first notice, within thirty days after delivery of the notice;
- (b) in relation to the second notice, where the member or beneficial owner has not furnished the required beneficial ownership information within the thirty-day period specified in paragraph (a), within twenty-one days;
- (c) in relation to the third notice, where the member or beneficial owner has not furnished the required beneficial ownership information within the twenty-one-day period specified in paragraph (b), within fourteen days.

(3) A company shall not repurchase the shares of a member, if—

- (a) all the shares issued by the company are owned solely by one shareholder;
- (b) the financial position or condition of the company does not enable it to repurchase its shares;

(c) the company's articles do not permit the repurchase by the company of its shares.

(4) The records of the beneficial ownership of the company shall include, a copy of—

- (a) each notice given by the company, and the date on which the notice was sent, and the mode of delivery; and
- (b) each response, if any, received by the company from the member and beneficial owner, as the case may be, and the date on which it was received.

377Y. For the purposes of this Part, the identification of the beneficial owner of a company shall be determined, in the case of beneficial ownership through—

- (a) direct means, in accordance with section 377Z; and
- (b) indirect means, in accordance with section 377AA and 377AB.

377Z. The beneficial owner of a company directly through ultimate effective control or ultimate ownership, is—

- (a) where a shareholder of the company is a body corporate, the individual—
 - (i) having ownership of twenty-five percent or more of the shares in that body corporate;
 - (ii) holding not less twenty-five percent of total voting rights of all the members having the right to vote in that body corporate;
 - (iii) having the right to exercise dominant control of that body corporate; or
 - (iv) having the right to exercise dominant influence on the policy of that body corporate;
- (b) in the case of a chain of ownership, the individual who owns, has voting rights, has the right to dominant control or dominant influence, or who exercises dominant control or dominant influence in the manner specified in paragraph (a)(i), (ii), (iii) and (iv), in the last body corporate in the chain of ownership—
 - (i) owns twenty-five percent or more of the shares in the company;
 - (ii) has twenty-five percent or more of the total voting rights of all the members having the right to vote in the company;
- (c) in the case of a chain of ownership, the individual who—
 - (i) owns twenty-five percent or more shares, in aggregate of the shares owned in each body corporate in the chain of ownership of the company; or
 - (ii) has twenty-five percent or more of the voting rights, in aggregate, of the percentage of voting rights held in each body corporate, in the chain of ownership, directly below the position of the company in the chain of ownership; or
- (d) the individual who, pursuant to a nominee arrangement—
 - (i) owns twenty-five percent or more of the shares in the company;
 - (ii) has twenty-five percent or more of the total voting rights of all the members having the right to vote in the company.

377AA.—(1) The beneficial owner of a company indirectly through ultimate ownership—

Ultimate
ownership
indirectly.

Determination
of beneficial
owner.

Direct
beneficial
ownership.

- (a) where a shareholder of the company is a body corporate, is the individual who—
 - (i) owns twenty-five percent or more of the shares in that body corporate; or
 - (ii) has twenty-five percent or more of the total voting rights of all the members having the right to vote in that body corporate;
- (b) in the case of a chain of ownership, where the first body corporate in the chain of ownership owns twenty-five percent or more of the company, is the individual who—
 - (i) owns twenty-five percent or more shares in the last body corporate in the chain of ownership of the company; or
 - (ii) has twenty-five percent or more of the total voting rights of all the members having the right to vote in the last body corporate in the chain of ownership of the company; or
- (c) is the individual who is not a member or an officer of the company and owns twenty-five percent or more of the shares of the company or has twenty-five percent of the total voting rights of all member having the right to vote in the company.

377AB. —(1) The beneficial owner of a company through ultimate effective control indirectly, is the individual who—

Indirect beneficial ownership through ultimate effective control.

- (a) not being a member or an officer of the company has the ability—
 - (i) to appoint or remove a director of the company;
 - (ii) to exercise significant influence on or actually exercises significant influence on the policy of the company; or
 - (iii) to exercise significant control over or actually exercises significant control over the affairs of the company;
- (b) has the right to exercise or actually exercises the dominant influence on the policy of the company through means other than ownership interests in each of the bodies corporate in the chain of ownership of the company, where each body corporate in the chain of ownership has ownership in the body corporate immediately preceding it in the chain of ownership; or
- (c) has the right to exercise or actually exercises dominant control over the affairs of the company through means other than ownership interests in each of the bodies corporate in the chain of ownership of the company, where each body corporate in the chain of ownership has ownership in the body corporate immediately preceding it in the chain of ownership.

377AC. —(1) The Registrar may, in writing, require an officer appointed under section 377T(2), or any other officer, employee or agent of a company to answer any question concerning the beneficial ownership of a company.

Duty to answer questions put by Registrar.

(2) Where the Registrar requires an answer to questions under subsection (1), it shall be the duty of any officer, employee or agent of the company to whom the questions are directed, having information pertinent to the questions of the Registrar, to furnish, in writing, the information in answer to the questions, in such manner and within such time-frame as the Registrar may specify.

(3) A person who—

- (a) refuses to furnish, in writing, the information in answer ton the questions posed by the Registrar;

(b) wilfully hinders or obstructs, or without lawful excuse, fails within a reasonable time to comply with any requirement of the Registrar, an officer of the department authorised by the Registrar acting in the execution of duties or the exercise of powers conferred under section 113A or Part XIA;

(c) personates or pretends to be the Registrar or a person authorized by the Registrar; or

(d) threatens, intimidates, or uses threatening language or behaves in a threatening manner to the Registrar, or a person authorized by the Registrar, acting in the execution of duties or the exercise of powers conferred under section 113A or Part XIA,

commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(4) An officer, employee or agent of the company who contravenes subsection (2), commits an offence and is liable on summary conviction in a Parish Court—

(a) in the case of an individual, to a fine not exceeding three million dollars;

(b) in the case of a company, to a fine not exceeding five million dollars.

377AD. —(1) Where a copy of an identification document for a member or a beneficial owner filed with the Registrar is not up-to-date, is invalid or has been revoked, a company shall give the Registrar notice in the prescribed form of the particulars of the valid identification document, and submit with such notice a copy certified to be true of a valid identification document.

(2) For the purposes of subsection (1) and section 52(1B) the requirement for certification is satisfied if done by—

(a) an attorney-at-law;

(b) a consular officer;

(c) a diplomatic officer;

(d) a Justice of the Peace;

(e) a Notary Public;

(f) an officer duly authorized by law to administer oaths; or

(g) the affixing of an Apostille.

(3) In this section—

“Apostille” has the meaning assigned to it by section 2 of the Authentication (Foreign Public Documents) Act, 2020;

“consular officer” means—

(a) in relation to Jamaica, a consul-general, consul, vice-consul or consular agent appointed to represent Jamaica and holding a valid exequatur or other authorization to perform consular functions;

(b) in relation to a foreign state or country, a consul-general, consul, vice-consul or consular agent representing a foreign state or country and holding a valid exequatur or other authorization to act in Jamaica in that capacity;

Part XIA.

Part XIA.

Identification documents not up-to-date.

“diplomatic officer” means—

- (a) in relation to Jamaica, an Ambassador or High Commissioner of Jamaica accredited to a foreign state or country and recognized as a head of a Jamaican mission oversea appointed to represent Jamaica in that foreign state or country and a foreign service officer who is a member of the official staff of the head of the Jamaican mission authorized to certify documents;
- (b) in relation to a foreign state or country an Ambassador, High Commissioner or other person, by whatever title called, accredited by a foreign state or country and recognized as a head of mission in Jamaica by the Government of Jamaica and a member of the official staff thereof, authorized by the head of mission to certify documents.

PART XII—MISCELLANEOUS

Prohibition of Partnerships with more than Twenty Members

378.—(1) No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business (other than the business of banking) for the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other local statute, or of letters patent.

(2) Nothing in subsection (1) prohibits the formation—

- (a) for the purpose of carrying on practice as attorneys-at-law, of a partnership consisting of persons each of whom is an attorney-at-law;
- (b) for the purpose of carrying on practice as accountants, of a partnership consisting of persons each of whom is registered as a public accountant under the Public Accountancy Act;
- (c) of a partnership consisting of persons each of whom is a member of such profession as may be prescribed in regulations made under this Act for the purpose.

Provisions relating to Banks

379. No company, association, or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other local statute, or of letters patent.

Good Standing of Company

379A. At the request of a company, the Registrar shall certify, in writing, that the company, is at a

Prohibition of partnerships with more than twenty members.

Prohibition of partnerships with more than ten members.

Good standing.

date specified, in good standing, if the Registrar is satisfied that the company is compliant with the provisions of sections 52, 106, 109, 118, 121, 122, 123, 124, 172, 183, 363A, 377A, 377B and 377C.

Application of certain Provisions of this Act to Unregistered Companies

380.—(1) The provisions of this Act specified in the second column of the Eleventh Schedule (which respectively relate to the matters referred to in the first column of that Schedule) shall apply to all bodies corporate incorporated in and having a principal place of business in Jamaica, other than those mentioned in subsection (2), as if they were companies registered under this Act, but subject to any limitations mentioned in relation to those provisions respectively in the third column of that Schedule and to such adaptations and modifications (if any) as may be specified by regulations made by the Minister.

(2) The provisions of that Schedule shall not apply by virtue of this section to any of the following, that is to say—

- (a) any body incorporated by or registered under any local statute; and
- (b) any body not formed for the purpose of carrying on a business which has for its object the acquisition of gain by the body or by the individual members thereof; and
- (c) any body for the time being exempted by direction of the Minister.

(3) This section shall not repeal or revoke in whole or in part any enactment, royal charter or other instrument constituting or regulating any body in relation to which those provisions are applied by virtue of this section, or restrict the power of Her Majesty to grant a charter in lieu of or supplementary to any such charter as aforesaid; but, in relation to any such body, the operation of any such enactment, charter or instrument shall be suspended in so far as it is inconsistent with any of those provisions as they apply for the time being to that body.

(4) Any regulations made under this section or the Eleventh Schedule shall be subject to negative resolution.

Form of Registers, etc.

381.—(1) Any register, index, minute book or book of account required by this Act to be kept by a company may be kept either by making entries in bound books or by recording the matters in question in any other manner.

Forms of registers, etc.

(2) Where any such register, index, minute book or book of account is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.

(3) A company and every officer of that company that contravenes subsection (2) commits an offence and is liable on summary conviction in a Parish Court—

- (a) in the case of an individual, to fine not exceeding three million dollars;
- (b) in the case of a company, to a fine not exceeding five million dollars.

Application of certain provisions of this Act to unregistered companies.

Miscellaneous Offences

382. —(1) No person shall, in any return, report, certificate, balance sheet, or other document required by or other document required by or for the purposes of the provisions of this Act specified in the Ninth Schedule, wilfully make a statement which is false in any material particular, knowing it be false.

Penalty for false statement. Ninth Schedule.

(2) a person who contravenes subsection (1) commits an offence and is liable on conviction in a Parish Court—

- (a) in the case of an individual, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding two years;
- (b) in the case of a company, to a fine not exceeding five million dollars.

(3) Nothing in this section shall affect the provisions of the Perjury Act.

383. If any person or persons trade or carry on business under any name or title of which “Limited”, or any contraction or imitation of that word, is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding five hundred dollars for every day upon which that name or title has been used.

Penalty for improper use of word “Limited”.

383A.--- (1) Subject to section 396, no company shall issue, or have entered on its register of members, a share warrant.

(2) If a company fails to comply with subsection (1) the company and every officer who knowingly caused the failure is liable to a default fine not exceeding three million dollars.

(3) In this section, “share warrant” means, with respect to any fully paid up shares, a warrant issued under the company’s common seal, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons or otherwise, for the payment of dividends on the shares included in the warrant.

Provisions as to Offences

384.—(1) Where by any enactment in this Act it is provided that a company and every officer of the company who is in default shall be liable to a fine, the company and every such officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine not exceeding such amount as is specified in that enactment, or if the amount of the fine is not so specified, to a fine not exceeding fifty thousand dollars.

Penalty for improper use of word “Limited”.

(2) For the purpose of any enactment in this Act which provides that an officer of a company who is in default shall be liable to a fine or penalty, the expression “officer who is in default” means any director, manager, secretary or other officer of the company, who knowingly and wilfully authorizes or permits the default, refusal or contravention mentioned in the enactment.

385. All offences under this Act made punishable by fine may be prosecuted in the Resident Magistrate’s Court in a summary manner; and any person upon whom a fine is imposed in respect of any such offence shall in default of payment thereof be liable to imprisonment with or without hard labour for a term not exceeding twelve months.

Prosecution of offences punishable by time.

Production and inspection of books where offence suspected.

386.—(1) If on an application made to a Judge in Chambers by the Director of Public Prosecution or the Minister there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made—

- (a) authorizing any person named therein to inspect the said books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or
- (b) requiring the secretary of the company or such other officer thereof as may be named in the order to produce those books or papers or any of them to a person named in the order at a place so named.

(2) Subsection (1) shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in paragraph (b) thereof shall be made by virtue of this subsection.

(3) The decision of a Judge on an application under this section shall not be appealable.

386A. —(1) Subject to subsection (5)(a), this section shall apply to any offence created in this Act or regulations made hereunder and punishable on summary conviction, being an offence prescribed to be subject to a fixed penalty.

Fixed penalties.

(2) Where the Registrar has reason to believe that a person has committed an offence referred to in subsection (1), the Registrar may issue, in writing, to the person, in accordance with subsection (6), a prescribed notice (referred to as the fixed penalty notice), offering the person to whom it is issued the opportunity to discharge any liability to conviction of the offence concerned by payment of a fixed penalty under this section, and the notice shall—

- (a) specify and give such particulars of the offence alleged as are necessary for giving reasonable information of the allegation; and
- (b) state—
 - (i) the period (whether thirty 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 payable by the person;
- (c) require the person to whom the notice is issued, in the event that the fixed penalty is not paid within the period stated in the notice, to attend before the Parish Court in the parish in which the offence is alleged to have been committed, to answer to the offence alleged on such date as may be specified, being a date not earlier than ten days after the expiration of the period states in the notice; and
- (d) be construed as an information and summons for the purposes Justices of the Peace Jurisdiction Act.

(3) Where a person is issued a fixed penalty notice under this section, proceedings shall not be taken against any person in respect of the offence concerned until the end of thirty days following the date of notice or such longer period as may be specified in the notice.

(4) A person to whom a fixed penalty notice is issued under this section shall not be liable to be convicted of the offence concerned if the person pays the fixed penalty with respect thereto in accordance with this section before the expiration of the thirty days following the date of the fixed penalty notice referred to in subsection (3), or such longer period as may be specified in the notice, or before the expiration of the final adjudication of the case whichever last occurs.

(5) Payment of a fixed penalty under this section—

- (a) shall be made to a Collector of Taxes, at any time before the final adjudication of the case; and
- (b) may be made electronically in accordance with the Electronic Transactions Act and any other enactment regulating such transactions.

(6) In any proceedings in respect of an offence to which a fixed penalty applies under this section, a certificate or a receipt that payment of the fixed penalty was or was not made to the Collector of Taxes by a date specified in the certificate or receipt shall be sufficient evidence of the facts stated in the certificate or receipt, unless contrary is proved if—

- (a) the certificate purports to be signed by the Collector of Taxes; or
- (b) the receipt, including an electronically-generated receipt, is purportedly issued by the Collector of Taxes.

(7) In any proceedings for an offence under this Act, no reference shall be made to the giving of any notice under this section or to the payment of non-payment of a fixed penalty under this section, unless in the course of the proceedings or in some document which is before the court in connection with the proceedings, reference is made by or on behalf of the accused to the giving of such notice, or, as the case may be, to such payment or non-payment.

(8) In this section, “proceedings” means criminal proceedings in respect of the act or omission constituting the offence concerned, and “convicted” shall be construed accordingly.

(9) The Minister may by order, subject to affirmative resolution, make provision for anything incidental to the operation of this section, and in particular, any such order may prescribe—

- (a) the form and manner of issue, including electronically for notices in respect of offences subject to a fixed penalty;
- (b) any information to be furnished to the Collector of Taxes along with any payment; and
- (c) fixed penalties in relation to offences under this Act.

Service of Documents and Legal Proceedings

387. A document may be served on a company by leaving it at or sending it electronically or by post to the registered office of the company.

Costs in actions by certain limited companies.

388. Where a limited company is plaintiff in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power of Court to grant relief in certain cases.

389.—(1) If in any proceeding for negligence, default, breach of duty, or breach of trust against a person to whom this section applies it appears to the Court hearing the case that the person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where any case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

(4) The persons to whom this section applies are the following—

- (a) directors of a company;
- (b) officers of a company;
- (c) persons employed by a company as auditors whether they are or are not officers of the company.

390. Where proceedings are instituted under this Act against any person, nothing in this Act shall be taken to require any person who has acted as attorney for the defendant to disclose any privileged communication made to him in that capacity.

Saving for privileged communications.

Records, etc.

390A. —(1) Every company shall keep such documents, including documents containing information on members and beneficial owners, or relating to the membership or beneficial ownership of the company, as may be prescribed—

- (a) for not less than seven years or for such other period as may be prescribed; and
- (b) in such manner as may be prescribed.

Records.

(2) A company that contravenes subsection (1) commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding five hundred thousand dollars.

390B.—(1) Where a company is dissolved, the documents of the company shall be kept—

- (a) if the company is—
 - (i) wound up, by the trustee;
 - (ii) struck off the register, and not wound up, by an officer of the company;
- (b) for a period of not less than seven years after the dissolution of the company.

(2) A trustee or an officer of the company that contravenes subsection (2)(a) or (b) commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding five hundred thousand dollars.

Saving, etc.

391. Nothing in this Act shall affect the incorporation of any company registered under the Companies Act (repeated by this Act), and the provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the appointed day, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not been passed, and, for the purposes of the winding up, the law under which the winding up commenced shall be deemed to remain in full force.

Savings.

392.—(1) The Minister shall have power by regulations to alter or add to the requirements of this Act as to the matters to be stated in a company's balance sheet, profit and loss account and group accounts and the requirements specified in the Seventh Schedule and any reference in this Act to the Schedule shall be construed as a reference to that Schedule with any alterations or additions made by regulations for the time being in force under this subsection.

Power to alter or add to certain requirements.

Seventh Schedule.

(2) The Minister may by regulations alter or add to Tables A, B, C and D in the First Schedule and the forms in Part II and Part III of the Fifth Schedule.

First Schedule.

Fifth Schedule.

(3) Any regulations made under subsection (1) which render more onerous the requirements therein referred to shall be subject to affirmative resolution.

(4) Regulations made under this section not being regulations to which subsection (3) applies, shall be subject to negative resolution.

393.—(1) In addition to the powers conferred upon the Minister by section 392 the Minister may make rules providing for all or any of the other matters which by this Act are to be prescribed by his authority.

Power to make rules.

(2) Notwithstanding the provisions of subsection (1), the Minister may make particular rules—

- (a) prescribing the format and contents of returns, notices or other documents required to be sent to the Registrar or to be issued by the Registrar;

- (b) [requiring or permitting articles of incorporation, forms, returns, notices or other documents required to be sent to the Registrar, to be created, stored or communicated electronically;](#)
- (c) prescribing the retention period for company records held by the Registrar; and
- (d) respecting any other matter required for the efficient administration of this Act.

(3) Any rules made under this section shall be subject to affirmative resolution.

394.—(1) There shall be paid to the Registrar of Companies in respect of the several matters mentioned in the Fifteenth Schedule the several fees therein specified.

(2) All fees paid under this section shall be paid into the Consolidated Fund.

(3) The Minister may by order amend the Fifteenth Schedule.

(4) An order made pursuant to subsection (3) shall be subject to negative resolution.

395. The Companies Act is hereby repealed and is hereinafter referred to as “the repealed Act”.

396.—(1) Upon the appointed day—

- (a) all corporate instruments of an existing company; and
- (b) all cancellations, suspensions, proceedings, etc., regulations and things,

lawfully done under any provision of the repealed Act shall be presumed to have been lawfully done under this Act and continue in effect under this Act as though they had been lawfully done under this Act.

(2) For the purpose of this section, “lawfully done” means to have been lawfully granted, issued, imposed, taken, done, commenced, filed, or passed, as the circumstances require.

(3) Notwithstanding any other provision of this Act, but subject to subsection (4), if any provision of a corporate instrument of an existing company lawfully in force immediately before the appointed day is inconsistent with, repugnant to, or not in compliance with, this Act, that provision is not illegal or invalid by reason only of that inconsistency, repugnancy or non-compliance.

(4) Any act, matter or proceeding or thing done or taken by an existing company or any director, shareholder, member or officer thereof under a provision referred to in subsection (3), is not illegal or invalid by reason only of the inconsistency; repugnancy or noncompliance mentioned in that subsection, or by reason of being prohibited or not authorized by this Act.

(5) Section 177 applies to an existing company upon the appointed day.

(6) Where, on application by an existing company or its members, the Registrar determines that it is not practicable to change a reference to the nominal or par value of shares of a class or series that the

Fees.
Fifteenth
Schedule.

Repeal.

Transitional.

existing company was authorized to issue before the appointed day, the Registrar may permit the company to continue to refer in its articles to those shares, whether issued or not, as shares having a nominal or par value.

(7) A share of an existing company issued before the appointed day shall be deemed to have been issued in compliance with this Act, irrespective of—

- (a) whether the share is fully paid;
- (b) any designation, rights, privileges, restrictions or conditions attached to the share or set out on, or referred to in, the certificate representing the share,

and the provisions of this Act shall not be construed as depriving a shareholder of any right or privilege that he claims under an issued share of the company nor as relieving him of any liability in respect of such a share.

(8) Where any person is aggrieved by a decision of the Registrar, that person may appeal to the Supreme Court.

396*--- (1) Upon the specified date, a person who is the bearer of a share warrant shall be deemed to be---

- (a) the owner of the shares specified in the share warrant; and
- (b) a member of the company.

(2) Eighteen months after the specified date a share warrant shall---

- (a) be incapable of effecting the transfer of ownership of the shares specified in the share warrant from the bearer thereof to any other person; and
- (b) except for the purposes of subsection (1) and (4)(b), [should really be 3b] be deemed null and void.

(3) Within eighteen months after the specified date, every company which has issued a share warrant to a bearer before the specified date shall---

- (a) withdraw the share warrant;
 - (b) if the bearer of the share warrant presents the share warrant to the company, cause the name of the bearer of the share warrant to be entered as a member in the register of members and shall issue under seal, to that person one or more certificates in respect of that person's ownership of the shares specified in the share warrant, and a certificate issued under this paragraph shall specify the shares to which it relates;
 - (c) in accordance with this Act, amend its articles of incorporation, to remove any authorization to issue share warrants or to prohibit the issue of share warrants, as the case may require.
- (4) If a company fails to comply with subsection (3) the company and every officer who knowingly caused the failure is liable to a default fine not exceeding two million dollars.

397.--- (1) Within three months of the specified date and thereafter, at such times as the Registrar may determine during the period referred to in section 396(2), the Registrar shall cause a notice to be given to the public---

- (a) advising the public of the matters referred to in sections 383A and 396*; and
- (b) requesting the bearers of share warrants to present themselves to the company to which the share warrant relates to be entered in the register of members as a member of the company in

respect of the shares specified in the share warrant.

(2) The Registrar shall cause the notice referred to in subsection (1) to be published in a daily newspaper circulated throughout Jamaica and in the *Gazette*.

398. For the purposes of sections 397 and 398, “share warrant” shall have the meaning assigned to it by section 383A(3).

SEVENTH SCHEDULE (Sections 53, 149, 152, 157, 159 and 392)
Financial Disclosure—Form and Content of Company Accounts

PART I

Interpretation

1. In this Schedule—

"small company" means a company that qualifies under Part II of this Schedule, to be treated as a small company;
"small group" means a group that qualifies under Part II of this Schedule, to be treated as a small group.

General Rules

2. The accounts referred to in sections 146 (2) and 157 of the Act shall, except as otherwise provided in Part II of this Schedule in relation to small companies or small groups—

- (a) be prepared in accordance with generally accepted accounting principles promulgated by the Institute of Chartered Accountants of Jamaica, from time to time, or such other body as the Minister may prescribe;
- (b) contain—
 - (i) a balance sheet;
 - (ii) a statement of changes in equity;
 - (iii) a profit and loss account;
 - (iv) a statement of changes in financial position;
 - (v) notes to the accounts;
 - (vi) such other variation or addition to the above list as may be promulgated by the Institute of Chartered Accountants of Jamaica, but the contents need not be designated by the respective names specified in items (i)—(v).

3. If accounts prepared in accordance with the requirements of paragraph 2 do not (in the opinion of the directors) give a true and fair view of the matters to which they relate, then the directors of the company concerned may depart from those requirements to such extent as may in their opinion be necessary to give a true and fair view of those matters, and particulars of the departure and the reasons for it shall be given in a note to the accounts.

PART II

Small Companies

4.—(1) A small company is not required to comply with the generally accepted accounting principles referred to in paragraph 2, unless—

- (a) otherwise decided by the directors; or
- (b) disqualified under paragraph 8.

(2) The fact of such non-compliance shall be disclosed in notes to the accounts.

5. A small company shall present accounts in accordance with accounting principles that are appropriate to its circumstances having regard to the requirement for those accounts to present a true and fair view of the state of affairs and the results of operation of the company.

6. A company shall be treated as qualifying as small in relation to a financial year if it is not disqualified under paragraph 8 or 12, and meets two or more of the criteria specified in paragraph 7—

- (a) in the current year, if that is the first financial year of the company;
- (b) in the current year and the immediately preceding financial year.

7. The criteria referred to in paragraph 6 in relation to a small company are that—

- (a) its turnover is less than \$40 million;
- (b) its balance sheet total is less than \$30 million;
- (c) the total number of employees is less than 25.

8. A small company is disqualified for the purposes of this Part if it is or was at anytime within the financial year to which the accounts relate—

- [\(a\) a public company;](#)
- [\(b\) a bank as deemed under the Banking Services Act;](#)
- [\(c\) a merchant bank as defined under the Banking Services Act;](#)
- [\(d\) an insurance company registered under the Insurance Act;](#)
- [\(e\) a licensee under the Securities Act;](#)
- [\(f\) a building society as defined under the Banking Services Act; or The Banking Services Act;](#)
- [\(g\) a society registered under the Co-operative Societies Act](#)

Small Groups

9. Group accounts need not be prepared with respect to a holding company in relation to a financial year in which the holding company and its subsidiaries qualify as a small group and the holding company is not disqualified under paragraph 11.

10. A holding company and its subsidiaries qualify as a small group in relation to a financial year if they meet on a consolidated basis, two or more of the following criteria for that financial year and the immediately preceding financial years—

- (a) the groups turnover is less than \$80 million;
- (b) the balance sheet total is less than \$60 million;
- (c) the total number of employees is less than 50.

[11. A group of companies is disqualified for the purposes under this Part if any of the companies within that group is—](#)

- [\(a\) a public company;](#)
- [\(b\) a bank, merchant bank or building society as defined under the Banking Services Act;](#)
- [\(c\) an insurance company registered under the Insurance Act;](#)
- [\(d\) a licensee under the Securities Act;](#)
- [\(e\) a society registered under the Co-operative Societies Act.](#)

12. A holding company shall not be treated as qualifying as a small company in relation to a financial year unless it and its subsidiaries qualifies as a small group in relation to a financial year.

FIFTEENTH SCHEDULE (Section 394)

Table of Fees

FIFTEENTH SCHEDULE (Section 394)

Matter In respect of which fee is payable	Fee
1. For registration of a company limited by shares	\$ 15,000.00
2. For registration of a company not having share capital	\$ 15,000.00
3. For registration of a company limited by guarantee and having a share capital or an unlimited company having a share capital	\$ 15,000.00
4. For registration of an increase in the share capital of any company	\$ 12,000.00
5. For notice of increase in share capital of any company	\$ 3,000.00
6. For statement of increase in share capital of any company	\$ 3,000.00
7. For ordinary resolution for increase in share capital of any company	\$ 3,000.00
8. Overseas company	\$ 25,000.00
9. For registration of annual return for a company having share capital	\$ 5,000.00
10. For registration of annual return for a company not having share capital	\$ 2,000.00
11. For registering any charge	\$ 5,000.00
12. For registering amended memorandum or articles of incorporation	\$ 5,000.00
13. For registering any other document by the Act required or authorized to be registered or required to be delivered, sent or forwarded to the Registrar other than the memorandum or the abstract required to be delivered to the Registrar by a receiver or manager or the statement required to be sent to the Registrar by the Trustee in a winding up	\$ 3,000.00
14. For making a record of any fact by the Act required or authorized to be recorded by the Registrar	\$ 3,000.00
15. For document delivery	\$ 1,500.00
16. For inspection of documents kept by the Registrar	\$ 500.00 per hour
17. For a certified copy of a certificate of Incorporation	\$ 1,000.00
18. For a certified copy of any document or part of any document kept by the Registrar or extract therefrom	\$ 150.00 per page
19. For change of name of company	\$ 3,000.00
20. For an uncertified copy of any document or part of any document kept by the Registrar	\$ 100.00 per page
21. For registering a prospectus	\$ 80,000.00
22. For expedition of registration of a prospectus	\$150,000.00
23. For filing financial statements for an overseas company	\$ 7,000.00
24. For filing financial statements of a local company limited by guarantee	\$ 1,000.00
25. For filing financial statements of a local company limited by shares	\$ 3,000.00
26. For registering a rights issue	\$ 15,000.00
27. For a certificate of good standing from the Registrar of Companies	\$ 3,000.00
28. For a Registrar's report on the status of a company	\$ 3,000.00
29. For removal of a company at the request of the company	

(not including the cost of the advertisement)	\$ 3,000.00
30. For late registration of any document required to be filed	\$ 2,000.00
31. For same-day company registration and annual return	\$ 6,000.00
32. For supplying information via facsimile (per page)	
Jamaica	\$ 100.00
United States of America, Canada, Caribbean	\$ 500.00
Other countries	\$ 600.00
33. For filing of documents pertaining to shares along with the Articles of Incorporation	\$3,000.00
34. For company name reservation	\$ 3,000.00
35. For registration of mutual fund companies	\$ 15,000.00
36. For examination of Statutory declaration and issuance of Registrar's Certificate regarding public companies allotted share capital to be not less than the authorized minimum	\$ 5,000.00
37. For filing of ordinary resolution and notification to the Registrar that company intends to retain its existing shares with the nominal or par value	\$ 3,000.00
38. For notice to the Registrar of allotment by company of shares for other than monetary consideration along with director's resolution and accountant's estimate of the value of consideration	\$ 5,000.00
39. For filing of special resolution regarding the addition to the company's stated capital account (where the effect of the issuance of bonus shares is to allow one class of shareholders to obtain control of the company or pass a resolution which they could not have done before the issue)	\$ 3,000.00
40. For filing the director's declaration of solvency and audited or unaudited accounts prior to purchasing or otherwise acquiring a company's own shares	\$ 5,000.00
41. For filing the director's declaration of solvency special resolution and audited or unaudited accounts prior to a company reducing its stated capital	\$ 5,000.00
42. For filing a notice of increase in the amount secured by a registered charge	\$ 3,000.00
43. For filing notice of resolution that the company agrees not to produce audited reports within a particular financial year	\$ 3,000.00
44. For filing of notice of Secretary's appointment	\$ 3,000.00
45. For filing of complaint regarding unfitness of director or officer of a company	\$ 5,000.00
46. Fee to conduct investigation	\$ 10,000.00
47. Fee to conduct hearing	\$ 2,500.00 per hour or part thereof
48. Fee to issue certificate of unfitness	No Fee
49. Fee payable to Registrar to make application to the Court	According to court fees set out in the Civil Procedure Rules
50. For filing of notice of location of directors' contracts and memoranda	

or change in the location	\$ 3,000.00
51. For filing of notice of the place where the register of directors' interest is kept or any change in location	\$ 3,000.00
52. For filing of notice of application to be made to the Court regarding indemnification	\$ 3,000.00 in addition to court fees set out in the Civil Procedure Rules
53. Fee to restore a company to the Companies Register	\$ 15,000.00 in addition to filing fees
54. Fee for the filing of documents to support the company's request for permission to continue to refer in its articles to shares as having a nominal or par value and issuance of a Registrar's certificate granting permission	\$ 5,000.00 in addition to fees for professional opinion
55. Reports For Government Entities	
(1) Reports on companies by sector	\$ 5,000.00
(2) Computer generated report on business names	\$ 5,000.00
(3) Computer generated report on industrial and provident societies	\$ 5,000.00
(4) Computer generated report on Registered Companies	\$ 2,500.00
56. Database on Diskettes	
(1) Companies	\$ 6,000.00
(2) Business names	\$ 3,000.00
(3) Database in print	\$ 10,000.00
(4) Service of Summons	\$ 3,000.00
(5) Letters/ extracts verifying records	\$ 3,000.00
(6) Opinions/ research	\$ 5,000.00
(7) Concluding Research upon request	\$ 5,000.00
57. Attendance at Court	
(1) (Non-Legal Staff one day or part thereof)	
(a) Supreme Court	\$ 5,000.00
(b) Resident Magistrate's Court	\$3, 500.00
(2) (Legal Officer one day or part thereof)	
(a) Senior Counsel	The relevant fees set out in the Civil Procedure Rules
(b) Junior Counsel	The relevant fees set out in the Civil Procedure Rules.