

Directors' duties & responsibilities

**A pocket guide for directors on
key Companies Act requirements**



Corporate services

From small proprietorships and statutory bodies to large local, regional and multinational corporations, PwC's experienced Corporate Services team can advise, assist and support you and your Board on a wide range of corporate services including:

- Company incorporation and branch registration
- Registered office and authorised agent services
- Corporate compliance, filings and maintenance
- Branch de-registration
- Company dissolution
- Corporate secretarial services (compliance and training)
- Board and general meeting logistics and administration
- Registrar & transfer agent services
- Corporate governance advisory and training
- Corporate advisory services
- Company restructuring
- Stock exchange listing and support services



Contact us

Brian J. Denning

Partner, PwC Jamaica

brian.denning@pwc.com

Tel: (876) 932 8423

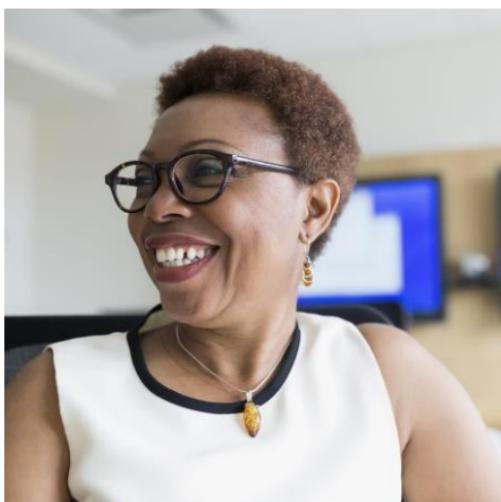
Tracy K. Campbell

Director, PwC Jamaica

tracy.campbell@pwc.com

Tel: (876) 932 8398

Find out more and tell us what matters to you by visiting us at www.pwc.com/jm



How are you managing your duties & obligations?

In today's global economy it is challenging for boards and management teams to navigate constantly changing regulatory requirements in dynamic markets. It is critical therefore that directors and other company officers keep pace with the business environment as well as new corporate requirements, trends and practices in order to be successful and thrive.

Shareholders and other company stakeholders are demanding more from their Boards. Consequently boards must be adaptive to change, able to identify and understand duties and obligations, ensure compliance and actively manage potential exposures.

How is your Board managing this? Have you considered the following:

- What skill sets do your Board members need to effectively and strategically direct your company?
- When was the last Board Skills Matrix undertaken?
- How has the diversity of your board members assisted in determining the trends within your industry?
- How has the EU General Data Protection Regulation (GDPR) affected the way you conduct business?
- Are you familiar with proposed and recently passed legislation or regulations and how these may affect your business?
- How have collective and individual Board Evaluations impacted the operational results of your company?
- How relevant are your corporate governance charters in today's changing landscape?
- How do you rate the importance of cybersecurity to your board and business?
- What is the biggest risk facing your company and is it being managed effectively?
- In light of the penalties for non-compliance, are you satisfied that your Board is taking all reasonable steps to ensure full compliance and mitigate both corporate and personal exposures?
- What were the results of your last corporate compliance health check?
- Which corporate governance "best practices" are applied in your company?

It is important for both you individually, and collectively as a Board, to frankly consider these and other important governance questions.

Table of contents

Introduction	5
Appointment of directors	6
Validity of directors' actions	6
Number of directors	6
Company secretary	7
Avoidance of acts done by persons in dual capacity	7
Duty of care and skill	7
Avoidance of conflicts of interest	8
Assignment of office	8
Removal of directors	8
Court disqualification of officers	9
Register of directors and secretary	9
Shadow directors	10
Illicit and permitted loans	10
Payments for loss of office	11
Disclosure of directors' salaries, pensions	11
Inspection of directors' service contracts	12
Duty to disclose directors' shareholdings	12
Maintenance of register of directors' shareholding interest	13
Disclosure of directors' interest in contracts	14
Disclosure of loans made to officers	15
Directors' particulars on corporate stationery	15
Indemnification of directors	16
Liability insurance for directors	16
Appendix I: Overview of principal criminal and civil sanctions imposed on directors and other officers by the Companies Act 2004	17

Introduction

Companies incorporated or registered in Jamaica are primarily governed by the Companies Act 2004 (“the Companies Act” or “the Act”) as amended. The Act was enacted on 1 February 2005 and was amended in 2013 and 2017.

Among other matters, the Act governs the appointment, conduct and removal of company directors and other officers and prescribes, in some detail, their duties and responsibilities. It establishes the legal framework within which directors and other officers of Jamaican companies must operate and imposes both criminal and civil sanctions on such directors, officers and the company in the event of contravention or default.

In light of the extensive sanctions which may be imposed personally on company directors and other corporate officers, it is critical that they be fully aware of their duties and responsibilities under the Act and take appropriate steps to ensure compliance.

This publication is a quick reference guide for company directors and officers, on their key duties and responsibilities under the Companies Act as well as a summary of the principal sanctions imposed in the event of noncompliance.



Appointment of directors (Sections 175, 178, 181, 183)

A person shall not be appointed as a director of a public company or named as a director in a prospectus (or statement in lieu of prospectus) delivered to the Registrar unless they (or their authorised agent) has:

A signed and delivered to the Registrar for registration a consent in writing to act as such director; and

B given the prescribed confirmations or undertakings concerning the take-up of any share qualification.

An applicant registering the articles of a public company, must deliver a list of all persons who have consented to act as director. If any person listed has not consented, then the applicant shall be liable to a fine not exceeding J\$100,000.

Every director who is required by the company's articles to hold a specified share qualification must ensure that they have obtained their qualification within 2 months after their appointment (or such shorter time as may be fixed by the articles)-failure to do so will result in them vacating their office of director.

At a general meeting of a public company, a motion for the appointment of two or more persons as directors by single resolution shall be void unless a resolution to this effect has been first agreed to by the meeting.

If any person being an undischarged bankrupt acts as a 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, they shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years, or on summary conviction before a Parish Court Judge to imprisonment (up to 2 years) or a fine (up to J\$200,000) or both.

Notice of appointment/change of director must be filed with the Registrar within 14 days.

Validity of directors' actions (Sec. 176)

The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in their appointment or qualification.

Number of directors (Sec. 176)

Every private company must have at least one director. Every public company must have at least three directors, at least two of whom are not employees of the company or its affiliates. Restrictions apply to prevent a sole director (or a corporation for which they act as sole director or secretary) also acting as secretary and vice-versa.

Company secretary (Section 172)

Every company is required to have a secretary. Notice of appointment of a secretary must be lodged with the Registrar of Companies within 14 days of appointment.

Where the office of secretary is vacant (or the secretary is otherwise unavailable), the directors of the company may authorise any officer of the company to undertake acts in the capacity of secretary.

The directors of a public company are bound to take all reasonable steps to ensure that the secretary is a person who appears to them to have the "requisite knowledge and experience to discharge the functions of secretary of the company."

Avoidance of acts done by persons in dual capacity

(Sec. 173)

Where the Act requires or authorises a thing to be done by or to a director and the secretary, this shall not be satisfied where it is done by or to the same person acting both as director and as (or in place of) the secretary.

Duty of care and skill (Sec. 174)

Every director and officer of a company in exercising their powers and discharging their duties is required to:

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.

The above duties imposed on directors and other officers of the company are owed to the company alone. 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 as well as the community in which the company operates.

A director or officer shall not be in breach of the above duty provided that they exercise due care, diligence and skill or believed in the existence of facts that if true, would render the director's or officer's conduct reasonably prudent.

In addition, 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, they reasonably relied in good faith on documents relating to the company's affairs, including financial statements, reports of experts or information provided by other directors, officers or professionals.

For the purpose of the Act, an officer of a company shall include a director, manager or secretary.

Avoidance of conflicts of interest (Sec. 174A)

It shall be the duty of the director of a company to avoid circumstances which, whether directly or indirectly, constitute or may result in a conflict of interest with the interests of the company.

A director who is directly or indirectly interested in a matter which may constitute or result in a conflict of interest with the interests of the company:

A

shall disclose the nature of their 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.

The duty is not infringed if the circumstances cannot reasonably be regarded as likely to give rise to a conflict or if the approval of the other directors of the company is obtained.

Assignment of office (Sec. 200)

Notwithstanding any provision in the company's articles which may empower a director or manager of the company to assign their office to another person, any such assignment shall have no effect unless approved by a special resolution of the company.

Removal of directors (Sec. 179)

A company may, by ordinary resolution, remove a director before the expiration of their period of office notwithstanding anything to the contrary contained in the company's articles or in any agreement between the company and the director.

Special notice shall be required of such a resolution and where the director in question has made written representations for circulation, then these should be circulated to members with the resolution. Any person appointed as director in replacement shall be deemed (for retirement purposes) to have taken office from the date the person removed was originally appointed.

Court disqualification of officers (Section 180,182)

The Act also permits the company's shareholders, directors, creditors, liquidator or Trustee in Bankruptcy to lodge a complaint with the Registrar if they form a view that a person "is unfit to be concerned in the management" of the company.

Upon receipt of such a complaint, the Registrar shall investigate the matter and afford to the complainant(s) an opportunity to be heard. If satisfied that there are sufficient grounds for a Court hearing on the matter, the Registrar shall issue a certificate to enable the complainant to make an application to the Court.

The Registrar may also make such an application to the Court if satisfied that the person is unfit to be concerned in the management of the company.

The person concerned should be given at least 10 days notice prior to the complainant or Registrar making such an application.

If the Court determines that the person is unfit to be concerned with the management of the company, then it may order that the person may not be a director (or be otherwise involved in the management of the company) for a period up to 5 years.

In addition the Court may make a disqualification order (up to 5 years) against a person who has been persistently in default in relation to the provisions of the Act requiring any return, account, document or notice to be filed or delivered to the Registrar.

For this purpose, a person shall be regarded as persistently in default where they have been adjudged guilty (whether by way of conviction or by way default order made against them) of three or more defaults within 5 years.

Register of directors & secretary (Sec. 183)

Every company is required to keep at its registered office a register of its directors (including shadow directors) or managers and secretary (highlighting name, usual address, nationality, business occupation and other directorships etc.)

A return containing these particulars must be submitted to the Registrar within 14 days of the first appointment of directors. A notification of any changes must similarly be delivered within 14 days of the happening thereof.

The register must be open for inspection during business hours to any member of the company (without charge) or to members of the public. Failure to comply with the above shall render the company and each director/officer in default liable to a fine (up to J\$50,000).

Shadow directors (Sections 2,183)

For the purpose of the register of directors (and certain other provisions of the Act), a shadow director shall be regarded as a director and officer of a company.

The Act defines the term “shadow director” as “a person in accordance with whose directions or instructions the directors of a company are accustomed to act, so, however, that a person is not deemed to be a shadow director by reason only that the directors act on advice given by him in a professional capacity”.

Illicit and permitted loans (Sec. 184,185)

A company is prohibited from providing financial assistance (by way of loan or guarantee or otherwise) for whatever purpose to its (or its affiliated companies') shareholders, directors, officers, employees or to any other person in connection with the purchase of shares in the company (or its affiliates) in the event that:

A the company is unable (or would be after rendering the financial assistance) to pay its liabilities as they become due; or

B the realisable value of the company's assets (excluding the financial assistance) would be less than aggregate of the companies liabilities and total stated capital.

An officer of a company who acts in contravention of the above shall, on summary conviction before a Parish Court Judge, be liable to a fine not exceeding \$1,000,000 and/or to imprisonment for a term not exceeding 2 years. In addition, the Parish Court Judge may order the officer to restore to the company an amount equal to the value of the financial assistance given.

A company may provide financial assistance (by way of loan, guarantee or otherwise) to any person:

A in the ordinary course of its business of lending money;

B on account of expenditure incurred on behalf of the company;

C to a subsidiary or 100% parent company;

D to employees to enable them to purchase shares under an approved Employee Share Ownership Plan (ESOP).

Payments for loss of office (Sec. 186,187,188,189)

The Act provides that it shall be unlawful for a company to make any payment to a director (including the transfer of any property) by way of compensation for loss of office, or in connection with their retirement from office unless particulars have been disclosed to members and the proposal has been approved by the company.

If a payment is made to a director of a company in contravention of the above, the company and every officer of the company who is in default shall be liable to a fine not exceeding J\$50,000.

Additional disclosure requirements apply in the event that the payment is made in connection with the transfer of shares in the company.

It is the duty of each director to give notice to the company in relation to these matters as outlined by the Act. Failure to do so shall render the director liable to a fine of J\$50,000 and any sum received by him shall be recoverable.

Disclosure of directors' salaries, pensions (Sec. 190,192)

Any accounts (or statements annexed thereto) of a company laid before it in general meeting should disclose the aggregate amount of:

A directors' emoluments;

B directors' or past directors' pensions;

C any compensation to directors or past directors for loss of office.

The Act outlines disclosure requirements in respect of each of the above. It is the duty of each director and officer to give notice to the company of any matters relating to them as may be necessary to comply with the above. Failure to do so shall render the director or officer liable to a fine not exceeding J\$50,000.

Inspection of directors' service contracts (Sections 195)

The Act requires every company to keep a copy of the contract of service (or a memorandum note of written terms if no written contract exists) of each director (including shadow directors) employed by the company or its subsidiary at either:

A

the company's registered office;

B

the place where its register of members is kept (if different);

C

its principal place of business in Jamaica.

This shall not apply to a contract which requires a director to work wholly or mainly outside of Jamaica – instead the company shall be required to keep a memorandum note of certain details of such contract; or

- the unexpired portion of which is less than 12 months; or
- which can be terminated by the company within the next 12 months without the payment of compensation.

Every contract (or memorandum note) required to be kept by the company must be open for inspection, during business hours, by members of the company without charge. Where an inspection is refused, the Court may by order compel an immediate inspection thereof.

Failure to comply with the above shall render the company and every officer in default liable, on summary conviction by a Parish Court Judge, to a fine not exceeding J\$200,000.

Duty to disclose directors' shareholdings (Sec. 196)

Where a person becomes a director of a company and at that time they hold an interest in shares or debentures of the company, its subsidiary, its holding company (or one of its holding company's subsidiaries), then they shall notify the company in writing (within 5 days of appointment) of such interest

A similar notification is required (within 3 days of the occurrence) from any existing director who:

- A** becomes, or ceases to be, interested in such shares or debentures;
- B** makes any acquisitions or disposals;
- C** is granted, exercises or assigns any options or other rights to subscribe for such shares or debentures.

The failure by any person to comply with the above (including where they knowingly or recklessly makes a false statement) shall render them liable, upon conviction, to a fine not exceeding \$500,000 or to imprisonment for up to 2 years or to both.

For the above purpose, a director's interest in shares or debentures (including options or other rights to subscribe) shall be deemed to include any interests held by their spouse or minor child and therefore notification is also required (within 5 days) for any of the above occurrences in connection with their interests.

The failure by a director to notify the company in relation to the interests of their spouse or minor child shall render them liable, upon conviction, to a fine not exceeding J\$200,000. Where the director knowingly or recklessly makes a false statement, then they shall be liable, upon conviction, to a fine not exceeding J\$500,000 or to imprisonment for up to 2 years or to both.

These requirements do not apply to a director of a company licensed under the Securities Act.

Maintenance of register of directors' shareholding interest (Sec. 197,198)

Every company is required to maintain a register of the above shareholding interests as well as additional details required by the Act. If the register is not maintained at the registered office, the company must notify the Registrar of its location within 14 days. The register must be open for inspection (during business hours) to any member of the company without charge (and to any person upon the payment of a prescribed fee) and copies should also be made available.

Failure to comply with the above shall render the company and every officer who is in default liable to a fine not exceeding J\$2,000 (or J\$4,000 in the case of a failure to notify the Registrar of the location of the register) for every day during which the default continues.

Disclosure of directors' interest in contracts (Sections 193)

A director or officer of a company who is:

- A** party to a contract or proposed contract with the company; or
- B** a director or an officer of any entity or who has an interest in any entity that is a party to a material contract or proposed material contract with the company; or
- C** an associate of a person who is a party to such a contract with the company or has an interest in any entity that is a party to such a contract;

shall disclose in writing to the company or request to have entered in the minutes of Directors' meetings the nature and extent of their interest.

The contract must be approved by the board of directors of the company (in the absence of the director concerned) and a record of the contract should be kept at the registered office of the company.

A director should make the required disclosure:

- A** at the meeting at which a proposed contract is first considered; or
- B** otherwise, at the first meeting after which they become so interested; or
- C** at the first meeting at which they become a director.

An officer (other than a director) should make the required disclosure:

- A** immediately after they become aware that the contract is to be considered or has been considered at a directors' meeting;
- B** immediately after they become interested in a contract already made; or
- C** immediately after becoming an officer having been so interested in a contract prior to becoming an officer.

A general notice to the directors of a company by a director or officer declaring that they are a director or officer of (or has an interest in) another entity and should be regarded as interested in any type of contract with that entity, shall be regarded as a sufficient declaration of interest in relation to any such contract.

If a director or officer of a company fails to disclose an interest in a material contract, the Court may, upon the application of the company, set aside the contract on such terms as the Court thinks fit.

Disclosure of loans made to officers (Sec. 191,192)

The accounts laid by the company before the general meeting should disclose the amount of any loans made during the company's financial year (or outstanding at the expiration of that year) to any director or officer of the company (including loans made prior to the person becoming a director or officer).

Exceptions to this requirement include:

A

loans made in the ordinary course of the business of lending money;

B

a loan made by a company (or its subsidiary) to an employee not exceeding J\$500,000 and certified by the directors as having been made in accordance with any practice adopted vis-à-vis employee loans.

If the accounts fail to make proper disclosure, it shall be the duty of the auditors of the company to include in their report a statement giving the required particulars (so far as they are reasonably able to do so).

It is the duty of each director and officer to give notice to the company of any matters relating to them as may be necessary to comply with the above. Failure to do so shall render the director or officer liable to a fine not exceeding J\$50,000.

Directors' particulars on corporate stationery (Sections 194)

Every company (including a foreign company with local place of business) shall, unless specifically exempted by Ministerial order, state the present (and any former) first names and surnames of each director (or corporate name as appropriate) in all trade catalogues, trade circulars, showcards and business letters on or in which the company's name appears. If the company fails to comply with the above, every officer of the company shall be liable, on summary conviction before a Parish Court Judge, to a fine for each offence not exceeding J\$50,000.

Indemnification of directors (Sec. 201, 202)

A company may indemnify:

- A** a present or former director, officer or auditor;
- B** a person who acts or has acted as a director or officer of a company of which the company is or was a shareholder or creditor;
- C** a legal representative of any such person

in respect of all costs, charges and expenses reasonably incurred by them in respect of any criminal, civil or administrative action or proceeding to which they are made a party by virtue of their position (excluding any action taken by or on behalf of the company).

With the approval of the Court, the company may also provide an indemnity in defence of a derivative action to which the person has been made a party by reason of their position.

With certain exceptions, a director or officer may only be indemnified where:

- A** they 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 that is enforced by monetary penalty, they had reasonable grounds for believing that their conduct was lawful;
- C** the company, with the Court's approval, may also indemnify any of the persons listed above in the defence of a derivative action to which they have been made a party by reason of their position.

Liability insurance for directors (Sec. 204)

A company may purchase and maintain insurance for the benefit of any present or former director, officer or auditor (as described above) against any liability incurred by them in their capacity as director, auditor or officer of the company other than in respect of liability for fraud.

Appendix I

Overview of principal criminal and civil sanctions imposed on directors and other officers by the Companies Act 2004

Articles of incorporation	18
General provisions with respect to company name	18
General provisions with respect to articles	18
Prospectus (or statement in lieu of prospectus)	19
Allotment of shares	20
Commissions	20
Issue of redeemable shares	21
Miscellaneous provisions	21
Reduction of share capital	21
Transfer of shares and debentures etc.	21
Special provisions regarding debentures	22
Registration of charges	22
Registered office and company name	23
Register of members	23
Beneficial ownership	24
Branch register	24
Meetings & proceedings	24
Accounts & audit	25
Inspection	27
Arrangements & reconstruction	27
Winding up by the court	28
Voluntary winding up	28
Provisions applicable to all forms of winding up	29
Receivers & managers	30
Overseas companies	30

Guide to penalty type

A

company and every director/officer in contravention or default shall be liable to a fine of up to amount highlighted

B

company and every director/officer who knowingly or willfully authorises or permits default -liable to fine up to amount highlighted

C

any person upon conviction in a Circuit Court or summary conviction in a Parish Court- imprisonment for up to the period highlighted or fine up to amount highlighted or both

D

any person on summary conviction before a Parish Court Judge-imprisonment for up to the period highlighted or fine up to the amount highlighted or both

E

any person acting in default/contravention-liable to a fine up to amount highlighted per day while default continues

Summary of key sanctions

Articles of incorporation

Notification of Registrar within 15 days of an increase in members beyond the registered number for unlimited companies/companies limited by guarantee.

Penalty: A - J\$50,000 (Sec. 9(3))

General provisions with respect to company name

Notification of the public (through the Gazette and daily newspaper) of a company's name change within 30 days after the Registrar's approval.

Penalty: B - J\$50,000 (Sec. 17(6))

General provisions with respect to articles

Company required to provide a copy of the articles of incorporation upon request by a member.

Penalty: A - J\$2,000 (Sec. 22(2))

Prospectus (or statement in lieu of prospectus)

Delivery of prospectus (or statement in lieu of prospectus) to the Registrar upon any alteration of articles so that it ceases to be a private company.

Penalty: A - J\$50,000 (Sec. 26(3))

Authorization of delivery of statement in lieu of prospectus containing an untrue statement (unless immaterial or there are reasonable grounds for believing that the statement was true).

Penalty: C - (2 years/J\$50,000) or D (3 months/J\$50,000) (Sec. 26(4))

If non-cash consideration is to be accepted in consideration for an allotment of shares, the directors must pass a resolution to this effect and secure an appropriate valuation by qualified accountant to support the value ascribed. **(Sec. 38(4))**

Issue of a prospectus without having been registered with the Registrar.

Penalty: E - J\$5,000 per day (Sec. 40(7))

Issue of an application form for shares or debentures in a public company without a prescribed prospectus pursuant to the Act.

Penalty: E - J\$5,000 per day (Sec. 41(4))

Issue of a prospectus including any expert statement must be accompanied by a confirmation from the expert that they have given and has not withdrawn their consent to use the statement.

Penalty: B - J\$100,000 (Sec. 42(2))

A public limited company shall not vary the terms of a contract referred in a prospectus (or statement in lieu) prior to its statutory meeting.

Penalty: A - J\$50,000 (Sec. 43(3))

Civil liability (subject to permitted defenses) imposed on directors, promoters etc. to pay compensation in respect of any loss or damage incurred by the subscribers for shares or debentures in the company as a result of an untrue or misleading statement contained in the prospectus. **(Sec. 44(1))**

Criminal liability (subject to permitted defenses) imposed on any person who authorise the issue of a prospectus which contains an untrue or misleading statement.

Penalty: C - (2 years/fine- no limit specified) or

Penalty: D - (3 months/J\$100,000) (Sec. 45(1))

Allotment of shares

Monies paid by applicants for shares must be repaid to them if the conditions to permit allotment are not met within 40 days of the issue of the prospectus. Penalty: if not repaid within 48 days - directors shall be jointly and severally liable for repayments plus interest at 6% per annum from the expiration of the 48th day. (Sec. 48(4))

A public company is required to lodge and register a statement in lieu of prospectus with the Registrar at least 3 days before the first allotment of any shares or debentures. **Penalty: A - J\$50,000 (Sec. 49(4))**

Authorization of the delivery of a statement in lieu of prospectus (prior to the allotment of any shares) containing an untrue statement (unless statement is immaterial or there are reasonable grounds for believing that the statement was true).

Penalty: C - (2 years/no specified limit) or D - (3 months/J\$100,000) (Sec. 49(5))

Any irregular allotment made by a company is voidable at the instance of the applicant (within one month) and any director who knowingly contravenes or permits the contravention shall be liable to compensate the company or the applicant for any damage, loss or costs arising. **(Sec. 50(2))**

No allotment may take place (or proceedings taken on applications made) consequent on the issue of a prospectus until 3 days after the date of issue (or later date as may be specified in the prospectus).

Penalty: A - J\$50,000 (Sec. 51(4))

Returns of allotment (including contracts supporting non-cash consideration provided etc.) to be lodged with the Registrar within one month of allotment.

Penalty: E - J\$1,000 per day for every officer in default (Sec. 52(3))

Commissions

Permits the payment of a commission (within prescribed limits and having complied with specific disclosure requirements) to a person for agreeing to subscribe for shares or to procure subscriptions etc.

Penalty: B - J\$50,000 (Sec. 53(5))

Commission amounts paid shall be stated in the company's balance sheet until written off.

Penalty: A - J\$50,000 (Sec. 54(2))

Commission amounts paid shall be stated in the company's balance sheet until written off.

Penalty: A - J\$50,000 (Sec. 54(2))

Issue of redeemable shares

Power to issue redeemable shares (if authorized by articles) subject to funding any redemption (out of profits or the proceeds of a fresh share issue) and in accordance with the requirements of the Act: **Penalty: B - J\$50,000 (Sec. 56(5))**

A company must lodge with the Registrar a statutory declaration made by the directors prior to purchasing its own shares – criminal liability is imposed on directors who willfully or recklessly make a declaration containing a statement which is false in any material particular: **Penalty: D - (2 years/J\$1m) (Sec. 58(7))/(Sec. 59(7))**

Power to issue redeemable preference shares (if authorised by articles) subject to funding any redemption (out of profits or the proceeds of a fresh share issue) and in accordance with the requirements of the Act: **Penalty: B - J\$50,000 (Sec. 62(6))**

Miscellaneous provisions - Share Capital

Notification to Registrar of any alteration to the share capital of the company (whether by way of consolidation, subdivision, conversion, redemption or cancellation) within one month of alteration: **Penalty: A - J\$50,000 (Sec. 66(2))**

Notification to the Registrar of any increase in the share capital of the company within 15 days of a resolution authorizing the increase:

Penalty: A - J\$50,000 (Sec. 67(3))

Requirement to disclose in accounts any share capital in respect of which interest is being paid: **Penalty: A - J\$50,000 (Sec. 69(2))**

Reduction of Share Capital

A company shall not reduce its share capital unless a statutory declaration is made by its directors - criminal liability imposed on directors who willfully or recklessly make a declaration containing a statement which is false in any material particular.

Penalty: D - (2 years/J\$1m) (Sec. 71(7))

Any order by the Court concerning the variation of rights attached to shares shall be delivered by the company to the Registrar within 15 days of the date of the order. **Penalty: A - J\$50,000 (Sec. 73(5))**

Transfer of shares and debentures

A company shall not register a transfer of shares or debentures unless a proper instrument of transfer has been presented to the company: **Penalty: B - J\$50,000 (Sec. 75(2))**

If a company refuses to register a share or debenture transfer, then it shall notify the transferee within 3 months after the date the transfer was lodged with the company.

Penalty: E - J\$2,000 per day (Sec. 77(2))

A company is required to issue certificates in respect of shares or debentures within 2 months in the case of an allotment (and within 3 months of a transfer)

Penalty: A - J\$50,000 (Sec. 79(3))

If default continues for more than 10 days after notice served on the company - the Court may (upon application) order the company and any officer to make good the default. **(Sec. 79(4))**

Special provisions regarding debentures

Maintenance of a register of holders of debentures in accordance with the Act.

Penalty: A - J\$50,000 (Sec. 84(4))

Company must permit inspection of the register of debenture holders and provide copies in accordance with the provisions of the Act.

Penalty: A - J\$50,000 (Sec. 86(5))

Registration of charges

A company is responsible for sending particulars of each charge (as well as an original and certified copy) to the Registrar for registration in accordance with the provisions of the Act.

Penalty: A - J\$50,000 (Sec. 93(9))

A company is also responsible for sending certain particulars of any debentures issued which contain any charge (ranking pari passu for the benefit of debenture holders) together with a certified copy of the deed containing the charge to the Registrar for registration under the Act: **Penalty: A - J\$50,000 (Sec. 95(3))**

Where a company acquires property subject to a register-able charge, it is required to submit prescribed particulars as well as a certified copy of the deed containing the charge to the Registrar for registration within 21 days of acquisition.

Penalty: A - J\$50,000 (Sec. 96(2))

Where a company issues a debenture (or a certificate of debenture stock) which is secured by a registered charge, it shall endorse the debenture/certificate with a registration certificate issued by the Registrar in respect of the charge.

Penalty: B - J\$50,000 (Sec. 98(2))

A certified copy of every instrument creating any charge requiring registration should be kept by a company at its registered office.

Penalty: A - J\$2,000 (Sec. 102(2))

Every limited company shall maintain a register of charges at its registered office and shall enter the information required by the Act.

Penalty: B - J\$100,000 (Sec. 103(2))

Each company member or creditor may inspect (without charge) and other persons may inspect (for a prescribed fee) the copies of instruments creating a charge or the register of charges as the case may be during business hours.

Penalty: A - J\$50,000 and E (J\$2,000 per day) (Sec. 104(2))

Registered office and company name

Notice of any change in the situation of the registered office shall be given to the Registrar within 14 days of any change.

Penalty: A - J\$50,000 (Sec. 106(3))

The company's name must be clearly painted or affixed on the outside of every office or place in which its business is carried on.

Penalty: A - J\$50,000, E - J\$2,000 (Sec. 107(2))

The company's name must also be engraved on its seal, printed on all business letters, notices, official publications, promissory notes, bills of exchange, cheques, purchase orders, invoices, receipts etc. Any officer of a company who authorises the use or issue of any of the above which do not comply with the Act:

Penalty: A - J\$50,000 and can be held personally liable. (Sec. 107(4))

A public company having a share capital shall not commence business or exercise any borrowing powers unless it complies with all requirements of the Act and the Registrar certifies that it is entitled to commence business.

Penalty: E - J\$50,000 per day (Sec. 108(6))

Register of members

Every company shall maintain a register of members and beneficial owners containing particulars specified by the Act and notify the Registrar of the place the register is held (or any change in location) within 14 days.

Penalty: A - J\$50,000 (Sec. 109(4))

Every company with 50 or more members shall maintain an index of members' names and update such an index within 14 days of any change to the register of members. **Penalty: A - J\$50,000 (Sec. 110(4))**

Every register of members (and index as appropriate) should be open to inspection to members and other persons (for a prescribed fee) and copies provided as requested.

Penalty: A - J\$50,000 (Sec. 109(4))

Beneficial ownership

Where a company has notice of any type of trust affecting the membership of the company, the company shall enter the particulars of the beneficial owner in the register of members. Where a member holds property in, or of, a company, he shall notify the company of the name and address of the beneficial owner as specified in the Act. Notwithstanding, the company must request in writing information regarding beneficial ownership at least once per year or when directed by the Registrar.

Penalty: A - J\$500,000 (Sec. 116(6)(a))

Branch register

Where a company carries on business in a foreign jurisdiction, it may maintain a register of members resident therein (a branch register). The company shall notify the Registrar of the existence of, any change in or discontinuance of such register (within 14 days) **Penalty: A - J\$50,000 (Sec. 118(3))**

Any update to the branch register must also be reflected in a timely fashion on the company's principal register and a duplicate of the branch register must also be maintained where the principal register is kept.

Penalty: A - J\$50,000 (Sec. 119(7))

Meetings & proceedings

Each year a company shall hold an Annual General Meeting (AGM) in addition to any other meetings and not more than 15 months shall pass between one AGM and the next (provided that if a company holds its first AGM within 18 months of incorporation, it need not hold an AGM in the year of incorporation or the following year). Failure to comply with any of the above.

Penalty: A - J\$50,000 (Sec. 126(5))

Every public limited company shall (between 1-3 months after it becomes entitled to commence business) hold a "statutory meeting" and the directors shall forward "a statutory report" to members at least 7 days before the meeting (and forward a certified copy of the report to the Registrar).

Penalty: A/B - J\$50,000 (Sec. 127(9))

Every notice calling a meeting of a company shall clearly state that a member entitled to attend and vote is entitled to appoint a proxy (who need not be a member) to attend and vote instead of him.

Penalty: A - J\$50,000 (Sec. 131(2))

Invitations to appoint a proxy (along with forms for appointment must be sent to all such members (or otherwise be available on request)

Penalty: A - J\$50,000 (Sec. 131(2))

A notice of an AGM shall (with certain exceptions) contain a resolution requested by any member entitled to attend and vote (at the expense of the company) or a statement provided by any such member (at the member's expense unless otherwise resolved by the company).

Penalty: B - J\$50,000 (Sec. 137(2))

A copy of certain resolutions (including special and extraordinary resolutions) should be forwarded to the Registrar within 15 days of being passed.

Penalty: A - J\$50,000 (Sec. 139(5))

Where articles have been registered, a copy of every such resolution should be annexed to every copy of the articles issued after the passing of the resolution. If articles are not registered, a copy of such resolution should be sent to any member upon request.

Penalty: A - J\$1,000 per each copy (Sec. 139(6))

Minutes of all proceedings of general meetings and meetings of directors or managers must be entered in books (minute books) kept for this purpose.

Penalty: A - J\$50,000 (Sec. 142(4))

Books containing minutes of general meetings shall be kept at the company's registered office and be open for inspection (during business hours) to any member and copies of any minutes must be furnished upon request by a member within 7 days.

Penalty: A - J\$50,000 & J\$2,000 per offence (Sec. 143(3))

Accounts & audit

Every company shall keep proper books and documents of account (as prescribed by the Act) which reflect a true and fair view of the company's affairs etc. These books etc. shall be kept at the registered office and shall be open to inspection by directors. **Penalty: D - (6 months/J\$50,000) (Sec. 144(5))**

The directors of the company shall (within 18 months of incorporation and subsequently at least once every calendar year) lay before the company in general meeting a profit and loss account, balance sheet and a directors report (in the manner prescribed). **Penalty: D - (6 months/J\$50,000) (Sec. 145(3))**

The accounts of a company shall give a true and fair view of the state of the company's affairs and the end of its financial year and shall comply with the requirements of the Seventh Schedule of the Act. These requirements shall not however apply to a company's profit and loss account where the company has subsidiaries and a consolidated profit and loss account is prepared. **Penalty: D - (6 months/J\$50,000) (Sec. 146(6))**

Where a company has subsidiaries, then group accounts must be laid before the company in general meeting (unless the company is itself a subsidiary of another Jamaican incorporated company). **Penalty: D - (6 months/J\$50,000) (Sec. 147(3))**

Every balance sheet of a company must be signed on behalf of the board by two directors (or in the case of a sole director, that director). For banking companies, the secretary and three directors (or all the directors if less) must sign the balance sheet. The profit and loss account and any group accounts shall be annexed to the balance sheet (and approved by the board of directors) along with the auditors' report and circulated or published accordingly.

Penalty: A - (J\$100,000) (Sec. 152(5))

A copy of the balance sheet (including any document to be annexed thereto) to be laid before the company in general meeting must be sent to each member of a company, debenture holders or other persons entitled to receive notice at least 21 days before the meeting. **Penalty: A - (J\$100,000) (Sec. 153(3))**

Every member of a public company and debenture holder is entitled to be furnished (within 10 days of request) a copy of the last balance sheet of the company (including any document to be annexed thereto together with a copy of the auditors report on the balance sheet. **Penalty: B - (J\$2,000 per day) (Sec. 153(4))**

Every member of a private company and debenture holder is entitled (within 10 days of request) to a copy of the balance sheet of the company and auditors report on the balance sheet (can be charged up to J\$200). **Penalty: A - (J\$50,000) (Sec. 153(5))**

Where no auditors are appointed at the AGM, the company is required (within 7 days) to notify the Minister (who may appoint a person to fill the vacancy).

Penalty: A - (J\$50,000) (Sec. 154(4))

The auditors shall make a report to the members of the company in accordance with the Act and this report shall be read before the company in general meeting and be open for inspection by any member.

Every auditor shall have a right of access to the books and accounts etc. of the company and shall be entitled to require from the company officers any information or explanations necessary to perform duties of the auditor. The auditor is entitled to receive notices in respect of and attend (and be heard at) all general meetings. **Penalty: A - (J\$100,000) (Sec. 157(5))**



Inspection

Every officer and agent of a company is required to produce all books and documents etc. to any inspector appointed by the Minister and otherwise give all assistance requested. Failure to do so may result in the officer or agent being held in contempt of Court and punished accordingly. (**Sec. 163(3)**)

Costs of an inspection shall be initially defrayed by the Minister but certain persons may be liable to repay such costs including persons convicted on prosecution or ordered to pay damages arising from proceedings brought in connection with the inspector's report. (**Sec. 164(1)**)

Where the Minister believes there is good reason to investigate the ownership of any shares or debentures of a company (and it is unnecessary to appoint an inspector to do so), he may require any person who he believes has such an interest (or who acted as an agent or attorney for such a person) to supply certain information. **Penalty: D - (6 months/J\$50,000)** (**Sec. 169(3)**)

In the event that the Minister encounters difficulty or resistance in securing such information, he may impose certain restrictions on the shares or debentures (including restrictions on transfer, suspension of voting rights etc.). Any person who attempts to circumvent these restrictions (as outlined by the Act) shall commit an offence.

Penalty: D - (6 months/J\$50,000) (Sec. 170(5))

Shares or debentures must not be issued in contravention of any restrictions imposed.

Penalty: A - (J\$50,000) (Sec. 170(6))

Arrangements & reconstructions

Where a compromise or arrangement is proposed between a company and its creditors or members (or a class thereof), the Court may (upon application) order a meeting of such creditors or members (or a class thereof).

If a 75% majority agree to such compromise or arrangement, the Court may sanction it as binding. Such an order shall have no effect however until a copy of the order (annexed to the company's articles) has been delivered to the Register for registration. **Penalty: A - (J\$1,000 for each copy in respect of which default is made)** (**Sec. 206(4)**)

Proper notification of such a meeting (in the manner and content prescribed) must be given to creditors or members (as the case may be).

Penalty: A - (J\$50,000) (Sec. 207(4))

Every director must give notice to the company of any matters relating to himself as may be necessary to comply with requirements. **Penalty: A - (J\$50,000)**
(Sec. 207(5))

Where an application has been made to the Court to sanction a compromise or arrangement proposing a scheme of reconstruction or amalgamation involving the transfer of any property or the whole or part of any undertaking of a company, the Court may by order make provision for a range of matters prescribed by the Act. Such an order must be delivered to the Register for registration within 7 days of the order being made. **Penalty: A - (J\$50,000)**
(Sec. 208(3))

Winding up by the Court

Where the Court makes a winding up order consequent on hearing a winding up petition, a copy of the order must be submitted forthwith by the company to the Registrar who shall make a minute thereof. **Penalty: B - (J\$50,000)**
(Sec. 228(2))

Where the Court has made a winding up order or appointed a provisional liquidator, there shall be submitted to the Trustee in Bankruptcy (attached to the Court) a statement as to the affairs of the company in the prescribed form and this shall be verified by affidavit. The statement shall be submitted and verified by one or more persons being directors, company secretary or chief officer of the company.

Any person who, without reasonable excuse, fails to comply with the section shall be liable to a fine. **Penalty: E - (J\$2,000)** **(Sec. 232(5))**

In the context of the above, any person who untruthfully states that they are a creditor or contributory of the company shall be guilty of contempt of court and shall be punishable accordingly. **(Sec. 232(7))**

Voluntary winding up

Where a company passes a resolution for voluntary winding up, it shall, within 14 days of passing the resolution, give notice of the resolution by advertisement in the Gazette and in writing to the Registrar.

Penalty: A - (J\$100,000) **(Sec. 273(2))**

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 directors) may, at a directors' meeting, make a statutory declaration of solvency in the prescribed manner.

Any director making a declaration without having reasonable grounds for the opinion that the company will be able to pay its debts within the period specified shall be liable to imprisonment for a period not exceeding 6 months or a fine not exceeding J\$50,000 or both.
(Sec. 277(3))

Provisions applicable to all forms of winding up

If a person, being a past or present officer of a company, carries out (or fails to carry out, as appropriate) a wide range of actions specified, they shall be guilty of an offence. **Penalty: C - 2 years (or 5 years for certain offences)/fine – no limit specified**, **Penalty: D (\$3m (or J\$5m for certain offences)/12 months)** (Sec. 318)

If any officer or contributory of any company being wound up destroys, alters, or falsifies any books papers or securities or makes any false entry etc. in any register or books of account etc. of the company with the intent to defraud or deceive any person, then they shall be guilty of an offence.

Penalty: D - (\$2m/2 years). (Sec. 319)

Any officer of a company who:

- has by false pretences etc. induced any person to give credit to the company;
- with the intent to defraud the company's creditors, has made any gift, transfer or charge on any property of the company; or
- has concealed or removed any part of the property since (or within 2 months before) the date of any unsatisfied judgment or order for the payment of money obtained against the company;

shall be guilty of an offence. **Penalty: C - (2 years/fine – no limit specified)**, **Penalty: D - (\$3m/1 year) (Sec. 320)**

If a company is wound up and it is shown that proper books and accounts were not kept by the company throughout the period of 2 years prior to the commencement of a winding up, every officer who knowingly was a party to or connived at the default shall be guilty of an offence (unless they can show that they acted honestly and that the default was excusable).

Penalty: C - (1 year/fine – no limit specified), **Penalty: D - (\$2m/6 months) (Sec. 321)**

If in the course of the winding up of a company, it appears that any business of the company has been carried out with the intent to defraud creditors of the company or for any fraudulent purpose, the Court may (upon application of the Trustee, the liquidator, any creditor or contributory of the company) declare that any persons who were knowingly party to this shall be personally responsible without limitation of liability for all or any debts or liabilities as the Court may direct. (Sec. 322)

If in the course of the winding up, it appears that any promoter, past or present officer or liquidator of a company has misappropriated or retained or become accountable for any money or property of the company or has been guilty of any misfeasance or breach of trust, the Court may (upon application of the Trustee, the liquidator, any creditor or

contributory) examine the matter and order the officer etc. to repay or restore the money or property to the company (plus interest as appropriate) or to pay compensation as directed by the Court. **(Section 323)**

If it appears to the Court 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, the Court may (upon application) direct the liquidator to refer the matter to the Director of Public Prosecutions. **(Sec. 324)**

Every invoice, order for goods or business letter issued by a company in liquidation shall contain a statement that the company is being wound up. **Penalty: B - J\$50,000 (Sec. 327(2))**

Receivers & managers

Every invoice, order for goods or business letter issued by company under receivership shall contain a statement that a receiver or manager has been appointed.

Penalty: B - J\$50,000 (Sec. 343(2))

Overseas companies

In the event that any company fails to comply with the provisions of Part X of the Act (which governs companies incorporated overseas carrying on business in Jamaica), then any officer or agent who knowingly or willfully authorises or permits the default commits an offence. **Penalty: B - J\$2,000,000 (Sec. 370)**

Where a company fails to appoint the minimum number of directors or a secretary for a period of more than three (3) months. **Penalty: A - \$500,000**



pwc.com/jm

This publication has been prepared for general informational purposes, and does not constitute professional advice on facts and circumstances specific to any person or entity. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication. The information contained in this publication was not intended or written to be used, and cannot be used, for purposes of avoiding penalties or sanctions imposed by any government or other regulatory body. PwC Corporate Services (Jamaica) Limited, its members, employees, and agents shall not be responsible for any loss sustained by any person or entity that relies on the information contained in this publication. The content of this publication is based on information available as of October 2019. Accordingly, certain aspects of this publication may be superseded as new guidance or interpretations emerge.

At PwC Jamaica, our purpose is to build trust in society and solve important problems. We're a network of firms in 157 countries with over 276,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com/jm.

© 2019 PwC Corporate Services (Jamaica) Limited. All rights reserved. PwC refers to the Jamaica member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity.