

# **VOLUME 7**

## **SECTION 3A**

### **REGISTRATION OF COMPANIES CUSTOMER GUIDELINES BASED ON COMPANIES ACT 2004**

**The Responsibility of  
The Companies Office of Jamaica  
(formerly Registrar of Companies)  
1 Grenada Way  
Kingston 5, Jamaica W.I.**

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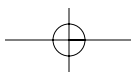
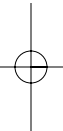
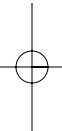
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# CHAPTER I

## THE ROLE OF THE COMPANIES OFFICE OF JAMAICA

### 1.0 BACKGROUND

The role of the Companies Office of Jamaica (COJ) is to maintain accurate and up to date records on commercial entities which are often accessed by the public to check a company's current:

- i Legal Status
- ii Statutory Compliance
- iii Ownership

The COJ registers local and overseas companies, Industrial and Provident Societies and individuals carrying on business in Jamaica. It actively encourages voluntary compliance of companies and businesses with the Companies Act of 2004, the Registration of Business Names Act of 1934 and the Industrial and Provident Societies Act of 1903 and strives to maintain up-to-date records of all companies and businesses which have been registered.

#### 1.0.1 Court Action and Removal of Name from Register

Where necessary, the COJ initiates court action against delinquent clients to ensure compliance with all provisions of the law. It also removes from its register companies which have been wound up and those which the Registrar has reason to believe are not in operation.

### 1.1 REASONS FOR REGISTRATION

Companies should ensure that they are registered with the COJ for the following reasons:

- i In order that such companies can be assisted in a number of ways such as:
  - placement of name on the COJ list of businesses with the right to operate in Jamaica
  - inclusion on COJ's website so that any one in the world can access basic information about the company.

- ii they access loans and grants
  - Sponsors and moneylenders prefer to deal with a company that has complied with government regulations. A limited liability company is able to create a charge over the general assets of the company
- iii They can obtain Government and other contracts.
  - The Government of Jamaica is now moving towards the direction wherein only companies legally operating will be privy to Government contracts.
- iv They can inspire consumer confidence
  - The company is being transparent when registration is effected, as comprehensive information on the company officers and shareholders will be available at the Companies Office of Jamaica.

## **1.2 RESPONSIBILITIES OF A COMPANY**

The responsibilities of a Company are as follows:

- i The incorporation of a company imposes upon the secretary and directors or (if none have yet been appointed) the subscribers to the Articles of Incorporation a number of obligations. Any default in complying with these obligations could result in a fine for every day during which the default continues, or a term of imprisonment. These obligations are imposed by the Companies Act, and the new or updated guidelines are outlined in this document.
- ii A company has the capacity, rights, powers, and privileges of an individual. It is not necessary for the articles to confer any particular power on the company.
  - A company is however prohibited from carrying on business, which is prohibited by law or for which a licence is required.(e.g. banking licence)
  - A company is prohibited from carrying on business or exercising any of its powers in a manner contrary to its Articles.

### **I.3 GENERAL GUIDELINES**

- i All forms are available at the Office of the Companies of Jamaica (COJ). They can also be obtained from the COJ's website ([www.orcjamaica.com](http://www.orcjamaica.com)).
- ii There is a glossary of terms available on the COJ's website ([www.orcjamaica.com](http://www.orcjamaica.com)) and at appendix I to this document.
- iii All fees are listed at Appendix 3 and are also available on the COJ's website. These fees may change at any time.

## CHAPTER 2

### REGISTERING A COMPANY, NAME SEARCHES AND RESERVATIONS

#### 2.0 TYPES OF COMPANIES THAT SHOULD BE REGISTERED

The kinds of companies that can be registered under the Companies Act 2004 are:

- i Private companies limited by shares
- ii Public companies limited by shares
- iii Mutual fund company limited by shares
- iv Company limited by guarantee without a share capital
- v Private company limited by guarantee with a share capital
- vi An unlimited company

One person may form a private or public company.

#### 2.1 PROCEDURE FOR DOING AN OFFICIAL NAME SEARCH AND/OR RESERVING A COMPANY NAME

General guidelines:

- i To request a Company Name Search and/or Reservation the prescribed form should be completed and submitted to the COJ together with payment of the prescribed fee. (See Appendix 3 for fee structure).
- ii A customer can request a name search only or a name search & name reservation.
- iii The reserved name will also be entered on the COJ's website - so customers who subscribe to the web site can view it. The information entered will state when the name reservation will expire.
- iv The name reservation period is for 90 days.
- v Once the 90 days has expired the reserved name will be automatically deleted from the COJ website.

### 2.1.1 Requirements for Name Search/Reservation

The following are the steps to carry out a name search or reservation:

- i Obtain and complete the application for Name Search and Name Reservation.
  - A maximum of five applications for name search and name reservation will be accepted by the ORC per customer, in one given day.
- ii Submit the application and pay the fee (see Appendix 3 for fees) for the name search. The Name Search fee is separate from the company name reservation.
- iii Pick up the letter outlining the result of the name search. The letter is normally ready within one working day.
- iv If the customer would like to reserve an approved name, payment of the fee for the name reservation is required.
  - For approved names, the letter will state the name reservation expiry date.
  - Name reservation is for 90 days including public holidays and weekends.

### 2.1.2 Documents from COJ

The customer will receive a:

- i Letter of Confirmation or Denial and a
- ii Receipt



## CHAPTER 3

### REGISTRATION OF A PUBLIC COMPANY LIMITED BY SHARES

#### 3.0 GENERAL GUIDELINES TO REGISTER A PUBLIC COMPANY LIMITED BY SHARES

- i A Public Company's shares may be offered for sale to the general public and members' liability is limited to the amount unpaid on shares held by them.
- ii A Public Company shall not do business or exercise any borrowing powers unless the Registrar has issued it a certificate, which states that the value of the allotted shares is not less than the authorized minimum that is \$500,000.
- iii A Public Company shall therefore apply to the Registrar for a certificate that states that the value of the allotted shares is not less than the authorized minimum.
- iv The Companies Office of Jamaica must be notified of the address of the registered office of the company in the prescribed form at incorporation of a new company.
- v A Public Company shall have at least three directors. At least two of whom must not be employees of the company or any of its affiliates.
- vi A company limited by shares can be reregistered as a company limited by guarantee, the amount of guarantee shall not be less than the amount remaining unpaid on the shares.

#### 3.1 REQUIREMENTS FOR REGISTRATION

The following are required for Registration

- i Articles of Incorporation Company Limited by Shares
- ii Declaration of Compliance
- iii Notice of Address of Registered Office
- iv A certified copy of the subscribers' Tax Registration Number (TRN)

- v Application for Certification of Minimum Share Capital
- vi Declaration of Minimum Share Capital
- vii Statement in Lieu of Prospectus or Prospectus
- viii List of Directors along with written consent to act as a director
- ix Particulars of Different Classes of Shares, where applicable.
- x Prescribed fees (see Appendix 3 for fees)

### **3.2 PROCEDURES FOR APPLICATION FOR REGISTRATION**

The following are the procedures to follow for Registration:

- i Obtain the required forms
- ii Have available:
  - Articles of Incorporation Company Limited by Shares
  - Declaration of Compliance
  - Notice of Address of Registered Office
  - Application for Certification of Minimum Share Capital
  - Declaration of Minimum Share Capital
  - Statement in Lieu of Prospectus or Prospectus
  - List of Directors along with written consent to act as a director
  - Particulars of Different Classes of Shares, where applicable

### **3.3 COMPLETE THE FOLLOWING DOCUMENTS**

- i Articles of Incorporation of the Company limited by shares.

Articles of Incorporation will be different from the one filed for private companies, the private company clauses will not apply. The Articles of Incorporation must:

- Be printed or type written in the prescribed form acceptable by the COJ
- Divided into consecutive paragraphs and the pages of the Articles of Incorporation must be properly numbered
- Bear stamp as a deed-stamped at the stamp office
- Be signed by each subscriber of the Articles in the presence of a witness

- State the occupation and address of each subscriber
- Be dated

ii Declaration of Compliance

The Declaration of Compliance must:

- contain the name of the proposed company
- be dated the same date or a date subsequent to the date on the Articles of Incorporation.
- be signed in the presence of a Justice of the Peace, Notary Public or Commissioner of Oaths

The declaration must be signed by either an

- Attorney at law or a Member of the Institute of Chartered Secretaries & Administrators engaged in the formation of the company, or a
- Person named in the Articles of Incorporation as Director or Secretary of the company

iii Notice of Address and location of Registered Office

- The Office of the Companies Office of Jamaica must be notified of the address of the registered office in the prescribed form at incorporation of a new company
- The address of the registered office is the address where all official correspondence will be sent
- The address must be on the Island of Jamaica
- The mailing address can be a Post Office Box; however, the registered address must be an actual physical location.
- The director or secretary named in the Articles of Incorporation, the Attorney-at-Law or chartered secretary and administrator engaged in the formation of the company

is required to sign the notice

- iv Certified copies of the subscribers' TRN as these are required. The TRN to be certified an Attorney-at-Law, Justice of the Peace or Notary Public.
- v Application for Certification of Minimum Share Capital

#### Declaration of Minimum Share Capital

- The value of the company's allotted share capital must not be less than the authorized minimum, which is currently \$500,000. This amount could be varied by Ministerial Order
  - Specify the amount paid up at the time of the application on the company's allotted share capital
  - 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
  - Specify the amount or benefit paid or given or intended to be paid to any promoter of the company and the consideration for the payment or benefit
  - The statutory declaration must be signed by a director or secretary of the company
- vi Statement in lieu of Prospectus or Prospectus
  - vii List of Directors along with written consent
    - Specify the names of all directors
    - Where directors of a public company with a share capital are appointed they must file along with the incorporation documents their written consent to act as directors.
  - viii Particulars of Classes of Shares; where applicable

A company having a share capital shall, where applicable, file a document with the Registrar setting out the following:

- if two or more classes of shares are issued, the rights, privileges, restrictions and conditions attaching to each class of shares; and
  - 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.
- ii Complete the necessary form if the company has more than one(I) class of shares

### **3.4 SUBMISSION OF DOCUMENTS**

Submit the completed documents with the stated fees (see Appendix 3 for fees). At the time of submission the customer will be told when to return to obtain the results.

### **3.5 THE ROLE OF THE COJ**

The ORC is responsible for reviewing all the documents that have been submitted.

- i If the documents do not comply, all documents will be returned to the customer along with the necessary amendments.
- ii The Registrar's discretion to refuse to register a company with an undesirable name will be subject to guidelines.

#### **3.5.1 Rejection of Document**

If the documents are rejected, the customer will be given a Rejection Memorandum outlining the changes to be made to the documents. The appropriate corrections should be made and the documents resubmitted to the COJ.

#### **3.5.2 Certificate of Incorporation**

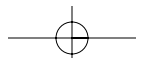
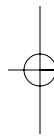
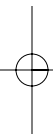
If the documents are accepted, the customer will be given the Certificate of Incorporation.



### **3.5.3 Documents from COJ**

The customer will receive the following from the COJ.

- i Rejection Memorandum
- ii Certificate of Incorporation
- iii Receipt



## CHAPTER 4

### REGISTRATION OF A COMPANY LIMITED BY GUARANTEE WITH SHARE CAPITAL

#### 4.0 GENERAL GUIDELINES

- i A guarantee company is one that the liabilities of the members are limited to such amount as they respectively undertake to contribute to the assets of the company in the event of its being wound up.
- ii Every company limited by guarantee is obliged to register an Article of Incorporation.
- iii A company limited by guarantee can be re-registered as a company limited by shares

#### 4.1 REQUIREMENTS FOR REGISTRATION

The following are required for Registration:

- i Articles of Incorporation – Company Limited by Guarantee with Share Capital
- ii Declaration of Compliance
- iii Notice of Address of Registered Office
- iv A certified copy of the subscribers' TRN
- v Particulars of Different Classes of Shares, where applicable.
- vi Prescribed fees (see appendix for fees)

#### 4.2 PROCEDURES FOR APPLICATION FOR REGISTRATION

The following are procedures to follow for registration

- i Obtain the required forms
- ii Have available:
  - Articles of Incorporation – Company Limited by Guarantee with Share Capital
  - Declaration of Compliance

- Notice of Address of Registered Office
  - Particulars of Different Classes of Shares, where applicable.
- iii Complete and submit the required documents.

### 4.3 DOCUMENTS REQUIRED

The following documents should be properly completed and submitted to the COJ:

- i Articles of Incorporation Company Limited by Guarantee with Share Capital

Articles of Incorporation must:

- State that each member undertakes to contribute to the assets of the company in the event of it being wound up while he/she is a member or within one year after he/she ceases to be a member for payment of its debts contracted before he/she ceases to be a member and of the costs of winding up, for adjustments of rights of contributories.
- State the number of members that company proposes to register
- Include the clauses relating to the Private Company
- Be printed or type written in the prescribed form acceptable by the COJ
- Be divided into consecutive paragraphs and the pages of the articles of incorporation must be properly numbered
- Bear stamp as a deed-stamped at the stamp office
- Be signed by each subscriber of the Articles in the presence of a witness
- State the occupation of each subscriber and their addresses
- Be dated



ii Declaration of Compliance

The Declaration of Compliance must

- contain the name of the proposed company
- be dated the same date or a date subsequent to the date on the Articles of Incorporation.
- be signed in the presence of a Justice of the Peace, Notary Public or Commissioner of Oaths

The declaration must be signed by either an

- Attorney at law or a Member of the institute of chartered Secretaries & Administrators engaged in the formation of the Company, or a
- Person named in the articles of incorporation as Director or Secretary of the Company

iii Notice of Address and Location of Registered Office

- The Companies Office of Jamaica must be notified of the address of the registered office in the prescribed form at incorporation of a new company
- The address of the registered office is the address where all official correspondence will be sent
- The address must be on the Island of Jamaica
- The mailing address can be a Post Office Box; however the registered address must be an actual physical location.
- The director or secretary named in the Articles of Incorporation, the Attorney-at-Law or chartered secretary and administrator engaged in the formation of the company is required to sign the notice

iv Certified copies of the subscribers' TRN as these are required. The TRN must be certified by an Attorney-at-Law, Justice of the Peace or Notary Public.

v Particulars of Classes of Shares; where applicable

A company having a share capital shall, where applicable, file a document with the Registrar setting out the following:

- if two or more classes of shares are issued, the rights, privileges, restrictions and conditions attaching to each class of shares; and
- if a class of shares may be issued in a series, the authority that has been 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.
- This form should be completed if the company has more than one(I) class of shares

#### 4.4 SUBMISSION OF DOCUMENTS

The completed documents should be submitted with the stated fees (see Appendix 3 for fees)

- i At the time of submission the customer will be told when to return to obtain the results

#### 4.5 ROLE OF THE COJ

The COJ will review all the documents that have been submitted.

- i If the documents do not comply all documents will be returned to the customer along with the necessary amendments.
- ii The Registrar's discretion to refuse to register a company with an undesirable name will be subject to guidelines.

##### 4.5.1 Rejection of Documents

If the documents are rejected, the customer will be given a Rejection Memorandum outlining the changes to be made to the documents. The appropriate corrections should be made and the documents

resubmitted to the COJ.

### **4.5.3 Certificate of Incorporation**

If the documents are accepted, the customer will be given the Certificate of Incorporation.

## **4.6 DOCUMENTS FROM COJ**

The customer will receive the following from the COJ

- i Rejection Memorandum
- ii Certificate of Incorporation
- iii Receipt

## CHAPTER 5

### REGISTRATION OF A COMPANY LIMITED BY GUARANTEE WITHOUT SHARE CAPITAL

#### 5.0 GENERAL GUIDELINES

- i A guarantee company is one that the liabilities of the members are limited to such amount as they respectively undertake to contribute to the assets of the company in the event of its being wound up.
- ii Every company limited by guarantee is obliged to register an Article of Incorporation.
- iii Churches, charitable organizations, service clubs, professional associations, community based organizations and other such groups are often registered under the Companies Act as companies limited by guarantee without a share capital.
- iv A company limited by guarantee can be reregistered as a company limited by shares.

#### 5.1 REQUIREMENTS FOR REGISTRATION

The following are required for registration:

- i Articles of Incorporation Company Limited by Guarantee without Share Capital
- ii Declaration of Compliance
- iii Notice of Address of Registered Office
- iv A certified copy of the subscribers' TRN
- v Prescribed fees (see Appendix 3 for fees)

## 5.2 PROCEDURES FOR REGISTRATION

The following are the procedures to follow for Registration

- i Obtain the required forms
- ii Have available
  - Articles of Incorporation Company Limited by Shares
  - Declaration of Compliance
  - Notice of Address of Registered Office

## 5.3 COMPLETE THE FOLLOWING DOCUMENTS

- i Articles of Incorporation Company Limited by Guarantee without Share Capital

Articles of Incorporation must:

- State that each member undertakes to contribute to the assets of the company in the event of it being wound up while he is a member or within one year after he ceases to be a member for payment of its debts contracted before he ceases to be a member and of the costs of winding up, for adjustments of rights of contributories.
- Include the clauses relating to the Private Company
- Be printed or type written in the prescribed form acceptable by the COJ
- Divided into consecutive paragraphs and the pages of the Articles of Incorporation must be properly numbered
- Bear stamp as a deed-stamped at the stamp office
- Be signed by each subscriber of the Articles in the presence of a witness
- State the occupation of each subscriber and their addresses
- Be dated

## ii Declaration of Compliance

The Declaration of Compliance must contain:

- the name of the proposed company
- be dated the same date or a date subsequent to the date on the Articles of Incorporation.
- be signed in the presence of a Justice of the Peace, Notary Public or Commissioner of Oaths

The Declaration must be signed by either an

- Attorney at law or a Member of the institute of chartered Secretaries & Administrators engaged in the formation of the company, or
- Person named in the Articles of Incorporation as Director or Secretary of the company

## iii Notice of Address and location of Registered Office

The Office of the Companies of Jamaica must be notified of the address of the registered office in the prescribed form at incorporation of a new company

The address of the registered office is the address where all official correspondence will be sent

The address must be on the Island of Jamaica

The mailing address can be a Post Office Box; however the registered address must be actual physical location.

The director or secretary named in the Articles of Incorporation, the Attorney-at-Law or chartered secretary and administrator engaged in the formation of the company is required to sign the notice

## iv Certified copies of the subscribers' TRN as these are required. The TRN must be certified an Attorney-at-Law, Justice of the Peace or Notary Public.

## **5.4 SUBMISSION OF DOCUMENTS**

The completed documents must be submitted with the stated fees (see Appendix 3 for fees) and at the time of submission the customer will be told when to return to obtain the results

## **5.5 THE ROLE OF THE COJ**

The COJ will review all the documents that have been submitted.

- i If the documents do not comply all documents will be returned to the customer along with the necessary amendments to be made.
- ii The Registrar's discretion to refuse to register a company with an undesirable name will be subject to guidelines.

### **5.5.1 Rejection of Documents**

If the documents are rejected, the customer will be given a Rejection Memorandum outlining the changes to be made to the documents. The appropriate corrections should be made and the documents resubmitted to the COJ.

### **5.5.2 Certificate of Incorporation**

If the documents are accepted, the customer will be given the Certificate of Incorporation.

## **5.6 DOCUMENTS FROM COJ**

The customer will receive the following from the COJ

- i Rejection Memorandum
- ii Certificate of Incorporation
- iii Receipt

## CHAPTER 6

### REGISTRATION OF AN UNLIMITED COMPANY

#### 6.0 GENERAL GUIDELINES

- i A company must be registered as an unlimited company in which case there is no limit on the members' liability to contribute to the assets.
- ii The name will not of course include the word "limited" & there will be no limitation of liability clause in the articles of incorporation.

#### 6.1 REQUIREMENTS FOR REGISTRATION

The following are required:

- i Articles of Incorporation Unlimited Company
- ii Declaration of Compliance
- iii Notice of Address of Registered Office
- iv Certified copies of the officers' and subscribers' TRN are required
- v Particulars of Different Classes of Shares, where applicable.
- vi Payment of the prescribed fees. (See Appendix 3 for fees)

#### 6.2 PROCEDURES FOR REGISTRATION

- i Obtain the required forms
- ii Have available:
  - Articles of Incorporation Unlimited Company
  - Declaration of Compliance
  - Notice of Address of Registered Office
  - Particulars of Different Classes of Shares, where applicable.

#### 6.3 SUBMIT THE FOLLOWING DOCUMENTS

- i Articles of Incorporation - Unlimited Company

The Articles of Incorporation must:



- State the number of members of the company and if the company is to have a share capital, the amount of the share capital.
- Not include limitation of liability clause in the Articles of Incorporation
- Be printed or type written in the prescribed form acceptable by the ORC
- Be divided into consecutive paragraphs and the pages of the Articles of Incorporation must be properly numbered
- Bear stamp as a deed-stamped at the stamp office
- Be signed by each subscriber of the Articles in the presence of a witness
- State the occupation of each subscriber and their addresses
- Be dated

ii Declaration of Compliance

The Declaration of Compliance must contain:

- the name of the proposed company
- be dated the same date or a date subsequent to the date on the Articles of Incorporation.
- be signed in the presence of a Justice of the Peace, Notary Public or Commissioner of Oaths

The Declaration must be signed by either an

- Attorney at law or a Member of the institute of chartered Secretaries & Administrators engaged in the formation of the company, or a
- Person named in the articles of incorporation as Director or Secretary of the company

iii Notice of Address and Location of Registered Office

The Office of the Companies of Jamaica must be notified of the address of the registered office in the prescribed form at incorporation of a new company

The address of the registered office is the address where all official correspondence will be sent

The address must be on the Island of Jamaica

The mailing address can be a Post Office Box; however the registered address must be an actual physical location.

The director or secretary named in the Articles of Incorporation, the Attorney-at-Law or chartered secretary and administrator engaged in the formation of the company is required to sign the notice

iv Certified copies of the subscribers' TRN as these are required. The TRN must be certified an Attorney-at-Law, Justice of the Peace or Notary Public.

v Particulars of Classes of Shares; where applicable

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

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

This form must be completed if the company has more than one(1) class of shares

## **6.4 SUBMISSION OF DOCUMENTS**

Submit the completed documents with the stated fees (see Appendix 3 for fees) and at the time of submission the customer will be told when to return to obtain the results.

## **6.5 ROLE OF THE COJ**

The COJ will for review all the documents that have been submitted.

- i If the documents do not comply all documents will be returned to the customer along with the necessary amendments.
- ii The Registrar's discretion to refuse to register a company with an undesirable name will be subject to guidelines.

### **6.5.1 Rejection of Documents**

If the documents are rejected, the customer will be given a Rejection Memorandum outlining the changes to be made to the documents. The customer should then make the appropriate corrections and resubmit the documents to the COJ.

### **6.5.2 Certificate of Incorporation**

If the documents are accepted, the customer will be given the Certificate of Incorporation.

## **6.6 DOCUMENTS RECEIVED FROM THE COJ**

The customer will receive the following from the COJ:

- i Rejection Memorandum
- ii Certificate of Incorporation
- iii Receipt

## CHAPTER 7

### APPOINTMENT OF DIRECTORS/SHADOW DIRECTORS

#### 7.0 GENERAL GUIDELINES

The following activities should be undertaken after the company is registered:

- i A notice of particulars of directors must be filed with the Companies Office of Jamaica within fourteen (14) days from the appointment of the director of the company.
- ii A private company shall have at least one director.
- iii Public companies shall have at least three directors at least two of who are not employees of the company or any of its affiliates.

#### 7.1 DOCUMENTS REQUIRED

The company should submit to the Registrar of Companies the following:

- i Notice of Appointment of Directors
- ii Original or certified copy of TRN of each director
- iii Prescribed fee (see Appendix 3 for fees)

#### 7.2 STEPS TO FOLLOW

The company is required to:

- i Obtain the Notice of Appointment of Directors form from the COJ.
- ii Complete the Notice of Appointment of Directors form
  - The names of the directors should be consistently spelt throughout the document.
  - The prescribed form must include the name, address, occupation, and nationality of directors.
  - Directors should be over 18, as minors have limited capacity

- Shadow directors will also be deemed directors of the company.
  - A shadow director is a person in accordance with whose directions or instructions the directors of the company are accustomed to act, however, a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity.
  - The person ceasing to be a director cannot sign the notice that is informing the Registrar of this fact.
  - A director must list if he or she holds directorships of any other company.
  - If a company is a director the following information must be provided to the ORC: corporate name, registered office address, place of incorporation and the company seal must be affixed and signed by a director and secretary of the company.
  - The duties of the directorship will be executed by the duly authorized officer or agent of the company
- iii Original or certified copy of the directors' TRN is required.
- Copies of the TRN must be certified by an Attorney-at-Law, Justice of the Peace or Notary Public
- iv Submit the completed Notice of Change of Directors form, certified copy of each Director's TRN and the stated fees to the ORC.
- v If any document is rejected by the ORC, the company or agent will be contacted and given a rejection memo outlining the amendments required.
- vi The company is to make appropriate amendments as necessary and resubmit accordingly.

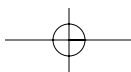
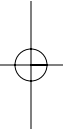
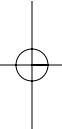
### 7.3 DOCUMENTS FROM THE COJ

After all the required information is submitted, the company will receive the



following:

- i Receipt
- ii Certified copies of documents on request (fees apply)
- iii Rejection memo, if applicable.



## CHAPTER 8

### APPOINTMENT OF A COMPANY SECRETARY

#### 8.0 GENERAL GUIDELINES

- i Every company shall have a secretary who shall be appointed by the directors.
- ii Notice of the appointment of a company secretary shall be given to the Registrar in the prescribed form within fifteen (15) days after the date of the appointment.
- iii A sole director shall not act as the company secretary.
- iv If the position of secretary is vacant, any assistant or deputy secretary or any officer of the company authorized generally or specially in that behalf, can carry out the duties of secretary

#### 8.1 REQUIRED DOCUMENTS

- i Notice of Appointment of Company Secretary form
- ii Original or certified copy of Secretary's and Company's TRN
- iii Prescribed fees (see Appendix 3 for fees)

#### 8.2 THE STEPS TO BE FOLLOWED

- i Obtain the Notice of Appointment of Company Secretary form from the COJ.
- ii Complete the Notice of Appointment of Company Secretary form

The COJ will require the following information:

- Full name
- Residential address
- Occupation
- Contact and fax numbers
- Secretary's Tax Registration Number
- Company's Tax Registration Number
- Date when appointed as Company Secretary

The COJ will also require information with respect to the outgoing secretary and the date when that person ceased to hold the office of secretary.

- iii A certified copy of the company's Director's and Secretary's TRN is required.
  - TRN to be certified by an Attorney-at-Law, Justice of the Peace or Notary Public.
- iv Submit the completed Notice of Appointment of Company Secretary form, TRNs and the stated fees to the COJ
- v If any document is rejected by the COJ, the company or agent will be contacted and given a rejection memo outlining the amendments required.
- vi The company is to make appropriate amendments as necessary and resubmit accordingly.

### **8.3 DOCUMENTS FROM THE COJ**

After the documents are submitted the customer will receive the following:

- i Receipt
- ii Certified copies of documents on request (fees apply)
- iii Rejection memo, if applicable.



## CHAPTER 9

### THE COMPANY'S ANNUAL STATUTORY REQUIREMENTS

#### 9.0 ANNUAL RETURN

A company's annual return is:

- i A document that registered companies are required by law to send to the Registrar each year.
- ii It includes information concerning the type of company and its business activities in regard to shares, the registered office, directors, company members, and company debts secured by company assets.
- iii It is open to public inspection.
- iv Failure to file the return is an offence and may lead to the company being removed from the register and fined.

#### 9.1 SUBMISSION OF ANNUAL RETURNS

##### 9.1.1 General Guidelines

- i The annual return must be submitted in the prescribed form that applies to the type of company.
- ii Every year the company shall make up annual returns for the period ending:
  - no later than the anniversary of the company's incorporation
  - or-
  - in the event that it is not the first annual return then on the anniversary date of the last return filed.
- iii The annual return must be filed with the Registrar within twenty-eight (28) days after the date to which it is made up
- iv If a company fails to deliver an annual return on its due date that company shall be liable:

- to a penalty of \$100.00 for each day that the default exists but subject to a maximum penalty of \$10,000.00 (enforceable by the court); and
  - a late fee as prescribed.
- v Certified copies (certified by a director, the manager or secretary of the company) of the last balance sheet and profit and loss accounts laid before the company in the general meeting are to accompany the annual returns for the following types of companies:
- Public companies
  - Every private company which is obliged to file accounts

## 9.2 TYPES OF ANNUAL RETURNS FORMS

Annual returns forms can be obtained from the COJ, depending on the type of company as follows:

- i Company having a Share Capital form for the following company types:
- Company Limited by Shares
  - Company Limited by Guarantee with a Share Capital
  - Unlimited Company
- ii Company not having a Share Capital form for following company type:
- Company Limited by Guarantee without a Share Capital
- iii An overseas company for following company type:
- All overseas companies

Certified copies (certified by a director, the manager or secretary of the company) of the last balance sheet and profit and loss accounts laid before the company in the general meeting are to accompany the annual returns for the following company types:

- i Public companies

- ii Every private company which is obliged to file accounts

**9.2.3** Original or certified copy of company's and Directors' TRNs need to be submitted along with payment of the prescribed fees (see Appendix 3 for fees).

### **9.3 THE STEPS TO BE FOLLOWED**

- i Obtain the appropriate Annual Return form from the COJ as follows:

For Companies:

- Limited by shares – Annual Returns Company Limited by Shares form
- Not having a share capital – Annual Returns Company not having a Share Capital form
- Registered Overseas – Annual Returns of an Overseas Company form

- ii Complete the Annual Return form.

- iii Annual returns for a company with share capital shall:

- state the date to which the annual return is made up
- List names and addresses of all persons who, on the date of the return, are members and officers of the company and of all persons who have ceased to be members or officers since the date of the last return or, in the case of the first return, of the incorporation of the company.
- State the number and classes of shares held by the members at the date of the return
- State the number of shares not fully paid up at the date of the return
- Indicate the changes, if any, in the stated capital since the last return; these changes can include:

- Issuances
  - Purchases
  - Redemptions
- Specify any transfer of shares since the last return
  - If the names are not arranged in alphabetical order, an annexed alphabetical list of the members is required
  - Conversion information must be stated i.e. conversion from shares to stock
    - State the amount of stock held by each of the existing members instead of the number of shares and the particulars relating to shares
  - Provide information as to the address where the register of members and information on shares, debenture and indebtedness is located
- iv Annual Return for a company not having a share capital shall be made, stating:
- The date to which it was made up
  - The address of the registered office of the company
  - All particulars of directors and secretaries at the date of the return
  - Attach to the return a statement containing particulars of the total indebtedness of the company in respect of all mortgages and charges, which are required to be registered under this Act.
  - State any increase in membership

A private company filing an annual return document must sign the following certificates (A, B, C & D), where applicable:

- **Certificate A:** A certificate signed by both director and secretary which states that the company has not since the date of the last Annual Return issued any invitation to the

Public to subscribe for any shares or debentures of the company or to deposit money for fixed period or payable on call whether bearing or not bearing interest and we also certify that to the best of our knowledge and belief since the above-mentioned date no person other than the holder has except in cases provided for in the Fourteenth Schedule, had any interest in any of the company's shares

- **Certificate B:** A certificate signed by both director and secretary which states that the annual return discloses the fact that the number of members of the company exceeds twenty, also a certificate so signed that the excess consists wholly of persons who are not to be included in reckoning the number of twenty
  - **Certificate C:** Should the company be a private company not obliged to file accounts the following certificate is also required which certifies that to the best of their knowledge and belief, subject to the exceptions provided for in the Fifteenth Schedule, no body corporate holds any shares in the company, and that this has been the positions all times since the date of the last Annual Return
  - **Certificate D:** Should be completed by any company which falls within the exceptions outlined in section 159 (1) and the criteria outlined in the 7th Schedule Part I Paragraph 7 of the Companies Act 2004 must also complete the following certificate.
- v Obtain and submit the Certified copies (certified by a director, the manager or secretary of the company) laid before the company in the general meeting of the last balance sheet and profit and loss accounts are to accompany the annual returns for the following company types:
- Public companies
  - Every private company which is obliged to file accounts
- vi Certified copies of the company's, Directors' and Secretary's TRN are required.
- TRN to be certified by an Attorney-at-Law, Justice of the Peace or Notary Public.

- vii The form & certified copy of the TRN must be submitted along with the stated fee (see Appendix 3 for fees) to the ORC. The company is given a receipt
- viii If the annual return is rejected by the ORC, the company or agent will be contacted and given a rejection memo outlining the amendments required.
- ix The company is to make appropriate amendments as necessary and resubmit accordingly.

#### **9.4 DOCUMENTS FROM THE COJ**

After filling the required documents, the company will be given the following:

- i Receipt
- ii Certified copies of documents on request (fees apply)
- iii Letter of good standing, if requested
- iv Rejection memo and documents to be amended, if applicable.

## CHAPTER 10

### CHANGES IN A REGISTERED COMPANY

#### 10.0 GUIDELINES

Changes in a registered company should be reported to the COJ. The types of changes that should be reported are:

Change	Form(s)
Change in Registered Office Address	Notice of Change of Address of Registered Office
Change in Particulars of a Director(s)/Shadow Director	Notice of Change of Directors
Reduction of share capital	Declaration to Reduce Share Capital
Filing of Charge documents	Particulars and Summary of Charge
Change in Par value	Notice of Election to Retain Par Value Shares
Allotment of shares/Return of allotment	Return of Allotment of Share

#### 10.1 CHANGE OF REGISTERED OFFICE ADDRESS

The General Guidelines for change of Registered Office Address is as follows:

- i The company must notify the COJ on the prescribed form within seven (7) days of any change of the registered office address. If the seventh day falls on a weekend, then notification must be on the next working day.
- ii The registered office is where all communication is sent.

##### 10.1.1 Requirements from the Company

The following is required:

- i Notice of Change of Address of Registered Office form
- ii Original or certified copy of company's TRN
- iii Prescribed fee (see appendix for fees)

### 10.1.2 The Steps to be Followed

- i Obtain the Notice of Change of Address of Registered Office form from the COJ.
- ii Complete the Notice of Change of Address of Registered Office form.
  - The company must state the effective date of the change of address.
  - The previous address of the Registered Office notices must be stated.
  - The notice of address of registered office notice or change of address of registered office must be signed by the director, secretary or authorized officer of the company. An address and contact information is required for the persons signing the form.
- iii A certified copy of the company's TRN is required.
  - TRN to be certified by an Attorney-at-Law, Justice of the Peace or Notary Public.
- iv The form & certified copy of the TRN must be submitted along with the stated fee (see appendix for fees) to the COJ.
- v If any document is rejected by the COJ, the company or agent will be contacted and given a rejection memo outlining the amendments required.
- vi The company is to make appropriate amendments as necessary and resubmit accordingly.

### 10.1.3 Documents From COJ

After submission of the documents the company will receive:

- i Receipt
- ii Rejection memo, if applicable



## **10.2 CHANGE OF THE PARTICULARS OF DIRECTOR(S) AND SHADOW DIRECTOR(S)**

The General Guidelines for the change of the particulars of Director(s) and Shadow Director(s) are:

- i A notice of particulars of directors must be filed with the Companies Office of Jamaica fourteen (14) days from the appointment or change of the director of the company.
- ii A private company shall have at least one director who is not the secretary of the company.
- iii 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.
- iv A director of a company may be a natural person (individual) or a legal person, (company or corporation)

### **10.2.1 Requirements from the Company**

- i Notice of Change of Directors form
- ii Original or certified copy of the TRN of each director
- iii Prescribed fee (see appendix for fees)

### **10.2.2 The Steps to be followed**

- i Obtain the Notice of Change of Directors form from the COJ.
- ii Complete the Notification of Change of Directors form
  - The names of the directors should be consistently spelt throughout the document.
  - The prescribed form must include the name, address, occupation, and nationality of directors.
  - Directors should be over 18, as minors have limited capacity
  - Shadow directors will also be deemed directors of the company. A shadow director is a person in accordance with whose directions or instructions the directors of the company are accustomed to act, however, a person is not

deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity.

- The person ceasing to be a director cannot sign the notice that is informing the Registrar of this fact.
  - A director must list if he or she holds directorships of any other company.
  - If a company is a director the following information must be provided to the COJ: corporate name, registered office address, place of incorporation and the company seal must be affixed and signed by a director and secretary of the company.
  - The duties of the directorship will be executed by the duly authorized officer or agent of the company
- iii A certified copy of the directors' TRN is required.
- TRN to be certified by an Attorney-at-Law, Justice of the Peace or Notary Public.
- iv Submit the completed Notice of Change of Directors form, certified copy of the TRNs and stated fees (see appendix for fees) to the COJ
- v If any document is rejected by the COJ, the company or agent will be contacted and given a rejection memo outlining the amendments required.
- vi The company is to make appropriate amendments as necessary and resubmit accordingly.

### 10.3 DOCUMENTS FROM COJ

After submission of the documents, the customer will receive the following from the COJ:

- i Receipt
- ii Certified copies of documents on request (fees apply)
- iii Rejection memo, if applicable

## 10.4 FILING CHARGE DOCUMENTS

General Guidelines for filing charge documents are as follows:

- i It is the responsibility of the company to file all charges. If companies default they are liable to a \$50,000 fine.
- ii Creditors can register the charges on behalf of the company.
- iii Charges include:
  - a charge for the purpose of securing any issue of debentures;
  - a charge on uncalled share capital of the company;
  - a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;
  - a charge on land, wherever situated, or any interest therein but not including a charge for any rent or other periodical sum issuing out of land;
  - a charge on book debts of the company;
  - a floating charge on the undertaking or property of the company;
  - a charge on calls made but not paid;
  - a charge on a ship or any share in a ship;
  - a charge on goodwill, on a patent or a licence under a patent, on a trade mark or on a copyright or a licence under a copyright.
- iv Every charge created after the effective date of the Companies Act 2004 shall be void against the liquidator and any creditor of the company if it is not registered in the prescribed manner at the COJ before the winding up of the company
- v A charge registered within 21 days (inclusive of public holidays and

weekends) of its creation shall rank in priority to any charge created after it.

- vi Any charge created and not registered with the COJ within 21 days after its creation shall for the purpose of priority be deemed to have been created on the registration date. The registration date is the date when the company files the document with the COJ and satisfies all the necessary requirements. Where a charge is rejected and returned, the relevant date for registration is the date of the document was last returned to the COJ.
- vii If the amount secured by a charge is increased after the charge is registered at the COJ, the particulars must be filed at the COJ. A Particular of increase, which states details of the increase along with any, supporting documentation e.g. upstamping page of the charge document, duly endorsed by stamp office.
- viii If the amount secured by a charge is increased after the charge is registered at the COJ, the amount by which the charge is increased will not take priority over a charge created subsequent to the original charge but prior to the upstamping. Notice of the subsequent charge must be given to the prior chargee (lender).

#### **10.4.1 Requirements from the Company**

The following information is required:

- i Particulars and Summary of Charge form
- ii The original or certified copy of the Charge document
  - If the document is being certified by the company/borrower, then two (2) authorized officers of the company should sign under seal of the company or if not under the seal one (1) officer should sign.
  - The document may be certified by an Attorney-at-Law or duly authorized agent on behalf of the lender
- iii Original or certified copy of the company TRN of lender and borrower
- iv Prescribed fees (see Appendix 3 for fees)

### 10.4.2 The Steps to be Followed

- i Obtain the Particulars and Summary of Charge form from the ORC.
- ii Complete the Particulars and Summary of Charge form
- iii A certified copy of the lender's and borrower's (company's) TRN is required.
  - TRN to be certified by an Attorney-at-Law, Justice of the Peace or Notary Public
- iv Submit the Particulars and Summary of Charge form, original or certified copy of the charge document, original or certified copy of the company's TRN (lender and borrower) and the prescribed fees to the COJ
- v If any document is rejected by the COJ, the company or agent will be contacted and given a rejection memo outlining the amendments required.
- vi The company is to make appropriate amendments as necessary and resubmit accordingly.

### 10.4.3 Documents from the COJ

After submitting the required information, the customer will be given

- i Receipt
- ii Certificate/letter of registration of a charge
- iii Rejection memo, if applicable

## 10.5 NOTICE OF ELECTION TO RETAIN PAR VALUE

General Guidelines for the Notice to Retain Par Value

- i Effective after the Companies Act 2004, shares in a company shall be issued without nominal or par value.
- ii Companies will not be able to file any documents using the Par value unless the notice of election has been filed with the COJ

- iii A share with a nominal value or par value issued, before the Companies Act 2004 takes effect, shall be deemed to be a share without nominal or par value.
- iv The Ordinary Resolution must be filed within fifteen (15) days from the date the resolution is passed.
- v This procedure is only necessary if a company by ordinary resolution makes the election to retain its existing shares with a nominal or par value and may continue to issue shares with a nominal or par value.
- vi Notice of the election must be given to the COJ
- vii This election must be made within six months the date the Companies Act 2004 takes effect.
- viii This election lasts for 18 months, at the end of 18 months the company will be deemed to have converted its existing shares to shares without a nominal or par value and shares issued thereafter shall be shares issued without a nominal or par value.
- ix If the company decides before the end of 18 months that it wants to change from nominal or par value to no par value they should notify the COJ in the prescribed form.

### **10.5.1 Requirements from the Company**

The following are required:

- Notice of Election to Retain Par Value Shares form
- Certified copy of the Ordinary Resolution
- Original or Certified copy of company's TRN
- Prescribed fees (see Appendix 3 for fees)

### **10.5.2 The Steps to be followed**

- i Obtain the Notice of Election to retain Par Value Shares form from the COJ
- ii Complete the Notice of Election to retain Par Value Shares form
- iii A certified copy of the Ordinary Resolution is required

- iv A certified copy of the company's TRN is required.
  - TRN to be certified by an Attorney-at-Law, Justice of the Peace or Notary Public
- v Submit the Notice of Election to retain Par Value Shares form, certified copy of the Ordinary Resolution original or certified copy of the company's TRN and the prescribed fees to the COJ
- vi If any document is rejected by the COJ, the company or agent will be contacted and given a rejection memo outlining the amendments required.
- vii The company is to make appropriate amendments as necessary and resubmit accordingly.

### **10.5.3 Documents From COJ**

The customer will receive the following:

- i Receipt
- ii Certified copies of documents on request (fees apply)
- iii Rejection memo, if applicable

## **10.6 REGISTRATION OF ALLOTMENT OF SHARES OR RETURN OF ALLOTMENT**

General Guidelines for the Registration of an Allotment of Shares or Return of Allotment are:

- i The COJ must be notified of any allotment of shares within one month of any allotment made by a company.
- ii An allotment is the assignment of shares to the members of the company.
- iii In the case of public companies:
  - Which have issued a prospectus, no allotment of shares can be made unless the amount stated in the prospectus as the minimum subscription has been received
  - Which have not issued a prospectus, no allotment of shares may be made unless 3 days before the first allotment a

statement in lieu of prospectus is registered with the Registrar

- iv Within one month of each allotment the company (private or public) must file a return of allotment in the prescribed form with the Registrar.

### **10.6.1 Requirements from the Company**

- i Return of Allotment of Share form
- ii Original or Certified copy of company's TRN
- iii Prescribed fees (see Appendix 3 for fees)

### **10.6.2 The Steps to be followed**

- i Obtain the Return of Allotment of Share form from the COJ.
- ii Complete the Return of Allotment of Share form
  - The return of allotment will include:
  - The number of shares comprised in the allotment.
  - The names, addresses and description of allottees.
  - The amount, if any, paid or due and payable on each share.
- iii In the case of shares allotted for consideration other than cash, the return of allotment must be accompanied by a particulars of contract in the prescribed form constituting the terms of the allotment, together with any other relevant contracts for example any contract for sale of land.
  - These contracts must be duly stamped.
  - Where a contract has not been reduced to writing, the Particulars of Contract form will have to be stamped.
- iv Where the shares have been allotted in exchange for land or past services rendered, the land or past services rendered must be the fair equivalent of the money that the company would have received if the shares had been issued for money.
  - No allotment may be made in these circumstances unless the directors of the company have passed a resolution that the allotment should be made.



- v The resolution must state the nature of the consideration, its value and the extent to which the shares to be issued will be credited as paid up.
- vi Before this resolution is passed
- Where the consideration consists of services, a qualified accountant must give a report no more than 120 days before the allotment that the worth of such services is at least as much as the amount which will be credited as paid up on the shares.
  - In any other case, a qualified accountant, valuer or surveyor must give a report no more than 120 days before the allotment that the worth of the consideration is at least as much as the amount which will be credited as paid up on the shares.
- vii If the allotment is being made to a member other than an existing shareholder, a certified copy of the TRN of that person is required.
- viii A certified copy of the company's TRN is required.
- TRN to be certified by an Attorney-at-Law, Justice of the Peace or Notary Public.
- ix Submit the Return of allotment of share form, duly stamped contract (if applicable), qualified accountant, valuer or surveyors report (if applicable), original or certified copies TRNs and the prescribed fees to the COJ
- x If any document is rejected by the COJ, the company or agent will be contacted and given a rejection memo outlining the amendments required.
- xi The company is to make appropriate amendments as necessary and resubmit accordingly.

### **10.6.3 Documents from the COJ**

After the required documents have been submitted to the ORC, the company will be given the following:

- i Receipt
- ii Certified copies of documents on request (fees apply)
- iii Rejection memo, if applicable.

## CHAPTER II

### PROCESSING COMPLAINTS AGAINST DIRECTORS

#### II.0 DISQUALIFICATION OF A DIRECTOR

##### General guidelines

- i A complaint may be made to the Registrar that a person is unfit to be concerned with the management of a company. Such complaints may be made by
  - shareholders
  - directors
  - creditors
  - liquidator of a company
  - trustee in bankruptcy or
  - the Registrar of Companies
- ii The Registrar may make an application to the court if she is satisfied that a person is unfit to be concerned with the management of a company
- iii Stated cases in which the court will disqualify a director
  - Any misfeasance/breach of fiduciary/other duty by the director in relation to the company
  - Any misapplication or retention of money/other property of the company or any conduct by the director giving rise to an obligation to account for money/other property
  - The extent of the director's responsibility for any failure of the company to comply with this Act in relation to the keeping and maintaining of accounting records
  - Whether the director has knowingly been party to carrying on business of the company with the intention to defraud creditors.
  - Any other circumstances that may be prescribed.

## 11.2 REQUIREMENTS FROM THE COMPANY

The following documents are required:

- Application to Disqualify a Director
- Declaration in Support of Application for Disqualification of Director
- Original or certified copy of applicant's TRN
- Prescribed fees (see Appendix 3 for fees)

## 11.3 THE STEPS TO BE FOLLOWED

- i Obtain the Application to Disqualify a Director and the Declaration in Support of Application for Disqualification of Director forms.
- ii Complete the Application to Disqualify a Director and the Declaration in Support of Application for Disqualification of Director forms.
  - The Statutory declaration must state the grounds on which the claim is being made
  - Provide original or certified copy of applicant's TRN
- iii Submit the application & statutory declaration along with the stated fees (see Appendix 3 for fees) to the ORC.
- iv The Restoration and Investigation Supervisor will investigate the compliant.
- v The appointed supervisor will contact the company for any assistance that may be needed for the investigation by way of letter of inquiry within five working days.
- vi The company shall respond in writing within ten days.
- vii If in completing the investigations the conclusion is made that there is merit to the claim, a hearing will be held.

- The hearing will be held ten days after a response is received from the company.
  - Notice will be sent to the applicants from the COJ to inform them of the date and time of the hearing.
- viii If the panel is satisfied that there are sufficient grounds for the matter to be heard in Court, the panel will issue a Certificate of Leave to proceed to the effect that the applicants have the right to make an application to the Court.
- Any person including the Registrar who intends to make an application to the court must give the person concerned at least 10 days notice of his/her intention to do so
- ix A decision by the registrar to refuse to issue a certificate may be appealed to the Master in Chambers

#### **11.4 DOCUMENTS FROM THE COJ**

The company after submitting all the required documents, will receive from the COJ:

- Notification of Receipt of Complaint under Section 180 of the Companies Act 2004
- Notification of Hearing pursuant of Section 180 of the Companies Act 2004
- Certificate of Leave to Proceed, and a
- Receipt

## CHAPTER 12

### HOW TO RESTORE A COMPANY?

#### 12.0 GENERAL GUIDELINES

- i A company or a member

#### 12.1 REQUIREMENTS FROM THE COMPANY

The following documents are required from the company

- i Application to Restore a company to the Company Register
- ii Declaration in Support of Application for Restoration
- iii Prescribed fees (see Appendix 3 for fees)

#### 12.2 THE STEPS TO BE FOLLOWED

- i Obtain the Application to Restore a Company to the Company Register and Declaration in Support of Application for Restoration forms from the COJ
- ii Complete the Application for to Restore a Company to the Company Register
- iii Complete the Declaration in Support of Application for Restoration form. The Declaration is to be done by a company, member of the company (officer) or creditor of the company – the declaration must include the following details:
  - Statement of intention to file outstanding documents
  - Name of the company
  - Date of incorporation
  - Status of the company
  - Registered office address
  - Directors at the time of the application for restoration

- Date struck from the register
  - Directors at the time the company was struck from the register
  - Justification for restoration for instance any proof of an outstanding debt from the creditor.
  - Exhibit of the Notice to the Commissioner of Lands & Accountant General where applicable
  - Any other relevant information
- iv Submit the application and declaration to COJ together with the prescribed fee (see Appendix 3 for fees).
- The fee for restoration of a company will be paid in two parts. Half of the restoration fee will be submitted with the application & statutory declaration The other half submitted after the hearing when the order is being filed at the COJ
- v The Restoration and Investigation Supervisor will respond to the application to restore the company.
- Applications will be heard once per month every fourth Tuesday & notice of the application must be received at least five working days before the hearing.
  - Once the application is heard by the committee an order may be granted, the order must state the time period in which the company is to file the outstanding company documents if any, and the cost to be paid by the applicant.
- vi The order must be filed along with the outstanding documents to the ORC within the specified time.

### 12.3 RESULTS OF THE APPLICATION

Once the company files the order, documents, and remaining fees (see appendix for fees) to the COJ then the company or the Attorney acting on behalf of the company

will be issued a standard letter (Notification of Restoration).

The COJ will publish notice of the Restoration in the gazette

## **12.4 DOCUMENTS RECEIVED FROM THE COJ**

If the application is approved, the company will receive the following:

- i Order for Restoration is sent after the hearing
- ii Notification of Restoration
- iii Gazetted Notice of the Restoration

## **12.5 CONTACT INFORMATION**

For further information please contact:

The Registrar  
Companies of Jamaica (Formerly the Office of the Registrar of Companies)  
1 Grenada Way  
Kingston 5  
Tel: (876) 908-4427-9  
Fax: (876) 908-4425  
Website: [www.orcjamaica.com](http://www.orcjamaica.com)



## Appendix I

### GLOSSARY OF TERMS

1. ***Ad valorem*** The more your firm is valued the more you pay.
2. **Annual Return** A document that registered companies are required by law to send to the Registrar each year. It includes information concerning the type of company and its business activities in regard to shares, the registered office, directors, company members, and company debts secured by company assets. It is open to public inspection. Failure to file the return is an offence and may lead to the company being removed from the register and fined.
3. **Articles of Incorporation** The foundation document for the registration of the Company. This is a contractual document which must be filed with the Registrar of Companies in order for the company to come into existence. It contains information about the company such as the company's name, registered office, share capital, the directors and the business carried out by the company.
4. **Bylaws** The rule or administrative provision provided by an organization for its internal governance and its external dealings. While the bylaws may be an organization's most authoritative governing document they are subordinate to the Articles of Incorporation.
5. **Certificate of Compliance /Good Standing** A document issued by the Registrar of Companies upon request certifying that the company has filed all statutory returns due to the Office of the Registrar of Companies as at the date of request.
6. **Certificate of Incorporation** A document issued by the Registrar of Companies giving a Company its legal existence. It is issued after registration and certifies that the company has been incorporated. For a limited company it also certifies that the members have limited liability.
7. **Charges (registration)** A document creating a lien which creates a legal interest over the Company's property such as a Mortgage in the case of land or a Bill of Sale in the case of equipment or motor vehicles.
8. **Company Secretary** An officer in a company who has authority in administrative matters. This person acts as an agent of the company and has responsibility for ensuring that all documents which the company must send to the Registrar of Companies and other Government Departments are delivered on time.
9. **Constructive Notice** Abolished under Companies Act 2004. This concept presumes in a person, knowledge of particular facts whether or not he in fact possesses that knowledge. Under the old Companies Act, persons dealing with registered

## Appendix I

- 10. Declaration of Compliance** This is a declaration which is done under the Voluntary Declarations Act which states that the person forming the Company has complied with all the requirements set out in the Companies Act.
- 11. Derivative/ Representative action** Action taken by individuals where wrong is done to the company although in normal circumstances the company itself would be the proper person to seek redress. This is usually a civil proceeding brought by the minority of a company's members in their own names seeking a remedy for the company in respect of wrong done to it by a third party. Usually because of the company's failure to take action.
- 12. Director's indemnity** Directors may be safeguarded by the company taking out insurance on their behalf where the company is sued and they are party to the action as a result of their positions or they bring action on behalf of the company. This is provided that they have discharged their duties properly and are in no way culpable.
- 13. Disclosure** A method of regulating the conduct of directors and promoters by requiring them to disclose to the company any relevant information for example an interest in a contract with the company. Companies are in general subject to requirements to state who their officers, shareholders, creditors, receivers and liquidators are. The Company must also have for public inspection certain records.
- 14. Dividends** The payment made by a company to its shareholders out of its profit available for distribution.
- 15. Duty of Care (directors)** Officers of a company are under an obligation to exercise due care, diligence and skill in the performance of their functions. The requisite standard of care is that of a reasonable person in comparable circumstances taking into account the skill and knowledge of the particular director.
- 16. Incorporation** The formation of a company. This gives the company legal personality distinct from that of its members. Upon incorporation a company acquires all of the rights powers and privileges of an individual. The Company once incorporated by registering as a Limited Liability Company under the Companies Act can do anything it wants to do unless it restricts its powers in the Articles. A company can for example also be incorporated by Statute.
- 17. Indemnity** A duty to make good any loss, damage or liability incurred by another. A company may indemnify its directors or officers or other persons acting on its behalf against all costs, charges and expenses reasonably incurred in respect of a civil, criminal or administrative action or proceedings to which he/she has been made party by virtue of his/her position in the company.

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18. **Insolvency** The condition of being unable to pay debts as they fall due in the usual course of business.
19. **Liquidity** State of being readily converted to cash.
20. **Memorandum of Association** Now abolished. Was previously a foundation document of incorporation, which together with the Articles of Incorporation governed the operation of companies. The Memorandum of Association previously defined the relationship of the Company with third parties and set out the rights and powers of the Company. If an object was not stated in the Memorandum it would be ultra vires or outside of the Company's capacity. The Memorandum and Articles of Association have been replaced by the single Articles of Incorporation.
21. **Mutual Fund Company** An investment company incorporated for the purpose of investing monies of its members for mutual benefit. It must state in its Articles that it is a mutual fund company having power to redeem and purchase its own shares without reducing its share capital. The Mutual Fund Company is exempted from certain obligations under the Companies Act.
22. **No Par Value Shares** Shares in a company issued without a specific value assigned.
23. **Nominal** Having an arbitrary dollar amount assigned on its face, usually insignificant as compared to the expected or real value. It is merely a notional amount.
24. **Notice of Situation (of registered office)** This is a notice detailing the physical location of the company's registered office. The Registered Office address is the address to which all communications should be sent. A Company is adequately served documents, for example, law suits if service is effected at the address recorded as the registered office address. It must be filed with the Registrar of Companies on incorporation and within seven days of any change thereto.
25. **Pari passu shareholders** Shares issued in a Company should be distributed in equal proportion to the existing shareholdings. These are shareholders who have acquired newly created shares which rank equally with those already in existence. Where there has been an increase in share capital, the shares created will carry the same rights as existing shares.
26. **Pre-Emptive Rights** The right of some shareholders to purchase newly issued shares before they are offered to the public. May also allow for first refusal of shares of any shareholder wishing to transfer his holdings.
27. **Pre-incorporation contract** A contract which is made by a person acting as an agent for a company not yet formed. The company may adopt this contract within a reasonable time after incorporation by any action or conduct signifying its intention to be bound thereby.

## Appendix I

28. **Public Company** A registered company that can offer its shares to the public.
29. **Shadow directors** Persons that do not formally occupy a seat on the board of directors but whose directions and instructions are habitually followed by the board. Lawyers, accountants and other professionals will not be deemed as such when they provide advice in a professional capacity.
30. **Share redemption/  
redeemable share** Shares issued subject to the provision that they can be bought back on the company's or shareholders request by the company. They cannot be bought back unless fully paid up and then only out of profits or the proceeds of a fresh issue of shares made for that purpose.
31. **Solvency** The ability to pay debts as they fall due.
32. **Stated capital account** The total equity of the company as it appears on the balance sheet.
33. **Statutory Declaration** A declaration made in a prescribed form before a Justice of the Peace or person authorized to administer an oath.
34. **Ultra Vires** Abolished under the Companies Act 2004. Any acts committed outside of the Company's stated objects and powers would be deemed to be ultra vires. The concept described acts which were unauthorized and beyond the scope of power granted by the Memorandum of Association, a corporate charter or by law.
35. **Wrongful Trading** Carrying on business in the course of a winding up with intent to defraud creditors of the company, creditors of any other person or for any fraudulent purpose. The person carrying out the business in such a manner trades wrongfully if he/she knew that the company had no reasonable prospect of avoiding insolvency. The standard for assessing such knowledge is that which a reasonable diligent person in the same position would have realised.

## Appendix 2

<b>Form</b>	<b>Used for</b>
Name search and Name Reservation	- Reserving a Company Name
Articles of Incorporation Company Limited by Shares	- Registering a Company Limited by Shares
Articles of Incorporation Company Limited by Guarantee with Share Capital	- Registering a Company Limited by Guarantee with a Share Capital
Articles of Incorporation Company Limited by Guarantee without Share Capital	- Registering a Company Limited by Guarantee without a Share Capital
Articles of Incorporation Unlimited Company with a Share Capital	- Registering Unlimited Company with a Share Capital
Declaration of Compliance	- Registering all Company types
Declaration of Minimum Share Capital Registering:	- Public Company Limited with Share Capital - Private Registering a Company Limited with Share Capital - Mutual Fund Company Limited with Share Capital - Public Company Unlimited with Share Capital - Private Company Unlimited with Share Capital - Company Limited by Guarantee with Share Capital
Notice of Address of Registered Office or Notice of Change of Address of Registered Office	- Change in Registered Office Address
Application to Disqualify a Director	- Disqualifying a Director
Declaration in Support of Application for Disqualification of Director	- Disqualifying a Director
Application for to Restore a Company to the Company Register	- Restoring a Company
Declaration in Support of Application for Restoration	- Restoring a Company

**Appendix 3****Office of the Registrar of Companies (ORC)****REGISTRAR OF COMPANIES ON FEES**

The fees quoted below represents our new fee structure. The figures are quoted in Jamaican currency and are in effect as of February 1, 2005

PARTICULARS	FEE
<b>ATTENDANCE AT COURT</b>	
<b>(Non - Legal Staff one day or part thereof)</b>	
Supreme Court	\$5,000
Resident Magistrate	\$3,500
<b>(Legal Officers one day or part thereof)</b>	
Senior Counsel	\$52,000
Junior Counsel	\$12,000
<b>REPORTS</b>	
<b>For Government Entities</b>	
Reports on companies by sector (e.g. manufacturing/real estate companies)	\$ 5,000
Computer generated report on Business Names	\$ 5,000
Computer generated report on Industrial and Provident Societies	\$ 5,000
Computer generated report on Registered Company	\$ 2,500.
<b>DATABASE ON DISKETTES</b>	
Companies	\$ 6,000
Business Names	\$ 3,000
Database in print	\$10,000
Service of Summons	\$ 2,000
Letters/Extracts verifying records	\$ 2,000
Opinions/Research	\$ 3,000
Concluding research upon request	\$ 2,000
<b>COMPANIES ACT</b>	
Registration of Company (limited by shares)	\$10,000
Registration of company (not having share capital)	\$10,000
Registration of company (limited by guarantee and having a share capital or an unlimited company having a share capital)	\$10,000
Overseas Company	\$18,000
For Registration of increase in the share capital of any company	
Notice of increase of share capital	\$3,000
Statement of increase of share capital	\$3,000
Ordinary Resolution for increase in share capital	\$3,000
Registering Annual Return	\$4,000.

**Appendix 3**

Register any charge	\$3,000
Registering Amended Memorandum or Articles of Association	\$3,000
Register any other document by the Act required or authorized to be registered other than the Memorandum, or the statement required to be sent to the Registrar by the Liquidator	\$2,000
Making a record of any fact by the Act required or authorized to be recorded by the Registrar	\$2,000
Inspection of documents kept by the Registrar	\$200. for 1 hour.
Certified copy of a Certificate of Incorporation	\$1,000
Certified copy of any document or part of any document kept by the Registrar or extract therefrom	\$150 per page
Change of name of company	\$3,000
Uncertified copy of any document or part of any document kept by the Registrar	\$100
Registering a prospectus	\$20,000.
Registering a Rights Issue	\$10,000
Certificate of good standing on the Register of Companies	\$ 2,000.
Registrar's report on the status of a company	\$2,000
Fee for the removal at the request of the company (not including advertisement)	\$3,000.
Late registration of any document required to be filed	\$1,000.
Expedition of Registration	\$3,000
For supplying information via fax ( per page)	
US, Canada, Caribbean	\$500.
Jamaica	\$100
Other countries	\$600.
Filing of document pertaining to shares along with Articles of Incorporation	\$2,000
Company Name Reservation	\$2,000
Registration of Mutual Fund Companies	\$10,000
Examination of Statutory Declaration and issuance of Registrar's	

## Appendix 3

Certificate regarding public companies' allotted share capital to be not less than the authorized minimum	\$5,000
Filing of ordinary resolution and notification to the Registrar that company intends to retain its existing shares with nominal/par value	\$2,000
Notice to the Registrar of allotment by company of shares for other than monetary consideration along with directors' resolution and accountant's estimate of the value of the consideration.	\$ 4,000 (Filing fee for the resolution and notice)
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/pass a resolution which they could not have done before the issue)	\$2,000
Filing of directors' declaration of solvency and audited or unaudited accounts prior to purchasing/otherwise acquiring a company's own shares	\$4,000
Filing directors' declaration of solvency, special resolution and audited/unaudited accounts prior to a company reducing its stated capital.	\$4,000
Filing of notice of increase in the amount secured by a registered charge	\$2,000
Filing of notice of resolution that company agrees not to produce audited reports within a particular financial year	\$2,000
Filing of notice of Secretary's appointment	\$2,000
Filing of complaint regarding unfitness of director/officer of a company	\$5,000
Fee to conduct investigation	\$10,000
Fee to conduct hearing	\$2,000 per hour or part thereof
Fee to issue Certificate of Unfitness	No fee
Fee payable to Registrar to make application to the Court	according to court fees set out in the Civil Procedure Rules
Filing of notice of the location of directors' contracts and memoranda or any change in the location	\$2,000
Filing of notice of the place where the register of directors' interests is kept or any change in location	\$2,000
Filing of notice of application to be made to the Court regarding indemnification-	\$2,000 in addition to court fees set out in the Civil Procedure Rules



## Appendix 3

Fee to restore a company to the Companies Registry

\$15,000 payable  
in addition to  
filing fees

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/par value and issuance of Registrar's certificate granting permission.

\$5,000  
in addition to fees  
for professional  
opinion

**Appendix I**

**OFFICE OF THE REGISTRAR OF COMPANIES  
NEW FEES FOR BUSINESS NAMES & INDUSTRIAL PROVIDENT SOCIETIES  
EFFECTIVE FEBRUARY 1, 2005**

**REGISTRATION OF BUSINESS NAMES ACT**

Statement of particulars (corporation)	\$2,500
(other)	\$2,000
Additional certificate	\$1,000
Statement of particulars required by schedule	\$1,000
Statement of change of particulars	\$2,000
Additional certificate	\$ 500.
Inspection fee	\$500
Certificate of registration under Section 18	\$1,000
Certified copy of extract of statement	\$200
Appeal to the Minister	\$3,000
Supplying information via fax (per page)	
USA, Canada, Caribbean	\$500
Jamaica	\$100
Other countries	\$600
Other documents	\$600
Late renewal fees	\$1,000
Expedition fee	\$1,500

**INDUSTRIAL AND PROVIDENT SOCIETIES ACT**

Application to cancel and publish cancellation of Registry in the Gazette and Newspaper	Sum to "defray expenses" of Gazette and Newspaper plus registration fee of \$1000.
To obtain copy of rules from a Society	\$100 per page
Annual registration fee payable by Society	
To publish Dissolution of society in Newspaper and Gazette	\$2,500
For acknowledgement of registry of amendment of the rules	\$2,500

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For the registry of a special resolution by any society (to include in the case of a change of name, the approval of same)	\$2,000
For direction to transfer stock	\$3,000
For every appointment of Inspectors, or calling of a special meeting by the Registrar	\$3,000
For the determination of the Registrar on a dispute, or for his award for dissolution or distribution of funds	\$5,000
For every other hearing after the first and for every adjournment if necessary	\$5,000
For every document (except as after mentioned) required to bear the seal of the Registrar of Companies not chargeable with any other fee to the Registrar	\$2,000
For a certified copy for a Certificate of Registrar	\$1,000
For every inspection, on the same day, of documents (whether one or more) in the custody of the Registrar relating to one and the same society	\$200 per hour
For supplying information via fax ( per page)	\$500
US, Canada, Caribbean	\$500
Jamaica	\$100
Other countries	\$600
For a certified copy of every page of any document in the Custody of the Registrar	\$150 per page
For uncertified copy or a page of any document	\$100
For the registration of the rules of the society	\$8,000
For registration of any notice of change of office	\$2,000
For the registration of Annual Returns	\$3,000