

**A BILL
ENTITLED**

AN ACT to Amend the Companies Act and for connected matters.

BE IT ENACTED by The King’s Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:-

Short title and construction.

1. This Act may be cited as the Companies (Amendment) Act, 2023, and shall be read and construed as one with the Companies Act (hereinafter referred to as the principal Act) and all amendments thereto.

Amendment of section 2 of principal Act.

2. Section 2 of the principal Act is amended by –

(a) deleting the definitions of “beneficial owner”, “document”, “ultimate effective control” and “ultimate ownership”;

(b) inserting in the correct alphabetical sequence the following definitions –

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

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

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

“beneficial owner” means –

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

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

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

“Commissioner General” means the Commissioner General appointed under section 4 of the of the Revenue Administration Act;

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

Administration Act;

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

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

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

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

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

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

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

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

“public entity” means –

- (a) Tax Administration Jamaica established under section 4 of the Tax Administration Jamaica Act;
- (b) the Public Procurement Commission established under section 9 of the Public Procurement Act, 2015; and
- (c) any statutory body that provides regulatory oversight

in relation to any professional service, business or commercial enterprise or industry;

“return date” means the date, that is –

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

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

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

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

“ultimate ownership” means any circumstance in which the

ownership of a company, by an individual, is exercised indirectly through a chain of ownership –

(a) through companies, corporations or any other mechanisms;

(b) by himself or jointly with another person;

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

(c) deleting subsections (7), (8) and (9).

Amendment of section 3 of principal Act.

3. Section 3(1)(a) of the principal Act is amended by inserting next after sub-paragraph (ii), the following sub-paragraph –

“(iii) a return of beneficial ownership containing accurate, adequate and up-to-date particulars in respect of each member and beneficial owner of the company in accordance with section 377A; and ”.

Insertion of new section 23A in principal Act.

4. The principal Act is amended by inserting next after section 23 the following section –

“Nominee shareholders prohibited. 23A. No company incorporated under this Act shall have a nominee shareholder.”.

Amendment of section 52 of principal Act.

5. Section 52 of the principal Act is amended by inserting next after subsection (1), the following subsections –

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

(1B) In the case of companies incorporated, established or formed outside of Jamaica and carrying on business in Jamaica, that is to say,

companies to which Part X applies, the return of allotment delivered to the Registrar shall be accompanied by a copy of the certificate of incorporation or similar document however described, providing evidence of the incorporation, establishment or formation of the company and the copy shall be certified in accordance with section 377AD(2).”.

Amendment of section 83 of principal Act.

6. Section 83 of the principal Act is amended by deleting –
- (a) the words “, or of any share warrant or coupon”;
 - (b) the words “or share warrant or coupon”;
 - (c) the words “shall be guilty of a felony” and substituting therefor the words “commits an offence”; and
 - (d) the words “with or without hard labour for” and substituting therefor the words “for a term not exceeding”.

Amendment of section 109 of principal Act.

7. Section 109 of the principal Act is amended –
- (a) in subsection (1) –
 - (i) by deleting the words “enter therein the following particulars –” and substituting therefor the words “enter therein accurate, adequate and up-to-date particulars, in respect of the following –”;
 - (ii) by deleting paragraph (a) and substituting therefor the following paragraph –
 - “(a) in respect of each member and beneficial owner of the company, the particulars specified in subsection (1A);”;
 - (iii) by deleting paragraph (aa);
 - (iv) by deleting paragraph (ab);
 - (v) in paragraph (b), by deleting the words “, if applicable,”;

- (vi) in paragraph (c), by deleting the words “, if applicable,”;
 - and
 - (vii) in the proviso thereto, by deleting the words “, if any,”;
- (b) by inserting next after subsection (1), the following subsections –
- “ (1A) The particulars referred to in subsection (1)(a), to be included in the register of members, in respect of each member and beneficial owner of the company are as follows –
- (a) in respect of individuals –
 - (i) name, date of birth and nationality;
 - (ii) address and occupation;
 - (iii) taxpayer registration number or other tax identification number; and
 - (iv) if the number referred to in paragraph (a)(iii) is not applicable or available, the number, place of issue and expiry date of any valid passport or driver’s licence held, issued in Jamaica or any other jurisdiction; and
 - (b) in respect of members who are not individuals –
 - (i) the member’s name and date of incorporation, registration or establishment;
 - (ii) country, state or jurisdiction of incorporation, registration or establishment;
 - (iii) registered address or address of principal place of business; and
 - (iv) taxpayer registration number, or other tax identification number;
 - (c) in the case of a company having a share capital, a

statement of the shares held by the member –

- (i) distinguishing each share by its number;
 - (ii) the amount paid or agreed to be considered as paid on the shares of each member; and
 - (iii) the voting rights of that member;
- (d) in respect of each member and beneficial owner, the dates on which membership and beneficial ownership were acquired, commenced or ceased; and
- (e) where shares are held jointly, the interest held by each joint holder, and the date on which joint ownership commenced.

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

- (c) by deleting subsection (3) and substituting therefor the following subsection –

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

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

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

since then been kept at the registered office of the company; and

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

(d) by deleting subsection (4) and inserting therefor the following subsections –

“ (4) Subsection (3)(b) shall not apply to changes in the particulars referred to in subsection (1A) in relation to the membership of a public company or a company limited by guarantee and not having a share capital.

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

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

commits an offence.

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

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

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

(a) in the case of an individual, to a fine not exceeding three million dollars;

(b) in the case of a company, to a fine not exceeding five million dollars.”.

Amendment of section 110 of principal Act.

8. Section 110 of the principal Act is amended –

(a) in subsection (1), by inserting next after the words “names of the members” the words “and beneficial owners”; and

(b) in subsection (2), by inserting next after the words “that member” the words “and beneficial owner”.

Amendment of section 112 of principal Act.

9. Section 112 of the principal Act is amended –

(a) in subsection (1), by inserting next after the word “members” the words “and beneficial owners”; and

(b) in subsection (3), by deleting the words “fifty thousand” and substituting therefor the words “one million”.

Repeal and replacement of section 113 of the principal Act.

10. The principal Act is amended by repealing section 113 and substituting therefor the following section –

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

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

(a) section 109(3), section 110(3), section 112(1) or section 113A (1), (2) or (3); or

(b) any requirements of this Act as to the produc-

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

Insertion of new section 113A to 113F in principal Act.

11. The principal Act is amended by inserting next after section 113 the following sections –

“Inspection of register of members by Registrar.

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

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

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

- (a) shall, subject to law, have the right to inspect any such documents and to be furnished with or permitted to make copies thereof; and
- (b) may, at the request of the company, permit the company to produce the documents for inspection, and for the making of any copies

thereof, within such period, not exceeding seven days, as may be specified by the Registrar.

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

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

(i) a fine not exceeding three million dollars; and

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

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

(i) a fine not exceeding two million dollars or to a term of imprisonment not exceeding one year, or to both such fine and imprisonment; and

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

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

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

Notice of inspection of register of members.

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

Entry to company premises, production of documents, etc.

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

- (a) produce, within a period not exceeding seven days, to the Registrar, all documents relating to the beneficial ownership of the company which are in their possession, including documents substantiating or purporting to substantiate the particulars of the entries made

in the register of members;

- (b) permit access to, inspection and examination by the Registrar of the documents referred to in paragraph (a) at the registered office, place of business or at the premises of such other office where the register of members is kept, and otherwise to give to the Registrar all assistance in connection with the inspection of the register of members of the company.

(2) Any person who –

- (a) wilfully obstructs, hinders or impedes the Registrar, an officer of the department or a person authorized by the Registrar in the execution of his duties; or
- (b) refuses to produce any document substantiating or purporting to substantiate the particulars of the entries made in the register of members to be produced, which it is his duty to produce,

commits an offence .

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

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

- (b) in the case of a body corporate, to a fine not exceeding three million dollars.

**Certification
of inspection.**

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

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

**Rectification
of register of
members.**

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

- (2) If the company contravenes subsection

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

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

**Registrar
may request
information.**

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

- (a) the company;
- (b) any public entity;
- (c) any entity in a foreign state or country which carries out functions analogous to the functions of a public entity in that state or country, for information on the measures used for verification, including substantiating documents used to verify the accuracy of the information that was submitted to the Registrar in accordance with section 377A(c).”.

**Repeal and
replacement of
section 116 of
the principal
Act.**

12. The principal Act is amended by repealing section 116 and substituting therefor the following section –

**“Notice of
trusts.**

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

Insertion of new section 117A in principal Act.

13. The principal Act is amended by inserting next after section 117, the following section –

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

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

(2) At the expiration of the three-month period after the published notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of that notice the company shall be dissolved, so, however, that –

(a) the liability, if any, of the company, every officer and member of the company shall continue and may be enforced as if the

company had not been dissolved; and

- (b) nothing in this subsection shall affect the power of the Court to wind up a company, the name of which has been struck off the register.

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

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

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

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

- (a) give notice to the company of the non-

compliance, specifying a period within which to rectify the register of members in compliance with section 113E, and in the case of a company to which Part X applies, the period specified in the notice shall not be a period less than three months; and

- (b) in the notice referred to in paragraph (a), advise the company of the Registrar's power to strike off the company under this section.

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

- (a) to a trustee, may be addressed to the trustee at his last known place of business;

- (b) to the company, shall be addressed to –

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

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

Amendment of section 121 of principal Act.

14. Section 121 of the principal Act is amended –

- (a) in subsection (1), by deleting all the words after the words “return date” and substituting therefor a full stop;
- (b) in subsection (2)(a), by inserting next after the words “set out in” the words “Part II of”; and
- (c) by deleting subsection (3) and substituting therefor the following subsection –

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

Amendment of section 122 of principal Act.

15. Section 122 of the principal Act is amended –

- (a) by deleting subsection (1) and substituting therefor the following subsection –

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

- (b) in subsection (2) –

- (i) by deleting paragraph (a) and substituting therefor the following paragraph –

“(a) state the names, nationalities, addresses, and

occupations of all past and present members therein mentioned;” and

- (ii) in paragraph (b), by deleting the words “and beneficial owners, if any,” wherever they appear; and
- (iii) in the proviso thereto, by deleting the words “or beneficial owners, if any,”.

Amendment of section 124 of principal Act.

16. Section 124 of the principal Act is amended by deleting subsection (2).

Amendment of section 172 of principal Act.

17. Section 172 of the principal Act is amended –
- (a) by inserting next after subsection (1) the following subsection –
 - “ (1A) No company incorporated under this Act shall appoint a nominee director.”;
 - (b) in subsection (7) by inserting immediately after the words “subsection (1)” the words “, (1A)”.

Amendment of section 337 of principal Act.

18. Section 337 of the principal Act is amended –
- (a) in subsection (7) –
 - (i) in paragraph (b), by deleting the full stop and substituting therefor the words “; and”; and
 - (ii) by inserting next after paragraph (b), the following paragraph –
 - “(c) in the case of a company to which Part X applies, to the person named under section 363(1)(d), authorized to accept service of process on behalf of that company.”; and
 - (b) by inserting next after subsection (7), the following subsection –
 - “ (8) This section shall apply –

Part X.

- (a) with any necessary modification to the striking off from the register of companies of the name of a company to which Part X applies;
- (b) save and except that in relation to a company to which Part X applies, the Registrar need not inquire as to whether the company is carrying on business or in operation and shall send to the company and the person referred to in subsection (7)(c), a notice –
 - (i) not less than three months before sending by post to the company and the publication in the Gazette and a newspaper circulating in the Island, the notice referred to in subsection (3);
 - (ii) advising the company to which Part X applies that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be removed from the register.”.

**Amendment
of section 352
of principal
Act.**

19. Section 352 of the principal Act is amended –

- (a) in subsection (1), by deleting the words “Any person” and substituting therefor the words “Subject to subsection (1A) and (1D), any person”;

(b) by inserting next after subsection (1), the following subsections –

“ (1A) The register of beneficial owners or any other document providing beneficial ownership information of an intended company, a company or a former company, including a company struck-off the register and dissolved shall not be made available for inspection under subsection (1) –

- (a) except with the written consent of the beneficial owner, or former beneficial owner, to whom the information relates;
- (b) upon the written request of the person desirous of inspecting the register of beneficial owners or any other document providing beneficial ownership information kept by the Registrar; and
- (c) otherwise in accordance with subsection (1D).

(1B) Subject to subsection (5), upon the written request of an authority referred to in subsection (1C), the Registrar shall –

- (a) permit an officer authorized by the authority which made the request, to inspect documents kept by the Registrar;
- (b) provide, certified by the Registrar, any copy or extract of any document or any part of any document requested;
- (c) furnish, in a timely manner, to the authority, any requested information.

(1C) An authority that may make a request to the Registrar referred to in subsection (1B) is as follows –

- (a) a competent authority;

- (b) an authority of a foreign state or country carrying out functions analogous to the functions of a competent authority;
- (c) the designated authority;
- (d) a constable not below the rank of Sergeant;
- (e) the Commissioner of Customs;
- (f) the Commissioner General;
- (g) the Director of Public Prosecutions.

(1D) The register of beneficial owners shall be available for inspection by any of the following persons –

- (a) a competent authority;
 - (b) upon request to the Registrar, in writing, by a procuring entity;
 - (c) upon request to the Registrar, in writing, and with the consent of the beneficial owner –
 - (i) a financial institution;
 - (ii) a designated non-financial institution.”;
- (c) by deleting subsection (3) and substituting therefor the following subsection –

“ (3) A copy of or extract from any document –

- (a) registered and kept by the Registrar for the registration of companies;
- (b) inspected by the Registrar,

certified to be a true copy under the hand of the Registrar (whose official position it shall not be necessary to prove), shall in all legal proceedings be admissible in evidence as of equal validity with the original document.”; and

(d) by inserting next after subsection (4), the following subsection –

“ (5) The Registrar may refuse a request made under subsection (1B) by an authority of a foreign state or country, if any disclosure of information made by the Registrar pursuant to the request is prohibited by law or an order of the court.”.

Insertion of new section 352A and 352B in principal Act.

20. The principal Act is amended by inserting next after section 352, the following sections –

“Protection of Registrar and authorized officers.

352A. No action, suit, prosecution or other proceedings shall be brought or instituted personally against the Registrar or any officer authorized under section 351(2) and 377M, in respect of any lawful act done, in good faith, in pursuance or execution or intended execution of the provisions of sections

Part XIA.

113A, 113C, 352 and Part XIA.

Duty of secrecy.

352B. – (1) Every person having an official duty under this Act, or being employed or otherwise concerned in the administration of this Act shall regard and deal with as secret and confidential all documents and information, except that no disclosure made by a concerned person in proceedings for an offence under this Act or under the Perjury Act shall be deemed inconsistent with any duty imposed under this subsection.

(2) The obligation as to secrecy and confidentiality imposed under this section, in relation to any documents or information obtained under this Act continues to apply to a person despite that person

having ceased to have an official duty, be employed or otherwise concerned in the administration of this Act.

(3) Every person who is required under subsection (1) or (2) to deal with matters specified therein as secret and confidential who at any time communicates any such document or information referred to in subsection (1) disclosed to him in the execution of any official duties or otherwise in the administration of the Act to any person –

(a) other than a person to whom he is authorized by law to communicate the document or information;

(b) otherwise than for the purpose of this Act, commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding one million dollars or to a term of imprisonment not exceeding one year.”.

Amendment of section 362 of principal Act.

21. Section 362 of the principal Act is amended by inserting immediately after the words “within the Island after the appointed day” the words “(referred to as companies to which Part X applies)”.

Repeal and replacement of section 363A of principal Act.

22. The principal Act is amended by repealing section 363A and substituting therefor the following section –

“Registers to be kept by companies incorporated outside Jamaica.

363A. A company incorporated outside Jamaica which establishes a place of business within Jamaica, shall keep in Jamaica –

(a) a register of its members, to be referred to as

the “overseas branch register” to which sections 109 to 117A shall apply; and

- (b) a register of directors to be referred to as the “overseas register of directors” to which section 183 shall apply.”.

Insertion of new section 363B in principal Act.

23. The principal Act is amended by inserting next after section 363A, the following section –

“Nominee directors and nominee shareholders prohibited. Part X.

363B. No company to which Part X applies shall have a nominee shareholder or appoint a nominee director.”.

Amendment of section 365 of principal Act.

24. Section 365(1)(c) of the principal Act is amended by deleting the word “any”.

Amendment of section 369 of principal Act.

25. Section 369 of the principal Act is amended by deleting the marginal note and substituting therefor the following marginal note –

“Part X company ceasing to have a place of business in Jamaica.”.

Insertion of new section 369A in principal Act.

26. The principal Act is amended by inserting next after section 369, the following section –

“Striking off of name of Part X company. Part X.

369A. The name of a company to which Part X applies may be struck off the register of companies pursuant to sections 117A, 337 and 377H, respectively.”.

Amendment of section 370 of principal Act.

27. Section 370 of the principal Act is amended by inserting next after the words “provisions of this Part” the words “for which no other penalty is provided”.

Insertion of new Part XIA

28. The principal Act is amended by inserting next after section 377, the

**in principal
Act.**

following Part –

“

PART XIA. *Beneficial Ownership*

**Duty to make
beneficial
ownership
return.**

377A. – (1) In respect of the beneficial ownership of a company, or an intended company, a beneficial ownership return shall be made –

- (a) pursuant to section 3(1)(a)(iii), in relation to an intended company;
- (b) upon the delivery of a return of allotments under section 52, in respect of each allottee named therein;
- (c) by a company and delivered to the Registrar annually, made up to a date not later than the date which is from time to time the company's return; and
- (d) within fourteen days after any change of beneficial ownership information that occurs before the next annual filing of the return is due.

(2) Where there is a chain of ownership, every beneficial owner of the company, including those whose beneficial ownership is acquired or held pursuant to a chain of ownership shall be included in the beneficial ownership return.

(3) A company that fails to deliver a beneficial ownership return in accordance with subsection (1)(b),(c) or (d) commits an offence and is liable to a fine not exceeding five million dollars.

**Beneficial
ownership
return.
Form A.
Form B.
Part III.
Fifth
Schedule.**

377B. Each beneficial ownership return shall –

- (a) be made, as appropriate, in the form set out as Form A or Form B in Part III to the Fifth Schedule;
- (b) contain the information required under section 377C;
- (c) in the case of companies to which Part X applies, be accompanied by a copy of the certificate of incorporation or similar document, however described, providing evidence of the incorporation, establishment or formation of the company, upon the first occasion on which the beneficial ownership return is made by a company to which Part X applies, and thereafter at the request of the Registrar; and
- (d) be delivered to the Registrar within twenty-eight days after the date to which it is made up.

Part X.

Information required for beneficial ownership return.

377C. – (1) The information referred to in section 377B(b) to be contained in a beneficial ownership return is as follows –

- (a) the date to which it is made up;
- (b) the name of the company, address of the registered office and, in the case of a company to which Part X applies, its principal place of business;
- (c) an accurate, adequate and up-to-date list of all persons who, on the date of the return, are members and beneficial owners of the company, and of all persons who have ceased to be members and beneficial owners since the date of the last return or, in the case of the first return, of the incorporation of the company.

Part X.

(2) In the case of a public company, the list referred to in subsection (1), to be contained in the annual beneficial ownership return, may exclude the names of all past and present members of the company.

List contained in beneficial ownership return.

377D. – (1) The list referred to in section 377C(1)(c) shall –

- (a) state, in respect of each member, who is an individual and each beneficial owner –
 - (i) name, date of birth and nationality;
 - (ii) address and occupation;
 - (iii) taxpayer registration number or other

tax identification number; and

(iv) if the number referred to in paragraph

(a)(iii) is not applicable or available,

the number, place of issue and expiry

date of the valid passport or driver's

licence held, and in the case of a past

member or beneficial owner, the last

valid passport or driver's licence held

prior to the cessation of membership

or ownership of the company, as the

case may be;

(b) state, in respect of each member who is not an

individual, the member's name, date of

establishment, nationality, address and

taxpayer registration number, or other tax

identification number; and

(c) in the case of a company having shares, state

the number of shares held by each of the

existing members and beneficial owners at the

date of the return, specifying the shares

transferred since the date of the last return or,

in the case of the first return, of the

incorporation of the company by persons who

have ceased to be members or beneficial

owners, respectively, and the dates of

registration of transfers.

(2) If the names in the list contained in the

return are not arranged in alphabetical order, the company shall have annexed to the list an index sufficient to enable the name of any person in the list to be readily found.

Verification by Registrar of beneficial ownership information.

377E. – (1) The Registrar shall verify the accuracy of the beneficial ownership particulars in a beneficial ownership return delivered to the Registrar in compliance with this Act.

(2) For the purposes of subsection (1), the Registrar may make a request, in writing, to –

- (a) the company;
- (b) any public entity;
- (c) any entity in a foreign state or country which carries out functions analogous to the functions of a public entity in that state or country,

for information on the measures used for verification, including substantiating documents used to verify the accuracy of the information that was submitted to the Registrar.

Failure to deliver or inaccurate, etc., annual beneficial ownership return.

377F. – (1) Where an annual beneficial ownership return has not been delivered to the Registrar or the annual beneficial ownership return delivered is not accurate, adequate or up-to-date in accordance with section 377C(1)(c), and the company is in default for a period of not less than nine months after the company's return date, the Registrar shall –

- (a) give notice to the company in default,
requiring the company to deliver –
- (i) the outstanding annual beneficial ownership return, not later than thirty days after the date of the notice; or
 - (ii) an annual beneficial ownership return that is adequate, accurate and up-to-date, within such period not being less than thirty days, in accordance with section 377G;
- (b) if the company has not delivered the required return within the period specified in the notice given under paragraph (a), give a final notice to the company, requiring the company to deliver the outstanding annual beneficial ownership return not later than sixty days after the date of this final notice,

and if the company has not delivered the outstanding annual beneficial ownership return within the sixty-day period specified in a final notice given under paragraph (b), the name of the company, unless cause is shown to the contrary, may be struck off the register and the company dissolved under section 377H.

(2) In the case of a financial holding company or financial institution, the name of the company shall not be struck-off, without the Registrar holding consultations with the Supervisor and, in the

case of a financial institution providing insurance business and insurance related financial services, without the Registrar holding consultations with the Financial Services Commission.

(3) In this section –

“financial holding company” has the meaning assigned to it by section 2 of the Banking Services Act;

“financial institution” has the meaning assigned to it by section 2 of the Banking Services Act;

“Financial Services Commission” means the body established under section 3 of the Financial Services Commission Act;

“Supervisor” has the meaning assigned to it by section 2 of the Banking Services Act.

Notice of inaccurate, etc., annual beneficial ownership return.

377G. – (1) Where a company delivers to the Registrar an annual beneficial ownership return that, as at the return date applicable to that annual beneficial ownership return –

- (a) does not contain any information required under section 377C(1); or
- (b) contains a list of the membership and beneficial ownership that is inaccurate, inadequate or not up-to-date,

the Registrar shall give notice to the company and the company shall, within thirty days after the date of the notice, or such longer period as the Registrar may

allow, deliver to the Registrar an annual beneficial ownership return that is accurate, adequate and up-to-date.

(2) A notice under subsection (1) shall –

- (a) be given in writing;
- (b) specify, as applicable, the information omitted from the annual beneficial ownership return, or the information that is inaccurate, inadequate or not up-to-date; and
- (c) advise the company of the period, not being less than thirty days from the date of the notice, within which the company is to deliver to the Registrar an annual beneficial ownership return that is accurate, adequate and up-to-date.

Registrar may strike off company for failure to deliver or inaccurate, etc., annual beneficial ownership return.

377H. – (1) Where the Registrar is satisfied that a company has not delivered, within the sixty-day period specified in a final notice given under section 377F(1)(b), an outstanding annual beneficial ownership return or has delivered, within the period specified in section 377G(2)(c), an annual beneficial ownership return that is not accurate, adequate or up-to-date, the Registrar shall publish in the *Gazette* and in a daily newspaper circulating in Jamaica, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause

is shown to the contrary, be struck off the register and the company shall be dissolved.

(2) At the expiration of the three-month period the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of that notice, the company shall be dissolved, so, however, that –

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

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

- (a) the outstanding annual beneficial ownership return or the accurate, adequate and up-to-date annual beneficial ownership return was delivered within the sixty-day period specified

in a final notice given under section 377F(1)(b) or within the period specified in section 377G(2)(c) as the case may be, at the time of the striking off; or

- (b) otherwise that it is just that the company be restored to the register,

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

(4) A notice, or any other document, to be sent under this section –

- (a) to a trustee, may be addressed to the trustee at his last known place of business;
- (b) to the company, shall be addressed to –
 - (i) the company at its registered office;
 - (ii) a director or other officer of the company, or if there is no director or other officer whose name and address are known to the Registrar, to each of the persons who subscribed the articles, addressed to him at the address mentioned in the articles; and
 - (iii) in the case of a company to which

Part X.

Part X applies, to the person named under section 363(1)(d), authorized to accept service of process on behalf of

that company.

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

Part X.

Restrictions on share transfers and exercise of power to borrow.

377I. – (1) With effect as at the date of a notice issued under section 113D(b) or 377F(1)(a), the following restrictions apply –

- (a) the member shall not effect any transfer of any shares held;
- (b) a director shall not exercise the power to borrow money under the articles,

until the information relating to the membership and beneficial ownership of those shares is accurate, adequate and up-to-date in compliance with this Act.

(2) A member who contravenes a restriction under subsection (1)(a) or a director who contravenes a restriction under section (1)(b) commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding one million dollars or to a term of imprisonment not exceeding one year.

(3) Notwithstanding subsection (1), the Court may, on an application made by a person aggrieved, make an order, on the terms specified in subsection (4), for the purpose of protecting the rights or interests of the aggrieved person, if the Court is satisfied that –

- (a) a restriction under subsection (1) unfairly

affects the rights or interests of the aggrieved person; and

(b) it is not possible for the company to ascertain the information necessary to address the matters of which notice has been given by the Registrar and the company intends to do any one of the following –

(i) in the case of a transfer of shares, to purchase the shares held by the member and beneficial owner; or

(ii) the relevant interest affected by the restriction is to be transferred for valuable consideration.

(4) An order under subsection (3), may, subject to such terms and conditions, including any limitation on the application of the order to a specific person or transaction, or certain class of person or transactions, as the Court thinks fit –

(a) declare that certain acts shall not constitute a breach of a restriction imposed under subsection (1);

(b) in the interests of fairness to the aggrieved person, approve the transfer of shares or the exercise of borrowing powers.

(5) For the avoidance of doubt, this section shall not apply to transactions which commenced, and have not yet concluded, prior to, on or by the date of

the notice referred to in subsection (1).

Duty of Registrar to keep register of beneficial owners of companies.

377J. – (1) The Registrar shall cause to be established and maintained an accurate, adequate and up-to-date register of beneficial owners, in respect of each company entered in the register of companies, and the register shall, in respect of each beneficial owner, include the following particulars –

- (a) name, date of birth and nationality;
- (b) address and occupation;
- (c) taxpayer registration number or other tax identification number;
- (d) if the number referred to in paragraph (c) is not applicable or available, the number, place of issue and expiry date of the valid passport or driver's licence held, and in the case of a past beneficial owner, the last valid passport or driver's licence held prior to the cessation of membership or ownership of the company, as the case may be; and
- (e) in relation to the beneficial ownership –
 - (i) the company owned and the shares or interest held;
 - (ii) the name, address and nationality of the member holding the legal interest on behalf of the beneficial owner.

(2) The annual beneficial ownership returns shall be contained in a separate part of the register of

beneficial owners.

(3) The register of beneficial owners shall be available for inspection in accordance with section 352(1A).

Register of beneficial owners to be evidence.

377K. The register of beneficial owners shall be *prima facie* evidence of any matters by this Act directed or authorized to be inserted therein.

Powers of Registrar in relation to accuracy, etc., of beneficial ownership information.

377L. – (1) For the purpose of the discharge of the Registrar’s functions in relation to the register of beneficial owners and the accuracy, adequacy of, and the keeping of up-to-date beneficial ownership information by a company and, without prejudice to any other power conferred on the Registrar under this Act, the Registrar shall –

- (a) take such steps as are necessary to ensure that appropriate standards of conduct and performance are maintained in relation to the keeping of accurate, adequate and up-to-date beneficial ownership information by companies in accordance with this Act and any rules or regulations made under this Act;
- (b) at such times as the Registrar may determine examine, in such manner and such frequency as the Registrar thinks fit, the records and procedures of a company for the purpose of being satisfied that the company is compliant with the provisions of this Act in relation to

the beneficial ownership of the company.

(2) Within ninety days after the completion of an examination under subsection (1), the Registrar shall report to the company the results of every such examination and any such report may contain such recommendations as the Registrar considers necessary to address any inaccuracy, inadequacy or other deficiency in the company's records or procedures in relation to the beneficial ownership of the company discovered in the examination.

Authorised officers and persons.

377M. – (1) The Registrar may authorize, in writing, such number of officers of the department or other persons, subject to the Registrar's directions and to prescribed conditions (if any), for the purposes of section 113A and this Part.

(2) Anything done or executed by an officer of the department to whom authority is given under this section and in accordance with such authority shall be valid and effectual as if executed by the Registrar.

Right to enter for inspection or examination.

377N. For the purpose of the execution of duties by the Registrar under section 113A or this Part, it shall be lawful, for the Registrar, or a person authorized by the Registrar, to enter on to the premises of the registered office, place of business or at the premises of such other office where the register of members is kept, on the days Monday to Friday, in each week,

between the hours of 8:30 a.m. and 5:00 p.m.

Co-operation. 377O. – (1) The Registrar may, in the performance of the functions conferred on the Registrar under this Act, work in co-operation with any person or body as the Registrar may deem appropriate.

(2) A person or body shall co-operate with the Registrar in the exercise of the functions conferred on the Registrar under this Act.

(3) Subject to the provisions of this section, the Registrar may, with the approval of the Minister, enter into a memorandum of understanding or other agreement or arrangement with a foreign law enforcement agency, regarding the exchange of information relevant to the functions of the Registrar under this Act.

(4) Nothing in this section authorizes a disclosure by the Registrar unless –

(a) the Registrar is satisfied that the foreign law enforcement agency is subject to adequate legal restrictions on further disclosures of the information provided, including the provision to the Registrar of –

(i) an undertaking of confidentiality on the part of the foreign law enforcement agency; or

(ii) an undertaking by the foreign law enforcement agency not to disclose

the information provided, without the consent of the Registrar; and

- (b) the Registrar is satisfied that the information requested by the foreign law enforcement agency is required for the purposes of that agency's functions, including the conduct of criminal proceedings to enforce laws administered by that agency.

(5) Where, pursuant to a request for the exchange of information, the Registrar in accordance with this section supplies information to a requesting foreign law enforcement agency, the information supplied shall be deemed to be lawfully given under this Act and every person liable to be proceeded against on the ground that such information was unauthorized or unlawfully given, or that the person was otherwise acting illegally or improperly for any such reason only, is hereby acquitted, freed, discharged and indemnified against all persons whatsoever and whomsoever, from liability arising from the supply of that information.

(6) In this section, a "foreign law enforcement agency" means any entity having, under the laws of a foreign state or country, functions analogous to the functions performed in Jamaica by the Registrar.

**Minor
inconsis-**

377P. – (1) For the avoidance of doubt –

tencies.

- (a) a person shall not be liable to be proceeded against under this Act; and
- (b) the name of a company shall not be struck off or removed from the register of companies, for any minor inconsistency in the particulars referred to in section 109, to be included in the register of members, in respect of each member and beneficial owner of the company, or a beneficial ownership return made to the Registrar.

(2) An inconsistency that is minor in nature, is –

- (a) the inadvertent omission or inclusion of a letter, symbol, number or other character of text in the particulars of the list of persons contained in the beneficial ownership return; and
- (b) such other inconsistency as may be specified by the Registrar.

Service of notices.

377Q. – (1) Without prejudice to any other provision of this Act for the service of documents, a notice or notification under this Part may be served either –

- (a) personally, by handing it to or leaving it with the member;
- (b) by post, by a letter properly addressed and prepaid; or
- (c) by facsimile transmission, or other means of

electronic communication.

(2) A notice or notification served in accordance with subsection (1), shall be deemed to have been received by the intended recipient, in the case of delivery –

- (a) by post, at the time at which the notice would have been delivered in the ordinary course of the post;
- (b) by facsimile or other electronic means, twenty-four hours after the time the notice was so sent, if there is no notification of a failure of delivery during that period.

(3) The calculation of time by reference to the giving of a notice served under this section shall commence on the day immediately succeeding the day on which it was received or deemed to have been received.

Company to keep records of its actions in relation to beneficial ownership information.

377R. – (1) The records kept and maintained by a company in accordance with section 390A of the beneficial ownership of the company (referred to as beneficial ownership information) shall include a record of the measures used for verification and the substantiating documents used to verify the accuracy of the beneficial ownership information taken by the company and its officers in relation to the keeping of such beneficial ownership information in compliance with the provisions of this Act.

(2) The company and every officer who contravenes subsection (1) commits an offence and is liable on summary conviction in a Parish Court –

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

Duty of company to obtain beneficial ownership information.

377S. – (1) Where a company has notice of a change in the beneficial ownership of the company, or of any change in the particulars of any such beneficial owner, and it has not been notified by a member or the beneficial owner, the company shall, in writing, notify the member and beneficial owner of their respective obligations under sections 377U and 377V, and the notification shall advise the member or beneficial owner or both, as the case may be, to furnish to the company the required beneficial ownership information, within such period as specified in the notification.

(2) Notwithstanding subsection (1), a company shall once per year, or at such times as the Registrar may direct, in writing, or as may be prescribed, notify in writing, the member and beneficial owner of their respective obligations under sections 377U and 377V, and the notification shall direct the member or beneficial owner or both, as the case may be, to furnish to the company the required

beneficial ownership information, within such period as specified in the notification.

(3) In the case of an unlimited company or a company limited by shares, prior to the allotment or transfer of shares, the company shall be furnished with the beneficial ownership information required under this Act in respect of the intended allottee or transferee of the shares.

(4) A company and every officer who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction in a Parish Court –

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

**Company's
duty to verify
beneficial
ownership
information.**

377T. – (1) The company shall, in relation to the beneficial ownership information furnished by a member and beneficial owner, verify the identity of the individual the company records as its beneficial owner, and the basis on which such individual was identified as a beneficial owner of the company.

(2) The company shall appoint an officer, or such number of officers, who shall be responsible for conducting the verification of the beneficial ownership information furnished to the company and notifying its members and beneficial owners in

relation thereto, in accordance with the provisions of this Part.

(3) A company and every officer who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction in a Parish Court –

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

Duty of member to provide company with information.

377U. – (1) A subscriber to the articles –

- (a) who upon becoming a member of the company at the time of incorporation will own twenty-five percent or more interest in the company;
- (b) shall notify the persons forming the company of the identity of the beneficial owner of the interest to be held by that member at the time of the formation of the company, as well as the basis on which such individual is identified as the beneficial owner.

(2) A member who owns twenty-five percent or more interest in the company, shall notify the company of the identity of the beneficial owner of the interest held by that member, as well as the basis on which such individual is identified as the beneficial owner –

- (a) in the case of a member who is a shareholder,

at the time of the allotment or transfer of shares, and otherwise at the time of the acquisition of the member's interest in the company, or any subsequent change in that member's interest in the company; and

- (b) at the time of any other change in beneficial ownership of the interest held by the member of the company.

(3) A member who refuses to notify the beneficial owner of the interest held by that member in contravention of the provisions of this section, commits an offence and is liable on summary conviction in a Parish Court –

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

Duty of beneficial owner to provide company with information.

377V. – (1) A beneficial owner, shall notify the company of –

- (a) the particulars of the beneficial owner as specified in section 377B(b), and whether the beneficial ownership is by means of shares held by a member on behalf of the beneficial owner or by exercise of control and the basis on which such individual is identified as the beneficial owner; and
- (b) any subsequent change in relation to the legal

or beneficial ownership of the company, or the particulars referred to in paragraph (a).

(2) Where a beneficial owner has ultimate effective control of a company or an ownership interest of twenty-five percent or more in the company, in aggregate, by virtue of separate ownership interests in more than one body corporate, and each such body corporate is a member of the company owning less than twenty-five percent interest in the company, that beneficial owner of the company shall notify each body corporate that is a member of the company of the interest of that beneficial owner in the company of which each body corporate is a member.

(3) A person who will become a beneficial owner of the company at the time of incorporation shall notify the persons forming the company of the interest to be held or the control to be exercised by that person at the time of the formation of the company.

(4) The beneficial owner shall notify the company of the interest in the company held by the beneficial owner –

(a) in the case of a shareholder, at the time of the allotment or transfer of shares, and otherwise at the time of the acquisition of the beneficial owner's interest in the company, or at the time of any subsequent change in that beneficial

owner's interest in the company; and

- (b) at any time the particulars for inclusion in the register of members under section 109(1A) in relation to that beneficial owner changes.

(5) A beneficial owner who refuses to notify the company or a body corporate of the interest held by that beneficial owner in that company or body corporate, as the case may be, in contravention of subsection (1), (2) or (4) commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding three million dollars.

**Change in
beneficial
ownership
to be notified
to Registrar.**

377W. – (1) The company shall notify the Registrar of changes in the beneficial ownership of the company within fourteen days after any change occurs in the beneficial ownership information, any changes in the particulars of a beneficial owner required under section 109(1A) to be contained in the register of members, or since delivery to the Registrar of the last beneficial ownership return, and the notification shall be made in the form set out as Form C in Part III of the Fifth Schedule.

**Form C.
Part III.
Fifth
Schedule.**

(2) If default is made in complying with subsection (1) to notify the Registrar of changes in beneficial ownership, or in the particulars of beneficial ownership, the company and every officer of the company who is in default commits an offence and is liable on summary conviction in a Parish Court

to a fine not exceeding one million dollars.

**Re-purchase
of shares from
non-compliant
member or
beneficial
owner.**

377X. – (1) Where pursuant to section 377S (1) or (2) a company has notified a member or a beneficial owner to furnish the company with the required beneficial ownership information, and the member or beneficial owner has failed to furnish the required information within the period specified in that notification –

- (a) the company shall proceed in accordance with subsection (2); and
- (b) thereafter, in the case of an unlimited company or a company limited by shares and subject to subsection (3), the company may repurchase the shares held by the member.

(2) In the circumstances referred to in subsection (1), the company shall give notice, on not less than three occasions, to the member or beneficial owner directing that member or beneficial owner to furnish to the company the required beneficial ownership information within the specified periods, as follows –

- (a) in relation to the first notice, within thirty days after delivery of the notice;
- (b) in relation to the second notice, where the member or beneficial owner has not furnished the required beneficial ownership information within the thirty-day period specified in

paragraph (a), within twenty-one days;

- (c) in relation to the third notice, where the member or beneficial owner has not furnished the required beneficial ownership information within the twenty-one-day period specified in paragraph (b), within fourteen days.

(3) A company shall not repurchase the shares of a member, if –

- (a) all the shares issued by the company are owned solely by one shareholder;
- (b) the financial position or condition of the company does not enable it to repurchase its shares;
- (c) the company's articles do not permit the repurchase by the company of its shares.

(4) The records of the beneficial ownership of the company shall include, a copy of –

- (a) each notice given by the company, and the date on which the notice was sent, and the mode of delivery; and
- (b) each response, if any, received by the company from the member and beneficial owner, as the case may be, and the date on which it was received.

**Determination
of beneficial
owner.**

377Y. For the purposes of this Part, the identification of the beneficial owner of a company shall be determined, in the case of beneficial ownership

through –

- (a) direct means, in accordance with section 377Z;
and
- (b) indirect means, in accordance with section
377AA and 377AB.

**Direct
beneficial
ownership.**

377Z. The beneficial owner of a company directly through ultimate effective control or ultimate ownership, is –

- (a) where a shareholder of the company is a body corporate, the individual –
 - (i) having ownership of twenty-five percent or more of the shares in that body corporate;
 - (ii) holding not less than twenty-five percent of total voting rights of all the members having the right to vote in that body corporate;
 - (iii) having the right to exercise dominant control over, or who exercises dominant control of that body corporate; or
 - (iv) having the right to exercise dominant influence over, or who exercises dominant influence on the policy of that body corporate;
- (b) in the case of a chain of ownership, the individual who owns, has voting rights, has the

right to dominant control or dominant influence, or who exercises dominant control or dominant influence in the manner specified in paragraph (a)(i), (ii), (iii) and (iv), in the last body corporate in the chain of ownership, where the first body corporate in the chain of ownership –

- (i) owns twenty-five percent or more of the shares in the company;
- (ii) has twenty-five percent or more of the total voting rights of all the members having the right to vote in the company;

(c) in the case of a chain of ownership, the individual who –

- (i) owns twenty-five percent or more shares, in aggregate of the shares owned in each body corporate in the chain of ownership of the company; or
- (ii) has twenty-five percent or more of the voting rights, in aggregate, of the percentage of voting rights held in each body corporate, in the chain of ownership, directly below the position of the company in the chain of ownership; or

(d) the individual who, pursuant to a nominee

arrangement –

- (i) owns twenty-five percent or more of the shares in the company;
- (ii) has twenty-five percent or more of the total voting rights of all the members having the right to vote in the company.

Ultimate ownership indirectly.

377AA. – (1) The beneficial owner of a company indirectly through ultimate ownership –

- (a) where a shareholder of the company is a body corporate, is the individual who –
 - (i) owns twenty-five percent or more of the shares in that body corporate; or
 - (ii) has twenty-five percent or more of the total voting rights of all the members having the right to vote in that body corporate;
- (b) in the case of a chain of ownership, where the first body corporate in the chain of ownership owns twenty-five percent or more of the company, is the individual who –
 - (i) owns twenty-five percent or more shares in the last body corporate in the chain of ownership of the company; or
 - (ii) has twenty-five percent or more of the total voting rights of all the

members having the right to vote in the last body corporate in the chain of ownership of the company; or

- (c) is the individual who is not a member or an officer of the company and owns twenty-five percent or more of the shares of the company or has twenty-five percent of the total voting rights of all the members having the right to vote in the company.

Indirect beneficial ownership through ultimate effective control.

377AB. – (1) The beneficial owner of a company through ultimate effective control indirectly, is the individual who –

- (a) not being a member or an officer of the company has the ability –
- (i) to appoint or remove a director of the company;
 - (ii) to exercise significant influence on or actually exercises significant influence on the policy of the company; or
 - (iii) to exercise significant control over or actually exercises significant control over the affairs of the company;
- (b) has the right to exercise or actually exercises the dominant influence on the policy of the company through means other than ownership interests in each of the bodies corporate in the

chain of ownership of the company, where each body corporate in the chain of ownership has ownership in the body corporate immediately preceding it in the chain of ownership; or

- (c) has the right to exercise or actually exercises dominant control over the affairs of the company through means other than ownership interests in each of the bodies corporate in the chain of ownership of the company, where each body corporate in the chain of ownership has ownership in the body corporate immediately preceding it in the chain of ownership.

Duty to answer questions put by Registrar. 377AC. – (1) The Registrar may, in writing, require an officer appointed under section 377T(2), or any other officer, employee or agent of a company to answer any question concerning the beneficial ownership of a company.

(2) Where the Registrar requires an answer to questions asked under subsection (1), it shall be the duty of any officer, employee or agent of the company to whom the questions are directed, having information pertinent to the questions of the Registrar, to furnish, in writing, the information in answer to the questions, in such manner and within such time-frame as the Registrar may specify.

(3) A person who –

- (a) refuses to furnish, in writing, the information in answer to the questions posed by the Registrar;
- (b) wilfully hinders or obstructs, or without lawful excuse, fails within a reasonable time to comply with any requirement of the Registrar, an officer of the department authorised by the Registrar acting in the execution of duties or the exercise of powers conferred under section 113A or Part XIA;

Part XIA.

- (c) personates or pretends to be the Registrar or a person authorized by the Registrar; or
- (d) threatens, intimidates, or uses threatening language or behaves in a threatening manner to the Registrar, or a person authorized by the Registrar, acting in the execution of duties or the exercise of powers conferred under section

Part XIA.

113A or Part XIA,

commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.”.

(4) An officer, employee or agent of the company who contravenes subsection (2), commits an offence and is liable on summary conviction in a

Parish Court –

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

Identification documents not up-to-date.

377AD. – (1) Where a copy of an identification document for a member or a beneficial owner filed with the Registrar is not up-to-date, is invalid or has been revoked, a company shall give the Registrar notice in the prescribed form of the particulars of the valid identification document, and submit with such notice a copy certified to be true of a valid identification document.

(2) For the purposes of subsection (1) and section 52(1B) the requirement for certification is satisfied if done by –

- (a) an attorney-at-law;
- (b) a consular officer;
- (c) a diplomatic officer;
- (d) a Justice of the Peace;
- (e) a Notary Public;
- (f) an officer duly authorized by law to administer oaths; or
- (g) the affixing of an Apostille.

(3) In this section –

“Apostille” has the meaning assigned to it by section 2 of the Authentication (Foreign

Public Documents) Act, 2020;

“consular officer” means –

- (a) in relation to Jamaica, a consul-general, consul, vice-consul or consular agent appointed to represent Jamaica and holding a valid exequatur or other authorization to perform consular functions;
- (b) in relation to a foreign state or country, a consul-general, consul, vice-consul or consular agent representing a foreign state or country and holding a valid exequatur or other authorization to act in Jamaica in that capacity;

“diplomatic officer” means –

- (a) in relation to Jamaica, an Ambassador or High Commissioner of Jamaica accredited to a foreign state or country and recognized as a head of a Jamaican mission overseas appointed to represent Jamaica in that foreign state or country and a foreign service officer who is a member of the official staff of the head of the Jamaican mission authorized to certify documents;
- (b) in relation to a foreign state or country an Ambassador, High Commissioner or

other person, by whatever title called, accredited by a foreign state or country and recognized as a head of mission in Jamaica by the Government of Jamaica and a member of the official staff thereof, authorized by the head of mission to certify documents.”.

Insertion of new section 379A in principal Act.

29. The principal Act is amended by inserting next after section 379, the following sub-heading and section –

“ *Good Standing of Company*

Good standing.

379A. At the request of a company, the Registrar shall certify, in writing, that the company is, at a date specified, in good standing, if the Registrar is satisfied that the company is compliant with the provisions of sections 52, 106, 109, 118, 121, 122, 123, 124, 172, 183, 363A, 366, 377A, 377B and 377C.”.

Amendment of section 381 of principal Act.

30. Section 381 of the principal Act is amended –

(a) in subsection (2), by deleting all the words after the word “discovery” and substituting there for a full stop; and

(b) by inserting next after subsection (2) the following subsection –

“ (3) A company and every officer of that company that contravenes subsection (2) commits an offence and is liable on summary conviction in a Parish Court –

(a) in the case of an individual, to a fine not exceeding three million dollars;

(b) in the case of a company, to a fine not exceeding five

million dollars.”.

Repeal and replacement of section 382 of principal Act.

31. The principal Act is amended by repealing section 382 and substituting therefor the following section –

“Penalty for false statement.

Ninth Schedule.

382. – (1) No person shall, in any return, report, certificate, balance sheet, or other document required by or for the purposes of the provisions of this Act specified in the Ninth Schedule, wilfully make a statement which is false in any material particular, knowing it to be false.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction in a Parish Court –

(a) in the case of an individual, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding two years;

(b) in the case of a company, to a fine not exceeding five million dollars.

(3) Nothing in this section shall affect the provisions of the Perjury Act.”.

Insertion of new section 386A in principal Act.

32. The principal Act is amended by inserting next after section 386, the following section –

“Fixed penalties.

386A. – (1) Subject to subsection (5)(a), this section shall apply to any offence created in this Act or regulations made hereunder and punishable on summary conviction, being an offence prescribed to be subject to a fixed penalty.

(2) Where the Registrar has reason to

believe that a person has committed an offence referred to in subsection (1), the Registrar may issue, in writing, to the person, in accordance with subsection (6), a prescribed notice (referred to as the fixed penalty notice), offering the person to whom it is issued the opportunity to discharge any liability to conviction of the offence concerned by payment of a fixed penalty under this section, and the notice shall –

- (a) specify and give such particulars of the offence alleged as are necessary for giving reasonable information of the allegation; and
- (b) state –
 - (i) the period (whether thirty days or a longer period) during which, by virtue of subsection (4) proceedings will not be taken for the offence; and
 - (ii) the amount of the fixed penalty payable by the person;
- (c) require the person to whom the notice is issued, in the event that the fixed penalty is not paid within the period stated in the notice, to attend before the Parish Court in the parish in which the offence is alleged to have been committed, to answer to the offence alleged on such date as may be specified, being a date not earlier than ten days after the expiration of

the period stated in the notice; and

- (d) be construed as an information and summons for the purposes Justices of the Peace Jurisdiction Act.

(3) Where a person is issued a fixed penalty notice under this section, proceedings shall not be taken against any person in respect of the offence concerned until the end of thirty days following the date of the notice or such longer period as may be specified in the notice.

(4) A person to whom a fixed penalty notice is issued under this section shall not be liable to be convicted of the offence concerned if the person pays the fixed penalty with respect thereto in accordance with this section before the expiration of the thirty days following the date of the fixed penalty notice referred to in subsection (3), or such longer period as may be specified in the notice, or before the expiration of the final adjudication of the case, whichever last occurs.

(5) Payment of a fixed penalty under this section –

- (a) shall be made to a Collector of Taxes, at any time before the final adjudication of the case; and
- (b) may be made electronically in accordance with the Electronic Transactions Act and any

other enactment regulating such transactions.

(6) In any proceedings in respect of an offence to which a fixed penalty applies under this section, a certificate or a receipt that payment of the fixed penalty was or was not made to the Collector of Taxes by a date specified in the certificate or receipt shall be sufficient evidence of the facts stated in the certificate or receipt, unless the contrary is proved, if –

- (a) the certificate purports to be signed by the Collector of Taxes; or
- (b) the receipt, including an electronically-generated receipt, is purportedly issued by the Collector of Taxes.

(7) In any proceedings for an offence under this Act, no reference shall be made to the giving of any notice under this section or to the payment or non-payment of a fixed penalty under this section, unless in the course of the proceedings or in some document which is before the court in connection with the proceedings, reference is made by or on behalf of the accused to the giving of such notice, or, as the case may be, to such payment or non-payment.

(8) In this section, “proceedings” means criminal proceedings in respect of the act or omission constituting the offence concerned, and “convicted” shall be construed accordingly.

(9) The Minister may by order, subject to affirmative resolution, make provision for anything incidental to the operation of this section, and in particular, any such order may prescribe –

- (a) the form and manner of issue, including electronically for notices in respect of offences subject to a fixed penalty;
- (b) any information to be furnished to the Collector of Taxes along with any payment; and
- (c) fixed penalties in relation to offences under this Act or any regulations made under this Act.”.

Amendment of section 387 of principal Act. 33. Section 387 of the principal Act is amended by inserting next after the words “sending it” the words “, electronically or”.

Amendment of section 390A of principal Act. 34. The principal Act is amended –

- (a) by deleting the sub-heading “*Records*” and inserting therefor the sub-heading “*Records, etc.*”; and
- (b) in section 390A (1), by inserting next after the words “such documents” the words “, including documents containing information on members and beneficial owners, or relating to the membership and beneficial ownership of the company,”.

Insertion of new section 390B in principal Act. 35. The principal Act is amended by inserting next after section 390A, the following section –

“Records of dissolved company. 390B. – (1) Where a company is dissolved, the documents of the company shall be kept –

- (a) if the company is –

- (i) wound up, by the trustee;
- (ii) struck off the register, and not wound up, by an officer of the company;

(b) for a period of not less than seven years after the dissolution of the company.

(2) A trustee or an officer of the company that contravenes subsection (2)(a) or (b) commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding five hundred thousand dollars.”.

Amendment of section 392 of principal Act.

36. Section 392(2) of the principal Act is amended by –

- (a) deleting the word “form” and substituting therefor the word “forms”; and
- (b) inserting next after the words “Part II” the words “and Part III”.

Amendment of Fifth Schedule of principal Act.

37. The Fifth Schedule to the principal Act is amended in –

- (a) in the heading by deleting the words “(Sections 121 and 392)” and substituting therefor the words “(Sections 121, 377B, 377W and 392)”;

(b) in paragraph 3 of Part I –

- (i) in sub-paragraph (e), by deleting the semi-colon and substituting therefor a full stop; and
- (ii) by deleting sub-paragraph (f);

(c) in Part II by deleting Form 19A and Form 19B and substituting therefor, the following forms –

“ *[Here Insert, New Form 19A and Form 19B]*”; and

(d) by inserting next after Part II, the following Part –

“ Part III.

Beneficial Ownership Return

Form A

[Here, Insert Form A]

Form B

*[Here, Insert Form B]**Notification by Company of Changes
in Beneficial Ownership*

Form C

*[Here, Insert Form C].”.***Amendment
of Ninth
Schedule of
principal Act.**

38. The Ninth Schedule to the principal Act is amended by inserting in the correct numerical sequence, in the first and second columns, respectively, the following entries –

“122	Annual return to be made by company having a share capital
377A	Beneficial ownership return
377W	Notification of change in beneficial ownership
377AC(1)	Written answer to Registrar’s question.”.

**Amendment of
of enactments
and con-
struction.
Schedule.**

39. – (1) The provisions of the enactments specified in the first column of the Schedule are amended in the manner specified in the second column of the Schedule.

(2) Each amendment shall be construed as one with the enactment specified in relation to the amendment.

SCHEDULE**(Section 38)***Amendment of Enactments***First Column****Second Column**

**The Companies
(Forms) Rules,
2005**

- New rule 3 Insert next after rule 2, the following rule –
- “3. The forms referred to in rule 2 may be created, stored or communicated electronically.”.
- Schedule
1. Delete Form 1A, Form 1B, Form 1C and Form 1D and substitute therefor the following forms –
- “ *[Here Insert New Form 1A, Form 1B, Form 1C and Form 1D]* ”.
2. Delete Form 23 and substitute therefor the following form –
- “ *[Here, Insert New Form 23]*”.
3. Insert, in the correct numerical sequence, the following forms –
- “*[Here, Insert New Form 19E, Form 27A, Form 27B, Form 31, Form 31A and Form 31B]*”.

**The Companies
Rules, 2006**

- Rule 13 Delete paragraphs (a) and (b) and substitute therefor the following paragraphs –
- “(a) it is shown to the Registrar’s satisfaction that –
- (i) in the case of a company struck off the register of companies pursuant to –
- (A) section 117A, the company is not in contravention of section 113E, having rectified the register of members so that entries are accurate, adequate and up-to-date;
- (B) section 337, the company is carrying on business;
- (C) section 377H, the company has delivered to the Registrar the outstanding annual

beneficial owner-ship
return or an accurate,
adequate and up-to-date
annual beneficial
ownership return;

- (ii) the company after being struck off has complied with any notice given or request made by the Registrar;
 - (iii) there is other just cause for the company to be restored to the register;
 - (iv) the company has a registered office and place of business in Jamaica;
 - (v) the person making the application has the requisite *locus standi*; and
- (b) the applicant has undertaken to file all required documents if the company is restored to the register.”.

MEMORANDUM OF OBJECTS AND REASONS

The *Companies Act, 2004* (“the Act”), establishes a regime for the incorporation of companies, the regulation of the affairs and winding up of trading companies, the duties and obligation of its principal officers and rights of shareholders and creditors in relation to companies established or operating under the Act.

The Bill seeks to amend the Companies Act to ensure that its provisions –

- (a) conform with the Financial Action Task Force Standards relating to beneficial ownership of companies;
- (b) empower the Registrar of Companies with regulatory oversight to verify beneficial ownership information for companies;
- (c) provide for mutual exchange of information between the Registrar

and competent authorities and law enforcement, including foreign authorities;

- (d) provide effective and proportionate sanctions to deter non-compliance by companies in relation to their obligations to declare beneficial owners.

Aubyn Hill
Minister of Industry, Investment and Commerce