

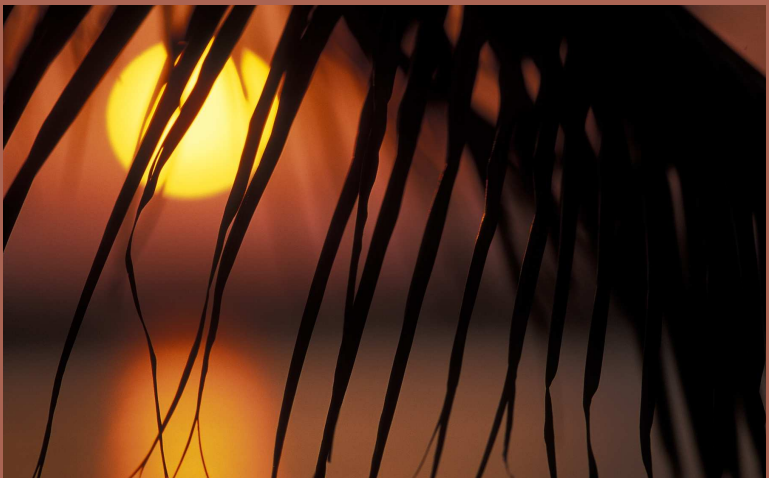
# *DUKE CORPORATION LIMITED*

A Member Firm of

*PRICEWATERHOUSECOOPERS* 

## **The Companies Act 2004: Jamaica**

Appointment, Removal and Responsibilities  
of Company Directors and Officers



A Pocket Guide for  
Company Directors and Officers



# **The Companies Act 2004 Jamaica**

## **Appointment, Duties and Responsibilities of Company Directors and Officers**

**A Pocket Guide  
for Company  
Directors and Officers**

PricewaterhouseCoopers ([www.pwc.com](http://www.pwc.com)) provides industry-focused assurance, tax and advisory services for public and private clients. More than 125,000 people in 142 countries connect their thinking, experience and solutions to build public trust and enhance value for clients and their stakeholders.

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**Appendix I:** Summary of Principal Criminal & Civil Sanctions imposed on Company Directors and Officers

### Duke Corporation Limited - A Profile:

Duke Corporation Limited (“Duke”) is the Corporate Secretarial affiliate of PricewaterhouseCoopers, Jamaica and provides both Corporate Secretarial and Registrar & Transfer Agent services to a wide range of clients.

The Board of Directors consists of the partners of PricewaterhouseCoopers, Jamaica. Staff members include members of the Institute of Chartered Secretaries & Administrators (ICSA).

Duke provides a comprehensive range of services to our clients, including corporate secretarial services to private and public listed companies, overseas companies and companies registered under the Industrial and Provident Societies Act.

Duke has also acted as Registrar and Transfer Agent to both private and public share and bond offers and assists clients in complying with the Companies Act 2004 as well as the rules of the Jamaica Stock Exchange (JSE) where applicable.

For further information, please contact Duke Corporation Limited (located at our Kingston office) or any of the partners at PricewaterhouseCoopers (see our contact details on the back cover of this Guide). You may also contact Duke Corporation Limited by email at [dukecorporation@jm.pwc.com](mailto:dukecorporation@jm.pwc.com)

### PricewaterhouseCoopers - Profile:

Across the Caribbean region, with over 80 partners and 1300 staff, PricewaterhouseCoopers provides a fully integrated range of professional services to local, regional and international clients from offices located in Antigua, Aruba, the Bahamas, Barbados, the BVI & USVI, the Cayman Islands, Curacao, Grenada, Jamaica, the Dominican Republic, Puerto Rico, St. Lucia, St. Maarten, Suriname, Trinidad and Tobago and the Turks & Caicos Islands.

In providing industry-focused assurance, tax and advisory services for public and private clients, PricewaterhouseCoopers assists these clients primarily in four broad areas: corporate accountability, risk management, structuring/mergers and acquisitions, and performance and process improvement.

Our use of our networks, experience, industry knowledge and business understanding in each of these areas distinguishes the way we work - we call this "Connected Thinking".

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With unrivalled geographic coverage and human resources in the Caribbean, we seek to provide services of consistently superior quality to all of our clients across the region.

For further information or assistance, please contact any of our partners at our offices in Kingston or Montego Bay or visit our website at [www.pwc.com/jm](http://www.pwc.com/jm)

## Introduction:

On 1 February 2005, the Companies Act 2004 (“the Act”) entered into force, thereby bringing a much needed overhaul of Jamaica’s companies’ legislation.

Amongst other matters, the Act expands, in some detail, the duties and responsibilities of company directors and other corporate officers. Furthermore, the Act imposes both criminal and civil sanctions on such directors and officers in the event that either they or the company act in contravention or default of the provisions of the Act.

In light of the extensive sanctions which may be imposed personally on company directors and other corporate officers, it is critical that any person acting in such capacity ensures that he or she is fully aware of his or her duties and responsibilities under the Act and takes appropriate steps to ensure compliance with the various provisions of the Act.

The objective of this Pocket Guide is to provide an overview for company directors and officers of their duties and responsibilities under the Act as well as to provide a summary of the principal sanctions imposed by the Act on such directors and officers in the event of non-compliance.

This Pocket Guide is for information purposes only and does not purport to provide legal advice. By its nature, it does not contain an exhaustive overview of all of the provisions of the Act nor is it intended to fully capture all of the complexities and requirements of the Act. You should not make any decisions or take action solely based on the contents of this Pocket Guide.

It is critical that you secure appropriate professional advice in order to ensure compliance with the Companies Act 2004.

### Appointment of Directors *(Sections 175, 178, 181)*

A person may not be appointed as a director of a public company or named as a director in a prospectus (or statement in lieu of prospectus) delivered to the Registrar unless he (or his authorized agent) has:

- (a) signed and delivered to the Registrar for registration a consent in writing to act as such director; and
- (b) given the prescribed confirmations or undertakings concerning the take-up of any share qualification.

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

Every director who is required by the company's articles to hold a specified share qualification must ensure that he has obtained his qualification within two months after his appointment (or such shorter time as may be fixed by the articles) – failure to do so will result in him vacating his office of director.

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

If any person who is an un-discharged bankrupt acts as a director of, (or indirectly takes part in the management of) any company (except with leave of the Court), then he shall be liable upon conviction on indictment or upon summary conviction before a Resident Magistrate to imprisonment (up to 2 years) or a fine (up to J\$200,000) or both.

### **Validity of Directors' Actions** *(Sec. 176)*

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

### **Number of Directors** *(Section 172)*

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

### **Company Secretary** *(Section 172)*

Every company is required to have a secretary. Notice of appointment of a secretary must be lodged with the Registrar of Companies within fifteen (15) days of appointment. Where the office of secretary is vacant (or the secretary is otherwise unavailable), the directors of the company may authorise any officer of the company to undertake acts in the capacity of secretary.

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

### **Duty of Care and Skill** *(Section 174)*

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

- (a) act honestly and in good faith with a view to the best interest of the company; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, including, but not limited to the general knowledge, skill and experience of the director or officer.

The above duties imposed on directors and other officers of the company are owed to the company alone. In determining what are the best interests of the company, a director or officer may have regard to the interests of the company's shareholders and employees as well as the community in which the company operates.

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

In addition a director or officer shall be deemed to have acted with due care, diligence and skill where, in the absence of fraud or bad faith, he reasonably relied in good faith on documents relating to the company's affairs, including financial statements, reports of experts or information provided by other directors, officers or professionals.

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

### **Assignment of Office** *(Section 200)*

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

### **Removal of Directors** *(Section 179)*

A company may by ordinary resolution remove a director before the expiration of his period of office notwithstanding anything to the contrary contained in the company's articles.

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

### **Court Disqualification of Officers** *(Sections 180, 182)*

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

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

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

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

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

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

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

### Register of Directors & Secretary *(Section 183)*

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

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

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

### Shadow Directors *(Sections 2, 183)*

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

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

### Illicit and Permitted Loans *(Sections 184, 185)*

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

- (a) the company is unable (or would be after rendering the financial assistance) to pay its liabilities as they become due; or
- (b) the realizable value of the company’s assets (excluding the financial assistance) would be less than aggregate of the companies liabilities and total stated capital.

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

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

- (a) in the ordinary course of its business of lending money;
- (b) on account of expenditure incurred on behalf of the company;
- (c) to a subsidiary or 100% parent company;
- (d) to employees to enable them to purchase shares under an approved Employee Share Ownership Plan (ESOP).

### **Payments for Loss of Office** *(Sections 186, 187, 188, 189)*

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

If a payment is made to a director of a company in contravention of the above, the company and every officer of the company who is in default shall be liable to a fine not exceeding J\$50,000. Additional disclosure requirements apply in the event that the payment is made in connection with the transfer of shares in the company.

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

### **Disclosure of Directors' Salaries/Pensions**

*(Sections 190, 192)*

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

- (a) directors' emoluments;
- (b) directors' or past directors' pensions;
- (c) any compensation to directors or past directors for loss of office.

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

### **Inspection of Directors' Service Contracts** *(Section 195)*

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

- (a) the company's registered office;
- (b) the place where its register of members is kept (if different);
- (c) its principal place of business in Jamaica.

This shall not apply to a contract:

- which requires a director to work wholly or mainly outside of

Jamaica – instead the company shall be required to keep a memorandum note of certain details of such contract; or

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

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

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

### **Duty to disclose Directors' Shareholdings** *(Section 196)*

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

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

- (a) becomes, or ceases to be, interested in such shares or debentures;
- (b) makes any acquisitions or disposals;

- (c) is granted, exercises or assigns any options or other rights to subscribe for such shares or debentures.

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

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

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

### **Maintenance of Register of Shareholdings**

*(Section 197, 198)*

Every company is required to maintain a register of the above shareholding interests as well as additional details required by the Act. If the register is not maintained at the registered office, the company must notify the Registrar of its location within 14 days. The register must be open for inspection (during business hours) to any member of the company without charge (and to any person upon the payment of \$50) and copies should also be made available.

Failure to comply with the above shall render the company and every officer who is in default liable to a fine not exceeding J\$2,000

(or J\$4,000 in the case of a failure to notify the Registrar on the location of the register) for every day during which the default continues.

### Disclosure of Directors' Interest in Contracts

*(Section 193)*

A director or officer of a company who is:

- (a) party to a contract or proposed contract with the company; or
- (b) a director or an officer of any entity or who has an interest in any entity that is a party to a material contract or proposed material contract with the company; or
- (c) an associate of a person who is a party to such a contract with the company or has an interest in any entity that is a party to such a contract;

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

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

A director should make the required disclosure:

- (a) at the meeting at which a proposed contract is first considered; or
- (b) otherwise, at the first meeting after which he becomes so interested; or
- (c) at the first meeting at which he becomes a director.

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

- (a) immediately after he becomes aware that the contract is to be considered or has been considered at a directors' meeting;
- (b) immediately after he becomes interested in a contract already made; or
- (c) immediately after becoming an officer having been so interested in a contract prior to becoming an officer.

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

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

### **Disclosure of Loans made to Officers** *(Section 191)*

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

Exceptions to this requirement include:

- (a) loans made in the ordinary course of the business of lending money;

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

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

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

### **Directors' Particulars on Corporate Stationery**

*(Section 194)*

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

### **Indemnification of Directors etc.** *(Section 201, 202)*

A company may indemnify:

- (a) a present or former director, officer or auditor;

- (b) a person who acts or has acted as a director or officer of a company of which the company is or was a shareholder or creditor;
- (c) a legal representative of any such person.

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

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

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

- (a) he acted honestly and in good faith with a view to the best interests of the company; and
- (b) in the case of a criminal or administrative action that is enforced by monetary penalty, he had reasonable grounds for believing that his conduct was lawful.
- (c) the company, with the Courts approval, may also indemnify any of the persons listed above in the defence of a derivative action to which he has been made a party by reason of his position.

### **Liability Insurance for Directors etc.** *(Section 204)*

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

## **Appendix I**

### **Overview of Principal Criminal and Civil Sanctions\* imposed on Directors and other Officers by the Companies Act 2004**

\* excluding those sanctions already highlighted  
in the main body of this Pocket Guide

## Overview of Principal Criminal & Civil Sanctions imposed on Directors and other Officers

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### Key to Penalties:

- A. Company and every director/officer in contravention or default shall be liable to a fine of up to amount highlighted
- B. Company and every director/officer who knowingly or willfully authorizes or permits default - liable to fine up to amount highlighted
- C. Any person upon conviction on indictment / by the Circuit Court - imprisonment for up to the period highlighted or fine up to amount highlighted or both.
- D. Any person on summary conviction before a Resident Magistrate – imprisonment for up to the period highlighted or fine up to the amount highlighted or both.
- E. Any person acting in default/contravention – liable to a fine up to amount highlighted per day while default continues.

#### **Example:**

**Penalty: A – J\$50,000** Means that the company and every director/officer in contravention or default shall be liable to a fine up to J\$50,000.

**Penalty: C (2 years / J\$50,000) or D (3 months / J\$50,000)**

Means any person shall be liable:

- Upon conviction on indictment / by the Circuit Court - to imprisonment up to 2 years or a fine of J\$50,000 or both; or
- Upon summary conviction before a Resident Magistrate - to imprisonment up to 3 months or a fine of J\$50,000 or both.

## Articles of Incorporation:

Notification of Registrar within 15 days of an increase in members beyond the registered number for unlimited companies/companies limited by guarantee. **Penalty: A – J\$50,000** (Sec. 9(3))

## General Provisions with respect to Company Name:

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

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

## General Provisions with respect to Articles:

Company required to provide a copy of articles of incorporation upon request by a member. **Penalty: A – J\$2,000** (Sec. 22(2))

## Prospectus (or statement in lieu of prospectus):

Delivery of prospectus (or statement in lieu of prospectus) to the Registrar upon any alteration of articles so that it ceases to be a private company. **Penalty: A – J\$50,000** (Sec. 26(3))

Authorisation of delivery of statement in lieu of prospectus containing an untrue statement (unless immaterial or there are reasonable grounds for believing that the statement was true). **Penalty: C (2 years / J\$50,000) or D (3 months / J\$50,000)** (Sec. 26(4))

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

Delivery of a prospectus to the Registrar for registration prior to the issue of a prospectus. **Penalty: E – J\$5,000 per day** (Sec. 40(7))

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

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

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

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

A public limited company shall not vary the terms of a contract referred in a prospectus (or statement in lieu) prior to its statutory meeting. **Penalty: A – J\$50,000** (Sec. 43(3))

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

Criminal liability (subject to permitted defenses) imposed on any person who authorize the issue of a prospectus which contains an untrue or misleading statement. **Penalty: C (2 years / no limit specified) or D (3 months / J\$100,000)** (Sec. 45(1))

### Allotment of shares:

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

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

Authorisation of the delivery of a statement in lieu of prospectus (prior to the allotment of any shares) containing an untrue statement (unless statement is immaterial or there are reasonable grounds for believing that the statement was true). **Penalty: C (2 years / no specified limit) or D (3 months / J\$100,000)** (Sec. 49(5))

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

No allotment may take place (or proceedings taken on applications made) consequent on the issue of a prospectus until 3 days after the date of issue (or later date as may be specified in the prospectus). **Penalty: A – J\$50,000** (Sec. 51(4))

Returns of allotment (including contracts supporting non-cash consideration provided etc.) to be lodged with the Registrar within one month of allotment. **Penalty: E – J\$1,000 per day for every officer in default** (Sec. 52(3))

### Commissions:

Permits the payment of a commission (within prescribed limits and having complied with specific disclosure requirements) to a person for agreeing to subscribe for shares or to procure subscriptions etc. **Penalty: B – J\$50,000** (Sec. 53(5))

Commission amounts paid shall be stated in the company's balance sheet until written off. **Penalty: A – J\$50,000** (Sec. 54(2))

### Issue of Redeemable Shares:

Power to issue redeemable shares (if authorized by articles) subject to funding any redemption (out of profits or the proceeds of a fresh share issue) and in accordance with the requirements of the Act.

**Penalty: B – J\$50,000** (Sec. 56(5))

A company must lodge with the Registrar a statutory declaration made by directors prior to purchasing its own shares – criminal liability is imposed on directors who willfully or recklessly make a declaration containing a statement which is false in any material particular.

**Penalty: D (2 years / J\$1m)** (Sec. 58(7)) / (Sec. 59(7))

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

### Miscellaneous Provisions – Share Capital:

Notification of Registrar of any alteration to the share capital of the company (whether by way of consolidation, subdivision, conversion, redemption or cancellation) within one month of alteration.

**Penalty: A – J\$50,000** (Sec. 66(2))

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

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

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

### Reduction of Share Capital:

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

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

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

### Transfer of Shares & Debentures etc:

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

If a company refuses to register a share or debenture transfer, then it shall notify the transferee within 3 months of date the transfer was lodged with the company. **Penalty: E – J\$2,000 per day** (Sec. 77(2))

A company is required to issue certificates in respect of shares or debentures within 2 months in the case of an allotment (and within 3 months of a transfer) **Penalty: A – J\$50,000** (Sec. 79(3))

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

### Special Provisions regarding Debentures:

Maintenance of a register of holders of debentures in accordance with the Act. **Penalty: A – J\$50,000** (Sec. 84(4))

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

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

### Registration of Charges:

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

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

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

Where a company acquires property subject to a register-able charge, it is required to submit prescribed particulars as well as a certified copy of the deed containing the charge to the Registrar for registration within 21 days of acquisition. **Penalty: A – J\$50,000 (Sec. 96(2))**

Where a company issues a debenture (or a certificate of debenture stock) which is secured by a registered charge, it shall endorse the debenture/certificate with a registration certificate issued by the Registrar in respect of the charge. **Penalty: B – J\$50,000 (Sec. 98(2))**

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

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

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

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

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## The Companies Act 2004 - A Pocket Guide for Directors

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Each company member or creditor may inspect (without charge) and other persons may inspect (for J\$50) the copies of instruments creating a charge or the register of charges as the case may be during business hours. **Penalty: A – J\$50,000 and E (J\$2,000 per day)** (Sec. 104(2))

### Registered Office & Company Name:

Notice of the situation of the registered office shall be given to the Registrar at the date of incorporation or within 7 days of any change. **Penalty: A – J\$50,000** (Sec. 106(3))

The company's name must be clearly painted or affixed on the outside of every office or place in which its business is carried on. **Penalty: A – J\$50,000, E – J\$2,000** (Sec. 107(2))

The company's name must also be engraved on its seal, printed on all business letters, notices, official publications, promissory notes, bills of exchange, cheques, purchase orders, invoices, receipts etc. Any officer of a company who authorizes the use or issue of any of the above which do not comply with the Act: **Penalty: A – J\$50,000 and can be held personally liable.** (Sec. 107(4))

A public company having a share capital shall not commence business or exercise any borrowing powers unless it complies with all requirements of the Act and the Registrar certifies that it is entitled to commence business. **Penalty: E – J\$50,000 per day** (Sec. 108(6))

### Register of Members:

Every company shall maintain a register of members containing particulars specified by the Act and notify the Registrar of the place the register is held (or any change in location) within 14 days. **Penalty: A – J\$50,000** (Sec. 109(4))

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

Every register of members (and index as appropriate) should be open to inspection to members and other persons (for J\$50) and copies provided as requested. **Penalty: A – J\$50,000** (Sec. 109(4))

### **Branch Register:**

Where a company carries on business in a foreign jurisdiction, it may maintain there a register of members resident therein (a branch register). The company shall notify the Registrar of the existence of, any change in or discontinuance of such register (within 14 days)

**Penalty: A – J\$50,000** (Sec. 118(3))

Any update to the branch register must also be reflected in a timely fashion on the company's principal register and a duplicate of the branch register must also be maintained where the principal register is kept. **Penalty: A – J\$50,000** (Sec. 119(7))

### **Meetings & Proceedings:**

Each year a company shall hold an Annual General Meeting (AGM) in addition to any other meetings and not 15 months shall pass between one AGM and the next (provided that if a company holds an AGM within 18 months of incorporation, it need not hold an AGM in the year of incorporation or the following year). A resolution by a company to treat a meeting as its AGM shall be lodged with the Registrar within 15 days. Failure to comply with any of the above:

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

Every public limited company shall (between 1-3 months after it becomes entitled to commence business) hold a “statutory meeting” and the directors shall forward “a statutory report” to members at least 7 days before the meeting (and forward a certified copy of the report to the Registrar). **Penalty: A /B – J\$50,000 (Sec. 127(9))**

Every notice calling a meeting of a company shall clearly state that a member entitled to attend and vote is entitled to appoint a proxy (who need not be a member) to attend and vote instead of him.  
**Penalty: A – J\$50,000 (Sec. 131(2))**

Invitations to appoint a proxy (along with forms for appointment must be sent to all such members (or otherwise be available on request)  
**Penalty: A – J\$50,000 (Sec. 131(2))**

A notice of an AGM shall (with certain exceptions) contain a resolution requested by any member entitled to attend and vote (at the expense of the company) or a statement provided by any such member (at the member’s expense unless otherwise resolved by the company). **Penalty: B – J\$50,000 (Sec. 137(2))**

A copy of certain resolutions (including special and extraordinary resolutions) should be forwarded to the Registrar within 15 days of being passed. **Penalty: A – J\$50,000 (Sec. 139(5))**

Where articles have been registered, a copy of every such resolution should be annexed to every copy of the articles issued after the passing of the resolution. If articles are not registered, a copy of such resolution should be sent to any member upon request.  
**Penalty: A – J\$1,000 per each copy (Sec. 139(6))**

Minutes of all proceedings of general meetings and meetings of directors or managers must be entered in books (minute books) kept for this purpose. **Penalty: A – J\$50,000 (Sec. 142(4))**

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

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

### Accounts & Audit:

Every company shall keep proper books and documents of account (as prescribed by the Act) which reflect a true and fair view of the company's affairs etc. These books etc. shall be kept at the registered office and shall be open to inspection by directors.

**Penalty: D (6 months / J\$50,000) (Sec. 144(5))**

The directors of the company shall (within 18 months of incorporation and subsequently at least once every calendar year) lay before the company in general meeting a profit and loss account, balance sheet and a directors report (in the manner prescribed).

**Penalty: D (6 months / J\$50,000) (Sec. 145(3))**

The accounts of a company shall give a true and fair view of the state of the company's affairs and the end of its financial year and shall comply with the requirements of the Seventh Schedule of the Act. These requirements shall not however apply to a company's profit and loss account where the company has subsidiaries and a consolidated profit and loss account is prepared.

**Penalty: D (6 months / J\$50,000) (Sec. 146(6))**

Where a company has subsidiaries, then group accounts must be laid before the company in general meeting (unless the company is itself a subsidiary of another Jamaican incorporated company).

**Penalty: D (6 months / J\$50,000) (Sec. 147(3))**

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

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

A copy of the balance sheet (including any document to be annexed thereto) to be laid before the company in general meeting must be sent to each member of a company, debenture holders or other persons entitled to receive notice at least 21 days before the meeting.

**Penalty: A (J\$100,000) (Sec. 153(3))**

Every member of a public company and debenture holder is entitled to be furnished (within 10 days of request) a copy of the last balance sheet of the company (including any document to be annexed thereto) together with a copy of the auditors report on the balance sheet.

**Penalty: B (J\$2,000 per day) (Sec. 153(4))**

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

Where no auditors are appointed at the AGM, the company is required (within 7 days) to notify the Minister (who may appoint a person to fill the vacancy). **Penalty: A (J\$50,000) (Sec. 154(4))**

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

Every auditor shall have a right of access to the books and accounts etc. of the company and shall be entitled to require from company officers any information or explanations necessary to perform duties of auditor. The auditor is entitled to receive notices in respect of and attend (and be heard at) all general meetings.

**Penalty: A (J\$100,000)** (Sec. 157(5))

### Inspection:

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

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

Where the Minister believes there is good reason to investigate the ownership of any shares or debentures of a company (and it is unnecessary to appoint an inspector to do so), he may require any person who he believes has such an interest (or who acted as an agent or attorney for such a person) to supply certain information.

**Penalty: D (6 months / J\$50,000)** (Sec. 169(3))

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

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

Shares or debentures must not be issued in contravention of any restrictions imposed. **Penalty: A (J\$50,000) (Sec. 170(6))**

### **Arrangements & Reconstructions:**

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

If a 75%+ majority agree to such compromise or arrangement, the Court may sanction it as binding. Such an order shall have no effect however until a copy of the order (annexed to the company's articles) has been delivered to the Register for registration.

**Penalty: A (J\$1,000 for each copy in respect of which default is made) (Sec. 206(4))**

Proper notification of such a meeting (in the manner and content prescribed) must be given to creditors or members (as the case may be). **Penalty: A (J\$50,000) (Sec. 207(4))**

Every director must give notice to the company of any matters relating to himself as may be necessary to comply with requirements.

**Penalty: A (J\$50,000) (Sec. 207(5))**

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

### Winding Up:

#### *Winding up by the Court:*

Where the Court makes a winding up order consequent on hearing a winding up petition, a copy of the order must be submitted forthwith by the company to the Registrar who shall make a minute thereof.

**Penalty: B (J\$50,000)** (Sec. 228(2))

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

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

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

#### *Voluntary Winding Up:*

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

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

Where it is proposed to wind up a company voluntarily, the directors of the company (or in the case of a company having more than two directors - the majority of directors) may at a directors' meeting make a statutory declaration of solvency in the prescribed manner.

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

*(Sec. 277(3))*

### *Provisions applicable to All Forms of Winding Up:*

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

If any officer or contributory of any company being wound up destroys, alters, or falsifies any books papers or securities or makes any false entry etc. in any register or books of account etc. of the company with the intent to defraud or deceive any person, then he shall be guilty of an offence. **Penalty: D (\$2m / 2 years).** *(Sec. 319)*

Any officer of a company who:

- has by false pretences etc. induced any person to give credit to the company;
- with the intent to defraud the company's creditors, has made any gift, transfer or charge on any property of the company; or

- has concealed or removed any part of the property since (or within 2 months before) the date of any unsatisfied judgment or order for the payment of money obtained against the company;

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

If a company is wound up and it is shown that proper books and accounts were not kept by the company throughout the period of 2 years prior to the commencement of a winding up, every officer who knowingly was a party to or connived at the default shall be guilty of an offence (unless he can show that he acted honestly and that the default was excusable. **Penalty: C (fine – no limit specified / 1 year), Penalty: D (\$2m / 6 months)**) (Sec. 321)

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

If in the course of the winding up, it appears that any promoter, past or present officer or liquidator of a company has misapplied or retained or become accountable for any money or property of the company or has been guilty of any misfeasance or breach of trust, the Court may (upon application of the Trustee, the liquidator, any creditor or contributory) examine the matter and order the officer etc. to repay or restore the money or property to the company (plus interest as appropriate) or to pay compensation as directed by the Court. (Section 323)

If it appears to the Court that any past or present officer or any member of a company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may (upon application) direct the liquidator to refer the matter to the Director of Public Prosecutions. *(Sec. 324)*

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

### Receivers & Managers:

Every invoice, order for goods or business letter issued by company under receivership shall contain a statement that a receiver or manager has been appointed. **Penalty: B – J\$50,000** *(Sec. 343(2))*

### Overseas Companies:

In the event that any company fails to comply with the provisions of Part X of the Act (which governs companies incorporated overseas carrying on business in Jamaica), then any officer or agent who knowingly or willfully authorizes or permits the default commits an offence. **Penalty: B – J\$50,000/J\$2,000 per day** *(Sec. 370)*

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# *DUKE CORPORATION LIMITED*

## **Kingston**

Scotiabank Centre  
Corner of Port Royal  
& Duke Street  
Kingston  
Jamaica

Tel: (876) 922-6230  
Fax: (876) 932-8435

## **Montego Bay**

UGI Building  
32 Market Street  
Montego Bay  
St. James  
Jamaica

Tel: (876) 952-5065  
Fax: (876) 952-1273

**Email:** [dukecorporation@jm.pwc.com](mailto:dukecorporation@jm.pwc.com)  
**Website:** [www.pwc.com/jm](http://www.pwc.com/jm)

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