

**A BILL
ENTITLED**

AN ACT to Provide for the incorporation and operation of limited liability companies; and for connected matters.

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

PART I. Preliminary

Short title and commencement. 1. This Act may be cited as the Limited Liability Companies Act, 2021, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Interpretation. 2. – (1) In this Act –

“appointed date” means the day appointed under section 1 for the coming into operation of this Act;

“authorized person” means any person with the legal authority to bind a person or entity;

“bankrupt” means a person who has made an assignment under Part VI of the Insolvency Act, or against whom a receiving order has been made under Part V of the Insolvency Act, or, as the case may be, under the law of another jurisdiction;

“beneficial owner” –

(a) in relation to shares, means the individual on whose behalf the shares are held or on whose behalf a share transaction is conducted;

(b) in relation to an LLC, means the individual who exercises

ultimate ownership or ultimate effective control;

“certificate of authorization” means the certificate referred to in section 24;

“certificate of existence” means the certificate referred to in section 24;

“certificate of formation” means the certificate granted in accordance with section 6, including such certificate as amended or restated;

“charge” includes any interest created in real property;

“competent authority” means the Registrar, the Financial Services Commission, the Tax Administration Jamaica, the Financial Investigations Division of the Ministry with responsibility for finance or any other person or entity declared so to be by the Minister, by notice published in the *Gazette*;

“contribution” means any money, property, other assets, services rendered or other obligation to contribute money, property or other assets or to perform services, which a person contributes to an LLC in the person’s capacity as a member, but does not include any moneys lent or agreed to be lent to an LLC;

“Court” means the Supreme Court of Judicature of Jamaica;

“delayed effective date” means a future date, specified in the certificate of formation, on which the LLC comes into operation;

“designated office” means –

- (a) the office that an LLC is required to designate and maintain under section 15; or
- (b) the principal office of an LLC or a foreign LLC;

- “dissociated member” means a person who is a former member of an LLC as a result of an event specified under section 69;
- “distribution” means a transfer of money, other property or other assets from an LLC to another person on account of a transferable interest;
- “effective”, in relation to a record required or permitted to be filed with the Registrar under this Act, means effective under section 21(5);
- “entity” means a body incorporated, formed or otherwise established or existing under the laws of Jamaica or under the laws of another jurisdiction;
- “foreign LLC” means an entity formed under the law of a jurisdiction other than Jamaica which would be an LLC if formed under this Act;
- “governing statute” means the statute that governs an organization’s internal affairs;
- “interested person” means a beneficial owner, a member, a shareholder, a transferee, an organizer, a manager or a creditor of an LLC;
- “Limited Liability Company” or “LLC” means a company formed under this Act;
- “LLC interest” means a member’s share of the profits and losses of an LLC, a member’s right to receive distributions of the assets of the LLC and a member’s voting and other rights, benefits and obligations to which the member is entitled;
- “manager” means the person who, under the operating agreement of a manager-managed LLC, is responsible for the management of the LLC in accordance with section 48(3);

“manager-managed LLC” means an LLC that is not a member-managed LLC;

“member” means a person that has become a member of an LLC under section 42 and has not dissociated under section 69;

“member-managed LLC” means an LLC that is not a manager-managed LLC;

“operating agreement” means an agreement (in writing and whether or not referred to as an operating agreement) of all the members of an LLC, concerning the matters described in section 12 and includes the agreement as amended or restated;

“organizational documents” means –

- (a) for a (domestic or foreign) general partnership, its partnership agreement;
- (b) for a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;
- (c) for an LLC or foreign LLC, its certificate of formation or articles of organization and operating agreement or comparable records as provided in its governing statute;
- (d) for a business trust, its agreement of trust and declaration of trust;
- (e) for a domestic or foreign company for profit, its articles of incorporation, bylaws and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute;
- (f) for any other organization, the basic records that create the organization and determine its internal governance and the

relations among the persons that own it, have an interest in, or are its members;

“organizer” means a person that acts under section 6 to form an LLC;

“person” includes any corporation, either aggregate or sole, and any club, society, association or other body of one or more persons;

“personal liability” means liability for a debt, obligation or other liability of an organization which is imposed on a person who co-owns, has an interest in, or is a member of the organization –

- (a) by the governing statute solely by reason of the person co-owning, having an interest in, or being a member of the entity; or
- (b) by the entity’s organizational documents under a provision of the governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, obligations or other liabilities of the entity solely by reason of the person co-owning, having an interest in, or being a member of the entity;

“personal representative” means –

- (a) as to a natural person, the executor, administrator, guardian, conservator or other legal representative thereof or any authorized person; and
- (b) as to a person other than a natural person, any authorized person or the legal representative or successor thereof;

“principal office” means the office where the managers of an LLC or foreign LLC, direct, control and coordinate the activities of the LLC or foreign LLC, as the case may be, whether or not the

office is located in Jamaica;

“record” includes any information or document that is inscribed on a tangible medium or is stored in an electronic or other medium and is retrievable in perceivable form;

“Registrar” means the Registrar of Companies;

“statement of dissolution or termination” means a cancellation of any filed statement of authority for the purposes of section 39(6) and a limitation on authority for the purposes of section 39(7);

“transfer” includes an assignment, an encumbrance, a conveyance, a deed, a bill of sale, a lease, a mortgage, a security interest, a gift and a transfer by operation of law;

“transferable interest” means the right or interest, as originally associated with a person’s capacity as a member, to receive distributions from an LLC in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right or interest;

“transferee” means a person to whom all or part of a transferable interest has been transferred, whether or not the transferor is a member;

“transferor” means a person from whom all or part of a transferable interest has been transferred, whether or not the transferee is a member;

“ultimate effective control” means the control exercised by an individual who –

- (a) is in a position to determine the policy of the LLC or to make the final determination as to the decisions to be made by the LLC; or

- (b) alone or together with a connected person within the meaning of subsection (2) is in a position to control more than fifty percent of the voting power in the LLC or would hold interest in more than twenty *percent* of the issued shares of the LLC;

“ultimate ownership” means any situation in which ownership of an LLC is exercised by means of control other than direct control, and includes any arrangement utilizing one or more persons through which beneficial ownership of an LLC is established.

(2) For the purposes of subsection (1), the following persons shall be treated as being connected with a given person “A”, and the person with A, and shall be so treated notwithstanding that at the relevant time any of the persons in question (not being individuals) had not yet come into existence or ceased to exist –

- (a) a holding company or subsidiary of A;
- (b) a subsidiary of a holding company of A;
- (c) a holding company of a subsidiary of A;
- (d) any company of which A has control;
- (e) any company of which A and persons connected with A together have control;
- (f) any company which together with A constitutes a group;
- (g) an individual who is a director, manager or a person who has control of A or any partner or any immediate relative of such director, manager or person aforesaid;
- (h) any company of which any of the persons referred to in subparagraph (g) is a director, manager or has control.

(3) For the purposes of subsection (2)(f), “group” in relation to a

company means that company and –

- (a) any other company which is its holding company or subsidiary;
- (b) any other company which is a subsidiary of the holding company;
- (c) any company which is controlled by a person who directly or indirectly controls or is controlled by any company referred to in paragraph (a) or (b);
- (d) any company which is controlled by a person referred to in paragraph (a), (b) or (c).

(4) For the purposes of subsections (2) and (3), a company is a holding company of any company that is its immediate, intermediate or ultimate subsidiary, whether the holding company holds that other company's shares on trust or is the beneficial owner of such shares.

Knowledge and notice.

3. – (1) For the purposes of this Act –

- (a) a person knows a fact if the person has actual or deemed knowledge of it;
- (b) a person is deemed to have knowledge of a fact when the fact would have been brought to the attention of the person if the person had exercised reasonable diligence;
- (c) a person has notice of a fact if the person –
 - (i) knows of it;
 - (ii) has received a notification of it; or
 - (iii) has, from all of the facts known to the person at the time in question, reason to know it exists;
- (d) a person is deemed to have notice of a fact when the fact would have been brought to the attention of the person if the person had exercised reasonable diligence;
- (e) a person is deemed to have duly delivered a notification of a fact

to another person if the person takes reasonable steps to inform the other person thereof, whether or not the other person learns of the fact;

- (f) a person receives a notification of a fact when the notification –
 - (i) comes to the attention of the person; or
 - (ii) is delivered at the principal office of the person or at any other place designated by the person as a place for receiving service;
- (g) a body corporate has notice, or receives a notification, of a fact for the purposes of a particular transaction when a person conducting the transaction on behalf of the body corporate knows, has notice, or receives a notification, of the fact.

(2) A person that is not a member of an LLC or a foreign LLC is deemed –

- (a) to know of a limitation on the authority to transfer real property as provided in section 39(7); and
- (b) to have notice of the –
 - (i) dissolution of an LLC or foreign LLC, ninety days after a statement of dissolution under section 74(2)(b)(i) becomes effective;
 - (ii) termination of an LLC or foreign LLC, ninety days after a statement of termination under section 74(2)(b)(vi) becomes effective;
 - (iii) merger, conversion or domestication of an LLC or foreign LLC, ninety days after articles of merger or conversion become effective.

PART II. *Formation, Registration and Nature of LLC*

Nature, purpose and duration of LLC.

4. An LLC –
- (a) is an entity with separate legal personality distinct from its members or shareholders;
 - (b) has the capacity, and subject to this Act, the rights, powers and privileges of an individual;
 - (c) may have any lawful purpose, regardless of whether for profit;
 - (d) has the capacity to carry on its business, conduct its affairs and exercise its powers in Jamaica and in any jurisdiction outside of Jamaica, to the extent that the laws of Jamaica and of that jurisdiction permit; and
 - (e) has perpetual succession unless it is dissolved in accordance with Part XI.

Powers of LLC.

5. An LLC has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities.

Formation of LLC and filing of certificate of formation.

6. – (1) One or more persons may act as organizers to form an LLC by applying to the Registrar for a certificate of formation.
- (2) An application for a certificate of formation shall include a statement specifying –
- (a) the name of the LLC, which shall comply with section 8;
 - (b) the street and mailing address of the initial designated office and the name and street and mailing addresses of the initial agent for service of process of the LLC; and
 - (c) whether the LLC will have members when the application is made to the Registrar.
- (3) Subject to section 7(5), an application for a certificate of formation may also contain statements as to matters other than those

required by subsection (2), but the statement in an application for a certificate of formation is not effective as a statement of authority referred to in section 39.

(4) Unless the application for the certificate of formation contains the statement as provided in subsection (2)(c), the following rules shall apply –

- (a) the application for the certificate of formation shall name at least one member, save and except where the certificate of formation allows for a delayed effective date pursuant to section 21(4);
- (b) if the application for the certificate of formation states a delayed effective date, the LLC is not formed if, before the certificate takes effect, a statement of cancellation is signed and delivered to the Registrar;
- (c) subject to any delayed effective date and except in a proceeding by the Registrar to dissolve an LLC, the application to the Registrar for a certificate of formation shall be required to satisfy all conditions for the formation of the LLC.

(5) Where an application for a certificate of formation fails to contain a statement as required by subsection (2)(c), the application lapses and is void unless, within thirty days from the date of making of the application, an organizer signs and files with the Registrar, a notice stating –

- (a) that the LLC has at least one member; and
- (b) the date on which the person became the initial member of the LLC.

(6) Where the Registrar is satisfied that all the conditions under this section have been met for the grant of a certificate of formation, the

Registrar shall grant a certificate of formation.

(7) From the date of formation specified in the certificate of formation, an LLC shall be capable of exercising all the functions specified in this Act.

Amendment or restatement of certificate of formation.

7. – (1) A certificate of formation may be amended or restated at any time, for any proper purpose.

(2) To amend its certificate of formation, an LLC shall file with the Registrar a request for amendment stating the –

- (a) name of the LLC;
- (b) date of issue of its certificate of formation; and
- (c) changes that the request for amendment will make to the certificate of formation.

(3) To restate its certificate of formation, an LLC shall file with the Registrar a request for a restatement, stating –

- (a) in the heading or an introductory paragraph, the present name of the LLC and the date of the filing of the present name of the LLC and the date of the issue of the initial certificate of formation of the LLC;
- (b) if the name of the LLC has been changed at any time since the formation of the LLC, each of the former names of the LLC; and
- (c) the changes that the request for a restatement will make to the certificate.

(4) Subject to section 21(4), where the Registrar is satisfied that all the conditions have been met under this section, the Registrar shall issue an amended certificate of formation or a restated certificate of formation, as the case may be.

(5) If a member of a member-managed LLC, or a manager of a

manager-managed LLC, knows that any information in the application for a certificate of formation was inaccurate, or has become inaccurate owing to changed circumstances, the member or manager shall promptly –

- (a) cause the application for the certificate of formation to be amended; or
- (b) if appropriate, file with the Registrar, a statement of change under section 16 or a statement of correction under section 22.

Name.

8. – (1) The name of an LLC shall contain the words “Limited Liability Company” or the abbreviation “LLC”.

(2) Unless authorized by subsection (3), the name of an LLC shall be distinguishable in the Register from –

- (a) an entity that is incorporated, organized or authorized to transact business in Jamaica;
- (b) the LLC name stated in each certificate of formation that contains the statement as provided in section 6(2)(a) and that has not lapsed;
- (c) each name reserved under section 9 or under section 20 of the Companies Act; and
- (d) each name registered under the Companies Act and the Registration of Business Names Act.

(3) An LLC may apply to the Registrar for authorization to use a name that does not comply with subsection (2) and the Registrar shall authorize the use of the name applied for if the authorized registrant or owner thereof, consents in writing to the use.

(4) Subject to section 86, this section applies to a foreign LLC which is transacting business in Jamaica, or which has applied for registration under this Act to carry on business in Jamaica.

**Reservation
of name.**

9. – (1) The reservation of the name of an LLC which complies with section 6 shall be made by filing with the Registrar an application, executed by the applicant, specifying the name to be reserved and the name and address of the applicant, accompanied by the prescribed fee.

(2) The exclusive right to the use of a name may be reserved by –

- (a) any person intending to form an LLC under this Act and to adopt that name;
- (b) any LLC or foreign LLC registered in Jamaica which, in either case, proposes to change its name and adopt the reserved name;
- (c) a foreign LLC intending to register in Jamaica and adopt the reserved name; and
- (d) any person intending to organize a foreign LLC and to have it registered in Jamaica and adopt the reserved name.

(3) If the Registrar is satisfied that the name is available for use by an LLC or foreign LLC, the Registrar shall reserve the name for the exclusive use of the applicant, for a period of ninety days.

(4) Having reserved a name for a period of ninety days, pursuant to subsection (3), the applicant may apply to the Registrar on or before the expiration of the ninety day period, for the reservation of the same name for a further period of one hundred and twenty days.

(5) A person who has reserved a name under this section may transfer the reservation to another person to whom subsection (2) applies by filing with the Registrar a notice of transfer which states –

- (a) the reserved name;
- (b) the name and street and mailing address of the person to which the reservation is to be transferred; and
- (c) the paragraph of subsection (2) which applies to the other person,

and, subject to section 19, the transfer shall be effective when the notice of transfer is filed with the Registrar.

(6) The reservation of a specified name may be cancelled, by filing with the Registrar, a notice of cancellation, in the prescribed form, executed by the applicant or transferee, specifying the reserved name to be cancelled and the name and address of the applicant or transferee.

(7) Unless the Registrar finds that any application in relation to a notice of transfer or notice of cancellation, filed with the Registrar in accordance with subsections (5) and (6) does not conform to law, the Registrar shall, upon receipt of all filing fees required by law, prepare and return to the person who filed such instrument, a copy of the filed instrument with a notation thereon by the Registrar that the name has been transferred or cancelled.

Registrar and Register of LLC.

10. – (1) The Registrar shall be the Registrar of LLCs.

(2) The Registrar shall maintain a Register of the LLCs recording –

- (a) the name of each LLC registered under this Act;
- (b) the date of registration of each LLC under this Act;
- (c) any change of name of an LLC under this Act and the date of the change;
- (d) where applicable, the date of deregistration or striking off of an LLC;
- (e) any other information in respect of an LLC as the Registrar may determine to be necessary or appropriate in the circumstances.

Delegation of functions of Registrar.

11. – (1) The Registrar may in writing, delegate any of the functions of the Registrar under this Act, other than the power of delegation.

(2) Where this Act requires or authorizes the Registrar to issue a

certificate or to certify any fact, the certificate shall be signed by the Registrar or any other person designated by regulations made hereunder.

(3) A certificate referred to in subsection (2) or a certified copy thereof when introduced as evidence in any civil, criminal or administrative action or proceeding, is, in the absence of evidence to the contrary, proof of the facts so certified without personal appearance to prove the signature or official position of the person appearing to have signed the certificate.

(4) For the purposes of subsections (2) and (3), any signature of the Registrar or any signature of an officer designated by regulations made hereunder may be printed or otherwise mechanically reproduced.

(5) Subsections (2), (3) and (4) do not apply to certificates which are in electronic form.

Operating agreement.

12. – (1) An operating agreement may be entered into by the members of an LLC either before, after, or at the time of the signing of the certificate of formation, and the operating agreement shall take effect, whenever entered into, on the formation of the LLC or upon such other date as may be provided in the operating agreement.

(2) Except as otherwise provided in subsections (3) and (4), the operating agreement shall govern –

(a) relations among the members and between the members and the LLC;

(b) the rights and duties under this Act, of a manager of an LLC; and

(c) the means and conditions for amending the operating agreement.

(3) To the extent that the operating agreement does not otherwise provide for a matter described in subsection (2), the matter shall be governed by the provisions of this Act.

- (4) An operating agreement may not –
- (a) vary the capacity of an LLC, under section 5, to sue and be sued in its own name;
 - (b) vary the power of the Court under section 20;
 - (c) subject to subsections (5) to (8) –
 - (i) eliminate the duty of loyalty or care, or any other fiduciary duty;
 - (ii) eliminate the contractual obligation of good faith and fair dealing under section 51(6);
 - (d) unreasonably restrict the duties and rights under section 52;
 - (e) vary the power of a court to order dissolution in the circumstances specified in section 72;
 - (f) vary the requirements for winding up the business of an LLC as specified in section 74;
 - (g) unreasonably restrict the right of a member to maintain an action under Part XIII;
 - (h) restrict the right to approve a merger, conversion or domestication of an LLC under section 118 to a member that will have personal liability with respect to a surviving, converted, or domesticated organization; or
 - (i) except as otherwise provided in subsections (3) and (4) of section 14, restrict the rights under this Act of a person other than a member or manager.
- (5) Unless it is unreasonable, the operating agreement may –
- (a) restrict or eliminate the duty of a member or manager, as the case may be, as required by –
 - (i) subsections (2)(a) and (7) of section 51, to account to

the LLC in respect of, and to hold as trustee for it, any property, profit or benefit derived by the member or manager, as the case may be, in the conduct or winding up of the business of the LLC, from use by the member or manager of the property of the LLC, or from appropriation of an LLC opportunity;

(ii) section 51(2)(b), to refrain from dealing with the LLC in the conduct or winding up of the business of the LLC as or on behalf of a party having an interest adverse to the LLC; and

(iii) section 51(2)(c), to refrain from competing with the LLC in the conduct of the business of the LLC before the LLC is dissolved;

(b) identify specific types or categories of activities that do not violate the duty of loyalty; and

(c) prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under section 51(6).

(6) The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

(7) To the extent that the operating agreement of a member-managed LLC expressly relieves a member of a responsibility that the member would otherwise have under this Act, and imposes the responsibility on one or more other members, the operating agreement may, to the benefit of the member so relieved of the responsibility, also

eliminate or limit any fiduciary duty that would have pertained to the responsibility.

(8) The operating agreement may alter or eliminate the indemnification for a member or manager provided by section 50(1) and may eliminate or limit the liability of a member or manager to the LLC and members for damages for all causes of action other than –

- (a) breach of the duty of loyalty;
- (b) a financial benefit received by the member or manager to which the member or manager is not entitled;
- (c) a breach of a duty under section 47; or
- (d) damage caused to the LLC or a member thereof.

(9) The Court shall decide any claim that the term of an operating agreement under subsection (4) is unreasonable and –

- (a) shall make its determination as at the date that the term being challenged became part of the operating agreement and by considering only the circumstances existing as at that date; and
- (b) may invalidate the term only if, having regard to the purposes and activities of the LLC, it is readily apparent that –
 - (i) the objective of the term is unreasonable; or
 - (ii) the term is an unreasonable means to achieve the objective of the provision.

Operating agreement: effect on LLC and persons becoming members.

13. – (1) An LLC is bound by and shall enforce the operating agreement, whether or not the LLC has itself manifested assent to the operating agreement.

(2) A person who becomes a member of an LLC is deemed to assent to the operating agreement.

(3) Two or more persons who intend to become the initial

members of an LLC may enter into an agreement providing that, upon the formation of the LLC, the agreement will become the operating agreement.

(4) One person who intends to become the initial member of an LLC may assent to terms providing that, upon the formation of the LLC, the terms will become the operating agreement.

Operating agreement: effect on third parties and relationship to LLC.

14. – (1) An operating agreement may specify that its amendment requires –

(a) the approval of a person that is not a party to the operating agreement; or

(b) the satisfaction of a condition.

(2) An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(3) The obligations of an LLC and its members to a person in that person's capacity as a transferee or dissociated member are governed by the operating agreement.

(4) Subject only to a court order issued under section 61(3)(b), to effectuate a charging order, an amendment to the operating agreement made on behalf of a person who becomes a transferee or dissociated member, is effective with regard to any debt, obligation or other liability of the LLC or its members to the person in that person's capacity as a transferee or dissociated member.

(5) If a record that has been filed with the Registrar becomes effective under this Act and contains a provision that would be ineffective under section 12(4) if contained in the operating agreement, that provision shall likewise be ineffective in the record.

(6) Subject to subsection (5), if a record that has been filed with the

Registrar becomes effective under this Act or conflicts with a provision of the operating agreement –

- (a) the operating agreement prevails as to members, dissociated members, transferees and managers; and
- (b) the record prevails as to other persons to the extent that they reasonably rely on the record.

Office and agent for service of process.

15. – (1) An LLC shall designate in the prescribed manner, and continuously maintain in Jamaica –

- (a) an office, which need not be a place of its activity in Jamaica; and
- (b) an agent for service of process.

(2) A foreign LLC that has a certificate of authorization under section 82 shall designate and continuously maintain in Jamaica, an agent for service of process.

(3) An agent for service of process of an LLC or foreign LLC shall be a person who is a resident in Jamaica.

Change of office or agent for service of process.

16. – (1) An LLC or foreign LLC may change its designated office, its agent for service of process or the designated address of its agent for service of process, as the case may be, by filing with the Registrar a statement of change containing –

- (a) the name of the LLC;
- (b) the street and mailing addresses of its current designated office;
- (c) if the current designated office is to be changed, the street and mailing addresses of the new designated office;
- (d) the name and street and mailing addresses of its current agent for service of process; and
- (e) if the current agent for service of process or an address of the agent is to be changed, the new information.

(2) Subject to section 21(4), a statement of change is effective when filed with the Registrar.

**Resignation
of agent for
service of
process.**

17. – (1) If an agent for service of process of an LLC or foreign LLC intends to resign, the agent shall give not less than thirty days written notice of the intention to do so in accordance with subsection (2).

(2) A notice given under subsection (1) shall contain a statement of resignation indicating the LLC from which the agent is resigning, and shall be sent –

- (a) to a member of the LLC at the address of the member last known to the agent; or
- (b) if the agent is not aware of the identity of any member of the LLC, to the authorized person from whom the agent last received instructions concerning the LLC.

(3) The agent shall, within seven days of sending a notice in accordance with subsection (2), file a copy of the notice with the Registrar.

(4) If, at the time of expiry of the notice given under subsection (1), the LLC has not filed a notice of change of agent under section 16(1), the Registrar shall issue a written notice to the LLC that, unless the LLC files a notice of a change of agent within thirty days of the date of the notice from the Registrar, it will be struck off the Register and dissolved.

(5) If an LLC is struck off the Register and dissolved pursuant to subsection (4), the Registrar shall publish in the *Gazette* a notice of the striking off and dissolution of the LLC.

(6) Where an LLC is struck off the Register and dissolved, the Registrar may, upon –

- (a) the application of the LLC or an interested person, made in the

prescribed form and providing evidence of the designation of an agent for service of process for the LLC; and

- (b) payment of the prescribed fee and any outstanding fees, reinstate the LLC and issue to the LLC a certificate, in the prescribed form, as evidence of the reinstatement of the LLC.

Service of process.

18. – (1) An agent for service of process appointed by an LLC or foreign LLC is an agent of the LLC for service of any process, notice or demand required or permitted by law to be served on the LLC.

(2) Service is effected under subsection (1) at the earliest of –

- (a) the date of receipt of the process, notice or demand by the LLC or the foreign LLC;
- (b) the date shown on the return receipt, if signed on behalf of the LLC; or
- (c) five days after the process, notice or demand is deposited in the mail, if mailed postpaid and correctly addressed.

(3) This section shall not affect the right to serve process, notice or demand in any other manner agreed upon by the members of the LLC in the operating agreement or any other manner provided by law.

PART III. *Records and Annual Report*

Signing of records to be delivered for filing.

19. – (1) A record delivered to the Registrar for filing pursuant to this Act shall, except as otherwise provided in subsection (2), be signed by an authorized person by the LLC.

(2) Notwithstanding subsection (1) –

- (a) the application for the initial certificate of formation of an LLC shall be signed by at least one person acting as an organizer;
- (b) a notice under section 6(5) shall be signed by an organizer;
- (c) a record filed on behalf of a dissolved LLC that has no members

shall be signed by the person winding up the activities and affairs of the LLC under section 74(4) or a person appointed under section 74(5) to wind up those activities and affairs;

- (d) a statement of cancellation under section 6(4)(b) shall be signed by each organizer that signed the application for the certificate of formation, so however, a personal representative of a deceased organizer or an organizer who is suffering from a mental disorder pursuant to the Mental Health Act or a person under a power of attorney or other authorized person, may sign in the place of such organizer;
- (e) a statement of denial by a person under section 40 shall be signed by that person;
- (f) any other record shall be signed by the person on whose behalf the record is filed with the Registrar.

Signing and filing pursuant to judicial order.

20. – (1) Where a person is required by this Act to sign a record or file a record with the Registrar and fails to do so, a person who is aggrieved by the failure of the person to sign the record or file the record with the Registrar may petition the Court for an order to compel the person to sign the record or file the record with the Registrar, as the case may be.

(2) Where the person aggrieved under subsection (1) is not the LLC or foreign LLC to which the record pertains, that person shall make the LLC or foreign LLC a party to the action.

Delivery and filing of records.

21. – (1) A record authorized or required to be filed with the Registrar under this Act shall be –

- (a) captioned to describe the purpose of the record;
- (b) in a medium permitted by the Registrar; and
- (c) delivered to the Registrar.

(2) If the filing fees have been paid and the Registrar determines that a record complies with the filing requirements of this Act, the Registrar shall, in relation to –

- (a) a statement of denial under section 40, issue a copy of the filed statement and a receipt for the fees to the person on whose behalf the statement was filed and to the LLC; and
- (b) all other records, issue to the person on whose behalf the record was filed, a copy of the filed record and a receipt for the fees filed.

(3) Upon receipt of a request for a copy of the record and payment of the prescribed fee by a person on whose behalf the record was filed, the Registrar shall issue a certified copy of the record to that person.

(4) Except as otherwise provided in section 22 and except for an application for a certificate of formation that contains a statement as provided in section 12(2)(c), a record filed with the Registrar under this Act may specify an effective time and a delayed effective date.

(5) Subject to sections 6(4)(a), 17 and 22, a record filed with the Registrar is effective –

- (a) if the record does not specify either an effective time or a delayed effective date, on the date and at the time of filing of the record as evidenced by the Registrar's endorsement of the date and time on the record;
- (b) if the record specifies –
 - (i) an effective time but not a delayed effective date, on the date of filing of the record and at the time specified in the record;
 - (ii) a delayed effective date but does not specify an effective time, at 12:01 a.m. on the delayed effective date;

- (c) if the record specifies an effective time and a delayed effective date, at 12:01 a.m. on the delayed effective date.

**Correcting
filed record.**

22. – (1) Where after the filing of a record pursuant to section 21, an LLC or foreign LLC discovers that the record contains false or inaccurate information or was defectively signed, (including where the information has become false or inaccurate due to a change of circumstances) the LLC or foreign LLC shall forthwith, file with the Registrar a statement of correction to correct the record previously filed by the LLC or foreign LLC.

(2) A statement of correction under subsection (1) may not state a delayed effective date and shall –

- (a) describe the record to be corrected, including its filing date or attach a copy of the record as filed;
- (b) specify the false or inaccurate information and the reason it is false or inaccurate or the manner in which the signing was defective; and
- (c) correct the defective signature or false or inaccurate information.

(3) Subject to subsection (4), a statement of correction, when filed with the Registrar, is effective retroactively as of the effective date of the record that the statement corrects.

(4) Notwithstanding subsection (3), a statement of correction is effective when filed, both –

- (a) for the purpose of section 3(2); and
- (b) as to persons relying on the uncorrected record and who would be adversely affected by the correction.

**Liability for
false or
inaccurate
information in**

23. – (1) If a record filed with the Registrar under this Act contains false or inaccurate information, a person who suffers loss by reliance on the

filed record. information may recover damages for the loss from –

- (a) a person who signed the record or caused another to sign it on behalf of that person and knew or ought to have known the information to be false or inaccurate at the time of signing; and
- (b) subject to subsection (2), a member of a member-managed LLC or the manager of a manager-managed LLC, if –
 - (i) the record was filed on behalf of the LLC; and
 - (ii) the member or manager, as the case may be, had notice of the false or inaccurate information for a reasonably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have –
 - (A) effected an amendment under section 7;
 - (B) petitioned the Court under section 20; or
 - (C) filed with the Registrar, a statement of change under section 16 or a statement of correction under section 22.

(2) To the extent that the operating agreement of a member-managed LLC expressly relieves a member of responsibility for maintaining the accuracy of information contained in records filed on behalf of the LLC to the Registrar under this Act, and imposes that responsibility on one or more other members, the liability stated in subsection (1)(b) applies to those other members and not to the member that the operating agreement relieves of the responsibility.

(3) An individual who signs a record authorized or required to be filed under this Act affirms, by so signing, that the information stated in the record is accurate.

**Certificate of
existence or
authorization.**

24. – (1) The Registrar shall, upon request and payment of the prescribed fee, furnish to any person, a certificate of existence for an LLC if –

- (a) the records filed in the office of the Registrar show that the LLC has been formed under section 6; and
- (b) a statement of termination or a statement of dissolution pertaining to the LLC has not been filed with the Registrar; or
- (c) the Registrar has not administratively dissolved the LLC.

(2) A certificate of existence shall state –

- (a) the name of the LLC;
- (b) that the LLC was duly formed under this Act and the date of formation;
- (c) whether –
 - (i) all fees, duties, penalties and any other imposts due under this Act have been paid;
 - (ii) the most recent annual report of the LLC required by section 25 has been filed with the Registrar;
 - (iii) the Registrar has administratively dissolved the LLC;
 - (iv) the LLC has filed with the Registrar a statement of dissolution;
 - (v) a statement of termination has been filed with the Registrar; and
 - (vi) such other facts of record in the Registrar’s office as are specified by the person requesting the certificate.

(3) The Registrar shall, upon request and payment of the prescribed fee, furnish to a person, a certificate of authorization for a foreign LLC if the records filed in the office of the Registrar show that a

certificate of authorization has been filed with the Registrar and has not been revoked and that the Registrar has not issued a notice of cancellation.

- (4) A certificate of authorization shall state –
- (a) the name of the foreign LLC and any alternate name adopted under section 79 for use in Jamaica;
 - (b) that the foreign LLC is authorized to transact business in Jamaica;
 - (c) whether all fees, duties, penalties and any other imposts due under this Act have been paid;
 - (d) whether the most recent annual report of the foreign LLC required by section 25 has been filed with the Registrar;
 - (e) that the Registrar has not revoked the certificate of authorization of the foreign LLC and has not issued a notice of cancellation; and
 - (f) other facts of record in the office of the Registrar which are specified by the person requesting the certificate.

(5) Subject to any qualification stated in the certificate, a certificate of existence or certificate of authorization issued by the Registrar is conclusive evidence that the LLC is in existence or the foreign LLC is authorized to transact business in Jamaica.

- Annual report.** 25. – (1) Every LLC or foreign LLC authorized to transact business in Jamaica shall, each year, file with the Registrar a report stating –
- (a) the name of the LLC or foreign LLC;
 - (b) the street and mailing address of the designated office of the LLC or foreign LLC and of its agent for service of process;
 - (c) the street and mailing address of its principal office; and
 - (d) in the case of a foreign LLC, the state or other jurisdiction under whose law the foreign LLC is formed and any alternate name adopted under section 86.

(2) Information in an annual report under this section shall be current as of the date on which the report is filed with the Registrar.

(3) The first annual report under this section shall be filed with the Registrar on the 31st day of March of the year following the calendar year in which an LLC was formed or was authorized to transact business and a report shall be filed with the Registrar by the 31st day of March of each subsequent calendar year.

(4) If an annual report under this section does not contain the information specified in subsection (1), the Registrar shall promptly notify the LLC or foreign LLC concerned and return the report to the LLC or foreign LLC, as the case may be, for correction.

(5) A report which is corrected to contain the information required under subsection (1) and filed with the Registrar within thirty days after the effective date of the notice, is timely filed.

(6) The Registrar may suspend the certificate of formation or certificate of authorization, as the case may be, of an LLC or foreign LLC that fails to file an annual return when due or pay the required filing fee, upon providing the LLC or foreign LLC with at least sixty days written notice of intent to suspend the certificate of formation or certificate of authorization, as the case maybe, which notice shall be sent to the LLC or foreign LLC at its designated office specified in the certificate of formation or certificate of authorization, as the case may be, or the annual return.

(7) A notice under subsection (6) shall specify –

- (a) that the annual return has not been filed;
- (b) that the required filing fee has not been paid; and
- (c) the effective date of the suspension, and that the suspension is not

effective if the annual return is filed and the fee is paid before the effective date of the suspension.

(8) An LLC or foreign LLC whose certificate of formation or certificate of authorization, as the case may be, has been suspended, may apply to the Registrar for reinstatement, and the application shall state –

- (a) the name of the LLC or foreign LLC and the effective date of the suspension; and
- (b) that the ground for suspension either did not exist or has been corrected.

(9) Upon the receipt of an application for reinstatement pursuant to subsection (8), the Registrar shall determine whether the grounds for suspension did not exist or have been corrected and if satisfied thereof, shall issue a notice of reinstatement to the LLC or foreign LLC, as the case may be.

(10) A reinstatement under subsection (9) relates back to, and takes effect, as of the effective date of the suspension, and the status of the LLC or the foreign LLC continues as if the suspension had never occurred.

(11) If an annual report under this section contains an address of a designated office or the name or address of an agent for service of process which differs from the information shown in the records of the Registrar immediately before the annual report becomes effective, the differing information in the annual report shall not be considered a statement of change under section 7.

PART IV. *Series LLCs*

Establishment of series LLC.

26. An operating agreement of an LLC may establish or provide for the establishment of one or more designated series of members, managers or LLC interests having separate rights, powers or duties with respect to

specified property or obligations of the LLC or profits and losses associated with specified property or obligations, and any such series may have a separate business purpose or investment objective.

Requirements for establishment of series LLC.

27. – (1) Notwithstanding the provisions of this Act or any other enactment, where an LLC establishes or provides for the establishment of one or more series, the debts, liabilities, obligations and expenses incurred, contracted for, or otherwise existing with respect to the particular series, shall be enforceable against the assets of such series only, and not against the assets of the LLC generally or any other series thereof and, unless otherwise provided in the operating agreement, none of the debts, liabilities, obligations or expenses incurred, contracted for, or otherwise existing with respect to the LLC generally or any other series thereof shall be enforceable against the assets of such series if –

- (a) separate and distinct records are maintained for such series;
- (b) the assets associated with such series are held in separate and distinct records (directly or indirectly, including through a nominee or otherwise) and accounted for in separate and distinct records from the other assets of the LLC or any series of the LLC;
- (c) the operating agreement so provides; and
- (d) notice of the limitation on liabilities of a series is set forth in the organizational documents of the LLC.

(2) Notice in the organizational documents of the limitation on liabilities of a series referenced in subsection (1) shall be sufficient for all purposes of subsection (1) whether or not the LLC has established any series when such notice is included in the organizational documents and there shall be no requirement that any specific series of the LLC be referenced in such notice.

(3) Where organizational documents (that contain the notice referred to in subsection (1) of the limitation on liabilities of a series) are on file with the Registrar, that fact shall constitute notice of such limitation on liabilities of a series.

Member or manager may agree to be personally liable for debts.

28. Notwithstanding section 41 of this Act, a member or manager may agree, under an operating agreement or under any other agreement, to be obligated personally for any, or all the debts, obligations and liabilities of one or more series.

Provisions for series operating agreement including voting.

29. – (1) An operating agreement may provide for the classes or groups of members or managers associated with a series to have certain relative rights, powers and duties.

(2) An operating agreement may make provision for the future creation of additional classes or groups of members or managers associated with the series having such relative rights, powers and duties as may, from time to time, be established, including rights, powers and duties superior to existing classes and groups of members or managers associated with the series.

(3) An operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or manager or class or group of members or managers, including an action to create under the provisions of the operating agreement, a class or group of the series of LLC interests that was not previously existing.

(4) An operating agreement may provide that any member or class or group of members associated with the series shall have no voting rights.

Other voting provisions of series operating

30. – (1) An operating agreement may grant to –
 (a) all or certain identified members or managers; or

agreement.

(b) a specified class or group of the members or managers associated with a series, the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter.

(2) Voting by members or managers associated with a series may be on a *per capita*, number, financial interest, class, group or any other basis.

Management of series LLC.

31. – (1) Subject to subsection (2), the management of a series shall be vested in the members associated with such series in proportion to the then current percentage or other interest of the members in the profits of the series owned by all of the members associated with such series, and the decision of members owning more than 50 *per cent* of the said percentage or other interest in the profits shall control such management.

(2) Notwithstanding subsection (1), where an operating agreement provides for the management of the series, in whole or in part, by a manager, the management of the series, to the extent so provided, shall be vested in the manager who shall be appointed in the manner provided in the operating agreement.

(3) The manager of a series shall also hold the offices and have the responsibilities accorded to the manager as set forth in an operating agreement.

(4) A series may have more than one manager.

(5) A manager shall cease to be manager with respect to a series as provided in an operating agreement.

(6) Except as otherwise provided for in an operating agreement, any event under this Act or in an operating agreement that causes a manager to cease to be a manager with respect to a series shall not in itself,

cause such manager to cease to be a manager of the LLC or any other series thereof.

Member entitlement to distributions of series LLC.

32. – (1) Subject to sections 33 and 36, and unless otherwise provided for in an operating agreement, at the time a member associated with a series that has been established in accordance with section 26 becomes entitled to receive a distribution with respect to such series, the member shall have the status of, and be entitled to, all remedies available to a creditor of the series with respect to the distribution.

(2) An operating agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a series.

Limitations on distributions of series LLC.

33. – (1) Notwithstanding section 46, an LLC may make a distribution with respect to a series that has been established in accordance with section 26.

(2) An LLC may not make a distribution under subsection (1) if at the time of the distribution and after giving effect to the distribution –

- (a) all liabilities of such series, other than liabilities to members on account of their LLC interests with respect to such series; and
- (b) all liabilities for which recourse of creditors is limited to specified assets of such series,

exceeds the fair market value of the assets associated with such series.

(3) The fair market value of the assets of the series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair market value of those assets exceeds that liability.

(4) For the purpose of subsection (2), the term “distribution” shall not include amounts constituting reasonable compensation for present or

past services or reasonable payments made in the ordinary course of business pursuant to a *bona fide* retirement plan or other benefits programme under any applicable law in Jamaica or under the law of another jurisdiction.

(5) A member who receives a distribution in contravention of this section, and who knew at the time of the reception of the distribution that the distribution contravened this section, shall be liable to the series for the amount of the distribution.

(6) A member who receives a distribution in contravention of this section and who did not know at the time of the reception of the distribution that the distribution contravened this section, shall not be liable for the amount of the distribution.

(7) This section shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

Assignment of interest of series LLC.

34. – (1) Unless otherwise provided for in the operating agreement, where a member assigns the member's LLC interest with respect to a series, the member shall cease to be associated with the series and the member shall not be able to exercise any rights or powers of a member with respect to the series.

(2) Except as otherwise provided for in an operating agreement, any event under this Act or an operating agreement that causes a member to cease to be associated with a series shall not, by itself, cause such member to cease to be associated with any other series, or terminate the member's continued membership in the LLC, or cause the termination of the series, regardless of whether such member was the last remaining member associated with such series.

**Termination
of series
LLC.**

35. – (1) Subject to section 71, except to the extent otherwise provided for in the operating agreement, a series may be terminated and its affairs wound up without causing the dissolution of the LLC.

(2) The termination of a series established in accordance with section 26 shall not affect the limitation on liabilities of each series provided by section 78.

(3) A series is terminated and its affairs shall be wound up upon the dissolution of the LLC under section 78 or where one of the following events, specified in subsection (4), first occurs.

(4) The events referred to in subsection (3) are as follows –

(a) at the time specified in the operating agreement;

(b) unless otherwise provided for in the operating agreement –

(i) upon the affirmative vote or written consent of the members of the LLC associated with such series;

(ii) if there is more than one class or group of members associated with the series, then by the affirmative vote or written consent of each class or group of members associated with the series who own more than two-thirds of the then current percentage or other interest in the profits of the series of the LLC owned by all of the members associated with such series; or

(iii) by the affirmative vote or the written consent of the members in each class or group of such series, as appropriate; or

(c) the termination of such series under section 37.

**Procedure for
winding up
series LLC.**

36. – (1) Notwithstanding section 78, unless otherwise provided in the operating agreement, one of the following persons, as appropriate in the

circumstance, may wind up the affairs of a series –

- (a) a manager associated with a series who has not wrongfully terminated the series;
- (b) the members associated with the series;
- (c) a person approved by the members associated with the series;
- (d) if there is more than one class or group of members associated with the series, then by each class or group of members associated with the series or in either case, by members who own more than 50 *per cent* of the then current percentage or other interests in the profits of the series owned by all of the members associated with the series; or
- (e) the members in each class or group associated with the series.

(2) The Court may, upon cause shown, wind up the affairs of the series upon application of any member associated with the series, the member's personal representative or assignee, and in connection therewith, may appoint a liquidator.

(3) The person winding up the affairs of a series may, in the name of the LLC and for and on behalf of the LLC and such series, take all actions with respect to the series as are permitted under section 74(2).

(4) The persons winding up the affairs of a series shall take proper account of the claims and obligations of the series and distribute the assets of the series as provided in section 81.

(5) Any action taken in accordance with this section shall not affect the liability of members and shall not, without more, impose liability on a liquidator.

**Termination
of series LLC**

37. On an application by or on behalf of a member or manager associated with a series established in accordance with section 26, the

when not practicable to carry on business.

Court may order the termination of such series wherever it is shown that it is not reasonably practicable to carry on the business of the series in conformity with the operating agreement.

PART V. *Relations of Members and Managers to Persons Dealing with LLC*

Status of member.

38. – (1) A member is not an agent of an LLC solely by reason of being a member.

(2) A person's status as member does not prevent or restrict any law (other than this Act) from imposing liability on an LLC as a result of the actions or conduct of that person.

Statement of authority.

39. – (1) An LLC shall file with the Registrar a statement of authority which –

- (a) shall include the name of the LLC and the street and mailing address of its designated office;
- (b) in relation to any position that exists in or with respect to the LLC, may state the authority or limitations on the authority, of all persons having authority to –
 - (i) execute an instrument transferring real property held in the name of the LLC; or
 - (ii) enter into other transactions on behalf of, or otherwise act for or bind, the LLC; and
- (c) may state the authority or limitations on the authority, of a specific person to perform any action specified in paragraph (b).

(2) In order to amend or cancel a statement of authority filed with the Registrar under subsection (1), an LLC shall file with the Registrar an amendment or cancellation stating –

- (a) the name of the LLC;

- (b) the street and mailing addresses of the designated office of the LLC;
- (c) the caption of the statement being amended or cancelled and the date on which the statement became effective; and
- (d) the contents of the amendment or a declaration that the statement being effected is cancelled.

(3) A statement of authority affects only the power of a person to bind an LLC to persons that are not members.

(4) Subject to subsection (3) and section 3(2) and except as otherwise provided in subsections (6), (7) and (8), a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of knowledge or notice of the limitation by any person.

(5) Subject to subsection (3), a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favour of a person that gives value in reliance on the grant, except to the extent that when the person gives value –

- (a) the person has knowledge to the contrary;
- (b) the statement has been cancelled or restrictively amended under subsection (2); or
- (c) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

(6) Subject to subsection (3), an effective statement of authority that grants authority to transfer real property held in the name of the LLC and that is recorded by certified copy in the Office of the Registrar of Titles is conclusive in favour of a person who gives value in reliance on

the grant without knowledge to the contrary, except to the extent that when a person gives value –

- (a) the statement has been cancelled or restrictively amended under subsection (2) and a certified copy of the cancellation or restrictive amendment has been recorded in the Office of the Registrar of Titles; or
- (b) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective and a certified copy of the later-effective statement is recorded in the Office of the Registrar of Titles.

(7) Subject to subsection (3), if a certified copy of an effective statement containing a limitation on the authority to transfer real property held in the name of an LLC is recorded in the Office of the Registrar of Titles, all persons are deemed to know of the limitation.

(8) Subject to subsection (9), an effective statement of dissolution or termination is a cancellation of any filed statement of authority for the purposes of subsection (6) and is a limitation on authority for the purposes of subsection (7).

(9) After a statement of dissolution becomes effective, an LLC may file with the Registrar, and if appropriate, may record a statement of authority that is designated as a post-dissolution statement of authority which operates as provided in subsections (6) and (7).

(10) Unless earlier cancelled, an effective statement of authority is cancelled by operation of law five years after the date on which the statement, or its most recent amendment, becomes effective and such cancellation is effective without the need for any recording under subsection (6) or (7).

Statement of denial.

40. – (1) A statement of denial may be filed with the Registrar by a person who has been granted the power under a statement of authority to do so.

(2) A statement of denial shall –

- (a) provide the name of the LLC and the caption of the statement of authority to which the statement of denial relates; and
- (b) deny the grant of authority.

(3) A statement of denial in accordance with subsection (1) operates as a restrictive amendment under this section and may be recorded by a certified copy for the purposes of section 39(6)(a).

Liability of members and managers.

41. – (1) A debt, obligation or other liability of an LLC, shall be solely the debt obligation or other liability of the LLC.

(2) A member or manager shall not be personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation or other liability of an LLC solely by reason of being or acting as a member or manager.

(3) Subsection (2) shall apply whether or not the LLC has been dissolved.

(4) The failure of an LLC to observe any particular formality relating to the exercise of its powers or management of its activities shall not, solely by reason of this default, be a ground for imposing liability on a member or manager for the debt, obligation or other liability of the LLC.

PART VI. *Relations of Members to Each Other and to LLC***Becoming a member.**

42. – (1) If an LLC is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the LLC.

(2) A member and an organizer may be the same person.

(3) Where a member and an organizer are not the same person, the organizer acts on behalf of the member.

(4) If an LLC is to have more than one member upon formation –

- (a) those persons become members as agreed by them before the formation of the LLC; and
- (b) the organizer acts on behalf of the persons forming the LLC and may, but need not be one of those persons.

(5) After formation of an LLC, a person becomes a member –

- (a) as provided in the operating agreement;
- (b) as the result of a transaction effective under Part XV;
- (c) with the consent of all the members; or
- (d) if, within ninety consecutive days after the LLC ceases to have any members –
 - (i) the last person to have been a member, or the legal representatives or other authorized person, designates a person to become a member; and
 - (ii) the designated person consents to become a member.

(6) A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the LLC.

Form of contribution.

43. A contribution may consist of property transferred to, services performed for, or another benefit provided for the LLC or an agreement to transfer property to, perform services for, or provide another benefit to the LLC.

Liability for contributions.

44. – (1) The obligation of a person to make a contribution to an LLC is not affected by the person's death, disability or other inability to do so personally.

(2) If a person fails to make a contribution other than money, the LLC may direct the person to contribute money equal to the value of the part of the contribution which has not been made.

(3) The obligation of a person to make a contribution may be waived only by the affirmative vote or consent of all the members.

(4) Where a creditor of an LLC extends credit or otherwise acts in reliance on an obligation described in subsection (1) without knowledge of the nature of a compromise under subsection (3), the creditor may enforce the obligation.

**Sharing of
and right to
distributions
before
dissolutions.**

45. – (1) Distributions of money or kind by an LLC shall be made or paid among the members, and among classes of LLC interests or groups of members, in the manner provided in the operating agreement of the LLC.

(2) A person has a right to a distribution before the dissolution and winding up of an LLC only if the LLC decides to make an interim distribution, but a person's dissociation does not entitle that person to a distribution.

(3) A person does not have a right to demand or receive a distribution from an LLC in any form other than money save as provided in the operating agreement of the LLC.

(4) An LLC may distribute money or an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of the distributions.

(5) If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to a creditor of the LLC with respect to the distribution.

Limitations on distribution.

46. – (1) An LLC may not make a distribution if after the distribution –
- (a) the LLC would not be able to pay its debts as they become due in the ordinary course of the activities and affairs of the LLC; or
 - (b) the total assets of the LLC would be less than the sum of its total liabilities plus the amount that would be needed, if the LLC were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and the winding up of members and transferees whose preferential rights are superior to those of persons receiving the distribution.
- (2) An LLC may make a determination that a distribution is not prohibited under subsection (1) based on reliance on the following –
- (a) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or
 - (b) on a fair valuation or other method that is reasonable under the circumstances.
- (3) Except as otherwise provided for in subsection (1), the effect of a distribution under subsection (1) is measured –
- (a) in the case of a distribution by purchase, redemption or other acquisition of a transferable interest in the LLC, as of the date money or other property is transferred or debt incurred by the LLC; and
 - (b) in all other cases, as of the date –
 - (i) the distribution is authorized by the LLC, if the payment occurs within one hundred and twenty days after that date; or
 - (ii) the payment is made, if the payment occurs more than one

hundred and twenty days after the distribution is authorized by the LLC.

(4) The indebtedness of an LLC to a member or transferee incurred by reason of a distribution made in accordance with this section, is at parity with the indebtedness of the LLC to its general creditors, except to the extent subordinated by agreement.

(5) The indebtedness of the LLC, including indebtedness issued as a distribution, is not a liability for purposes of subsection (1) if the terms of the indebtedness provide that payment of principal and interest are made only if and to the extent that payment of a distribution could be made to members under this section.

(6) If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date on which the payment is made.

(7) For the purposes of subsection (1) “distribution” shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a *bona fide* retirement plan or other benefits programme under any applicable law in Jamaica or under the laws of another jurisdiction.

Liability for improper distributions.

47. – (1) Except as otherwise provided for in subsection (2), if a member of a member-managed LLC or manager of a manager-managed LLC consents to a distribution made in contravention of section 46 and, in consenting to the distribution, fails to comply with section 51, the member or manager is personally liable to the LLC for the amount of the distribution that exceeds the amount that could have been distributed without the contravention of section 46.

(2) To the extent that the operating agreement of a member-

managed LLC expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability referred to in subsection (1) applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

(3) A person who receives a distribution knowing that the distribution to that person was made in contravention of section 46, is personally liable to the LLC but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under section 46.

(4) A person against whom an action is commenced by virtue of subsection (1), on the ground that the person is liable under that subsection, may bring an action against any other person who –

- (a) is subject to liability under subsection (1) and seeks to compel a contribution from that person; and
- (b) received a distribution in violation of subsection (3) and seeks to compel a contribution from that person in the amount received by the person in violation of subsection (3).

(5) An action under this section is barred if it is not commenced within three years after the distribution.

Management of LLC.

48. – (1) An LLC is a member-managed LLC unless the operating agreement –

- (a) expressly provides that –
 - (i) the LLC is or will be manager-managed;
 - (ii) the LLC is or will be managed by managers; or
 - (iii) the management of the LLC is or will be vested in managers; or

(b) includes words of similar import to those in paragraph (a).

(2) The following rules shall apply in a member-managed LLC –

- (a) except as expressly provided for in this Act, the management and conduct of the LLC is vested in the members;
- (b) each member has equal rights in the management and conduct of the activities and affairs of the LLC;
- (c) a difference arising among members as to a matter in the ordinary course of the activities and affairs of the LLC may be decided by a majority of the members;
- (d) an act outside the ordinary course of the activities and affairs of the LLC may be undertaken only with the consent of all members;
- (e) the operating agreement may be amended only with the consent of all members.

(3) The following rules shall apply in a manager-managed LLC –

- (a) except as otherwise expressly provided for in this Act, any matter relating to the activities and affairs of the LLC is decided exclusively by the manager or if there is more than one manager, by a majority of the managers;
- (b) each manager has equal rights in the management and conduct of the activities and affairs of the LLC;
- (c) a difference arising among managers as to a matter in the ordinary course of the activities and affairs of the LLC may be decided by a majority of the managers;
- (d) the affirmative vote or consent of all managers is required to –
 - (i) sell, lease, exchange or otherwise dispose of all, or substantially all, of the property of the LLC, with or without the goodwill, outside the ordinary course of the

activities of the LLC;

(ii) approve a merger, conversion or domestication under Part XV;

(iii) undertake any other act outside the ordinary course of the activities of the LLC; and

(iv) amend the operating agreement.

(4) A manager may be –

(a) appointed at any time with the consent of a majority of the members and remains a manager until a successor has been appointed, unless the manager is removed or dies or, in the case of a manager who is not an individual, is terminated; and

(b) removed at any time by the consent of a majority of the members without notice or cause.

(5) A person need not be a member to be a manager, but the dissociation of a member who is also a manager removes the person as manager.

(6) Where a person who is both a manager and a member ceases to be a manager, that cessation of the person as a manager does not by itself dissociate the person as a member.

(7) The fact that a person ceases to be a manager does not discharge any debt, obligation or other liability to the LLC or members which the person incurred while the person was a manager.

(8) An action requiring the consent of members under this Act may be taken without a meeting, and a member may appoint a proxy or other agent to vote, consent or otherwise act for the member.

(9) The dissolution of an LLC does not affect the application of this section but a person who wrongfully causes the dissolution of the LLC

loses the right to participate in management as a member and a manager.

(10) An LLC shall reimburse a member for an advance to the LLC which accrues interest from the date of the payment or advance.

(11) A payment or advance made by a member which gives rise to an LLC obligation under subsection (9) or section 50(1) constitutes a loan to the LLC which accrues interest from the date of the payment or advance.

(12) A member is not entitled to remuneration for services performed for a member-managed LLC, except for reasonable compensation for services rendered in winding up the activities of the LLC.

Voting at meetings of LLC.

49. The operating agreement may set out provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

Indemnification and insurance.

50. – (1) An LLC shall reimburse a member of a member-managed LLC or the manager of a manager-managed LLC for any payment made by the member or the manager in the course of the activities of the member or manager on behalf of the LLC if the member or manager complied with the duties stated in sections 46, 48 and 51.

(2) An LLC shall indemnify a person with respect to any claim or demand against the person and any debt, obligation or other liability incurred by the person by reason of the former or present capacity of the person as a member or manager, if the claim, demand, debt, obligation or other liability does not arise from the person's breach of section 46, 48 or 51.

(3) In the ordinary course of its activities and affairs, an LLC may advance reasonable expenses, including attorney's fees and costs incurred by a person in connection with a claim or demand against the person by reason of the former or present capacity of the person as member or manager, if the person undertakes to repay the LLC if it is determined that the person is not entitled to be indemnified under subsection (2).

(4) An LLC may purchase and maintain insurance on behalf of a member or manager of the LLC against liability asserted against or incurred by the member or manager in that capacity or arising from that status if, pursuant to section 12(7), the operating agreement does not eliminate or limit the person's liability to the LLC for the conduct giving rise to the liability.

Standards of conduct for members and managers.

51. – (1) A member of a member-managed LLC or a manager of a manager-managed LLC owes to the LLC and, subject to section 91, the other members, the fiduciary duties of loyalty and care stated in subsection (2).

(2) The duty of loyalty of a member in a member-managed LLC or a manager in a manager-managed LLC includes the duties –

(a) to account to the LLC and to hold as trustee for it, any property, profit or benefit derived by the member or the manager, as the case may be –

(i) in the conduct or winding up of the activities and affairs of the LLC;

(ii) from the use of the property of the LLC by the member or the manager, as the case may be;

(iii) from the appropriation of an LLC opportunity;

(b) to refrain from dealing with the LLC in the conduct or winding up

of the activities and affairs of the LLC as or on behalf of a person having an interest adverse to the LLC; and

(c) to refrain from competing with the LLC in the conduct of the activities and affairs of the LLC before the dissolution of the LLC.

(3) Pursuant to subsection (2) (b), the duty of care of a member of a member-managed LLC in the conduct or winding up of the activities and affairs of the LLC is to refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, or contravening any applicable law in Jamaica or any other jurisdiction.

(4) The manager of a member-managed or a manager-managed LLC owes the fiduciary duties of loyalty and care to the LLC and all the members of the LLC.

(5) All of the members of a member-managed LLC or a manager-managed LLC may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(6) A member in a member-managed or a manager-managed LLC shall discharge the duties under this Act and under the operating agreement and exercise any rights consistent with the contractual obligation of good faith and fair dealing.

(7) It is a defence to a claim under subsection (2)(b) and any comparable claim in equity or at common law that the member of the member-managed LLC or the manager of the manager-managed LLC acted in the best interest of the LLC.

(8) A member does not violate a duty or obligation under this section or under the operating agreement solely by the conduct of the member to further the member's own interest.

(9) If, as permitted by subsection (5) or (10) (e) or the operating agreement, a member enters into a transaction with the LLC which otherwise would be prohibited by subsection (2) (b), the rights and obligations arising from the transaction are the same as those of a person that is not a member.

(10) In a manager-managed LLC, the following rules apply –

- (a) subsections (1), (2), (3) and (7) apply to the manager and not the member;
- (b) the duty stated under subsection (2) (c) continues until winding up is completed;
- (c) subsection (6) applies to the manager and the members;
- (d) the power to ratify under subsection (5) applies only to the members; and
- (e) subject to subsection (6), a member does not have any duty to the LLC or to any other member solely by reason of being a member.

Right of members, managers and dissociated members to information.

52. – (1) The provisions of subsections (2), (3) and (4) shall apply in relation to a member-managed LLC.

(2) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the LLC, any record maintained by the LLC regarding the activities, affairs, financial condition and other circumstances of the LLC, to the extent that the information is material to the rights and duties of the member under the operating agreement or this Act.

(3) The LLC shall furnish to each member –

- (a) without demand, any information concerning the activities, affairs, financial condition and other circumstances of the LLC which the LLC knows is material to the proper exercise of the rights and

duties of the member under the operating agreement or this Act, except to the extent that the LLC can establish that it reasonably believes that the member already knows the information; and

- (b) on demand, any other information concerning the activities, affairs, financial condition and other circumstances of the LLC, except to the extent that the demand or information demanded is unreasonable or otherwise improper under the circumstances.

(4) The duty to furnish information under subsection (3) also applies to each member to the extent that the member knows any of the information described in that subsection.

(5) The following rules shall apply to a manager-managed LLC –

- (a) the right to information stated in subsection (2) and the duty stated in subsection (3)(a) applies to the managers and not the members;
- (b) on reasonable notice, during regular business hours and at a reasonable location specified by the LLC, a member may obtain from the LLC and inspect and copy all information regarding the activities, affairs, financial condition and other circumstances of the LLC as is just and reasonable if –

- (i) the member seeks the information for a purpose material to the member's interest as a member;

- (ii) the member makes a demand in a record received by the LLC, describing with reasonable particularity, the information sought and the purpose for seeking the information; and

- (iii) the information sought is directly connected to the member's purpose.

(6) Within ten days after receiving a demand pursuant to

subsection (3) (b), the LLC shall, in a record, inform the member who made the demand –

- (a) of the information which the LLC will provide in response to the demand and when and where the LLC will provide the information; and
- (b) if the LLC declines to provide the information, of the reasons for so doing.

(7) Where the provisions of this Act or an operating agreement provides for a member to give or withhold consent to a matter, before the consent is given or withheld, the LLC shall, without demand, provide the member with all information that is known to the LLC and is material to the decision.

(8) Subject to subsections (14) and (15) upon giving ten days notice to an LLC, a dissociated member may have access to information to which the person was entitled while the person was a member, if –

- (a) the information pertains to the period of the person's membership; and
- (b) the person satisfies the requirements imposed on a member by subsection (5)(b).

(9) The LLC shall respond to a demand made pursuant to subsection (8) in the manner provided by subsection (6).

(10) An LLC may charge a person who makes a demand under this section the reasonable costs of copying, limited to the costs of labour and material.

(11) A member or dissociated member may exercise the rights under this section through an agent or a legal representative.

(12) Any restriction or condition imposed by the operating

agreement or under subsections (14) and (15) applies both to the agent or legal representative and the member or dissociated member.

(13) The rights under this section do not extend to a person as transferee.

(14) In addition to any restriction or condition stated in its operating agreement, an LLC, as a matter within the ordinary course of its activities, may impose reasonable restrictions and conditions on access to and use of any information to be furnished under this section, including classifying information as confidential and imposing nondisclosure and safeguarding obligations on the recipient.

(15) In a dispute concerning the reasonableness of a restriction under subsection (14), the LLC has the burden of proving reasonableness.

PART VII. *Beneficial Ownership*

Register of Beneficial Owners.

53. – (1) An LLC shall keep a register to be known as the Register of Beneficial Owners, in which shall be recorded the particulars set out in subsection (2).

(2) The Register of Beneficial Owners shall contain the following particulars in relation to that beneficial owner –

- (a) the full name of the beneficial owner;
- (b) the date on which the individual became a beneficial owner;
- (c) where applicable, the date on which the individual ceased to be a beneficial owner;
- (d) a copy of a valid identification (including a driver's licence, a passport or any other national identification) of the beneficial owner;
- (e) the residential address of the beneficial owner, and if different, an address for service of documents;

- (f) the date of birth of the beneficial owner;
- (g) the nationality of the beneficial owner;
- (h) the occupation of the beneficial owner;
- (i) the particulars of the beneficial interest of the beneficial owner and how that beneficial interest is held; and
- (j) such other information as may be prescribed.

(3) The members shall ensure that the information required by subsection (1) to be kept in the Register of Beneficial Owners is accurate and up-to-date.

(4) The Register of Beneficial Owners may be in such form as the members may approve, however, if it is in magnetic, electronic or other data storage form, the company shall produce legible evidence of its contents and ensure that such contents are accessible from Jamaica.

(5) An entry relating to a former beneficial owner of the LLC may be removed from the Register of Beneficial Owners after five years from the date on which that person ceased to be a beneficial owner of the LLC.

(6) A company registered under this Act which fails to keep or maintain a Register of Beneficial Owners, in accordance with this section, commits an offence, and is liable, on summary conviction in a Parish Court, to a fine not exceeding one million dollars.

**Inspection of
Register of
Beneficial
Owners.**

54. – (1) A beneficial owner of an LLC may, in person or by the attorney-at-law of the beneficial owner (in furtherance of a proper purpose, duly specified) request in writing, to inspect, during normal business hours, the Register of Beneficial Owners of the LLC and to make copies or extracts therefrom.

(2) For the purposes of subsection (1), a proper purpose is a purpose reasonably related to the interest of the beneficial owner.

(3) If a request under subsection (1) is submitted by an attorney-at-law, the request shall be accompanied by a power of attorney authorizing the attorney-at-law to act for the beneficial owner.

**Rectification
of Register of
Beneficial
Owners.**

55. – (1) If –

(a) particulars that are required to be entered in the Register of Beneficial Owners under section 53(2) of this Act, are omitted therefrom or inaccurately entered therein; or

(b) there is unreasonable delay in entering the particulars in the Register of Beneficial Owners,

a beneficial owner of the LLC, or any person who is aggrieved by the omission, inaccuracy or delay, may apply to the Court for an order that the Register of Beneficial Owners be rectified, and the Court may either grant or refuse the application, with or without costs to be paid by the applicant, or order the rectification of the Register of Beneficial Owners, and may direct the LLC to pay all costs of the application and any damages the applicant may have sustained.

(2) The Court may, in any proceedings under subsection (1), determine any question relating to the right of a person who is a party to the proceedings to have that person's name entered in or omitted from the Register of Beneficial Owners, whether the question arises between –

(a) two or more members or alleged members; or

(b) between members or alleged members and the LLC, and generally, the Court may in the proceedings,

determine any question that may be necessary or expedient to be determined for the rectification of the Register of Beneficial Owners.

**Duty of LLC
to obtain
information
on beneficial**

56. – (1) Subject to subsection (2), an LLC to which section 53 applies shall seek to identify each beneficial owner of the LLC.

owners.

(2) An LLC to which section 53 applies shall give written notice to anyone whom it knows or has reasonable cause to believe is a beneficial owner in relation to the LLC, which notice shall require that individual –

- (a) to state whether or not the individual is a beneficial owner in relation to the LLC; and
- (b) if so, where applicable, to provide, confirm or correct the particulars relating to the individual, which are required for the Register of Beneficial Owners.

(3) An LLC to which section 53 applies shall give written notice to anyone whom it knows, or has reasonable cause to believe, knows the identity of an individual who is a beneficial owner in relation to the LLC, which notice shall require that person –

- (a) to state whether or not that person knows the identity of a beneficial owner in relation to the LLC or knows the identity of any person likely to have that knowledge; and
- (b) if so, supply any particulars of such person who is within the knowledge of the person notified.

(4) Without limiting subsections (2) and (3), an LLC may at any time give written notice to a member of the LLC, to provide, confirm or correct the information supplied under section 53 in relation to the membership interest in the LLC held by the member.

(5) A notice under this section shall state that the person to be notified, shall comply with the notice within thirty days commencing from the date of the notice.

(6) An LLC is not required to take steps or give notice under this section with respect to a beneficial owner if the LLC has already been informed in writing of the person's status as a beneficial owner in relation

to the LLC, and has been supplied with the information under section 53.

Updating of particulars of beneficial ownership.

57. – (1) Within thirty days of an individual becoming a beneficial owner in relation to an LLC, the individual shall give written notice to the LLC of the information required pursuant to section 53.

(2) If there is a change in any particulars provided to the company in relation to a beneficial owner, that beneficial owner shall give written notice of the change to the LLC and the date on which the change occurred.

(3) An individual shall not provide false or misleading information under this section.

(4) An individual who contravenes subsection (3) commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding one million dollars.

Non-disclosure of beneficial ownership particulars.

58. Except where information is requested by order of the Court or a competent authority, information kept in a Register of Beneficial Owners of an LLC is deemed to be confidential information.

PART VIII. *Transferable Interests and Rights of Transferees and Creditors*

Nature of transferable interest.

59. A transferable interest in an LLC is personal property whether tangible or intangible.

Transfer of transferable interest.

60. – (1) A transfer, in whole or in part, of a transferable interest –

(a) is permissible, except as otherwise provided in the operating agreement;

(b) does not by itself cause a member's dissociation or a dissolution and winding up of the activities and affairs of the LLC; and

(c) subject to section 62, does not entitle the transferee to –

(i) participate in the management or conduct of the activities

and affairs of the LLC; or

- (ii) except as otherwise provided in subsection (3), have access to records or other information concerning the activities and affairs of the LLC.

(2) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(3) In a dissolution and winding up of an LLC, a transferee is entitled to an account of the transactions of the LLC only from the date of dissolution.

(4) A transferable interest may be evidenced by a certificate of the interest issued by the LLC in a record and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(5) An LLC need not give effect to the rights of the transferee under this section until the LLC knows or has notice of the transfer.

(6) A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective if the intended transferee has knowledge or notice of the restriction at the time of transfer.

(7) Except as otherwise provided in section 69(2)(b), if a member transfers a transferable interest, the transferor retains the rights of a member other than the transferable interest transferred and retains all duties and obligations of a member.

(8) If a member transfers a transferable interest to a person who becomes a member with respect to the transferred interest, the transferee is liable for the obligations of the member under sections 44 and 47(3) that are known to the transferee when the transferee becomes a member.

Charging order.

61. – (1) On application by a judgment creditor of a member or transferee, the Court may make a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment.

(2) For the purposes of this section, a charging order constitutes a possessory security on the transferable interest of the judgment debtor and requires the LLC to pay over to the person to whom the charging order was issued, any distribution that would otherwise be paid to the judgment debtor.

(3) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (1), the Court may –

- (a) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries which the judgment debtor may have made; and
- (b) make all other orders necessary to give effect to the charging order.

(4) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the Court may foreclose the lien and order the sale of the transferable interest and, except as otherwise provided in subsection (5), the purchaser at the foreclosure sale obtains only the transferable interest, and does not thereby become a member and is subject to section 60.

(5) At any time before the foreclosure under subsection (3) –

- (a) the member or transferee whose transferable interest is subject to a charging order under subsection (1) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the Court that issued the charging order;

(b) an LLC or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(6) If a court orders foreclosure of a charging order lien against the sole member of an LLC –

- (a) the court shall confirm the sale;
- (b) the purchaser at the sale obtains the entire interest of the member, and not only the transferable interest of the member;
- (c) the purchaser becomes a member; and
- (d) the person whose interest was subject to the foreclosed charging order is dissociated as a member.

(7) The making of a charging order is the exclusive remedy by which a judgment creditor of a member or a member's assignee may satisfy a judgment out of the judgment debtor's transferable interest, and attachment, garnishment, foreclosure or other legal or equitable remedies are not available to the judgment creditor, whether the LLC has one member or more than one member.

(8) No creditor of a member or of a member's assignee shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to the property of the LLC.

Power of personal representative of deceased member.

62. In the event of the death of a member who is an individual, the personal representative of the deceased member may exercise all of the rights of the member, including –

- (a) any rights of transfer in respect of all or part of the member's LLC interest (including the rights of a transferee under section 60); and
- (b) for the purposes of settling the estate, the rights of a current

member under section 52.

PART IX. *Registration of Charges*

Registration of Charges with Registrar

Registration of charges.

63. – (1) The Registrar shall keep with respect to each LLC a register of charges on the real property of the LLC and any person, including the LLC, interested in a charge on the real property of the LLC, may apply to have that charge registered, and the Registrar shall register the charge in such form as may be prescribed.

(2) Any charge registered under subsection (1) shall have priority based on the date that it is registered and not on the date of its creation and shall have such priority over any unregistered charge.

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

(4) Where –

- (a) a charge to which subsection (5) applies is registered within twenty-one days of its creation, that charge shall for the purposes of priority (and subject to any agreement altering priorities) rank in priority to any charge created after it;

(b) a charge to which subsection (5) applies is created and is not registered until after twenty-one days after its creation, that charge shall for purposes of priority (and subject to any agreement altering priorities) be deemed to have been created on the date of registration.

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

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

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

(8) The register of charges shall be available for inspection by members of the public during normal working hours.

(9) If default is made in complying with subsection (1), the LLC and every officer thereof who is in default shall be liable to an administrative fine specified in the Schedule.

Schedule.

**Amendment,
etc., of
registered
charges.**

64. – (1) Where a registered charge is amended by adding or removing one or more persons entitled to the charge or where the interest of one or more persons entitled to the charge is assigned or transferred, any person,

including the LLC, interested in the charge may apply to the Registrar to have such amendment, assignment or transfer registered, and the Registrar shall register the amendment, assignment or transfer in such form as may be prescribed.

(2) The registration charge is amended by adding or removing one or more persons entitled to the charge or where the interest of one or more persons entitled to the charge is assigned or transferred, any person, including the LLC, interested in the charge may apply to the Registrar to have such amendment, assignment or transfer registered, and the Registrar shall register the amendment, assignment or transfer in such form as may be prescribed.

**Rectification
of register
of charges.**

65. – (1) The Registrar, on being satisfied that the omission or misstatement of any particular with respect to any such charge was accidental, or due to inadvertence or to some other sufficient cause, and is not of a nature to prejudice the position of creditors or members of the LLC, may, on the application of the LLC or any person interested, rectify the register of charges, and any such rectification shall have effect from the date of the first entry of the charge in the register of charges.

(2) Any creditor or member of the LLC aggrieved by a decision of the Registrar either to rectify or not to rectify the register of charges, may, within six months of the decision of the Registrar appeal to the Court [which shall have the same powers as the Registrar].

(3) No appeal shall lie from a decision of the Court.

**Entries of
satisfaction
and release
of property
from charge.**

66. The Registrar, on satisfactory evidence with respect to any registered charge –

- (a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or

(b) that part of the real property charged has been released from the charge or has ceased to form part of the LLC's real property, may enter on the register a memorandum of satisfaction in whole or in part and where the Registrar enters a memorandum of satisfaction in whole, the Registrar shall, if required, furnish the LLC with a copy thereof.

Registration of appointment of a receiver or manager.

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

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

(3) If any person makes default in complying with the requirements of this section that person shall be liable to an administrative fine, specified in the Schedule.

Schedule.

PART X. *Member's Dissociation*

Member's power to dissociate; wrongful dissociation.

68. – (1) A person has the power to dissociate as a member of an LLC at any time by withdrawing as a member by express notice under section 69.

(2) A person's dissociation as a member from an LLC is wrongful only if the dissociation –

(a) is in breach of an express provision of the operating agreement; or

(b) occurs before the completion of the winding up of an LLC and –

- (i) the person withdraws as a member by express notice;
- (ii) the person is dissociated under section 69(1)(e)(i) by becoming bankrupt;
- (iii) the person is expelled as a member by an order of the Court under section 69(3); or
- (iv) in the case of a person that is not a trust, other than a business trust, an estate or an individual, the person is expelled or otherwise dissociated as a member because the LLC willfully dissolved or terminated.

(3) A person who wrongfully dissociates as a member is liable to the LLC and, subject to section 91, to the other members for damages caused by the dissociation, and such liability is in addition to any other debt, obligation or other liability of the member to the LLC or the other members.

Events causing dissociation.

69. – (1) A person is dissociated as a member from an LLC when –
- (a) the LLC knows or has express notice of the intention of the person to withdraw as a member, but if the person specified a withdrawal date later than the date the LLC had notice, the withdrawal takes effect on that later date;
 - (b) subject to subsection (2), an event stated in the operating agreement as causing the person’s dissociation occurs;
 - (c) subject to subsection (2), that person is expelled as a member pursuant to the operating agreement;
 - (d) in the case of a member who is an individual –
 - (i) the member dies; or
 - (ii) in a member-managed LLC –
 - (A) a guardian, trustee or other person is appointed to

manage the affairs of the person; or

(B) there is a court order stating that the person has otherwise become incapable of performing the person's duties as a member under this Act or the operating agreement;

- (e) in a member-managed LLC, the person –
 - (i) becomes a debtor in bankruptcy;
 - (ii) executes an assignment for the benefit of creditors; or
 - (iii) seeks, consents to, or acquiesces in, the appointment of a trustee, receiver or liquidator of the person or of all or substantially all of the person's property;
- (f) in the case of a person that is acting as a member by virtue of being a trustee of a trust, the trust's entire transferable interest in the LLC is distributed;
- (g) in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the LLC is distributed;
- (h) in the case of a member that is not an individual, the existence of the person terminates;
- (i) the LLC participates in a merger under Part XV if –
 - (i) the LLC is not the surviving entity; or
 - (ii) the person ceases to be a member otherwise as a result of the merger;
- (j) the LLC participates in a conversion under Part XV;
- (k) the LLC participates in a domestication under Part XV if, as a result of the domestication, the person ceases to be a member; or
- (l) the LLC is wound up.

(2) Notwithstanding the provisions of the operating agreement, a person is expelled as a member by the unanimous consent of the other members if –

- (a) it is unlawful to carry on the activities and affairs of the LLC with the person as a member;
- (b) there has been a transfer of all of the transferable interest of the person in the LLC other than –
 - (i) a transfer for the purpose of creating, perfecting or enforcing a security interest; or
 - (ii) a charging order in effect under section 61 which has not been foreclosed;
- (c) the person is an entity and –
 - (i) the entity has filed a certificate of dissolution;
 - (ii) the charter of the entity has been revoked;
 - (iii) the right of the entity to conduct business has been suspended by the jurisdiction of its incorporation;
 - (iv) the certificate of dissolution of the entity has not been revoked,and the entity has not been reinstated or the charter of rights of the entity to conduct business has not been reinstated; or
- (d) the person is an LLC or partnership that has been dissolved and whose business is being wound up.

(3) The Court may, on application by the LLC, order the expulsion of a member where –

- (a) the member has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely or materially affect, the activities and affairs of the LLC;

- (b) the member has willfully and persistently committed, or is willfully and persistently committing, a material breach of the operating agreement of the duties or obligations of the person under section 51; or
- (c) the member has engaged in, or is engaging in, conduct relating to the activities and affairs of the LLC which makes it not reasonably practicable to carry on the activities and affairs of the LLC with the person as a member.

Effect of person's dissociation as member.

70. – (1) When a person is dissociated as a member of an LLC –
- (a) the person's right to participate as a member in the management and conduct of the activities and affairs of the LLC terminates;
 - (b) if the LLC is member-managed, subject to the operating agreement, the person's fiduciary duties as a member end with regard to matters arising and events occurring after the person's dissociation; and
 - (c) subject to section 62 and Part XV, any transferable interest owned by the person immediately before the dissociation in the person's capacity as a member is owned by the person solely as a transferee.
- (2) A person's dissociation as a member of an LLC does not of itself discharge the person from any debt, obligation or other liability to the LLC or the other members which the person incurred while a member.

PART XI. *Dissolution and Winding Up*

Interpretation of Part XI.

71. In this Part "dissolved LLC" means an LLC dissolved under section 72 or 78, as the case may be.

Events causing dissolution.

72. An LLC is dissolved and its activities and affairs shall be wound up on the occurrence of any of the following –

- (a) an event or circumstance that, pursuant to the operating agreement, causes dissolution;
- (b) the consent of all the members to the dissolution and winding up;
- (c) the passage of ninety consecutive days during which the LLC has no members unless before the end of the period –
 - (i) a consent to admit at least one specified person as a member is given by transferees having the right to receive a majority of distributions as transferees at the time the consent is to be effective; and
 - (ii) at least one person becomes a member in accordance with the consent;
- (d) an application by a member to the Court for an order to dissolve the LLC on the grounds that the managers or those managers in control of the LLC –
 - (i) have acted, are acting, or will act, in a manner that is illegal or fraudulent; or
 - (ii) have acted, or are acting, in a manner that is oppressive and was, is, or will be, directly harmful to the member.
- (e) on application by a member, the making of an order by the Court dissolving the LLC on the grounds that –
 - (i) the conduct of all or substantially all of the LLC's activities and affairs is unlawful;
 - (ii) it is not reasonably practicable to carry on the activities and affairs of the LLC in conformity with the certificate of formation; or
 - (iii) the managers or those members in control of the LLC –
 - (A) have acted, are acting, or will act in a manner that

is illegal or fraudulent; or

- (B) have acted, or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

Winding up by the Court.

73. – (1) An order for the dissolution and winding up of an LLC may be made by the Court if –

- (a) the LLC carries on business in breach of the operating agreement;
- (b) the LLC carries on business without a member;
- (c) the LLC has persistently failed to comply with the provisions of this Act;
- (d) the LLC is unable to pay its debts;
- (e) the Court considers that it would be just and equitable for the LLC to be dissolved and wound up; or
- (f) the Court considers that it is not reasonably practicable for the business to be carried on in conformity with the operating agreement.

(2) An application to the Court for an order under subsection (1) may be made by –

- (a) the Registrar upon any one or more grounds set out in subsection (1);
- (b) an interested person upon the grounds set out in subsection (1) (c), (d) or (e); or
- (c) a member or manager upon the grounds set out in subsection (1) (f).

(3) Unless the Court otherwise orders, where the Court makes an order under this section, the provisions of the Companies Act shall apply as if the LLC were a company being dissolved and wound up by the Court

under Part V of that Act.

Winding up.

74. – (1) A dissolved LLC shall wind up its activities and affairs, and the LLC continues after dissolution only for the purpose of winding up.

(2) In winding up its activities and affairs, an LLC –

(a) shall discharge its debts, obligations or other liabilities, settle and close its activities and affairs, and marshal and distribute its assets;
and

(b) shall –

(i) file with the Registrar, a statement of dissolution, in the prescribed form, stating its name and that it is dissolved;

(ii) preserve its activities, affairs and property as a going concern for a reasonable time;

(iii) institute and defend actions and proceedings, whether civil, criminal or administrative;

(iv) transfer its property;

(v) settle disputes by mediation or arbitration;

(vi) file with the Registrar, a statement of termination stating its name and that it is terminated; and

(vii) perform other acts necessary or appropriate to the winding up.

(3) Where an LLC fails to file with the Registrar a statement of dissolution or a statement of termination, as the case may be, in accordance with subsection (2), that LLC is liable to an administrative fine specified in the Schedule which fine shall be imposed by the Registrar.

Schedule.

(4) Where a dissolved LLC has no members, the legal representative or other authorized person of the last person to have been a member may wind up the activities and affairs of the LLC and in so doing,

the person has the powers of a sole manager under section 48(3) and is deemed to be a manager under section 41.

(5) If the legal representative or other authorized person under subsection (4) declines or fails to wind up the activities and affairs of the LLC, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time when the consent is to be effective.

(6) A person appointed under subsection (5) –

- (a) has the powers of a sole manager under section 48(3) and is deemed to be a manager for the purposes of section 41; and
- (b) shall promptly deliver to the Registrar for filing an amendment to the certificate of formation of the LLC to state that –
 - (i) the LLC has no members;
 - (ii) the person has been appointed pursuant to this subsection to wind up the LLC; and
 - (iii) provide the person’s street and mailing addresses.

(7) Where the person appointed to wind up the LLC neglects to file with the Registrar an amendment to the certificate of formation of the LLC in accordance with section (6)(b), that person is liable to an administrative fine specified in the Schedule which fine shall be imposed by the Registrar.

Schedule.

(8) The Court may order judicial supervision of the winding up of a dissolved LLC, including the appointment of a person to wind up the activities and affairs of the LLC –

- (a) on the application of a member, if the member establishes good cause;
- (b) on the application of a transferee, if –

- (i) the LLC does not have any members;
 - (ii) the legal representative of the last person to have been a member declines or fails to wind up the activities and affairs of the LLC; and
 - (iii) within a reasonable time following the dissolution, a person has not been appointed pursuant to subsection (5);
- or

(c) in connection with a proceeding under section 72(d).

**Rescinding
dissolution.**

75. – (1) An LLC may rescind its dissolution, unless a statement of termination applicable to the LLC has become effective, the Court has made an order under section 72(d) dissolving the company or the Registrar has dissolved the LLC under section 78.

(2) An LLC which desires to rescind its dissolution shall –

- (a) obtain the affirmative vote or consent of each member of the LLC;
- and
- (b) file with the Registrar a statement of dissolution in the prescribed form.

(3) Where the LLC has filed with the Registrar a statement of dissolution which has become effective, the LLC may file with the Registrar a statement of rescission stating the name of the LLC and that the LLC desires to rescind its dissolution.

(4) If an LLC rescinds its dissolution –

- (a) the LLC resumes its activities and affairs as if dissolution had never occurred;
- (b) subject to paragraph (c), any liability incurred by the LLC after dissolution and before the rescission has become effective, is determined as if dissolution had never occurred; and

- (c) the rights of third parties arising out of the conduct in reliance on the dissolution before the third party knew or had notice of the rescission, may not be adversely affected.

**Known claims
against
dissolved
LLC.**

76. – (1) Except as otherwise provided in subsection (4), a dissolved LLC shall give notice of a known claim under subsection (2) which has the effect provided for in subsection (3).

(2) A dissolved LLC may, in a record, notify its known claimants of the dissolution and such notice shall –

- (a) specify the information required to be included in a claim;
- (b) provide a mailing address to which the claim is to be sent;
- (c) specify the deadline for receipt of the claim, which may be not less than one hundred and twenty days after the date the notice is received by the claimant; and
- (d) state that the claim will be barred if not received by the specified deadline.

(3) A claim against a dissolved LLC is barred if the requirements of subsection (2) are met and –

- (a) the claim is not received by the specified deadline; or
- (b) if the claim is received by the specified deadline but rejected by the LLC –
 - (i) the LLC notifies the claimant that the claim is rejected and will be barred unless the claimant commences an action against the LLC to enforce the claim within ninety days after the claimant receives the notice; and
 - (ii) the claimant does not commence the required action within the ninety days.

(4) This section shall not apply to a claim based on an event

occurring after the effective date of dissolution or a liability that is contingent on that date.

**Other claims
against
dissolved
LLC.**

77. – (1) A dissolved LLC shall publish notice of its dissolution and request persons having claims against it to present them in accordance with the notice.

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

- (a) be published forthwith in a daily newspaper circulated in Jamaica;
- (b) describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and
- (c) state that a claim against the LLC is barred unless an action to enforce the claim is commenced within six years after the date of publication of the notice.

(3) Where a dissolved LLC publishes a notice in accordance with subsection (2), unless the claimant commences an action to enforce the claim against the LLC within six years after the date of publication of the notice, the claim of each of the following claimants is barred –

- (a) a claimant that did not receive notice in a record under section 76;
- (b) a claimant whose claim was submitted to the LLC within the specified period but not acted on; and
- (c) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim that is not barred under this section may be enforced –

- (a) against a dissolved LLC, to the extent of its undistributed assets; and
- (b) if the assets of the LLC have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the assets distributed to the

member or transferee after dissolution, whichever is less.

(5) A person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person after dissolution.

**Administrative
dissolution.**

78. – (1) The Registrar may dissolve an LLC administratively if the LLC does not –

- (a) pay, within sixty days after the due date, any fee or penalty due to the Registrar under this Act;
- (b) deliver, within sixty days after the due date, its annual report to the Registrar; or
- (c) have a registered agent for sixty consecutive days.

(2) If the Registrar determines that either of the grounds specified under subsection (1) exists for administratively dissolving an LLC, the Registrar shall file a record of the determination and serve the LLC with a copy of the filed record.

(3) Pursuant to subsection (2), if within sixty days after service of the copy of the filed record, the LLC does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Registrar that each ground determined by the Registrar does not exist, the Registrar shall dissolve the LLC administratively by preparing, signing and filing a declaration of dissolution and serving the LLC with a copy of the filed declaration.

(4) An LLC that has been administratively dissolved continues in existence but, subject to section 79, may carry on only activities necessary to wind up its activities and affairs and liquidate its assets under sections 75 and 83 and to notify claimants under sections 76 and 77.

(5) The administrative dissolution of an LLC does not terminate

the authority of its agent for service of process.

(6) The Registrar shall publish a notice of the dissolution of an LLC in the *Gazette*.

Reinstatement following administrative dissolution.

79. – (1) An LLC that is administratively dissolved may apply to the Registrar for reinstatement within two years after the effective date of its dissolution and the application shall be delivered to the Registrar for filing and shall state –

- (a) the name of the LLC at the time of the administrative dissolution and the effective date of its dissolution;
- (b) the address of the principal office of the LLC and the name and street and mailing addresses of its registered agents; and
- (c) that the grounds for dissolution did not exist or have been eliminated.

(2) If the Registrar determines that an application under subsection (1) contains the required information and is reasonably satisfied that the information is correct, and all payments required to be made have been made, the Registrar shall –

- (a) cancel the statement of administrative dissolution and prepare a declaration of reinstatement that states that determination;
- (b) sign and file the original of the declaration of reinstatement; and
- (c) provide the LLC with a copy thereof.

(3) A declaration of reinstatement shall take effect as of the effective date of the administrative dissolution, and the LLC may resume its activities as if the dissolution had not occurred and the rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had notice of the reinstatement shall not be affected.

(4) An LLC that has been reinstated shall publish a notice of reinstatement in a daily newspaper circulated throughout Jamaica.

Appeal from rejection of reinstatement.

80. – (1) If the Registrar rejects an application for reinstatement from an LLC following administrative dissolution, the Registrar shall prepare, sign and file a notice that explains the reasons for rejection and provide the LLC with a copy of the notice.

(2) Within thirty days of receipt of a notice of rejection of reinstatement under subsection (1), an LLC may lodge an appeal before the Court to set aside the dissolution.

(3) The documents filed with the Court in relation to the appeal referred to in subsection (2) shall be served on the Registrar and contain a copy of the Registrar's declaration of dissolution, the LLC's application for reinstatement and the Registrar's notice of rejection.

(4) The Court may order the Registrar to reinstate a dissolved LLC or take such other action as the Court considers appropriate.

Distribution of assets in winding up of LLC.

81. – (1) In winding up the activities and affairs of an LLC, the LLC shall apply its assets to discharge its obligations to creditors, including members that are creditors.

(2) After an LLC complies with subsection (1), any surplus shall be distributed in the following order, subject to any charging order in effect under section 61 –

- (a) to each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and
- (b) in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 60.

(3) If an LLC does not have sufficient surplus to comply with subsection (2)(a), any surplus shall be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

(4) All distributions made under subsections (2) and (3) shall be paid in money or an asset in kind.

PART XII. *Foreign LLCs*

Duty to apply for certificate of authorization, etc.

82. – (1) A foreign LLC may apply to the Registrar under section 24 for the certificate of authorization to transact business in Jamaica.

(2) a foreign LLC may not be denied a certificate of authorization, pursuant to section 84(1), by reason of any difference between this Act and the law of the jurisdiction under which it is formed.

(3) A certificate of authorization does not authorize a foreign LLC to engage in any business or exercise any power that an LLC may not engage in or exercise in Jamaica.

Duty to apply for certificate of authorization, etc.

83. – (1) A foreign LLC may apply to the Registrar under section 24 for a certificate of authorization to transact business in Jamaica.

(2) Pursuant to subsection (1), the certificate of authorization shall state –

- (a) the name of the foreign LLC and, if the name does not comply with section 6, an alternate name adopted pursuant to section 86(1);
- (b) the name of the state or other jurisdiction under whose law the foreign LLC is formed;
- (c) the street and mailing address of the principal office of the foreign LLC and, if the law of the state or other jurisdiction referred to in paragraph (b) requires the foreign LLC to maintain an office in

that state or jurisdiction, the street and mailing address of the required office; and

- (d) the name and street and mailing addresses of the initial agent for service of process in Jamaica of the foreign LLC.

(3) An application under subsection (1) shall be accompanied by a certified copy of the certificate of formation or incorporation, the operating agreement, if any, a certificate of existence or a record of similar import signed by the official or other official having custody of the foreign LLC's publicly filed records in the state or other jurisdiction under whose law the foreign LLC is formed.

(4) A foreign LLC is not required to register as an overseas company with the Registrar under Part X of the Companies Act.

Activities not constituting transacting business.

84. – (1) The activities of a foreign LLC which do not constitute transacting business in Jamaica within the meaning of this section include –

- (a) maintaining, defending or settling an action or proceeding;
- (b) carrying on any activity concerning its internal affairs, including holding meetings of its members or managers;
- (c) maintaining accounts in financial institutions;
- (d) maintaining –
 - (i) offices or agencies for the transfer, exchange and registration of the foreign LLC's own securities; or
 - (ii) trustees or depositories with respect to those securities;
- (e) selling through independent contractors;
- (f) soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside of Jamaica before they become contracts;
- (g) creating or acquiring indebtedness, providing financing, mortgages

or security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages or other security interests in property; and

(i) protecting or conducting an isolated transaction that is completed within ninety days and is not in the course of similar transactions.

(2) This section shall not apply in determining the contracts or activities that may subject a foreign LLC to service of process, taxation or regulation under the laws of Jamaica other than this Act.

Issue of certificate of authorization.

85. Unless the Registrar determines that an application for a certificate of authorization does not comply with the filing requirements of this Act, the Registrar shall, upon payment of all filing fees, issue a certificate of authorization to a foreign LLC to transact business in Jamaica.

Non-complying name of foreign LLC.

86. – (1) A foreign LLC whose name does not comply with section 6(2) may not obtain a certificate of authorization until it adopts, for the purpose of transacting business in Jamaica, an alternate name that complies with section 8(3).

(2) After obtaining a certificate of authorization with an alternate name, a foreign LLC shall transact business in Jamaica under the alternate name unless the foreign LLC is authorized to transact business in Jamaica under another name.

(3) If a foreign LLC which is authorized to transact business in Jamaica changes its name to one that does not comply with section 8, it may not thereafter transact business in Jamaica until it complies with subsection (1) and obtains an amended certificate of authorization.

Revocation of certificate of authorization.

87. – (1) A certificate of authorization of a foreign LLC to transact business in Jamaica may be revoked by the Registrar in the manner provided in subsections (2) and (3) if the foreign LLC does not –

- (a) pay, within sixty days after the due date, any fee or penalty due to the Registrar under this Act;
- (b) deliver, within sixty days after the due date, its annual report required under section 25;
- (c) appoint and maintain an agent for service of process as required by section 15(2); or
- (d) deliver for filing, a statement of change under section 16 or any other change filed in the place of incorporation within thirty days after a change has occurred in the agent's name or address.

(2) For the purpose of revoking a certificate of authorization of a foreign LLC, the Registrar shall –

- (a) prepare, sign and issue a notice of revocation;
- (b) cause the notice of revocation to be published in the *Gazette*;
- (c) send a copy of the notice of revocation to the agent for service of process in Jamaica of the foreign LLC or, if the foreign LLC does not appoint and maintain a proper agent in Jamaica, to the principal office of the foreign LLC, and such notice shall state –
 - (i) the effective date of the revocation, which shall be at least sixty days after the date on which the Registrar sends the copy; and
 - (ii) the grounds for revocation under subsection (1).

(3) The authority of a foreign LLC to transact business in Jamaica ceases on the effective date of the notice of revocation unless, the Registrar before that date, issues a notice that the foreign LLC has rectified each ground for revocation stated in the notice issued under subsection (2).

(4) If the foreign LLC rectifies each ground, the Registrar shall,

within thirty days of being advised that each ground has been duly rectified, issue a notice to that effect.

Cancellation of certificate of authorization. 88. – (1) If a foreign LLC decides to cancel its certificate of authorization, it shall file with the Registrar, a notice of cancellation which shall be published in a newspaper circulated throughout Jamaica.

(2) A notice under subsection (1) shall state the name of the foreign LLC and that the foreign LLC desires to cancel its certificate of authorization.

(3) Pursuant to subsection (1), the certificate of authorization shall be cancelled ninety days after publication of the notice of cancellation.

Effect of failure to obtain certificate of authorization. 89. – (1) The failure of a foreign LLC to have a certificate of authorization to transact business in Jamaica does not –

- (a) impair the validity of a contract governed by Jamaican law;
- (b) impair the validity of an act of the foreign LLC; or
- (c) preclude the foreign LLC from defending an action or proceeding in Jamaica.

(2) A member or manager of a foreign LLC is not liable for the debts, obligations or other liabilities of the LLC solely because the foreign LLC transacted business in Jamaica without a certificate of authorization.

Application by Registrar. 90. The Registrar may make an application to the Court to prohibit a foreign LLC from transacting business in Jamaica in contravention of this Act.

PART XIII. *Actions by Members*

Direct action by member. 91. – (1) Subject to subsection (2), a member may maintain a direct action or proceeding against another member, a manager or the LLC to enforce the member's rights and protect the member's interests, including rights and interests under the operating agreement, or this Act, or arising

independently of the membership relationship.

(2) A member maintaining a direct action or proceeding under this section shall plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the LLC.

Derivative action.

92. A member may maintain a derivative action to enforce a right of an LLC if –

- (a) the member first makes a demand on the other members in a member-managed LLC, or the managers of a manager-managed LLC, requesting that they cause the LLC to bring an action or proceeding to enforce the right and the managers or other members do not bring the action within a reasonable time; or
- (b) the member reasonably believes a demand under paragraph (a) would be futile.

Proper plaintiff.

93. – (1) Except as otherwise provided in subsection (2), a derivative action to enforce a right of an LLC may be maintained only by a person who is a member at the time the action is commenced and remains a member while the action continues.

(2) If the sole plaintiff in a derivative action, being an individual, dies, while the action is pending, the court may permit another member of the LLC to be substituted as plaintiff.

Pleading.

94. In a derivative action under section 92, the complaint shall state with particularity –

- (a) the date and content of the plaintiff's demand and the response to the demand by the managers or other members; or
- (b) if a demand has not been made, the reasons why a demand under section 92(a) would be futile.

**Special
litigation
committee.**

95. – (1) If an LLC is named as or made a party in a derivative action, the LLC may appoint a special litigation committee to investigate the claims asserted in the action and determine whether pursuing the action is in the best interests of the LLC.

(2) If the LLC appoints a special litigation committee, on motion by the committee made in the name of the LLC, except for good cause shown, the Court shall stay discovery for such time as may be reasonably necessary to permit the committee to make its investigation.

(3) Subsection (2) does not prevent the Court from enforcing a person's right to information under section 52 or for granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(4) A special litigation committee shall be composed of one or more disinterested and independent individuals who may be members.

(5) A special litigation committee may be appointed –

(a) in a member managed LLC –

(i) by the consent of a majority of the members not named as defendants or plaintiffs in the proceeding; and

(ii) if all the members are named as defendants or plaintiffs in the proceeding, by a majority of the members named as defendants; or

(b) in a manager-managed LLC –

(i) by a majority of the managers not named as defendants or plaintiffs in the proceeding; and

(ii) if all managers are named as defendants or plaintiffs in the proceeding, by a majority of the managers named as defendants.

(6) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the LLC that the proceeding –

- (a) continue under the control of the plaintiff;
- (b) continue under the control of the committee;
- (c) be settled on terms approved by the committee; or
- (d) be dismissed.

(7) After making a determination under subsection (6), a special litigation committee shall file with the Court a statement of its determination and its report supporting its determination, and shall serve each party with a copy of the statement of determination and the report.

(8) The Court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently and with reasonable care, with the burden of proof being on the committee.

(9) If the Court finds –

- (a) that the members of the committee were disinterested and independent and that the committee acted in good faith, independently and with reasonable care, the Court may enforce the determination of the committee; or
- (b) otherwise, the Court shall dissolve the stay of discovery entered under subsection (2) and allow the action to proceed under the direction of the plaintiff.

Proceeds and expenses.

96. – (1) Except as otherwise provided in subsection (2) –

- (a) any proceeds or other benefits of a derivative action under section 92, whether by judgment, compromise or settlement, belong to the

LLC and not to the plaintiff; and

- (b) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the LLC.

(2) If a derivative action under section 92 is successful in whole or in part, the Court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the LLC.

PART XIV. *Investigation of LLCs*

Inspector of LLCs.

97. In this Part, "inspector" means an inspector appointed by order under section 98(1).

Investigation order.

98. – (1) A member of an LLC or the Registrar may apply to the Court *ex parte*, or upon such notice as the Court may require, for an order directing that an inspector be appointed to investigate an LLC.

(2) An inspector appointed under subsection (1) may be the Registrar.

(3) If, upon an application under subsection (1), it appears to the Court that –

- (a) the business of the LLC is being or has been carried on with intent to defraud any person;
- (b) the LLC was formed for a fraudulent or unlawful purpose, or is to be dissolved for a fraudulent or unlawful purpose; or
- (c) persons concerned with the formation, business or affairs of the LLC have, in connection therewith, acted fraudulently or dishonestly,

the Court may make any order it thinks fit with respect to an investigation of the LLC by an inspector.

(4) If a member makes an application under subsection (1), the member shall give the Registrar reasonable notice thereof, and the

Registrar is entitled to appear and be heard.

Contents of order.

99. – (1) An order under section 98(1) may provide for the following –
- (a) fixing the remuneration of an inspector;
 - (b) replacing an inspector;
 - (c) determining the notice to be given to any interested person, or dispensing with notice to any person;
 - (d) authorizing an inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records found on the premises;
 - (e) requiring any person to produce documents or records to an inspector;
 - (f) authorizing an inspector to conduct a hearing, administer oaths or affirmations and examine any person upon oath or affirmation, and establishing rules for the conduct of the hearing;
 - (g) requiring any person to attend a hearing conducted by an inspector and to give evidence upon oath or affirmation;
 - (h) giving directions to an inspector or any interested person on any matter arising in the investigation;
 - (i) requiring an inspector to make an interim or final report to the Court;
 - (j) determining whether a report of an inspector should be published, and, if so, ordering the Registrar to publish the report in whole or in part, or to send copies to any person the Court designates; and
 - (k) requiring an inspector to discontinue an investigation.
- (2) An inspector shall file with the Registrar a copy of every report made by the inspector under this section.

(3) A report received by the Registrar under subsection (2) shall not be disclosed to any person other than in accordance with an order of the Court made under paragraph (1)(i).

Inspector's powers.

100. An inspector –

- (a) has the powers set out in the order appointing the inspector; and
- (b) shall, upon request, produce to an interested person a copy of the order.

Hearing in camera.

101. – (1) An application under this Part and any subsequent proceedings, including applications for directions in respect of any matter arising in the investigation, shall be heard in camera unless the Court orders otherwise.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part may appear and be heard at the hearing.

(3) A person shall not publish anything relating to any proceedings under this Part except with the authorization of the Court.

Incriminating evidence.

102. A person shall not be excused from attending and giving evidence and producing documents and records to an inspector appointed by the Court under this Part by reason only that the evidence tends to incriminate that person or subject that person to any proceeding or penalty, but the evidence may not be used or received against that person in any proceeding thereafter instituted against that person, other than a prosecution for perjury in respect of the evidence.

Absolute privilege.

103. An oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.

PART XV. *Merger, Conversion and Domestication*

Interpretation of Part XV.

104. In this Part –

“constituent LLC” means a constituent organization that is an LLC;

“constituent organization” means an organization that is party to a merger;

“convert” includes to migrate or continue;

“converted organization” means the organization in existence after a conversion;

“converting organization” means an organization that converts into another organization pursuant to section 110;

“domesticated LLC” means the LLC that exists after a domesticating foreign LLC or LLC effects a domestication pursuant to sections 114 to 115;

“domestication” means the process by which a foreign LLC converts to or otherwise continues its existence as an LLC or an LLC converts to or otherwise continues its existence as a foreign LLC;

“organization” means a general partnership, including a limited liability partnership, limited partnership, limited liability limited partnership, LLC, business trust, corporation, or any other person having a governing statute, and includes a domestic or foreign organization regardless of whether organized for profit;

“surviving organization” means an organization into which one or more other organizations are merged whether the organization pre-existed the merger or was created by the merger.

Merger.

105. – (1) An LLC may merge with one or more other constituent organizations pursuant to this section, sections 106, 107 and 108 and a plan of merger, if –

- (a) the governing statute of each of the other organizations authorizes the merger;

- (b) the merger is not prohibited by the law of a jurisdiction that enacted any of the governing statutes; and
- (c) each of the other organizations complies with its governing statute in effecting the merger.

(2) A plan of merger must be in a record and must include –

- (a) the name and form of each constituent organization;
- (b) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;
- (c) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization and other consideration;
- (d) the organizational documents of the surviving organization; and
- (e) any amendments to the organizational documents of the surviving organization.

Action on plan of merger by constituent LLC.

106. – (1) Subject to section 118, a plan of merger shall be consented to by all the members of a constituent LLC.

(2) Subject to section 118 and any contractual rights, after a merger is approved, and at any time before articles of merger are filed with the Registrar under section 107, a constituent LLC may, as provided for in the plan of merger or with the consent of all members of the constituent LLC, amend the plan or abandon the merger.

Filings required for merger.

107. – (1) After each constituent organization has approved a merger, articles of merger shall be signed on behalf of –

- (a) each constituent LLC, pursuant to section 19(1); and
- (b) each constituent organization, as provided for in its governing

statue.

(2) Articles of merger under this section shall include –

- (a) the name and form of each constituent organization and the jurisdiction of its governing statute;
- (b) the name and form of the surviving organization, the jurisdiction of its governing statute and, if the surviving organization is created by the merger, a statement to that effect;
- (c) the date the merger is effective under the governing statute of the surviving organization;
- (d) where the surviving organization is an LLC, the certificate of formation of the LLC;
- (e) where the surviving organization is an organization other than an LLC, the organizational document that created the organization;
- (f) a statement from each constituent organization that the merger was approved as required by the governing statute of the organization;
- (g) if the surviving organization is a foreign organization not authorized to transact business in Jamaica, the street and mailing addresses of an office that the Registrar may use for the purposes of section 110; and
- (h) any additional information required by the governing statute of any constituent organization.

(3) Each constituent LLC shall file the articles of merger with the

Registrar.

Effective date of merger.

108. A merger under this Part becomes effective –

- (a) if the surviving organization is an LLC –
 - (i) upon the date the articles of merger is filed with the Registrar; or

(ii) subject to section 21(4), as specified in the articles of merger; or

(b) if the surviving organization is not an LLC, as provided by the governing statute of the surviving organization.

Effect of merger.

109. – (1) When a merger becomes effective –

- (a) the surviving organization continues or comes into existence;
- (b) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;
- (c) all property owned by each constituent organization that ceases to exist vests in the surviving organization;
- (d) all debts, obligations or other liabilities of each constituent organization that ceases to exist continue as debts, obligations or other liabilities of the surviving organization;
- (e) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;
- (f) except as prohibited by another enactment, all of the rights, privileges, immunities, powers and purposes of each constituent organization that ceases to exist, vest in the surviving organization;
- (g) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;
- (h) except as otherwise agreed, if a constituent LLC ceases to exist, the merger does not dissolve the LLC for the purposes of Part XI;
- (i) if the surviving organization is an LLC, the certificate of formation becomes effective;
- (j) if the surviving organization is an organization other than an LLC, the organizational document that creates the organization becomes

effective; and

- (k) if the surviving organization pre-existed the merger, any amendments provided for in the articles of merger for the organizational document that created the organization, become effective.

(2) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of Jamaica to enforce any debt, obligation or other liability owned by a constituent organization, if before the merger the constituent organization was subject to suit in Jamaica on the debt, obligation or other liability.

Conversion. 110. – (1) An organization which is not an LLC may convert to an LLC, and an LLC may convert to an organization which is not an LLC, pursuant to this section, sections 111 to 113, and a plan of conversion, if –

- (a) the governing statute of the converting or converted organization, as the case may be, authorizes the conversion; or
- (b) the conversion is not prohibited by the law of the jurisdiction that enacted the statute of the converting or converted organization; and
- (c) the converting or converted organization, as the case may be, complies with its governing statute in effecting the conversion.

(2) A plan of conversion shall be in a record and shall include –

- (a) the name and form of the organization –
 - (i) before conversion;
 - (ii) after conversion; and
- (b) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization and other consideration; and

- (c) the organizational documents of the converted organization that are, or are proposed to be, in a record.

Action on plan of conversion by converting organization.

111. – (1) Subject to section 118, a plan of conversion shall be approved by all the members of a converting organization.

(2) Subject to section 118 and any contractual rights, after a conversion is approved, and at any time before articles of conversion are delivered to the Registrar for filing under section 112, a converting organization may amend the plan or abandon the conversion –

- (a) as provided in the plan; or
- (b) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

Filings required for conversion; effective date.

112. – (1) After a plan of conversion is approved a converting organization shall file with the Registrar, articles of conversion which shall be signed as provided in section 19(1) and shall include –

- (a) a statement that the organization has been converted into another type of organization;
- (b) the name and form of the organization and the jurisdiction of its governing statute;
- (c) the effective date of the conversion under the governing statute of the converted organization;
- (d) a statement that the conversion was approved as required by –
 - (i) this Act; and
 - (ii) the governing statute of the converted organization; and
- (e) if the converted organization is a foreign organization not authorized to transact business in Jamaica, the street and mailing addresses of an office that the Registrar may use for the service of process for the purposes of enforcing a debt, obligation or other

liability.

(2) If the converting organization is not a converting LLC, the converting organization shall, in accordance with section 6, apply to the Registrar for a certificate of formation which shall include, in addition to the information required by section 6(2) –

- (a) a statement that the converted organization was converted from another organization;
- (b) the name and form of that converting organization and the jurisdiction of its governing statute; and
- (c) a statement that the conversion was approved in a manner that complied with the converting organization's governing statute.

(3) If a converting organization (whether or not an LLC) neglects to file the articles or conversion or apply for the certificate of formation, in accordance with subsection (1) or (2), as the case may be, that converting organization is liable to an administrative fine specified in the Schedule, which fine shall be imposed by the Registrar.

Schedule.

(4) A conversion becomes effective –

- (a) if the converted organization is an LLC, when the certificate of formation takes effect; and
- (b) if the converted organization is not an LLC, as provided by the governing statute of the converted organization.

Effect of conversion.

113. – (1) An organization that has been converted pursuant to this Act is for all purposes, the same entity that existed before the conversion.

(2) When a conversion takes effect –

- (a) all property owned by the converting organization remains vested in the converted organization;
- (b) all debts, obligations or other liabilities of the converting

organization continue as debts, obligations or other liabilities of the converted organization;

- (c) an action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;
- (d) except as prohibited by any other Act, all of the rights, privileges, immunities, powers and purposes of the converting organization remain vested in the converted organization;
- (e) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and
- (f) except as otherwise agreed, the conversion does not dissolve a converting organization for the purposes of Part XI.

(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of Jamaica to enforce any debt, obligation or other liability for which the converting LLC is liable if, before the conversion, the converting LLC was subject to suit in Jamaica on the debt, obligation or other liability.

Domestication. 114. – (1) A foreign LLC may become an LLC pursuant to this section, sections 115 to 117 and a plan of domestication if –

- (a) the governing statute of the foreign LLC authorizes the domestication; or
- (b) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and
- (c) the foreign LLC complies with its governing statute in effecting the domestication.

(2) An LLC may become a foreign LLC pursuant to this section, sections 115 to 117 and a plan of domestication if –

- (a) the governing statute of the foreign LLC authorizes the domestication; or
 - (b) the domestication is not prohibited by the law of the foreign jurisdiction; and
 - (c) the LLC complies with the governing statute of the jurisdiction and its organizational documents effecting the conversion.
- (3) A plan of domestication shall be in a record and shall include –
- (a) the name of the domesticating LLC before domestication and the jurisdiction of the governing statute;
 - (b) the name of the domesticated LLC after domestication and the jurisdiction of its governing statute;
 - (c) the terms and conditions of the domestication, including the manner and basis for converting interests in the domesticating LLC and into any combination of money, interests in the domesticated LLC and other consideration; and
 - (d) the organizational documents of the domesticated LLC that are, or are proposed to be, in a record.

Action on plan of domestication by domesticating LLC.

115. – (1) A plan of domestication shall be consented to –
- (a) by all members, subject to section 118; and
 - (b) as provided in the governing statute, in the case of a foreign LLC.
- (2) Subject to any contractual rights, after a domestication is approved, and at any time before the articles of domestication are delivered to the Registrar for filing under section 116, a domesticating LLC may amend the plan or abandon the domestication –
- (a) as provided in the plan; or
 - (b) except as otherwise prohibited in the plan, by the unanimous consent of the members.

**Filings
required for
domestication;
effective date.**

116. – (1) After a plan of domestication is approved, a domesticating LLC shall deliver to the Registrar for filing, articles of domestication which shall include –

- (a) a statement, as the case may require, that the LLC has been domesticated from or into another jurisdiction;
- (b) the name of the domesticating LLC and the jurisdiction of its governing statute;
- (c) the effective date of the domestication under the governing statute of the domesticated LLC, where applicable;
- (d) a statement that the domestication was approved as required by this Act;
- (e) if the domesticating company is a foreign LLC, a statement that the domestication was approved as required by the governing statute of the other jurisdiction, where applicable;
- (f) if the domesticated LLC was a foreign LLC not authorized to transact business in Jamaica, the street and mailing addresses of an office that the Registrar may use for the service of process for the purposes of enforcing a debt, obligation or other liability.

(2) A domestication becomes effective –

- (a) when the certificate of formation takes effect; and
- (b) according to the governing statute of the domesticated organization, if the domesticated LLC is a foreign LLC.

(3) If a domesticating LLC neglects to file articles of domestication with the Registrar in accordance with subsection (1), that domesticating LLC is liable to an administrative fine specified in the Schedule, which fine shall be imposed by the Registrar.

Schedule.

**Effect of
domestication.**

117. – (1) When a domestication takes effect –

- (a) the domesticated LLC is for all purposes the LLC that existed before the domestication;
- (b) all property owned by the domesticating LLC remains vested in the domesticated LLC and shall not be deemed to constitute a transfer for the purposes of transfer tax;
- (c) all debts, obligations or other liabilities of the domesticating LLC continue as debts, obligations or other liabilities of the domesticated LLC;
- (d) an action or proceeding pending by or against a domesticating LLC may be continued as if the domestication had not occurred;
- (e) except as prohibited by law, all of the rights, privileges, immunities, powers and purposes of the domesticating LLC remain vested in the domesticated LLC;
- (f) except as otherwise provided in the plan of domestication, the terms and conditions of the plan of domestication take effect; and
- (g) except as otherwise agreed, the domestication does not dissolve a domesticating LLC for the purposes of Part X.

(2) A domesticated LLC that is a foreign LLC, by the act of domesticating, consents to the jurisdiction of the courts of Jamaica to enforce any debt, obligation or other liability owed by the domesticating LLC, if, before the domestication, the domesticating LLC was subject to suit in Jamaica on the debt, obligation or other liability.

(3) If an LLC has adopted and approved a plan of domestication under section 114 providing for the LLC to be domesticated in a foreign jurisdiction, a statement surrendering the LLC's certificate of formation shall be filed with the Registrar, setting out –

- (a) the name of the LLC;

- (b) a statement that the certificate of formation is being surrendered in connection with the domestication of the LLC in a foreign jurisdiction;
- (c) a statement that the domestication was approved as required by this Act; and
- (d) the jurisdiction of formation of the domesticated foreign LLC.

Restrictions on approval of mergers, conversions and domestication.

118. – (1) If a member of a constituent, converting or domesticating LLC is personally liable in respect of a surviving, converted or domesticated organization, approval or amendment of a plan of merger, conversion or domestication is ineffective without the consent of the member, unless –

- (a) the operating agreement of the LLC provides for approval of a merger, conversion or domestication with the consent of fewer than all the members; and
- (b) the member has consented to the provision of the operating agreement.

(2) A member does not give the consent required by subsection (1) merely by consenting to a provision of the operating agreement that permits the operating agreement to be amended with the consent of fewer than all the members.

Part not exclusive.

119. Nothing in this Part precludes an entity from being merged, converted or domesticated under any other law.

General penalty.

120. Any person who commits an offence under this Act (other than an offence in respect of which some other penalty is specially provided for by this Act) or regulations made hereunder, shall, on summary conviction in a Parish Court, be liable to a fine not exceeding one million dollars, and in default of payment, to imprisonment for a term not exceeding twelve

months.

Regulations.

121. The Minister may make regulations for the purpose of giving effect to the provisions of this Act, and without prejudice to the generality of the foregoing provision, may make regulations with respect to –

- (a) requiring the payment of a fee in respect of the filing, examination or copying of any documents, or in respect of any action that the Registrar is required or authorized to take under this Act, or the payment of a penalty in respect of the late filing of any document, and prescribing the amount thereof;
- (b) prescribing the forms required by the Registrar for the establishment of an LLC;
- (c) prescribing the contents of returns, notices or other documents required to be filed with the Registrar or to be issued by the Registrar;
- (d) prescribing the rules with respect to exemptions permitted by this Act;
- (e) respecting the names of LLCs or classes thereof;
- (f) prescribing that specified LLCs be exempt from certain provisions of this Act; and
- (g) any other matter required by this Act to be prescribed.

PART XVI. *Miscellaneous*

Savings.

122. – (1) The rules of common law and of equity applicable to companies shall continue in force and apply to LLCs governed by or formed under this Act, except so far as they are inconsistent with the provisions of this Act.

(2) This Act shall not affect an action commenced, proceeding brought or right accrued before the date of commencement of this Act.

SCHEDULE**(Sections 63(9), 65(3),
67(3), 76(3) and
(7), 114(3) and
118(3))***Administrative Fines*

First Column	Second Column	
Brief Description of Offence	Relevant Section	Administrative Fine
1. Failure by LLC to deliver to the Registrar for registration, the prescribed particulars of a charge together with the original or copy certified in the prescribed manner of the instrument, if any, by which the charge is created or evidenced	63(9)	Ten thousand dollars (\$10,000.00)
2. Failure by a person, who obtains order for the appointment of a receiver or manager of the property of an LLC or appoints such receiver or manager under powers contained in any instrument, to notify the Registrar	67(3)	Fifteen thousand dollars (\$15,000.00)
3. Failure of a person, appointed receiver or manager of the property of an LLC, to notify the Registrar that the person has ceased to act as receiver or manager	67(3)	Fifteen thousand dollars (\$15,000.00)
4. Failure of LLC to file statement of dissolution or statement of termination with Registrar	76(3)	Twenty thousand dollars (\$20,000.00)
5. Failure of person appointed to wind up LLC to file amendment to LLC's certificate of formation with Registrar	76(7)	Ten thousand dollars (\$10,000.00)

6. Failure of converting LLC or other converting organization to file articles of conversion or certificate of formation with Registrar	112(3)	Twenty thousand dollars (\$20,000.00)
7. Failure of domesticating LLC to file articles of domestication with Registrar	118(3)	Twenty thousand dollars.

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to provide for the establishment and operation of limited liability companies (LLCs) in Jamaica. An LLC is an entity that shares the limitation of liability characteristic of a company incorporated under the Companies Act with partnership-like capacity to structure the entity by agreement rather than as prescribed by statute. The LLC is formed by applying to the Registrar for a certificate of formation. The provisions of the Bill include fiduciary obligations and contractual obligations governing the relationships between members and between members and managers. Express provisions of the operating agreement govern the relations among members and between members and the LLC. Provision is also made for the recognition of electronic records and signatures.

The Bill makes provision for –

- (a) member-managed or manager-managed LLCs and the rights of managers and members to dissociate;
- (b) transferable interests and rights of transferees;
- (c) the relations of members and managers to persons dealing with the LLC and the relations of members to each other and the LLC;
- (d) liability for improper distributions;

- (e) transferable interests and the right of transferees and creditors;
- (f) the power of members to dissociate; and
- (g) dissolution and winding up.

Andrew Holness
Prime Minister