

**A BILL
ENTITLED**

AN ACT to Provide for the registration and regulation of companies that operate and maintain segregated accounts and incorporated segregated accounts; 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 Segregated Accounts Companies Act, 2020, 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, unless the context otherwise requires –
“account owner”, means in relation to a segregated account or incorporated segregated account respectively, any person who is –

- (a) the registered holder of shares that are –
 - (i) issued by a segregated accounts company or an incorporated segregated accounts company; and
 - (ii) linked to that segregated account or incorporated segregated account; or
- (b) expressly identified in the governing instrument linked to a segregated account or incorporated segregated account as being the account owner for

the purposes of this Act in respect of that segregated account or incorporated segregated account; or

- (c) expressly designated in the records of the segregated accounts company or incorporated segregated accounts company as being an account owner or beneficial owner in respect of that segregated account or incorporated segregated account,

and the interests of an account owner in any of the foregoing capacities in relation to any segregated account or incorporated segregated account are referred to in this Act as “account holdings”;

“Bank” means the Bank of Jamaica established by section 3 of the Bank of Jamaica Act;

“bank” has the meaning assigned to it in the Banking Services Act;

“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 a body corporate, means the individual who exercises ultimate ownership or ultimate effective control;

“class of members”, in respect of a segregated accounts company or an incorporated segregated accounts company, respectively, means the members or any class of members of the segregated

accounts or incorporated segregated accounts of the company;

“commencement date” means the date on which this Act comes into operation;

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

“company” means a body corporate whether incorporated under the laws of Jamaica or of any other country, and any entity which in the opinion of the Registrar, is analogous to a body corporate;

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

“contract” includes a written agreement, instrument or other writing (including electronic documents), which creates or affects rights or obligations;

“counterparty” means any party (other than the segregated accounts company or incorporated segregated accounts company, (except where section 30(1) applies)) to a transaction to which the segregated accounts company or incorporated segregated accounts company is a party, respectively, and under which assets or liabilities are wholly or partly linked to a segregated account or incorporated segregated account, respectively, but an account owner shall not, (in that capacity), also be a

counterparty;

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

“creditor” means, in respect of any segregated account, incorporated segregated account (and in that regard may include a counterparty of the segregated account or incorporated segregated account) or the general account, respectively, any person to whom any liability is owed by the segregated accounts company or incorporated segregated accounts company where the liability –

(a) is linked to that segregated account or incorporated segregated account; or

(b) is a liability of the general account,

but, except as provided for in section 36(6), an account owner shall not, in that capacity, also be a creditor;

“distribution” means any act that confers or transfers a benefit from a segregated accounts company or an incorporated segregated accounts company respectively, to an account owner;

“electronic documents” means information that is created, generated, communicated, stored, displayed or proceeded by electronic means;

“general account” means an account comprising all of the assets and liabilities of a segregated accounts company or an incorporated segregated accounts company, respectively, which are not linked to a segregated account or incorporated segregated account of that company;

“general shareholder” means any member of a segregated accounts

company or an incorporated segregated accounts company, respectively, not being the holder of a share linked to the segregated account or incorporated segregated account of that company;

“governing instrument” means one or more written agreements, instruments, bye-laws, prospectuses, resolutions of directors, registers or other documents (including electronic records), setting out the rights, obligations and interests of account owners in respect of a segregated account or incorporated segregated account, as the case may be;

“incorporated segregated account” means a segregated account of an incorporated segregated accounts company which is created in accordance with this Act;

“incorporated segregated accounts company” means a company registered under section 7 which is comprised of one or more incorporated segregated accounts each having a separate legal personality;

“individual” means a natural person but does not include a partnership, unincorporated syndicate, unincorporated organization, trust or a natural person in that person’s capacity as trustee, executor, administrator or other legal representative;

“insolvent” shall be construed in accordance with the Insolvency Act;

“insurance business” means insurance business within the meaning of section 2 of the Insurance Act;

“international service provider” means an individual, firm or

company that engages or proposes to engage in the business of providing an international service as defined in the

International Corporate and Trust Services Providers Act;

“known creditors”, in relation to a company, means creditors whose identity and whereabouts are known to, or with due diligence could be discovered by, the company, or other persons known to the company;

“linked” means referable by means of –

(a) an instrument in writing including a governing instrument or contract;

(b) an entry or other notation made in respect of a transaction in the records of a segregated accounts company or an incorporated segregated accounts company; or

(c) an unwritten but conclusive indication,

which identifies an asset, right, contribution, liability or obligation as belonging or pertaining to a segregated account or an incorporated segregated account;

“manager” means any person who, by virtue of the terms of a governing instrument or otherwise with the consent of a segregated accounts company or an incorporated segregated accounts company and the account owners of any segregated account or incorporated segregated account, has control of a segregated account or incorporated segregated account, as the case may be;

“officer “in relation to a segregated accounts company or an

incorporated segregated accounts company includes a director, manager and secretary;

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

“primary regulator” means –

- (a) where the business of the company is regulated, the person or supervisory body primarily in charge of regulating and governing the business of the company;
- (b) where the business of the company is not regulated, the Commission;

“receiver” has the meaning assigned to it in section 2 of the Insolvency Act;

“Register” means the register of segregated accounts companies and incorporated segregated accounts companies maintained under section 7;

“registered” means registered under section 7;

“Registrar” means the Registrar of Companies;

“security” in relation to a segregated accounts company or an incorporated segregated accounts company means any share, note, bond, debenture, evidence of indebtedness, certificate, unit, warrant or right conferring an option to acquire shares or any other right issued by or pertaining to the company, but does not include a contract of insurance unless the terms of the contract so provide;

“security interest” means an interest created –

- (a) contractually over one or more items of personal property (whether specifically or generically described, present or future); and
- (b) securing the fulfilment of one or more present or future obligations;

“segregated account” means a separate and distinct account (comprising or including entries, recording data, assets, rights, contributions, liabilities and obligations linked to such account) of a segregated accounts company pertaining to an identified or identifiable pool of assets and liabilities of that segregated accounts company, which are segregated or distinguished from other assets and liabilities of the segregated accounts company for the purposes of this Act;

“segregated accounts company” means a company which is registered under section 7 and comprises one or more segregated accounts;

“solvent” shall be construed in accordance with the Insolvency Act;

“subsidiary” has the meaning assigned to it in section 151(1) of the Companies Act;

“Supervisor” means the Supervisor of Insolvency designated under section 22 of the Insolvency Act;

“transaction” means any dealing of whatever nature, which may be evidenced by a governing instrument (in the case of a transaction with an account owner) or contract (in the case of a transaction with a counterparty), including -

- (a) the issue of any security by which assets or liabilities

become linked to a segregated account or an incorporated segregated account or by which the assets or liabilities linked to a segregated account or an incorporated segregated account are otherwise affected; or

- (b) in the case of assets linked to a segregated account or an incorporated segregated account which are intended by the parties to be applied to a risk of any nature and any dealing which exposes such assets to liability or loss;

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

- (a) is in a position to determine the policy of the company or to make the final determination as to the decisions to be made by the company; or
- (b) alone or together with a connected person within the meaning of subsection (4) is in a position to control more than twenty percent of the voting power in the company or would hold interest in more than twenty percent of the issued shares of the company;

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

- (2) For the avoidance of doubt –

- (a) a segregated accounts company may only create and administer segregated accounts; and
 - (b) notwithstanding that a segregated accounts company may have created one or more segregated accounts pursuant to the provisions of this Act –
 - (i) a segregated accounts company is a separate legal person; and
 - (ii) the establishment by a segregated accounts company of a segregated account does not create, in respect of that segregated account, a separate legal person from the company;
 - (c) an incorporated segregated accounts company may only create and administer incorporated segregated accounts;
 - (d) an incorporated segregated account is a separate legal person from its incorporated segregated accounts company.
- (3) For the purposes of this Act, other than section 50(1) –
- (a) a segregated accounts company or an incorporated segregated accounts company shall be deemed to be solvent if the general account, without any reference to any liabilities of a segregated account or incorporated segregated account, as the case may be, is able to pay its liabilities as they become due;
 - (b) a segregated account or an incorporated segregated account shall be deemed to be solvent if it is able to pay its liabilities (excluding obligations to account owners in that capacity) as they become due.
- (4) For the purposes of subsection (2), 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 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 constitute a group;
- (g) an individual who is a director, manager or a person who has control of A or any partner of 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.

(5) For the purposes of subsection (4)(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).

(6) Notwithstanding the meaning assigned to the word “subsidiary”, for the purposes of subsections (4) and (5), a company is a holding company of any company that is an 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.

Application of Companies Act, etc.

3. The provisions of the Companies Act shall apply *mutatis mutandis* to the provisions of this Act, unless the context otherwise requires.

PART II. Registration

Application for registration.

4. – (1) Subject to the provisions of this section –

(a) a company incorporated or registered under the Companies Act that operates or intends to operate segregated accounts or incorporated segregated accounts; or

(b) members who own segregated accounts or incorporated segregated accounts of a company described in paragraph (a),

may apply to the Registrar to be registered under section 7 as a segregated accounts company or an incorporated segregated accounts company, as the case may be.

(2) A bank shall not apply to be so registered under section 7.

(3) A company which, having regard to the nature of its business activities is supervised by a primary regulator, shall, before it is registered under this Act, consult with its primary regulator which may do any one or more of the following, namely –

(a) impose such conditions on the registration of the company under this Act as the primary regulator may consider necessary;

(b) verify the identity of the account owners of segregated accounts

and incorporated segregated accounts, to ensure compliance with this Act;

- (c) require the company to take certain steps to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business relating to segregated accounts or incorporated segregated accounts; and
- (d) request information or conduct an investigation in order to be satisfied that the company has or has available to it the knowledge and expertise necessary for the proper management of segregated accounts and incorporated segregated accounts.

(4) The primary regulator may revoke or vary any condition or requirement imposed under subsection (3) after giving notice thereof to the company and the primary regulator shall notify the Registrar of any revocation or variation.

(5) From the date of registration under this Act, a company to which this Act applies shall be bound by, and may avail itself of, the provisions of this Act and from such date that company may establish one or more segregated accounts or incorporated segregated accounts, as the case may be, to which the provisions of this Act shall apply.

Application and documents to be filed.

5. – (1) The application referred to in section 4 shall be in such form as the Registrar may determine, but shall contain the following information –

- (a) the name of the company which, in cases where the Registrar so directs, shall include the expression “Segregated Accounts Company” or “(SAC)”, “Incorporated Segregated Accounts Company” or “(ISAC)”;

- (b) a statement that the company intends to operate segregated accounts or incorporated segregated accounts, as the case may be;
- (c) the address of the registered office of the company;
- (d) the name and address of the company's segregated accounts or incorporated segregated accounts representative as referred to in section 11;
- (e) the nature of the business of the company;
- (f) the date of incorporation of the company;
- (g) a statement that the company has made provision to account for segregated accounts or incorporated segregated accounts in the manner set out in section 22; and
- (h) evidence of the consent to registration from the primary regulator.

(2) Where the company has conducted business prior to its registration, the company, in filing an application under subsection (1) shall –

- (a) file with the Registrar a statutory declaration made by at least one director of the company, setting out a true and accurate statement or description of –
 - (i) the assets and liabilities of the company as at a date within three months prior to the date of the application;
 - (ii) any transaction or event which, as of the date of the application, has occurred or is expected to occur, between the date of the statement of assets and liabilities prepared pursuant to subparagraph (i) and the

date of registration of the company as a segregated accounts company or an incorporated segregated accounts company which, if it had occurred before the date of that statement, would have caused material changes to the assets and liabilities disclosed therein;

- (iii) the segregated accounts or incorporated segregated accounts which the company intends to operate and the assets and liabilities which the company proposes to assign to each of those segregated accounts or incorporated segregated accounts, as the case may be; and

(b) declare that on registration –

- (i) the company and each segregated account or incorporated segregated account will be solvent;
- (ii) no known creditors of the company will be prejudiced;
- (iii) the known creditors of the company have consented in writing to the company proceeding to register; and
- (iv) adequate notice has been given in accordance with subsection (4) to all known creditors of the company and no creditor makes objection to the registration under section 6 otherwise than on grounds that are frivolous or vexatious;

(c) attach evidence of the consent in writing to registration of seventy-five *per cent* in number of those persons who would, on the registration of the company, be the account owners of the company's segregated accounts or incorporated segregated

accounts, as the case may be, and seventy-five *per cent* in number of those persons who would, on the registration of the company, be creditors.

(3) The company in filing an application under subsection (1) shall –

- (a) in the event that the company is a subsidiary of a bank, attach evidence of the consent in writing to registration to the Governor of the Bank;
- (b) attach evidence of the consent in writing to registration, of the primary regulator.

(4) For the purposes of subsection (2)(b)(iv), adequate notice is given if –

- (a) a notice in writing is sent to each known creditor having a claim against the company that exceeds such sum as may be prescribed; and
- (b) notice is published in a daily newspaper circulated in Jamaica, in each case, stating that the company intends to apply to be registered under this Act and that a creditor of the company may object to the registration within twenty-eight days from the date of such notice, or publication of such notice, as the case may be.

Objection to registration of segregated accounts company or incorporated segregated accounts company.

6. – (1) An account owner or creditor may object to the registration or proposed registration of a company as a segregated accounts company or an incorporated segregated accounts company.

(2) Subject to subsection (4), an account owner or creditor who wishes to object to the registration or proposed registration of a company as a segregated accounts company or an incorporated

segregated accounts company may –

- (a) within twenty-eight days of the notice under section 5 (2)(b)(iv), being given, make an application to the Registrar objecting to the registration;
- (b) within thirty days of the decision of the Registrar, in relation to an application referred to in paragraph (a) being given, apply to the Court for the refusal or annulment of the company's registration.

(3) An application under subsection (2)(a) shall be accompanied

Third Schedule. by the fee specified in the Third Schedule.

(4) An application under subsection (2) may only be made by not less than twenty *per cent* in number of –

- (a) those persons who would, on the registration of the company, be account owners;
- (b) those persons who would, on the registration of the company, be creditors; or
- (c) such persons as are mentioned in paragraphs (a) and (b) combined who would be account owners or creditors on registration.

(5) An application under subsection (2) may be made by the persons entitled to make the application or by one or more of their number as they may appoint for the purpose.

(6) An application under subsection (2) shall not be made, without reasonable cause, by any person who has voted in favour of the registration or has given to the company a statement in writing duly signed that such person, having had notice, consents to the

registration.

(7) On an application under subsection (2)(b), the Court may make an order preventing, annulling or confirming the registration, either wholly or in part and on such terms and conditions as it thinks fit and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase or other disposition of the interests of persons objecting to the registration and may give such directions and make such orders as it may think expedient to facilitate the carrying into effect of any such arrangement.

**Registration
and Register
of segregated
accounts
companies and
incorporated
segregated
accounts
companies.
Third Schedule.**

7. – (1) Upon application and payment of the fee specified in the Third Schedule, the Registrar shall register a company as a segregated accounts company or an incorporated segregated accounts company, if the Registrar is satisfied that the –

- (a) company complies with this Act; and
- (b) necessary consent has been obtained under section 5(3).

(2) After registering a company pursuant to subsection (1), the Registrar shall issue a certificate showing the date of registration.

(3) The Registrar shall place a copy of the certificate referred to in subsection (2) on the public file maintained by the Registrar in respect of the company.

(4) The Registrar shall maintain a Register of Segregated Accounts Companies and Incorporated Segregated Accounts Companies.

(5) The Register shall be available for inspection by members of the public.

(6) The Registrar may, where applicable, after consultation with the primary regulator –

- (a) impose such conditions on the registration of a company as the Registrar considers necessary to ensure compliance with this Act; and
- (b) require the company to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its segregated accounts or incorporated segregated accounts business in a particular way.

(7) The Registrar may revoke or vary any condition or requirement imposed under subsection (6) by giving notice thereof to the company and the primary regulator.

Refusal of Registrar to register segregated accounts company or incorporated segregated accounts company.

8. Where the Registrar intends to refuse to register a company as a segregated accounts company or an incorporated segregated accounts company pursuant to section 7(1), the Registrar shall –

- (a) notify the applicant in writing of the intention of the Registrar to refuse to grant the certificate of registration and the reasons for the refusal; and
- (b) afford the applicant an opportunity to be heard, within twenty-eight days of the date of the notice of refusal.

Removal from Register.

9. – (1) The Registrar shall remove a segregated accounts company or an incorporated segregated accounts company from the Register on receipt of a request in writing by the segregated accounts company or the incorporated segregated accounts company, as the case may be,

Third Schedule.

upon the payment of the fee specified in the Third Schedule and attaching to the request, evidence of the consent in writing of seventy-

five *per cent* in number of –

- (a) the account owners of the company's segregated accounts or incorporated segregated accounts, as the case may be;
- (b) any counterparties who are creditors,

and upon such removal, the provisions of this Act shall cease to apply to that company.

(2) Where the Registrar removes a segregated accounts company or an incorporated segregated accounts company from the Register, pursuant to subsection (1) the Registrar shall notify the primary regulator.

(3) A request under subsection (1) shall be in such form as the Registrar may determine and shall include a statutory declaration made by a majority of the directors of the company to the effect that no creditor of the company will be prejudiced by, or that the known creditors have consented in writing to, the removal of the company from the Register and such statement shall be in accordance with subsection (4).

(4) The statutory declaration referred to in subsection (3) shall –

- (a) be a true and accurate statement of the assets and liabilities of the company as at a date within the three months prior to the date of the request;
- (b) include a description of any transaction or event which, as of the date of the request, is expected to occur between the date of the statement of assets and liabilities prepared pursuant to paragraph (a) and the date of removal of the company as a segregated accounts company or incorporated segregated

accounts company, as the case may be, which, if it had occurred before the date of the statement of assets and liabilities, would have caused significant changes to the assets and liabilities disclosed therein; and

(c) include a true and accurate statement of the segregated accounts or incorporated segregated accounts which the company has operated and the assets and liabilities which were linked to each of those segregated accounts or incorporated segregated accounts, as the case may be.

(5) If there is any material alteration of the particulars set out in subsection (4) between the date of the request given pursuant to subsection (1) and the removal of the company from the Register, the company shall give notice to the Registrar of such alteration.

(6) A segregated accounts company or an incorporated segregated accounts company shall circulate contemporaneously with the request to the Registrar under subsection (1), notice of that request to all account owners of the segregated accounts company or the incorporated segregated accounts company, as the case may be, and to all creditors.

(7) An account owner of a segregated account or incorporated segregated account, as the case may be, or any creditor who is aggrieved by a request made pursuant to subsection (1) may, within twenty-one days of receipt of the notice of the request, apply to the Registrar to refuse to remove the segregated accounts company or incorporated segregated accounts company from the Register.

(8) Where an application has been made under subsection (7)

and the Registrar has made a decision on the application, any person who is aggrieved by that decision may, within twenty-one days of the decision, appeal to the Court and the Court shall hear the matter and make such order as it thinks fit.

(9) The making of a request pursuant to subsection (1) shall not of itself effect the removal of a segregated accounts company or an incorporated segregated accounts company from the Register and the Registrar shall have absolute discretion to determine whether to give effect to the removal of the company from the Register and, in that regard, may require such information from the company that the Registrar considers necessary to render that decision.

(10) Notwithstanding the imposition of any other penalty in respect thereof and in addition to any rights that the Registrar may have under this or any other Act, the Registrar may, if satisfied that sufficient cause exists, remove a segregated accounts company or an incorporated segregated accounts company from the Register.

(11) The Registrar may act under subsection (10) –

- (a) on the initiative of the Registrar;
- (b) on an application by an account owner; or
- (b) on the recommendation of the primary regulator,

and shall first, in writing, notify the segregated accounts company or the incorporated segregated accounts company of the intention of the Registrar to remove the company from the Register and give the company an opportunity to be heard.

(12) Where the Registrar makes a decision to remove a segregated accounts company or an incorporated segregated accounts

company from the Register, the Registrar shall publish a notice thereof in the *Gazette* and in a daily newspaper circulated throughout Jamaica.

(13) The rights and obligations of any account owner and of any creditor shall be unaffected by the removal of a segregated accounts company or an incorporated segregated accounts company under subsection (10), and the powers of the company shall continue in respect of such accrued rights and obligations but solely for the discharge thereof.

(14) In this section, “sufficient cause” with respect to the removal of a segregated accounts company or an incorporated segregated accounts company from the Register, includes –

- (a) evidence that the segregated accounts company or the incorporated segregated accounts company –
 - (i) engaged in business practices that were improper (whether lawful or not) or which reflected discredit to its method of conducting business;
 - (ii) contravened a provision made by or under any enactment designed for protecting members of the public, whether in Jamaica or overseas, against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or in the management of a company or trust or due to bankruptcy;
 - (iii) committed an offence involving fraud or other dishonesty;
 - (iv) contravened a provision of the Proceeds of Crime Act

or any regulations made under that Act;

- (v) contravened a provision of an enactment relating to the financing of terrorist activities as defined in the Terrorism Prevention Act;
- (b) a conviction of the segregated accounts company or incorporated segregated accounts company for an offence under a law in Jamaica, in circumstances where the removal is in the public interest; or
- (c) conduct of the segregated accounts company or incorporated segregated accounts company which is in contravention of section 11(1) or 12(3).

PART III. *Management and Administration*

Company to inform persons whether it is a segregated or incorporated segregated accounts company, etc.

10. – (1) A company to which this Act applies shall –
- (a) in writing, inform any person with whom it enters into a transaction, that it is a segregated accounts company or an incorporated segregated accounts company;
 - (b) where the transaction relates to a segregated account, for the purposes of that transaction, identify or specify that segregated account;
 - (c) where the transaction relates to an incorporated segregated account, for the purposes of that transaction, identify or specify that incorporated segregated account; and
 - (d) include reference to the fact that the company is a company registered under this Act on its letterhead and contracts.
- (2) If in contravention of subsection (1), a segregated accounts company or an incorporated segregated accounts company –

- (a) fails to inform a person that the person is transacting with a segregated accounts company or an incorporated segregated accounts company and that person is otherwise unaware and has no reasonable grounds to believe that the transaction is with a segregated accounts company or an incorporated segregated accounts company, as the case may be; or
- (b) fails to identify the segregated account or incorporated segregated account in respect of which a person is transacting, and that person is otherwise unaware of and has no reasonable basis of knowing, which segregated account or incorporated segregated account the transaction is with,

the provisions of subsection (3) shall apply.

(3) Where the circumstances specified under subsection (2) occur, then –

- (a) directors of the company shall (notwithstanding any provision to the contrary in the relevant governing instrument or a contract which is binding on those parties in relation to the affected segregated account, incorporated segregated account or general account) incur personal liability to that person in respect of the transaction; and
- (b) unless otherwise provided for in the governing instrument, the directors shall have a right of indemnity against the assets of the general account unless they were fraudulent, reckless, negligent or acted in bad faith.

(4) Notwithstanding subsection 3(a), the Court may relieve a director of all or part of the personal liability of the director thereunder

if the director satisfies the Court that the director ought fairly to be so relieved because –

- (a) the director was not aware of the circumstances giving rise to the liability of the director or, in being so aware, the director was neither fraudulent, reckless, negligent, nor acted in bad faith; or
- (b) the director expressly objected, and exercised such rights as the director had as a director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to the liability of the director.

(5) Where, pursuant to subsection (4), the Court relieves a director of all or part of the personal liability of the director under subsection (3)(a), the Court may order that the liability in question shall instead be met from such assets of a segregated account, an incorporated segregated account or the general account of the company, as may be specified in the order.

(6) Any provision in the governing instrument in respect of a segregated account or incorporated segregated account, and any other contractual provision under which the segregated accounts company or the incorporated segregated accounts company may be liable, which purports to indemnify directors in respect of conduct which would otherwise disentitle them to an indemnity against the assets of the general account by virtue of subsection (3)(b), shall be void.

**Segregated
accounts
company, etc.,
representative.**

11. – (1) A company to which this Act applies shall appoint and maintain a representative in Jamaica who shall, where applicable, be a person approved by the primary regulator as the representative of the

company.

(2) The representative referred to in subsection (1) shall be –

(a) resident and licensed in Jamaica as –

(i) a licensee under the Banking Services Act;

(ii) a licensee under the International Corporate and Trust Services Providers Act;

(iii) a licensee under the Securities Act; or

(iv) a licensee under the Insurance Act;

(b) resident and enrolled under the Legal Profession Act;

(c) resident and registered under the Public Accountancy Act; or

(d) otherwise approved by a primary regulator.

(3) The particulars of the representative shall be included in the register of the directors and officers of the company maintained pursuant to the Companies Act.

(4) A company shall, on payment of the fee specified in the

Third Schedule. Third Schedule, file with the Registrar, the particulars of its representative.

(5) It shall be the duty of the representative within thirty days of –

(a) the representative coming to the conclusion that there is a reasonable likelihood of a segregated account, an incorporated segregated account or the general account of a segregated accounts company or an incorporated segregated accounts company for which the representative acts, becoming insolvent; or

(b) the representative having knowledge of or reason to believe that

the segregated accounts company or the incorporated segregated accounts company for which the representative acts

–

(i) has failed to comply with –

(A) any requirement or condition imposed under section 7(6);

(B) any requirement imposed by section 13, 16 or 22;

(C) any regulation made under section 55; or

(ii) has become involved in any criminal proceedings in Jamaica or elsewhere,

to file a written report with the Registrar and the primary regulator, setting out all the particulars of the case that are available to the representative relating to the insolvency, failure or involvement.

(6) The written report that is required to be filed with the Registrar under subsection (5) shall be accompanied by the fee specified in the Third Schedule.

Third Schedule.

(7) A representative who, neglects to file a written report with the Registrar regarding the insolvency, failure or involvement of the company, commits an offence and is liable, on summary conviction, to the penalty specified in the First Schedule.

First Schedule.

Replacement of company representative.

12. – (1) If the representative of a company to which this Act applies has resigned, has had their licence revoked pursuant to the provisions of the principal Act listed under subsection (2) under which the licence was granted, or has been removed as representative, the company

shall, on payment of the fee specified in the Third Schedule, notify the Registrar and the primary regulator.

(2) Where the representative of a company to which this Act applies resigns, has had their licence revoked pursuant to the provisions of the Act governing such licence or has been removed as representative and the company has not notified the primary regulator of a replacement of its representative, the primary regulator shall serve on the company at its registered office, a notice directing the company to replace the representative.

(3) If the segregated accounts company or the incorporated segregated accounts company fails within thirty days from the date of service of the notice referred to in subsection (2) to notify the primary regulator of any replacement of its representative or seeks to extend time for compliance, the primary regulator shall recommend to the Registrar that the company be removed from the Register in accordance with section 9.

Governing instruments and contracts.

13. – (1) The rights, interests and obligations of account owners in a segregated account or an incorporated segregated account shall be evidenced in a governing instrument and the rights, interests and obligations of counterparties shall be evidenced in the form of contracts.

(2) The governing instrument in relation to any segregated account or incorporated segregated account shall be deemed to be governed by the laws of Jamaica and the parties thereto shall be deemed to submit to the jurisdiction of the courts of Jamaica and, in relation to such governing instrument –

- (a) a person shall become an account owner and shall be bound by the governing instrument if the person has complied with the conditions, if any, for becoming an account owner as set out in the governing instrument;
- (b) an account owner shall take such interest in a segregated account or an incorporated segregated account (as the case may be) as may be stipulated in respect of that owner in accordance with the terms of the governing instrument and, in the absence of such stipulation or other compelling indication (in the discretion of the company directors exercised reasonably) the extent of the interest of such account owner shall be nil;
- (c) if no other provision for management is specified in the governing instrument, the segregated accounts company or incorporated segregated accounts company shall manage the segregated account or incorporated segregated account as the case may be and –
 - (i) appoint and supervise the officers, managers, employees and other persons who have management of the segregated account or incorporated segregated account; and
 - (ii) enter into financial arrangements for payment for services including the charging of fees, disbursements and other charges which the manager shall be authorized to withdraw from the segregated account or incorporated segregated account, as the case may be;
- (d) unless otherwise provided in the governing instrument, the segregated accounts company or incorporated segregated

accounts company may take any action, including –

- (i) the amendment of the governing instrument;
 - (ii) the appointment of one or more managers;
 - (iii) for the benefit of the segregated account or incorporated segregated account only, the sale, lease, exchange, transfer, pledge or other disposition of all or any part of the assets of the segregated account or incorporated segregated account, as the case may be, or the orderly winding up of the affairs and termination of the segregated account or incorporated segregated account, or may provide for the taking of any action to create, under the provisions of the governing instrument, a class, group or series of account holdings that was not previously outstanding, without the vote or approval of any particular manager or account owner, or class, group or series of managers or account owners;
- (e) the segregated accounts company or incorporated segregated accounts company may, if and to the extent that voting rights are granted under the governing instrument, set out provisions relating to –
- (i) notice of the time, place or purpose of any meeting at which any matter is to be voted on;
 - (ii) waiver of any such notice;
 - (iii) action by consent without a meeting;
 - (iv) the establishment of record dates;
 - (v) quorum requirements;
 - (vi) voting in person, by proxy or in any other manner; or

- (vii) any other matter with respect to the exercise of voting rights;
- (f) unless otherwise provided in the governing instrument in relation to a segregated account or incorporated segregated account, the segregated accounts company or incorporated segregated accounts company may, in respect of an account –
 - (i) grant to, or withhold from, all or certain managers or account owners, or a specified class, group or series of managers or account owners, the right to vote, separately or with any or all other classes, groups or series of managers or account owners, on any matter, such voting, as the case may be, being on a *per capita*, number, financial interests, class, group, series or any other basis;
 - (ii) create further segregated accounts or incorporated segregated accounts to which all or any part of the assets, liabilities, profits or losses linked to any existing segregated account or incorporated segregated account may be transferred, and for the conversion of the interest (or any part thereof) of all or certain account owners in an existing segregated account or incorporated segregated account into interests of account owners in the separate segregated account or incorporated segregated account; and
 - (iii) set out provisions therein regarding –
 - (A) the governance of the business (or any aspect

thereof) of the segregated account or incorporated segregated account and the rights, powers and duties of the company, any manager and the account owner and their respective servants, agents, employees, successors or assigns;

(B) the identity of the segregated account or incorporated segregated account to which the transaction and any assets or liabilities are linked; and

(C) the extent of the interest of the account owners and others (if any) therein and subordination thereof (if any).

(3) Any contract governing a transaction with a counterparty, including a contract executed outside Jamaica, shall include the name of the counterparty and, unless otherwise provided therein, shall include an implied term that the parties select the law of Jamaica as its governing law and submit to the jurisdiction of the courts in Jamaica.

(4) Unless otherwise expressly agreed in writing by the parties to the transaction by virtue of a governing instrument or contract which is binding on those parties in relation to the affected segregated account, incorporated segregated account or general account, as the case may be, and which is executed by parties having authority in relation to those accounts, any contract pertaining to a transaction shall be deemed to contain a statement that the rights of the counterparty shall not extend to, and the counterparty shall not have recourse to, the

assets which are linked to any other segregated account, incorporated segregated account or to the general account.

(5) For the avoidance of doubt, it is hereby declared that any provision of a contract or governing instrument relating to the segregation of assets or liabilities of a segregated account or incorporated segregated account shall be governed by and construed in accordance with this Act, and the parties may not contract otherwise in such regard.

Apportionment of assets and liabilities among segregated accounts and incorporated segregated accounts.

14. – (1) Notwithstanding any other provision of this Act, a segregated accounts company or incorporated segregated accounts company may apportion an asset or liability among two or more segregated accounts, incorporated segregated accounts and the general account.

(2) Where a segregated accounts company or incorporated segregated accounts company has apportioned an asset or liability pursuant to subsection (1), the extent to which the asset or liability is linked to each segregated account or incorporated segregated account shall be clearly indicated in the contract or governing instrument effecting the apportionment.

(3) Notwithstanding the contents of any governing instrument or subsections (1) and (2), it shall be the duty of the directors of a segregated accounts company or incorporated segregated accounts company to keep the assets and liabilities of each segregated account, incorporated segregated account and the general account separate and separately identifiable from the assets and liabilities of each segregated account, incorporated segregated account and the general account.

Issue of securities linked to a segregated account or incorporated segregated account.

15. – (1) A segregated accounts company or an incorporated segregated accounts company may create and issue securities in one or more classes linked to the same segregated account or incorporated segregated account, the proceeds of issue of which shall be included in the assets linked to that segregated account or incorporated segregated account, as the case may be.

(2) Where a segregated accounts company or incorporated segregated accounts company has effected a transaction by issuing a security linked to a segregated account or incorporated segregated account, the issue of the security shall be identified as being linked to the segregated account or incorporated segregated account, as the case may be, in the accounts, books and records to be kept by the company pursuant to this Act.

(3) Notwithstanding any enactment to the contrary, no record or register or that part of a record or register detailing any ownership of such security shall be open to public inspection save that any owner thereof shall be entitled to receive a copy of the information contained therein pertaining to such security.

(4) The proceeds of the issue of shares or other securities, other than securities linked to a segregated account or incorporated segregated account, shall be included in the general assets of the segregated accounts company or the incorporated segregated accounts company only, and except as provided in this Act, the general shareholders shall have no rights to the assets of any segregated account or incorporated segregated account by reason only of being a general shareholder.

**Dividends,
distributions,
repurchases
and reduction
of capital.**

16. – (1) A segregated accounts company or an incorporated segregated accounts company may pay a dividend or make a distribution in respect of securities of any class linked to a segregated account or incorporated segregated account, whether or not a dividend or distribution is declared on any other class of securities linked to the same or any other segregated account or incorporated segregated account or any other securities issued by the company.

(2) Notwithstanding any other provision of this Act, a dividend shall not be declared or paid or a distribution shall not be declared or made, in respect of securities linked to a segregated account or incorporated segregated account if there are reasonable grounds for believing that –

- (a) the segregated account or incorporated segregated account is not, or would after the payment not be, solvent; or
- (b) the realisable value of the assets of the segregated account or incorporated segregated account would be less than the aggregate of its liabilities other than deferred taxes, as shown in the books of account, and its issued and outstanding share capital.

(3) Dividends or distributions in respect of securities linked to a segregated account or incorporated segregated account shall be paid or made on or in respect of those securities by reference only to the assets and liabilities of the segregated account or incorporated segregated account linked to those securities, and not by reference to the general account or any other segregated account or incorporated segregated account, as the case may be, and otherwise in accordance with the

rights of such securities.

(4) Section 158 of the Companies Act shall not apply to a segregated accounts company or incorporated segregated accounts company in relation to a dividend or distribution in respect of a segregated account or incorporated segregated account, as the case may be, paid or made under this section.

(5) Notwithstanding sections 62(2) and (3) and 58(4) of the Companies Act, a segregated accounts company or an incorporated segregated accounts company may purchase or otherwise acquire the shares or securities linked to a segregated account or incorporated segregated account, as the case may be, using the assets linked to the relevant segregated account or incorporated segregated account on such terms and in such manner and at such price as may be determined having regard to the asset value of such shares as ascertained in accordance with the governing instrument, provided that on the date of purchase or other acquisition, after taking into account the purchase or other acquisition, there are reasonable grounds for believing that –

- (a) the relevant segregated account or incorporated segregated account is solvent; and
- (b) the realisable value of the assets of the segregated account or incorporated segregated account would be more than the aggregate of its liabilities and its issued share capital of all classes.

(6) Where a company in respect of a segregated account or incorporated segregated account having a share capital has –

- (a) purchased or otherwise acquired any of its own shares in

respect of a segregated account or incorporated segregated account; or

- (b) cancelled any shares, otherwise than in connection with a reduction of share capital under section 17,

the company shall within thirty days after so doing, and on the payment of the fee specified in the Third Schedule, give notice thereof to the Registrar, specifying the shares purchased or otherwise acquired or cancelled and the Registrar shall register any such particulars.

Third Schedule.

Reduction of capital of a segregated account or incorporated segregated account.

17. – (1) In any case where a segregated accounts company or an incorporated segregated accounts company in respect of a segregated account or incorporated segregated account, as the case may be, has share capital, if authorised by a resolution of the account owners of the segregated account or incorporated segregated account to which the shares are linked and subject to the governing instrument in relation to that segregated account or incorporated segregated account, on such terms as it may decide, the company may reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may –

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid up share capital which is lost or unrepresented by available assets; or
- (c) either with or without extinguishing or reducing liability on any of its shares and either with or without reducing the number of its shares, pay off any paid up share capital that is

in excess of the requirements of the company,
and may, so far as is necessary, alter its governing instruments
accordingly.

(2) A company shall not reduce the amount of share capital in
respect of a segregated account or incorporated segregated account if
on the date the reduction is to be effected, there are reasonable grounds
for believing that the segregated account or incorporated segregated
account is not, or after the reduction would not, be solvent.

**Application to
Court for
confirming
order.**

18. Where a segregated accounts company or an incorporated
segregated accounts company passes a resolution approving a
reduction of capital pursuant to section 17, if there is an objection by
the creditor, regarding the reduction, the company shall apply to the
Court for an order confirming the reduction.

**Approval for
and notification
of reduction of
share capital.**

19. – (1) A company shall apply to the Registrar for approval to
reduce the share capital of a segregated account or incorporated
segregated account, as the case may be and notify the primary
regulator of the application within seven days of such application.

(2) An application under subsection (2) shall be accompanied

Third Schedule.

by the fee specified in the Third Schedule.

**The Registrar
to register the
order and
minute.**

20. – (1) The Registrar, on production of an order of the Court
confirming the reduction of the share capital of a segregated account or
incorporated segregated account, and the delivery to the Registrar of a
copy of the order and a minute approved by the Court showing, with
respect to the share capital of the segregated account or incorporated
segregated account as altered by the order –

(a) the amount of the share capital;

(b) the number of shares into which it is to be divided; and

(c) the amount of each share, if any, at the date of registration deemed to be paid-up on each share,

shall register the order and minute.

(2) On the registration of the order and minute, the resolution for reducing the share capital in respect of a segregated account or incorporated segregated account as confirmed by the order so registered, shall take effect.

(3) Notice of the registration shall be published in such manner as the Court directs.

(4) The Registrar shall certify under the hand of the Registrar, the registration of the order and minute, and the certificate shall constitute conclusive evidence that the requirements of this Act with respect to the reduction of share capital have been complied with, and that the share capital of the segregated account or incorporated segregated account is such as is stated in the minute.

(5) The minute when registered shall be deemed, so far as is necessary, to be substituted for the corresponding part of the articles, and shall be valid and alterable as if it had been originally contained therein.

(6) The substitution of any such minute for part of the articles of the company shall be deemed so far as is necessary to be an alteration of the articles within the meaning of section 10 of the Companies Act.

**Contributories
liable to pay
debt of creditors
of altered
segregated
accounts
company or**

21. – (1) Subject to subsection (2), in the case of a reduction of share capital in respect of a segregated account or an incorporated segregated account, an account owner of the segregated account or incorporated

**incorporated
segregated
accounts
company.**

segregated account, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount paid, or the reduced amount if any, which is to be deemed to have been paid, on the share.

(2) If any creditor, entitled in respect of any debt or claim to object to the reduction of share capital in respect of a segregated account or incorporated segregated account is, by reason of the creditor's ignorance of the proceedings for reduction or of their nature and effect with respect to the claim, not entered on the list of creditors, and immediately after the reduction, the segregated account or incorporated segregated account is unable, within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount of the debt or claim, then –

- (a) every person who was an account owner of the segregated account or incorporated segregated account at the date of the registration of the order for reduction and the minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount, if any, which the creditor would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and
- (b) if the company is wound up, the Court, on the application of any such creditor and proof of the ignorance of the creditor, may if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders, on the

contributories settled on the list as if they were ordinary contributories in a winding up.

(3) Nothing in subsections (1) and (2) shall affect the rights of the contributories among themselves.

(4) Any officer of a segregated accounts company or an incorporated segregated accounts company who –

- (a) wilfully conceals the name of any creditor entitled to object to a reduction of capital of a segregated account or incorporated segregated account;
- (b) wilfully misrepresents the nature or amount of the debt or claim of any such creditor; or
- (c) aids, abets or is privy to any such concealment or misrepresentation as is described in paragraph (a) or (b),

commits an offence and is liable, on summary conviction, to the penalty specified in the First Schedule.

First Schedule.

**Accounts,
records and
registers.**

22. – (1) A company to which this Act applies shall –

- (a) maintain records in accordance with generally accepted accounting principles used in the preparation of the financial statements of the company in accordance with the relevant sections of the Companies Act and other accounting principles, generally accepted by the Institute of Chartered Accountants of Jamaica, so that the records shall to the best of the knowledge, information and belief of the directors and officers of the company, clearly show –
 - (i) the share capital (if any);
 - (ii) proceeds of rights issues, securities, reserves, assets,

liabilities, income and expenses, dividends and distributions,

that are linked to each segregated account or incorporated segregated account;

- (b) maintain a record of each transaction entered into by the company; and
- (c) maintain a general account which records in accordance with this Act and with all of the assets and liabilities of the company which are not linked to a segregated account or incorporated segregated account and which discloses any assets intended by the parties to be applied to a risk of any nature, and which therefore exposes such assets to liability or loss.

(2) For the purposes of subsection (1) (a) “reserves” includes retained earnings, revaluation reserves, contributed surplus and share premium.

(3) The records maintained with respect to a segregated account or incorporated segregated account may be inspected by an account owner of that segregated account or incorporated segregated account, but an account owner shall not have a right to inspect the records relating to any other segregated account, incorporated segregated account or, in such capacity, the general account.

(4) Subject to subsection (5), a segregated accounts company or an incorporated segregated accounts company shall prepare or cause to be prepared, financial statements in respect of each segregated account or incorporated segregated account, as the case may be, and the relevant provisions of the Companies Act shall apply with necessary

modifications, to the preparation of financial statements under this section and any references in those provisions to “member” shall be construed as a reference to the account owner of the segregated account or incorporated segregated account, as the case may be.

(5) Notwithstanding subsection (1), an account owner of a segregated account or incorporated segregated account may for the purposes of the relevant requirement of the Companies Act, agree in writing to waive the right of the account owner to have laid before a general meeting, financial statements or the auditor’s report thereon for an indefinite period but such waiver shall be expressed to be revocable at the option of that account owner.

(6) Subject to subsection (4), a copy of the financial statements of a segregated account or incorporated segregated account shall be made available to the account owner of a segregated account or incorporated segregated account, as the case may be, at such intervals and for such periods as are agreed between the segregated accounts company or incorporated segregated accounts company and that account owner of the segregated account or incorporated segregated account, but in any event shall be made available not less frequently than once in each financial year.

(7) If –

- (a) the records maintained with respect to a segregated account or incorporated segregated account; or
- (b) the financial statements of a segregated account or incorporated segregated account,

are not made available for inspection by any account owner of that

segregated account or incorporated segregated account, the Court may, on application by the affected account owner, by order, compel immediate production of the records or financial statements.

(8) A segregated accounts company or an incorporated segregated accounts company shall maintain a register of account owners setting out their respective interests in any segregated account or incorporated segregated account together with the particulars as specified in section 109 of the Companies Act.

(9) The register of account owners shall not be open to public inspection but the account owner shall be entitled to receive a copy of the information in the register pertaining to his interest in the company.

(10) The register of account owners shall be *prima facie* evidence of any matters directed or authorised to be inserted therein by this Act.

(11) A segregated accounts company or an incorporated segregated accounts company, as the case may be, shall, on payment of the fee specified in the Third Schedule file with the Registrar the number of segregated accounts that the segregated accounts company or the incorporated segregated accounts company holds.

Third Schedule.

Annual returns.

23. – (1) A segregated accounts company or an incorporated segregated accounts company shall on payment of the fee specified in the Third Schedule, file annual returns to the Registrar, as prescribed, signed by at least two directors, certifying that the company is and that its operations during the preceding year were in compliance with the provisions of this Act and the Companies Act.

(2) A segregated accounts company or an incorporated segregated accounts company is not required to file an annual return to the Registrar in respect of each segregated account or incorporated segregated account, as the case may be, but shall include in its annual returns such information required by this Act and the Companies Act in respect of each segregated account or incorporated segregated account, as the case may be.

(3) A segregated accounts company or an incorporated segregated accounts company that fails to comply with this section commits an offence and is liable, on summary conviction, to the penalty specified in the First Schedule.

First Schedule.

Nature of segregated accounts; application of assets and liabilities.

24. – (1) Notwithstanding any other provision of this Act, the establishment of a segregated account does not create a legal person distinct from the segregated accounts company.

(2) Notwithstanding any enactment or rule of law to the contrary, but subject to this Act, any liability linked to a segregated account shall be a liability only of that account and not the liability of any other account.

(3) Pursuant to subsection (2), the rights of creditors in respect of any liabilities shall be rights only in respect of the relevant segregated account and not of any other account, and, for the avoidance of doubt, any asset which is linked by a segregated accounts company to a segregated account –

(a) shall be held by the segregated accounts company as a separate fund which is –

(i) not part of the general account and shall be held

exclusively for the benefit of the account owners of the segregated account and any counterparty to a transaction linked to that segregated account;

(ii) available only to meet liabilities to the account owners and creditors of that segregated account; and

(b) shall not be available or used to meet liabilities to, and shall be absolutely and for all purposes protected from, the general shareholders and the creditors of the company who are not creditors with claims linked to segregated accounts.

(4) For the purposes of this Act, the Companies Act and any other enactment dealing with insolvency, the assets recorded in the general account shall be the only assets of a segregated accounts company available to meet the liabilities of that company that are not linked to a segregated account.

(5) No asset of the general account may be transferred from the general account to a segregated account unless, on the date from which the transfer is to be effective, and taking into account that transfer, the general account is solvent or all the shareholders and creditors of the general account, entitled to assets thereof on that date, have expressed in writing their concurrence to the transfer.

(6) In the event that a transfer is made to a segregated account in breach of subsection (5), on an application by an affected party, the Court may declare that the transfer is void, without prejudice to the rights of *bona fide* purchasers for value without notice.

**Liability of
segregated
accounts
company
arising from**

25. – (1) Unless otherwise expressly agreed in writing by the affected parties by virtue of one or more contracts, governing instruments or

transaction, etc. other documents which are binding on those parties in relation to the affected segregated accounts or general account, as the case may be, and are executed by parties having authority in relation to those accounts, where a liability of a segregated accounts company to a person arises from a transaction or matter relating to, or is otherwise imposed in respect of or attributable to a particular segregated account, that liability shall –

- (a) extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the assets linked to that segregated account;
- (b) not extend to, and that person shall not, in respect of that liability, be entitled to have recourse to the assets linked to any other segregated account; and
- (c) not extend to, and that person shall not in respect of that liability be entitled to have recourse to, the general account.

(2) Where a liability of a segregated accounts company to a person –

- (a) arises otherwise than in respect of a particular segregated account; or
- (b) is imposed otherwise than in respect of a particular segregated account,

that liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the general account.

Priority rights of parties to segregated accounts.

26. – (1) In the event that a segregated account has insufficient assets to pay all of its obligations in full, the order and priority of the rights in relation to assets linked to the segregated account shall (without

prejudice to the rights of any parties holding valid security interests against assets linked to that segregated account and any valid preferential claims in respect of that segregated account) be determined by the terms of the governing instrument and any contracts pertaining to that account and any ambiguity in respect of the order and priority rights shall be resolved as follows –

- (a) the claims of creditors shall rank ahead of the claims of account owners;
- (b) the claims of creditors amongst themselves shall rank equally; and
- (c) the claims of account owners amongst themselves shall rank equally.

(2) A segregated accounts company may (with the consent in writing of all account owners of, and counterparties who are creditors with claims linked to the relevant segregated account) transfer to the general account or another segregated account, an asset from the segregated account to which it is linked, if the segregated account to which such asset is linked, taking into account the proposed transfer, remains solvent.

(3) In the event a transfer is made to the general account or another segregated account in breach of subsection (2), on an application by an affected party, the Court may declare that the transfer is void, and make any other order it deems fit, without prejudice to the rights of *bona fide* purchases for value without notice.

(4) Any asset transferred in accordance with subsection (2) shall cease to be linked to the segregated account from which it was

transferred on the date of the transfer.

(5) Subject to the terms of the governing instrument relating to a given segregated account, on dissolution of the segregated accounts company or termination of the segregated account and after paying creditors of the segregated account, any property linked to that segregated account shall be paid *pro rata* to the account owners of such segregated account or, if there are no account owners, shall be deemed to fall into the general account.

(6) Without prejudice to the rights of parties to resolve disputes by reference to arbitration, any other form of dispute resolution, or to the court, where –

- (a) there is, on grounds that are reasonable, uncertainty as to whether any given interest in a segregated account is an interest as a counterparty or as an account owner, that interest shall be deemed to be an interest as a counterparty;
- (b) a given liability is not linked to a particular segregated account, or where there is, on grounds that are reasonable, uncertainty as to whether the liability is linked to a segregated account, that liability shall be deemed to be the liability of the general account.

Nature of incorporated segregated accounts; application of assets and liabilities.

27. – (1) Notwithstanding any other provision of this Act –

- (a) the establishment of an incorporated segregated account creates a legal person distinct from the incorporated segregated accounts company;
- (b) an incorporated segregated account is not a subsidiary of its incorporated segregated accounts company.

(2) An incorporated segregated account may not be itself an incorporated segregated accounts company.

(3) An incorporated segregated account may not be a member of its incorporated segregated accounts company.

(4) Unless the contrary intention appears in its governing instrument, an incorporated segregated account may be a member of any other incorporated segregated account of its incorporated segregated accounts company.

(5) An incorporated segregated account shall have the same registered office as its incorporated segregated accounts company.

(6) Notwithstanding any enactment or rule of law to the contrary, but subject to this Act, any liability linked to an incorporated segregated account shall be a liability only of that account and not the liability of any other account.

(7) Pursuant to subsection (6), the rights of creditors in respect of any liabilities shall be rights only in respect of the relevant incorporated segregated account and not of any other account, and, for the avoidance of doubt, any asset which is linked by an incorporated segregated accounts company to an incorporated segregated account –

(a) shall be held by the incorporated segregated accounts company as a separate fund which is –

(i) not part of the general account of the incorporated segregated account company and shall be held exclusively for the benefit of the account owners of the incorporated segregated account and any counterparty to a transaction linked to that incorporated segregated

account; and

- (ii) available only to meet liabilities to the account owners and creditors of that incorporated segregated account; and

- (b) shall not be available or used to meet liabilities to, and shall be absolutely and for all purposes protected from, the general shareholders and the creditors of the incorporated segregated accounts company who are not creditors with claims linked to the incorporated segregated account.

(8) For the purposes of this Act, the Companies Act and any other enactment dealing with insolvency, the assets recorded in the general account shall be the only assets of an incorporated segregated accounts company available to meet the liabilities of that company that are not linked to the incorporated segregated account.

(9) No asset of the general account of the incorporated segregated accounts company may be transferred from the general account to an incorporated segregated account unless, on the date from which the transfer is to be effective, and taking into account that transfer, the general account is solvent or all the shareholders and creditors of the general account entitled to assets thereof, on that date, have expressed in writing their concurrence to the transfer.

(10) In the event that a transfer is made to an incorporated segregated account in breach of subsection (9), on an application by an affected party, the Court may declare that the transfer is void, without prejudice to the rights of *bona fide* purchasers for value without notice.

**Liability of
incorporated
segregated**

28. – (1) Unless otherwise expressly agreed in writing by the affected

**accounts
company
arising from
transaction, etc.**

parties by virtue of one or more contracts, governing instruments or other documents which are binding on those parties in relation to the affected incorporated segregated accounts or general account, as the case may be, and are executed by parties having authority in relation to those accounts, where a liability of an incorporated segregated accounts company to a person arises from a transaction or matter relating to, or is otherwise imposed in respect of or attributable to, a particular incorporated segregated account, that liability shall –

- (a) extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the assets linked to that incorporated segregated account;
- (b) not extend to, and that person shall not, in respect of that liability, be entitled to have recourse to the assets linked to any other incorporated segregated account; and
- (c) not extend to, and that person shall not in respect of that liability, be entitled to have recourse to, the general account.

(2) Where a liability of an incorporated segregated accounts company to a person –

- (a) arises otherwise than in respect of a particular incorporated segregated account; or
- (b) is imposed otherwise than in respect of a particular incorporated segregated account,

that liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the general account.

**Priority rights
of parties to
incorporated
segregated
accounts.**

29. – (1) In the event that an incorporated segregated account has insufficient assets to pay all of its obligations in full, the order and

priority of the rights in relation to assets linked to the incorporated segregated account shall (without prejudice to the rights of any parties holding valid security interests against assets linked to that incorporated segregated account and any valid preferential claims in respect of that segregated account) be determined by the terms of the governing instrument and any contracts pertaining to that account and any ambiguity in respect of the order and priority rights shall be resolved as follows –

- (a) the claims of creditors shall rank ahead of the claims of account owners;
- (b) the claims of creditors amongst themselves shall rank equally; and
- (c) the claims of account owners amongst themselves shall rank equally.

(2) An incorporated segregated accounts company may, with the consent in writing of all account owners of, and counterparties who are creditors with claims linked to a given incorporated segregated account, transfer to the general account, or another incorporated segregated account an asset from the incorporated segregated account to which it is linked, if the incorporated segregated account to which such asset is linked, taking into account the proposed transfer, remains solvent.

(3) In the event a transfer is made to the general account or another incorporated segregated account in breach of subsection (2), on an application by an affected party, the Court may declare that the transfer is void, and make any other order it deems fit, without

prejudice to the rights of *bona fide* purchasers for value without notice.

(4) Any asset transferred in accordance with subsection (2) shall cease to be linked to the incorporated segregated account from which it was transferred on the date of the transfer.

(5) Subject to the terms of the governing instrument related to a given incorporated segregated account, on dissolution of the incorporated segregated accounts company or termination of the incorporated segregated account and after paying creditors of the incorporated segregated account, any property linked to that incorporated segregated account shall be paid *pro rata* to the account owners of such incorporated segregated account or, if there are no account owners, shall be deemed to fall into the general account.

(6) Without prejudice to the rights of parties to resolve disputes by reference to arbitration, any other form of dispute resolution, or to the court, where –

- (a) there is, on grounds that are reasonable, uncertainty as to whether any given interest in an incorporated segregated account is an interest as a counterparty or as an account owner, that interest shall be deemed to be an interest as a counterparty;
- (b) a given liability is not linked to a particular incorporated segregated account, or where there is, on grounds that are reasonable, uncertainty as to whether the liability is linked to an incorporated segregated account, that liability shall be deemed to be the liability of the general account.

(7) For the purposes of this section an incorporated segregated account –

- (a) may be organized and operated in any form of business organization authorised by the Registrar; and
- (b) may enter into an agreement with another incorporated segregated account.

Internal transactions of segregated accounts companies.

30. – (1) Notwithstanding any enactment or rule of law to the contrary –

- (a) a segregated accounts company acting in respect of the general account may enter into transactions with the company acting in respect of one or more segregated accounts; and
- (b) a segregated accounts company acting in respect of a segregated account may enter into transactions with the company acting in respect of one or more segregated accounts.

(2) For the avoidance of doubt –

- (a) a transaction referred to in subsection (1); and
- (b) any transaction between the company in respect of one segregated account and a third party,

shall have effect or otherwise, as the case may be, as the transaction would have done if the transaction had been entered into between the company and a third party.

(3) Without restricting the generality of subsection (2) –

- (a) a transaction referred to in that subsection shall be voidable at the instance of any creditor of the company in respect of the relevant segregated account or at the instance of any other person if the transaction would have been rendered void by such person under any enactment or rule of law which would have applied to the transaction if the transaction had been

entered into between the company and a third party in the same circumstances;

- (b) an account owner, counterparty or receiver of any given segregated account shall have standing to pursue on behalf of the relevant segregated account, any rights of action (including recourse to arbitration or another form of dispute resolution under section 32 available to the segregated accounts company in respect of that segregated account.

(4) Notwithstanding any enactment or rule of law to the contrary –

- (a) where a manager or officer or other person on behalf of a segregated accounts company or a segregated account is also acting in respect of the general account and one or more of the segregated accounts or in respect of two or more segregated accounts which are entering into a transaction, the person may so act notwithstanding any material interests or conflicts which may exist as between the manager, officer or other person or which any of them may have in acting in respect of such accounts; and

(b) where –

- (i) a given segregated account enters into a transaction as described in paragraph (a);
- (ii) the manager, officer or such other person has disclosed in writing to the company the nature and extent of their interest; and
- (iii) the governing instrument of the segregated account so

authorizes, or a majority of the account owners consent in writing to the entry into of such a transaction, then the manager, officer or such other person, the segregated accounts company and the company in respect of any segregated accounts, as the case may be, shall not be held liable to the company in respect of that segregated account or any of its account owners in respect of any conflict of interest arising in relation to the transaction.

Internal transactions of incorporated segregated accounts companies.

31. – (1) An incorporated segregated accounts company has no power, by virtue of its position as an incorporated segregated accounts company, to enter into transactions on behalf of any of its incorporated segregated accounts.

(2) An incorporated segregated account has no power, by virtue of its position as an incorporated segregated account, to enter into transactions on behalf of –

- (a) its incorporated segregated accounts company; or
- (b) other incorporated segregated accounts of its incorporated segregated accounts company.

(3) The directors and officers of an incorporated segregated accounts company and its incorporated segregated accounts shall ensure that, in respect of every transaction that the incorporated segregated accounts company or an incorporated segregated account enters into, it is stated whether the transaction is being entered into by the incorporated segregated accounts company or by an incorporated segregated account and, if it is by an incorporated segregated account, shall identify the specific incorporated segregated account.

(4) For the avoidance of doubt, any transaction between the

company in respect of one incorporated segregated account and a third party, shall have effect or otherwise, as the case may be, as the transaction would have done if the transaction had been entered into between the company and a third party.

(5) Without restricting the generality of subsection (4) –

(a) the transaction referred to in that subsection shall be voidable at the instance of any creditor of the company in respect of the relevant incorporated segregated account or at the instance of any other person if the transaction would have been rendered void by such person under any enactment or rule of law which would have applied to the transaction if the transaction had been entered into between the company and a third party in the same circumstances;

(b) an account owner, counterparty or receiver of any given incorporated segregated account shall have standing to pursue on behalf of the relevant incorporated segregated account, any rights of action (including recourse to arbitration or another form of dispute resolution under section 32 available to the incorporated segregated accounts company in respect of that incorporated segregated account pursuant to this section.

(6) Notwithstanding any enactment or rule of law to the contrary –

(a) where a manager or officer of or other person on behalf of an incorporated segregated accounts company or an incorporated segregated account is also acting in respect of the general account and one or more of the incorporated segregated

accounts or in respect of two or more incorporated segregated accounts which are entering into a transaction, the person may so act notwithstanding any material interests or conflicts which may exist as between the manager, officer or directors or which any of them may have in acting in respect of such accounts; and

(b) where –

- (i) an incorporated segregated account enters into a transaction as described in paragraph (a);
- (ii) the manager, officer or such other person has disclosed in writing to the company the nature and extent of their interest; and
- (iii) the governing instrument of the incorporated segregated account so authorises, or a majority of the account owners consent in writing to the entry into of such a transaction,

then the manager, officer or such other person, the incorporated segregated accounts company and the company in respect of any incorporated segregated accounts, as the case may be, shall not be held liable to the company in respect of that incorporated segregated account or any of its account owners in respect of any conflict of interest arising in relation to the transaction.

**Dispute
Resolution.**

32. – (1) Any dispute which arises in connection with a transaction under section 30 or 31, as between –

- (a) the segregated accounts company in respect of a given segregated account, and the segregated accounts company in respect of any one or more segregated accounts;

- (b) the incorporated segregated accounts company in respect of a given incorporated segregated account, and the incorporated segregated accounts company in respect of any one or more incorporated segregated accounts;
- (c) the segregated accounts company in respect of the general account and the segregated accounts company in respect of one or more segregated accounts; or
- (d) the incorporated segregated accounts company in respect of the general account and the incorporated segregated accounts company in respect of one or more incorporated segregated accounts,

may (notwithstanding any submission to the governing law of choice otherwise provided for in this Act or otherwise) be referred to the Court or may be submitted to arbitration under the Arbitration Act or another form of dispute resolution and (if the matter is submitted to arbitration) as if the arbitration were an international commercial arbitration.

(2) If the manager, officers, legal adviser or others representing the segregated accounts company or incorporated segregated accounts company in respect of the separate interests of the affected accounts cannot agree on whether a particular matter should be referred to the Court, arbitration or another form of dispute resolution, then that matter shall be referred to the Court.

Creditor enforcement rights limited to assets of segregated accounts.

33. – (1) There shall be implied (except in so far as the same is expressly excluded in writing) in every contract and governing instrument entered into by a segregated accounts company the following terms –

- (a) that no party shall seek, whether in any proceedings or by any other means whatsoever or wheresoever, to establish any interest in or recourse against any asset linked to any segregated account to satisfy a claim or liability not linked to that segregated account;
- (b) that if any party succeeds by any means whatsoever or wheresoever, in establishing any interest in or recourse against any asset linked to any segregated account of the company in respect of a liability not linked to that segregated account, that party shall be liable to the company to pay a sum equal to the value of the benefit thereby obtained; and
- (c) that if any party shall succeed in seizing or attaching by any means or otherwise levying execution against any assets linked to any segregated account of the company in respect of a liability not linked to that segregated account, that party shall hold those assets or their proceeds on trust for the company and shall keep those assets or proceeds separate and identifiable as such trust property.

(2) All sums recovered by a segregated accounts company as a result of any such trust as is described in subsection (1)(c), shall be credited against any concurrent liability pursuant to the implied term set out in subsection (1)(b).

(3) Any asset or sum recovered by a segregated accounts company pursuant to the implied term set out in subsection (1) (b) or (c) or by any other means whatsoever or wheresoever in the events referred to in those subsections shall, after the deduction or payment of

any costs of recovery, be applied by the company so as to compensate the segregated account affected.

(4) Notwithstanding sections 24(5) and 26(2), in the event of any assets linked to a segregated account being taken in execution in respect of a liability not linked to that segregated account, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to the segregated account affected, the company shall –

- (a) cause or procure its auditor, acting as expert and not as arbitrator, to certify the value of the assets lost to the segregated account affected; and
- (b) in priority to all other claims against the account, transfer or pay, from the assets of the account to which the liability was attributable to the segregated account affected, assets or sums sufficient to restore to the segregated account affected, the value of the assets lost.

Creditor enforcement rights limited to assets of incorporated segregated accounts.

34. – (1) There shall be implied (except in so far as the same is expressly excluded in writing) in every contract and governing instrument entered into by an incorporated segregated accounts company the following terms –

- (a) that no party shall seek, whether in any proceedings or by any other means whatsoever or wheresoever, to establish any interest in or recourse against any asset linked to any incorporated segregated account to satisfy a claim or liability not linked to that incorporated segregated account;
- (b) that if any party succeeds by any means whatsoever or wheresoever, in establishing any interest in or recourse against

any asset linked to any incorporated segregated account of the company in respect of a liability not linked to that incorporated segregated account, that party shall be liable to the company to pay a sum equal to the value of the benefit thereby obtained; and

(c) that if any party shall succeed in seizing or attaching by any means or otherwise levying execution against any assets linked to any incorporated segregated account of the company in respect of a liability not linked to that incorporated segregated account, that party shall hold those assets or their proceeds on trust for the company and shall keep those assets or proceeds separate and identifiable as such trust property.

(2) All sums recovered by an incorporated segregated accounts company as a result of any such trust as is described in subsection (1) (c), shall be credited against any concurrent liability pursuant to the implied term set out in subsection (1) (b).

(3) Any asset or sum recovered by an incorporated segregated accounts company pursuant to the implied term set out in subsection (1) (b) or (c) or by any other means whatsoever or wheresoever in the events referred to in those subsections shall, after the deduction or payment of any costs of recovery, be applied by the company so as to compensate the incorporated segregated account affected.

(4) Notwithstanding sections 27(9) and 29(2), in the event of any assets linked to an incorporated segregated account being taken in execution in respect of a liability not linked to that incorporated segregated account, and insofar as such assets or compensation in

respect thereof cannot otherwise be restored to the incorporated segregated account affected, the company shall –

- (a) cause or procure its auditor, acting as expert and not as arbitrator, to certify the value of the assets lost to the incorporated segregated account affected; and
- (b) in priority to all other claims against the account, transfer or pay, from the assets of the account to which the liability was attributable to the incorporated segregated account affected, assets or sums sufficient to restore to the incorporated segregated account affected, the value of the assets lost.

Rights and obligations with respect to segregated accounts and incorporated segregated accounts.

35. – (1) Notwithstanding any enactment or rule of law to the contrary, any asset of a segregated accounts company or an incorporated segregated accounts company which is linked to a particular segregated account or incorporated segregated account, as the case may be, is deemed to be owned by the company as a separate fund which does not form part of the general account (and which is not part of the company's own assets).

(2) To the extent provided in the governing instrument, any person (including an account owner) may give directions to the segregated accounts company or the incorporated segregated accounts company or other persons in the management of the segregated account or incorporated segregated account, as the case may be, and the managers shall have regard to such directions.

(3) Except to the extent otherwise provided in the governing instrument but subject to subsection (5)(b), neither the power to give directions to the segregated accounts company or the incorporated

segregated accounts company or other persons nor the exercise thereof by any person (including the account owner) shall cause the person giving directions to be a trustee or officer of the company.

(4) Except to the extent otherwise provided in the governing instrument, the account owners are entitled to the same limitation of personal liability as is enjoyed by members of companies limited by shares under the Companies Act.

(5) A segregated accounts company or an incorporated segregated accounts company may –

- (a) sue and be sued in respect of a particular segregated account or incorporated segregated account, as the case may be, and service of process upon the company in accordance with subsection (8) shall be sufficient;
- (b) be sued for debts and other obligations or liabilities contracted or incurred by the company in respect of a particular segregated account or incorporated segregated account, as the case may be, and for any damages to persons or property resulting from the negligence of the company acting in the performance of duties with respect to that account; and
- (c) exercise the same rights of set-off (if any) as between accounts as apply under the general law in respect of companies, including, on an insolvent liquidation of the company the same rights of set-off which arise in an insolvent liquidation of a company.

(6) The property of a segregated account is subject to orders of the court as it would have been if the segregated account were a

separate legal person (and notwithstanding that it is not a separate legal person).

(7) The property of an incorporated segregated account is subject to orders of the court.

(8) A segregated accounts company or an incorporated segregated accounts company may be served with process in the manner provided in section 387 of the Companies Act in all civil actions or proceedings involving or relating to the activities of a segregated account or incorporated segregated account, as the case may be, or a breach by the company of a duty to the segregated account or incorporated segregated account, as the case may be, or to any account owner thereof or to a counterparty to a transaction linked thereto.

**Account owners
beneficial
interests in
segregated
accounts and
incorporated
segregated
accounts.**

36. – (1) Except to the extent agreed otherwise by virtue of the governing instrument or contract, an account owner of a segregated account shall have an undivided beneficial interest in the assets linked to the segregated account, and after satisfying in full the claims of creditors of the segregated account, account owners shall share in the profits and losses of the segregated account in such proportions of the residual undivided beneficial interest in the segregated account owned by that account owner as may be specified in any governing instrument relating to such segregated account.

(2) Except to the extent agreed otherwise by virtue of the governing instrument or contract, an account owner of an incorporated segregated account shall have an undivided beneficial interest in the assets linked to that incorporated segregated account, and after satisfying in full the claims of creditors of the incorporated segregated

account, the account owner shall share in the profits and losses of the incorporated segregated account in such proportions of the residual undivided beneficial interest in the incorporated segregated account owned by that account owner as may be specified in any governing instrument relating to such incorporated segregated account.

(3) The beneficial interest of an account owner or counterparty in a segregated account or incorporated segregated account, as the case may be, is personal property notwithstanding the nature of the property of the segregated account or incorporated segregated account.

(4) Except to the extent as may be agreed otherwise by virtue of the governing instrument or contract, an account owner or counterparty has no interest in the property of a specific segregated account or an incorporated segregated account.

(5) Except to the extent as may be agreed otherwise by virtue of the governing instrument or contract, an account owner's or counterparty's beneficial interest in the segregated account or incorporated segregated account is freely transferable.

(6) Subject to the segregated accounts company or incorporated segregated accounts company complying with section 16, and except to the extent as may be agreed otherwise by virtue of the governing instrument or contract, at the time an account owner or counterparty becomes entitled to receive a payment, distribution, allocation or dividend pursuant to any governing instrument, that account owner or counterparty has the status of, and is entitled to all remedies available to a creditor of the segregated account or incorporated segregated account, as the case may be, with respect to the payment, distribution,

allocation or dividend, and the governing instrument or contract may provide for the establishment of record dates with respect to such payment, distribution, allocation or dividend.

(7) To the extent that, at law or in equity, a segregated accounts company or an incorporated segregated accounts company or manager has duties (including fiduciary duties) and liabilities relating to a segregated account or incorporated segregated account or to an account owner or to a counterparty –

- (a) that company or manager acting under a governing instrument or contract is not liable to the segregated account or incorporated segregated account, as the case may be, or to any account owner or counterparty for the company's good faith reliance on the provisions of that governing instrument or contract to which that account owner or counterparty is a party; and
- (b) the duties and liabilities of the company or manager may be expanded or restricted by provisions in a governing instrument to which the person is a party.

(8) Subject to sections 33(1)(c) and (2) and 34(1)(c) and (2), the provisions of this section and section 13 operate to the exclusion of any rule of law relating to trusts treating with the same subject matter, and no rule of law relating to trusts may be pleaded by any person to augment or modify the operation of this Act, but nothing in this section shall be construed so as to deny –

- (a) the remedy of tracing in law and in equity the assets or the proceeds of the assets of any segregated account or

incorporated segregated account, as the case may be, where such assets or proceeds have been commingled with the assets of any other segregated account, incorporated segregated account or the general account; or

(b) any remedies available under the doctrine of constructive trusts or similar equitable remedies where those remedies would otherwise be available.

(9) To the extent permitted in the governing instruments of the affected segregated accounts, the company in respect of a segregated account may be an account owner of one or more other segregated accounts of the same segregated accounts company.

PART IV. *Beneficial Ownership*

Register of Beneficial Owners.

37. – (1) A company registered under this Act 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 directors 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 directors may approve, however –

- (a) if it is in hard copy, it shall be kept at the registered office of the company; and
- (b) if it is in magnetic, electronic or other data storage form, the company shall be able to 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 company 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 company.

(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, to the penalty specified in the First Schedule.

First Schedule.

(7) In addition to a penalty under subsection (6), the Registrar

may, in accordance with section 9, remove a segregated accounts company or an incorporated segregated accounts company from the Register, where that company fails to keep or maintain a Register of Beneficial Owners.

Inspection of Register of Beneficial Owners.

38. – (1) A beneficial owner of a company 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 company 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.

39. – (1) If –

- (a) particulars that are required to be entered in the Register of Beneficial Owners under section 37(2) 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 company, 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 company 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 the name of that person 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 company, 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.

(3) Nothing in this section shall preclude a company from rectifying an omission, an inaccuracy or a delay in entering any particulars in the Register of Beneficial Owners, at the request of the beneficial owner or any other aggrieved person, without an order from the Court.

Duty of company to obtain information on beneficial owners, etc.

40. – (1) Subject to subsection (2), a company to which section 37 applies shall seek to identify each beneficial owner of the company.

(2) A company to which section 37 applies shall give written notice to anyone whom it knows or has reasonable cause to believe is a beneficial owner in relation to the company, which notice shall require that individual –

- (a) to state whether or not the individual is a beneficial owner in relation to the company; 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) A company to which section 37 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 company, 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 company or knows the identity of any person likely to have that knowledge; and
- (b) if so, to supply any particulars of such person who is within the knowledge of the person notified.

(4) Without limiting subsections (2) and (3), a company may, at any time, give written notice to a member of the company, to provide, confirm or correct the information supplied under section 37 in relation to the shares or guarantee membership in the company held by the member.

(5) A person whom a notice under this section is given, shall comply with the notice within thirty days commencing from the date of the notice.

(6) A person to whom a notice under this section is given, shall not provide false or misleading information to the company.

(7) A person who contravenes subsection (6) commits an offence and is liable, on summary conviction, to the penalty specified in the First Schedule.

First Schedule.

(8) A company to which section 37 applies is not required to take steps or give notice under this section with respect to a beneficial owner if the company has already been informed in writing of the

person's status as a beneficial owner in relation to the company, and has been supplied with the information under section 37.

Updating of particulars of beneficial ownership.

41. – (1) Within thirty days of an individual becoming a beneficial owner in relation to a company, the individual shall give written notice to the company of the information required pursuant to section 37.

(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 company and the date on which the change occurred.

(3) A person shall not provide false or misleading information under this section.

(4) A person who contravenes subsection (3) commits an offence and is liable, on summary conviction, to the penalty specified in the First Schedule.

First Schedule.

Non-disclosure of beneficial ownership particulars.

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

PART V. *Receivership and Winding up*

Receivership orders.

43. – (1) Subject to the provisions of this section, if, in relation to a segregated accounts company or an incorporated segregated accounts company the Court is satisfied that –

- (a) a particular segregated account or incorporated segregated account is insolvent, the general account is insolvent, a liquidation has commenced in relation to the company, or, for other reasons it appears to the Court just and equitable that a receiver should be appointed; and

(b) the making of a receivership order under this section would achieve the purposes set out in subsection (3),
the Court may make a receivership order in respect of that segregated account or incorporated segregated account, as the case may be.

(2) A receivership order may be made in respect of one or more segregated accounts or incorporated segregated accounts.

(3) A receivership order shall direct that the business and assets linked to a segregated account or incorporated segregated account shall be managed by a receiver specified in the order for the purposes of –

- (a) the orderly management, sale, rehabilitation, run-off or termination of the business of, or attributable to, the segregated account or incorporated segregated account; and
- (b) the distribution of the assets linked to the segregated account or incorporated segregated account to those entitled thereto.

(4) A resolution for the winding up of a segregated accounts company or an incorporated segregated accounts company of which any segregated account or incorporated segregated account is subject to a receivership order shall not be effective without leave of the Court.

Application for receivership orders.

44. – (1) An application for a receivership order in respect of a segregated account or incorporated segregated account, as the case may be, may be made by –

- (a) the segregated accounts company or incorporated segregated accounts company;
- (b) the directors of the segregated accounts company or the incorporated segregated accounts company;
- (c) any creditor of the segregated accounts company or the

incorporated segregated accounts company in respect of that segregated account or incorporated segregated account, as the case may be;

- (d) any account owner of that segregated account or incorporated segregated account;
- (e) the Registrar; or
- (f) the primary regulator.

(2) The Court may make an interim order or adjourn the hearing conditionally or unconditionally, on hearing an application –

- (a) for a receivership order; or
- (b) for leave, pursuant to section 43(4), for a resolution for winding up.

(3) Notice of an application to the Court for a receivership order in respect of a segregated account or incorporated segregated account shall be served upon –

- (a) the segregated accounts company or the incorporated segregated accounts company, as the case may be ;
- (b) the Registrar;
- (c) the primary regulator; and
- (d) such other persons (if any) as the Court may direct,

each of whom shall be given an opportunity to make representations to the Court before the order is made.

Parties of segregated accounts company or incorporated segregated accounts company may appoint receiver.

45. The account owner of a segregated account or an incorporated segregated account or the directors of a company to which this Act applies may by resolution voluntarily appoint a receiver in respect of the segregated account or incorporated segregated account, as the case

may be.

Functions and powers of receiver.

46. – (1) The receiver of a segregated account or incorporated segregated account –

- (a) may do all such things as may be necessary for the purposes set out in section 43(3); and
- (b) shall have all the functions and powers of the directors and managers of the segregated accounts company or the incorporated segregated accounts company in respect of the business and assets linked to the segregated account or incorporated segregated account.

(2) The receiver may at any time apply to the Court for –

- (a) directions as to the extent or exercise of any function or power; or
- (b) the receivership order to be discharged or varied.

(3) In exercising the functions or powers of a receiver, the receiver is deemed to act as the agent of the segregated accounts company or the incorporated segregated accounts company, as the case may be, in respect of the segregated account or incorporated segregated account and does not incur personal liability except to the extent that the conduct of the receiver amounts to misfeasance.

(4) Any person dealing with the receiver in good faith is not concerned to enquire whether the receiver is acting within the powers of the receiver.

(5) During the period of operation of a receivership order the functions and powers of the directors and managers and any liquidator of the segregated accounts company or the incorporated segregated

accounts company, cease in respect of the business and assets linked to the segregated account or incorporated segregated account in respect of which the order was made.

(6) At any time after the appointment of a receiver in respect of a segregated account or an incorporated segregated account, the company or any account owner or creditor of that account may, where an action or proceeding is pending against the company in respect of that account, apply to the Court for a stay of those proceedings, and if such application is made, the Court may stay the proceedings accordingly on such terms as it thinks fit.

Discharge and variation of receivership orders.

47. – (1) The Court shall not discharge a receivership order unless it appears to the Court that the purpose for which the order was made has been achieved or substantially achieved or is incapable of achievement.

(2) The Court, on hearing an application for the discharge or variation of a receivership order, may make any interim order it thinks fit or adjourn the hearing, conditionally or unconditionally.

(3) When making an order discharging the receiver, the Court may release the receiver from liability except in respect of misfeasance.

Remuneration of receiver.

48. The remuneration of a receiver and any expenses properly incurred by the receiver shall be payable in priority to all other unsecured claims from the assets linked to the segregated account or incorporated segregated account in respect of which the receiver was appointed but not from any assets of the general account or any assets linked to other segregated accounts or incorporated segregated

accounts.

Winding up of segregated accounts company or incorporated segregated accounts company.

49. – (1) Subject to this section, a segregated accounts company or an incorporated segregated accounts company shall be wound up in accordance with the provisions of this Act, the Companies Act and any other Act which applies to the winding up of a company, save that in the event of any conflict, the provisions of this Act shall prevail.

(2) For the purposes of determining whether a segregated accounts company or an incorporated segregated accounts company may be wound up on the ground of insolvency –

- (a) the test of insolvency which applies under section 221 of the Companies Act and in the case of an insurance company, section 53 of the Insurance Act, shall apply; and
- (b) assets and liabilities linked to segregated accounts or incorporated segregated accounts shall not be taken into account.

(3) Where –

- (a) a petition for the winding up of a segregated accounts company or an incorporated segregated accounts company is presented pursuant to Part V of the Companies Act (which relates to winding up); and
- (b) the general account is otherwise solvent for the purposes of section 221 of the Companies Act,

the Court shall not proceed on the petition on any ground provided for in paragraph (a), (b), (c) or (d) of section 220 of the Companies Act and shall not proceed unless the Court is satisfied that to proceed would be just and equitable in all the circumstances.

(4) A segregated accounts company or an incorporated segregated accounts company shall not be voluntarily wound up without the consent of the Registrar.

Application of assets.

50. – (1) Notwithstanding any provision of any other law or rule of law to the contrary, in the winding up of a segregated accounts company or an incorporated segregated accounts company the liquidator shall deal with the assets and liabilities which are linked to each segregated account or incorporated segregated account only in accordance with this Act.

(2) Pursuant to subsection(1), the liquidator shall ensure that the assets linked to one segregated account or incorporated segregated account are not applied to the liabilities linked to any other segregated account or incorporated segregated account or to the general account, unless an asset or liability is linked to more than one segregated account or incorporated segregated account, in which case the liquidator shall deal with the asset or liability in accordance with the terms of any relevant governing instrument or contract.

(3) The remuneration to be paid to the liquidator shall be apportioned by the liquidator to each segregated account or incorporated segregated account and the general account in such amounts as would best reflect the duties performed by the liquidator and approved by the Court.

(4) The liquidator, or any person affected by a decision of the liquidator, may apply to the Court for directions in relation to the remuneration of the liquidator.

Fixed penalties.

51. – (1) This section shall apply to an offence specified in the

Second Schedule. Second Schedule.

(2) The Registrar may give to any person which the Registrar has reason to believe has committed an offence to which this section applies, a notice in writing in the prescribed form offering that person the opportunity to discharge any liability to conviction of that offence by payment of a fixed penalty under this section.

(3) A person shall not be liable to be convicted of the offence if the fixed penalty is paid in accordance with this section and the requirement in respect of which the offence was committed is complied with before the expiration of the fifteen days following the date of the notice referred to in subsection (2) or such longer period (if any) as may be specified in that notice or before the date on which the proceedings are begun, whichever event last occurs.

(4) Where a person is given notice under this section in respect of an offence, proceedings shall not be taken against the person for that offence until the end of the fifteen days following the date of the notice or such longer period (if any) as may have been specified therein.

(5) In subsections (3) and (4) “proceedings” means any criminal proceedings in respect of the act or omission constituting the offence specified in the notice under subsection (2).

(6) The payment of a fixed penalty under this section shall be made to the Collector of Taxes specified pursuant to subsection (7); and in any proceedings a certificate that payment of a fixed penalty was, or was not made to the Collector of Taxes by a date specified in the certificate shall, if the certificate purports to be signed by the

Collector of Taxes, be admissible as evidence of the facts stated therein.

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

- (a) specify the offence alleged;
- (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation;
- (c) state –
 - (i) the period (whether fifteen days or a longer period) during which by virtue of subsection (4), proceedings will not be taken for the offence; and
 - (ii) the amount of the fixed penalty and the Collector of Taxes to whom and the address at which it may be paid.

**Second
Schedule.**

(8) The fixed penalty for the offences specified in the Second Schedule shall be a penalty specified therein in relation to such offences.

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

(10) Notwithstanding anything to the contrary contained in this Act or any other enactment, where in respect of an offence attracting a fixed penalty, a person is served with a fixed penalty notice under

subsection (2), requiring that person to pay a fixed penalty or to appear at the court specified, but the person does not pay the fixed penalty and is proceeded against in court, if the person is convicted of the offence the court may decide to impose a fine that is more than the sum that is the fixed penalty attached to that offence, specified in the Second Schedule.

(11) The Minister may, by order, make provision as to any matter incidental to the operation of this section, and in particular, any such order may –

(a) prescribe –

(i) the form of notice under subsection (2) and the Collector of Taxes to whom a fixed penalty is payable;

(ii) the nature of the information to be furnished to the Collector of Taxes along with any payment; and

(iii) the arrangements for the Collector of Taxes to furnish to the Registrar or the Commission, as the case may be, information with regard to any payment pursuant to a notice under this section; and

**Second
Schedule.**

(b) amend the Second Schedule.

(12) An order made under subsection 11(b) shall be subject to affirmative resolution.

**Offence of
making false,
deceptive or
misleading
statement.**

52. Any person who for any purpose under this Act makes a statement or declaration that the person knows or has reasonable grounds to believe to be false, deceptive or misleading in a material particular, commits an offence and is liable, on summary conviction,

First Schedule.

to the penalty specified in the First Schedule.

Offences and penalties. Second Schedule. 53. The offences specified in the first column of the Second Schedule shall incur the penalties specified in relation thereto in the Second column of that Schedule.

Fees. Third Schedule. 54. The fees payable in relation to segregated accounts companies and incorporated segregated accounts companies, as specified in the Third Schedule, shall be payable to the Registrar.

PART VI. *General*

Regulations. 55. – (1) The Minister may make regulations for the better carrying out of the provisions of this Act and without limiting the generality of the foregoing, may make regulations with respect to –

- (a) the conduct of the business of segregated accounts companies and incorporated segregated accounts companies;
- (b) the manner in which segregated accounts companies and incorporated segregated accounts companies may carry on, or hold themselves out as carrying on business; and
- (c) the form and content of the accounts of segregated accounts companies and incorporated segregated accounts companies.

(2) Regulations made under subsection (1) shall be subject to negative resolution.

Effect of infringement of interests in segregated account or incorporated segregated account on transaction. 56. Subject to sections 24(6), 26(2) and (3), 27(10) and 29(2) and (3), no transaction or interest in a segregated account or incorporated segregated account shall be void by reason only that at the relevant time the segregated accounts company or incorporated segregated accounts company fails to comply with, or is in breach of, any provision of this Act.

Suits and actions against 57. – (1) No suit or action shall lie against the Registrar or Supervisor

Registrar and Supervisor.

or any person acting on their behalf in respect of anything done or omitted to be done in their official capacity, in good faith, without negligence.

(2) Nothing in subsection (1) shall be deemed to interfere with applications or references to the Court under the provisions of the Companies Act which relate to winding up.

Registrar and Supervisor to be indemnified in respect of foreign suits.

58. Neither the Registrar nor the Supervisor shall be required to prosecute, defend or take part in any proceedings outside the jurisdiction of the Court unless indemnified by or on behalf of the person who wishes the Registrar or the Supervisor, as the case may be, to act against any judgement, order or costs that may be awarded against that person by deed, guarantee or deposit, as the Registrar or the Supervisor may require.

Savings.

59. – (1) The rules of common law and of equity applicable to companies shall continue in force and apply to segregated accounts companies and incorporated segregated accounts companies 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.

FIRST SCHEDULE

**(Sections 11(6),
21 (4), 23(4),
37(6), 40(7),
41(4), 46, 47
and 52)**

Offences and Penalties

First Column

Second Column

Brief Description of Offence	Relevant Section	Penalty
1. Company representative neglects to make written report to Registrar in case of insolvency, failure or involvement of company.	11(6)	On conviction in a Parish Court to a fine not exceeding two hundred and fifty thousand dollars.
2. Officer of segregated accounts company or incorporated segregated accounts company –	21(4)	On conviction in a Parish Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years.
(a) wilfully conceals name of creditor entitled to object to reduction of capital of segregated account or incorporated segregated account;		
(b) wilfully misrepresents the nature or amount of debt or claim of any creditor; or		
(c) aids, abets or is privy to any such concealment or misrepresentation in paragraph (a) or (b).		
3. Segregated accounts company or incorporated segregated accounts company fails to file annual returns with Registrar.	23(3)	On conviction in a Parish Court to a fine not exceeding two hundred and fifty thousand dollars.
4. Failure to keep or maintain Register of Beneficial Owners	37(6)	On conviction in a Parish Court to a fine not exceeding one million dollars.

5. Providing false or misleading information to be recorded in the Register of Beneficial Owners	40(7)	On summary conviction in a Parish Court to a fine not exceeding one million dollars.
6. Providing false or misleading information to be recorded in the Register of Beneficial Owners	41(4)	On summary conviction in a Parish Court to a fine not exceeding one million dollars.
7. Person makes a statement or declaration that the person knows or has reasonable grounds to believe to be false, deceptive or misleading in a material particular.	52	On conviction in a Parish Court to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months.

SECOND SCHEDULE

(Section 51)

*Offences in respect of which liability to conviction
may be discharged by payment of a fixed penalty*

First Column _____	Second Column _____	Third Column _____
Brief Description of Offence _____	Relevant Section _____	Penalty _____
1. Company representative neglects to make written report to Registrar in case of insolvency, failure or involvement of company	11(6)	One hundred and fifty thousand dollars (\$150,000.00).
2. Officer of segregated accounts company or incorporated segregated accounts company – (a) wilfully conceals	21(4)	Five hundred thousand dollars (\$500,000.00).

name of creditor entitled to object to reduction of capital of segregated account or incorporated segregated account;

(b) wilfully misrepresents the nature or amount of debt or claim of any creditor; or

(c) aids, abets or is privy to any such concealment or misrepresentation in paragraph (a) or (b).

3.	Segregated accounts company or incorporated segregated accounts company fails to file annual returns with Registrar	23(3)	One hundred and fifty thousand dollars (\$150,000.00).
4.	Failure to keep or maintain Register of Beneficial Owners	37(6)	Five hundred thousand dollars (\$500,000.00)

THIRD SCHEDULE

(Section 6(3), 7(1), 9(1), 11(4), 11(6), 12(1), 16(6), 19(2), 22(11), 23(1) and 54)

Fees Payable to the Registrar

Matters in Respect of which Fee is Payable	Relevant Section	Amount of Fee
_____	_____	_____

1. Application to object to registration of segregated accounts company or incorporated segregated accounts company	6(3)	Five thousand dollars (\$5,000.00)
2. Application to register segregated accounts company or an incorporated segregated accounts company	7(1)	Twenty-five thousand (\$25,000.00)
3. Request to remove a segregated accounts company or an incorporated segregated accounts company from the Register	9(1)	Five thousand dollars (\$5,000.00)
4. Filing particulars of company representative	11(4)	Five thousand dollars (\$5,000.00)
5. Filing report on –	11(6)	Five thousand dollars (\$5,000.00)
(a) insolvency of segregated account, incorporated segregated account or general account of company;		
(b) failure of company to comply with requirement or condition under section 7(6);		
(c) failure of company to comply with requirement under section 13, 17 or 23;		
(d) failure of company to comply with regulation under section 56; or		
(e) involvement of company in criminal proceedings		
6. Filing notice of removal of company representative	12(1)	Five thousand dollars (\$5,000.00)
7. Filing of notice specifying acquisition or cancellation of shares	16(6)	Five thousand dollars (\$5,000.00)

8. Application to register reduction in share capital	19(2)	Five thousand dollars (\$5,000.00)
9. Filing of report of number of accounts held by a segregated accounts company or an incorporated segregated accounts company	22(11)	Five thousand dollars (\$5,000.00)
10. Filing of annual returns	23(1)	Seven thousand dollars (\$7,000.00)

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to provide for the registration and operation of companies that operate segregated accounts or incorporated segregated accounts.

Such companies employ essentially the same mechanism for the segregation of assets and liabilities within a single entity. Through this mechanism, a single legal entity may be used to effectuate what would otherwise require the formation of multiple affiliated companies.

A segregated accounts company is permitted to establish one or more “segregated accounts” each of which qualifies as a separate account of the segregated accounts company. An incorporated segregated accounts company is permitted to establish one or more incorporated segregated accounts which are separate legal persons distinct from the incorporated segregated accounts company.

The assets and liabilities of a company under the Act that are attributed to a particular segregated account or incorporated segregated account, as the case may be, are segregated from the assets and liabilities attributed to other such accounts. Because of this segregation

of assets and liabilities, the creditors of one such account do not have recourse against the assets of others. Such companies may be used to effectuate the segregation of assets and liabilities in connection with numerous industries including real estate and ship and aircraft ownership.

Segregated accounts legislation can also be used for segregating new business ventures from established ventures and for segregating business divisions within a single company.

Andrew Holness
Prime Minister