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## REGISTRATION OF COMPANIES

### Background

It followed from the reception of English Law in Jamaica that the attainment of corporate status depended upon the grant of a royal charter or statute of incorporation. As early as 1662 however, specific power was conferred to establish corporations although no trace has been found of any commercial corporate body which derived its existence from the early exercise of this power. The grants of letters patent for the production of sugar were made generally to individuals and even up to the latter nineteenth century the majority of sugar estates appear to have retained the feature of ownership by individuals rather than by companies.

The corporate influence was nevertheless present in the plantation system and the supply of slave labour as chartered companies enjoying the distinction of royal patronage were to play a notable part in the transportation of persons from Africa for sale to the slave owners in Jamaica.

The patterns of corporate activity really began to emerge in earnest after emancipation in 1838.

There was a substantial reduction in the number of sugar estates and the demands for finance for the more economically viable ones were met by the birth of three banks. The first was the Colonial Bank which was incorporated by royal charter in 1836 with the advantage of limited liability. This was followed by an Act of the local legislature passed in 1836 authorising the enrolment in the Island Secretary's Office of a copy of the Charter providing for the admissibility in evidence in all legal proceedings of a certified copy of the Charter.

The second, the Bank of Jamaica, was organised by a group

The third bank the Planters Bank was established by deed of settlement in 1839 with unlimited liability.

During the 1840's attempts were made to establish capital enterprises other than sugar and a number of local statutes were passed incorporating companies for mining and operating of railways.

Besides Companies incorporated by statute were a number of unincorporated enterprises operating under Deed of Settlement. An example of such a body was the Jamaica Silk Company established in 1840.

In addition to bodies incorporated by Charter or statute and wholly unincorporated Deed of settlement companies, quasi-corporate bodies began to emerge. In 1844 the Jamaica Mutual Life Assurance Society was established by Deed of settlement. Because of the difficulties in maintaining legal proceedings by or against an unincorporated body, the legislature in 1844 empowered the society, without incorporating it, to sue in the name of the society, chairman, secretary or director of the society. In 1844 the Jamaica Mutual Life Assurance Society's Trustees Vesting Law was passed whereby property of the society could vest in successive trustees without need for formal transfer or conveyance. Full corporate status was not achieved, however until 1963 (vide Act 12 of 1963).

The Limited Partnership Act of 1853 was another development in the growth of corporate institutions. This Act provided for the establishment of limited partnerships by two or more persons "for the transaction of any mercantile, mechanical, agricultural or manufacturing business." It enabled sleeping

partners who took no active part in the management of the business

The first piece of general Company legislation consisted of 51 sections and a 1 page schedule and provided for the following:-

- (a) The formation of an incorporated company by 7 or more persons subscribing their names to a Memorandum of Association and otherwise complying with the Law in respect of registration;
- (b) The recording in the Island Secretary's Office of Memorandum and Articles of Association;
- (c) The achieving of limited liability by the addition of the word "limited" as the last word in the company's name and specifying the liability of the members in the event of winding-up;
- (d) The keeping of the company's register of members;
- (e) The issue of share certificate;
- (f) The keeping by the company of register of mortgages, directors and managers;
- (g) Alteration of Articles of Association by special resolution; and
- (h) Service of notices of authentication of documents.

Between 1865-1965 eight amendments were made to the original Act but the basic framework remained unaltered.

These included (a) the provision in 1865 for compulsory winding-up (b) the provision in 1886 for the keeping by the Deputy Keeper of the Records of a register of all companies open for inspection by the public; for periodic returns to be made to the Deputy Keeper of the Records of the financial position of limited

The first of three amendments in 1906 provided for the conversion of paid-up shares into stock; the prevention of companies having identical or confusingly similar names, the consolidation and division of shares, the prohibition of the entry of any trusts on the register and provision relating to reduction of capital.

The second amendment provided for winding-up of companies voluntarily or subject to the supervision of the court and for the striking off by the Registrar of defunct companies.

The third amendment authorised the court to sanction a compromise or arrangement between a company and its members or creditors where the company was in the course of being wound up and empowered the liquidator to transfer the business of the company to another company and distribute the consideration to the members of the company being wound up.

In 1908 the amendment empowered a company to alter its objects for specified purposes by special resolution and subject to confirmation by the court; and to alter the form of its constitution by substituting Memorandum and Articles of Association for a Deed of settlement.

By Law 7 of 1909 the Governor-in-Council was empowered to make, revoke or alter rules relating to the recording and registration of memorandum of association.

A company was also empowered to change its name by special resolution.

The final amendment in 1923 empowered companies to reissue redeemed debentures.

Between the years 1887-1897 only 47 companies were

### Company Formation

The Companies Act, 1965 provides that any 7 or more persons or where the company to be formed is a private company, any 2 or more persons associated for any lawful purpose may by subscribing their names to a Memorandum of Association and otherwise complying with the requirements of the Act in respect of registration, form an incorporated company with or without limited liability.

Such a Company may be either:-

- (a) A company having the liability of its members limited by the memorandum to the amount, if any unpaid on the shares respectively held by them (a company limited by shares); or
- (b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the Company in the event of its being wound up (a company limited by guarantee).

N.B. Most non-profit organisations and charitable associations fall within this category and may obtain a licence from the Minister of Marketing and Commerce for exemption from the use of the word "limited" pursuant to section 20.

- (c) A company not having any limit on the liability of its members (an unlimited company).

It should be noted that under the old Companies Law there was no distinction between public and private companies and whether

- (a) restricts the right to transfer its shares; and
- (b) limits the number of its members to twenty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company were while in that employment, and have continued after the determination of that employment to be, members of the company; and
- (c) prohibits any invitation to the public to subscribe for any shares or debentures of the company; and
- (d) prohibits any invitation of the public to deposit money for fixed periods or payable on call whether bearing or not bearing interest; and
- (e) subject to the exceptions provided in the Fifteenth Schedule, prohibits any person other than the holder from having any interest in any of the company's shares.

The necessary documents required to be submitted for registration are Memorandum and Articles of Association duly stamped the Memorandum to the value of its share capital that is \$1.25 per \$200 and the Articles of Association as a Deed, viz, \$1.88 together with the Declaration of Compliance signed by either an attorney engaged in the formation of the company or a director or secretary of the company named in the Articles of Association to the effect that all the requirements of the Companies Act with respect to registration have been complied with. The Registrar shall retain and register these documents.

A company may adopt the model Articles contained in Table

a prospectus or statement in lieu of prospectus - vide section 171.

The fee for registration of a company is provided in the Ninth Schedule to the Act.

Memorandum of Association

The Memorandum of Association of every company must state:-

(a) The name of the company, with "limited" as the last word of the name in the case of a company limited by shares or guarantee;

(b) that the registered office is to be situate in the Island.

N.B. A specific address should never be entered as the Act makes no provision for alteration of this Clause in the Memorandum of Association.

(c) The objects of the Company.

2. The Memorandum of Association of a company limited by shares or by guarantee must also state that the liability of its members is limited.

3. The Memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of debts and liabilities of the company contracted before he ceases to be a member, and of the costs charges and expenses of winding-up and for adjustment of the rights of the contributories

with which the company proposes to be registered and the division thereof into shares of a fixed amount.

- (b) No subscriber of the Memorandum of Association may take less than one share.
- (c) Each subscriber must write opposite to his name the number of shares he takes.

N.B. If the share capital is divided into various types of shares the subscriber should state the type of shares to which he subscribes.

- 5. The Memorandum of Association must be signed by each subscriber in the presence of at least one witness who must attest the signature.

#### Articles of Association

A company limited by shares may submit Articles of Association but a company limited by guarantee or unlimited must submit Articles of Association along with its Memorandum for registration.

The Articles should be signed by the same subscribers to the Memorandum of Association and the signatures should be witnessed.

In the case of an unlimited company or a company limited by guarantee the Articles must state the number of members with which the company proposes to be registered, and if the company has a share capital, the amount of share capital with which the company proposes to be registered.

Where an unlimited company or a company limited by guarantee has increased the number of its members beyond the registered



On registration of the required documents the Registrar shall certify under his hand that the Company is incorporated and in the case of a limited company, that the Company is limited.

#### Overseas Companies

Every Company incorporated outside of Jamaica which has established a place of business in Jamaica is required to comply with Section. 346 of the Companies Act by delivering to the Registrar for registration:-

- (a) a certified copy of the charter, statutes or memorandum and articles of a company, or other instrument constituting or defining the constitution and containing the name of the company, and if the instrument is not written in the English language a certified translation thereof;
- (b) a list of the directors of the company, containing such particulars with respect to the directors as are by this Act required to be contained with respect to directors in the register of the directors of a company;
- (c) the names and addresses of some one or more persons resident in the Island authorised to accept on behalf of the company service of process and any notices required to be served on the company.

The Registrar must also be notified of any alteration made in respect of the above documents.

#### The Name Aspect

No Company shall be registered by a name which in the

In considering the desirability of a name the Registrar may refuse a name that suggests governmental connections or a name which is too all-embracing as to suggest a large concern when in fact the opposite applies. Surnames and words such as "international" may only be accepted in the applicants can justify their use.

The word "Standard" may not be used except with the consent of the Minister - vide The Standards Act.

It should not be forgotten that registration is only the beginning of the life of a company. A private company may commence operation upon the receipt of a Certificate of Incorporation, but a public company must file a prospectus or statement in lieu thereof and comply with section 108 of the Act and receive a trading Certificate before it can commence business.

Thereafter every company must comply with all the requirements of the Act by filing inter alia the following documents:-

- (a) All special and extraordinary resolutions - vide section 138
- (b) Notices of Increases in share capital - section 63
- (c) Reduction in share capital - section 66
- (d) Return of Allotment of shares - section 51
- (e) Notification of Registered Office or of any change therein - section 106
- (f) Amended Memorandum of Association following alteration of objects pursuant to section 7
- (g) Annual Returns following Annual General Meetings - sections 121-124
- (h) Annual Declaration of Assets - section 124A
- (i) Declaration of solvency followed by resolution to  
of Members Voluntary Winding-up -

- (m) Accounts pursuant to section 349
- (n) Charges created by the Company pursuant to section 93.

This association of persons incorporated for a common purpose has as its essential feature an existence independent from that of the human beings who manage or comprise it - Saloman v. Saloman. Its assets belong to the company and not to the members and the latter have no powers as such of management or agency and cannot bind the company, although they have the limited power of control through the exercise of their votes at meetings.

As a registered company enjoys perpetual succession, death, etc., of any member does not affect it, so that its assets never have to be changed with membership.

These and other features distinguish it from a Partnership.

There are at present plans to provide for further disclosure, worker participation and other amendments to the Company Law and we await with interest the outcome of the recommendations being considered by the Working Party on the Harmonisation of Company Law in the Caribbean.

Presented by: Glo [unclear] [unclear]

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Sources: The Protection of Interests in Jamaican Company Law -  
Dr. K.O. Rattray, Solicitor General