

# JAMAICA<sup>1</sup>

## I. Overview of Country

Jamaica is an English-speaking constitutional monarchy and a parliamentary democracy, having gained its sovereignty from Britain in 1962. Jamaica's system of government and its constitution are based on the British Westminster model, with a functional two-party system. There are three distinct branches government: the executive, the legislative and the judiciary. Jamaica's legal and judicial systems are based on English common law and practice.<sup>23</sup>

The following are the legal entity forms through which a business can be conducted in Jamaica: private companies limited by shares, public companies limited by shares, companies limited by guarantee (either with or without share capital), companies having unlimited liability, branches of foreign corporations (overseas companies), partnerships – general or limited, joint ventures, sole proprietorships, and trusts.

Jamaican law also recognizes charitable organizations and entities known as co-operatives and friendly societies. Each of the foregoing for-profit entities, as well as charitable organizations and friendly societies, will be discussed in more detail below. Co-operatives are not covered in this summary.

Freedoms of association and assembly are generally respected in Jamaica.<sup>4</sup> Jamaica has a small but robust civil society and active community groups. Approximately 20 percent of the workforce is unionized. Labor unions are politically influential and have the right to strike.

However, corruption remains a serious problem in Jamaica. Government whistleblowers who object to official acts of waste, fraud, or abuse of power are not well protected by Jamaican law, as is required under the Inter-American Convention against Corruption. Implementation of the 2002 Corruption Prevention Act has been problematic. Opposition leaders have accused the government of having connections to scams originating in Jamaica in which victims are told they have won the lottery, only to have their personal information stolen. The government has addressed the matter by amending a handful of laws, including the Evidence Act in November 2012. Jamaica was ranked 83 out of 176 countries surveyed in Transparency International's 2012 Corruption Perceptions Index.<sup>5</sup>

## II. Registration Procedures<sup>6</sup>

### A. For-Profit Organizations

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<sup>1</sup> The following memorandum was prepared by pro bono counsel for the ABA Center for Human Rights. It is intended as background information only and should not be relied upon as legal advice on a particular case. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and, accordingly, should not be construed as representing the policy of the American Bar Association.

<sup>2</sup> GlobaLex, Update: The Jamaican Legal System and Guide to Legal Research, by Jeanne Slowe and Claudette Solomon, available at <http://www.nyulawglobal.org/globalex/jamaica1.htm>.

<sup>3</sup> LexMundi World Ready, Guide to Doing Business: Jamaica, prepared by Myers, Fletcher & Gordon, p. 8, available at [http://www.lexmundi.com/lexmundi/Guides\\_To\\_Doing\\_Business.asp](http://www.lexmundi.com/lexmundi/Guides_To_Doing_Business.asp).

<sup>4</sup> See the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act 2011; see also Supreme Court of Jamaica, *Banton v. Alcoa Minerals*, (1971) 17 WIR 275.

<sup>5</sup> Freedom House, Freedom in the World 2013: Jamaica, available at <https://freedomhouse.org/report/freedom-world/2013/jamaica>.

<sup>6</sup> See the Registration of Business Names Act, available at <http://www.moj.gov.jm/laws/registration-business-names-act>; the Registration of Business Names Rules, 1934, available at <http://www.moj.gov.jm/laws/registration-business-names-act-0>.

a. Laws

1. Companies<sup>7</sup>

A company is incorporated in Jamaica by preparing and filing incorporation documents at the Companies Office of Jamaica (COJ). Once approved, the Registrar of Companies will issue a Certificate of Incorporation and assign a company number to the newly incorporated entity. Generally, a company can be incorporated within two business days after all documents have been accepted by the Registrar of Companies. A company may be incorporated with one shareholder, one director, and one secretary. The sole director cannot also be the secretary. A company cannot have as secretary, a company which is the sole director of that company. There is no requirement for a Jamaican national to be a participant, manager, or director in a company incorporated in Jamaica. The registered address of the company must be situated in Jamaica.

The Companies (Amendment) Act, 2013 resulted in a simplified company incorporation process. The simplified process involves the filing of a Form 1A, 1B, or 1C (depending on the nature of the company to be incorporated), the Articles of Incorporation, and a Business Registration Form (BRF1), in order to obtain National Insurance Scheme Clearance, a Taxpayer Registration Number, General Consumption Tax registration, National Housing Trust/HEART Clearance, and ultimately a Tax Compliance Certificate issued at the COJ.

It is advisable at the outset to search and reserve the proposed company name (for up to 90 days) in order to ensure its availability for registration. The name search and name reservation process generally takes one to two business days.

The COJ generally takes five business days to process an application for incorporation of a company under the Companies Act. The COJ also offers an expedition service for one business day and next business day processing at an additional cost.

Prior to submission, the BRF1 will need to be signed by each director as well as the subscriber to its Form 1A to 1C – Articles of Incorporation. Original signed documentation is required. Although there is no requirement for a Jamaican national to be a participant, manager, or director, at least one director must have a Taxpayer Registration Number or obtain the same prior to registration of the company. Generally, there are no minimum capital requirements, although companies in specific sectors may have to meet specific capital requirements in order to carry on certain types of businesses (e.g. banks or public companies).

Companies registered under the Companies Act (as distinct from companies incorporated under the Companies Act) generally apply to overseas companies with an established place of business in Jamaica registered under Part X of the Companies Act. Within one month after establishing business in Jamaica, a foreign company (branch of a foreign company) must register with the COJ. Where the company is incorporated in a country in which English is the official language, a certified copy of the charter, statutes, or articles of a company or any other instrument is required. Where the company is incorporated in a country in which English is not the first language, the following is required: (i) a certified copy of the original incorporation documents in the language of origin; and (ii) a certified

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<sup>7</sup> See the Companies Act, available at <http://www.moj.gov.jm/laws/companies-act>; the Companies (Amendment) Act, 2013, available at [http://www.japarliament.gov.jm/attachments/339\\_The%20Companies%20\(Amendment\)%20Act,%202013.pdf](http://www.japarliament.gov.jm/attachments/339_The%20Companies%20(Amendment)%20Act,%202013.pdf); the Companies Rules, 2006, available at <http://www.moj.gov.jm/laws/companies-act-0>. Also, see LexMundi World Ready, Guide to Doing Business: Jamaica, *supra* note 2, p. 16-18.

translation of the charter, statutes, or articles of the company. A foreign company is required to appoint a person resident in Jamaica. This person/agent is authorized to accept service of process and notices served on the company.<sup>8</sup>

A general summary of the process for registration of a company, prepared by the World Bank Group, is outlined below.<sup>9</sup>

No.	Procedure	Time to Complete	Associated Costs
1	Ascertain from the Registrar of Companies whether the desired name is available and acceptable  The proposed company files a Form 6 - Name Search and Name Reservation with the COJ to ascertain the availability of the name at a cost of JMD 500. It is also recommended that a name reservation be done for an additional JMD 3,000 to reserve the name for 90 days.	1 day	JMD 500
2	File the Article of Incorporation and Business Registration Form with the Companies Registry Office  Since January 1, 2014 entrepreneurs are no longer required to submit forms separately to the National Insurance Scheme (NIS), Taxpayer Registration Number (TRN) and General Consumption Tax (GCT). These registrations are now subsumed under the Business Registration Form. Thus, only two forms are required, the Article of Incorporation form and the Business Registration Form.  Cost details: JMD 15,000 (registration fee) + JMD 3,000 for each additional document of which there are three:(a) Notice of Registered Office, Notice of Appointment of Directors and Notice of Appointment of Company Secretary + JMD 3,000 for articles of incorporation + JMD 3,000 for the Business Registration Form.	2 weeks	see procedure details

## 2. Partnerships<sup>10</sup>

Partnerships are permitted in Jamaica, and there is no requirement for a national of Jamaica to be a partner. Partnerships may be registered with the COJ under the Registration of Business Names Act (RBNA). To register a business name, a partnership must complete and submit the appropriate business registration form (including taxpayer and residence information relating to the partners) and pay the associated fee to the COJ, after which a business name certificate will be prepared and made available within two business days (or 24 hours, with the payment of an additional fee). Business registration certificates are valid for three years and must be renewed two weeks before the expiration of the current registration certificate.

The Partnerships (Limited) Act (PLA) also provides for limited partnerships which may be established for the transaction of any mercantile, mechanical, agricultural, or manufactory business, by

<sup>8</sup> UHY, Doing Business in Jamaica, p. 10-14, available at <http://www.uhy.com/wp-content/uploads/Doing-Business-in-Jamaica.pdf>.

<sup>9</sup> World Bank Group, "Doing Business 2015: Going Beyond Efficiency – Starting a Business in Namibia" (2014), available at <http://www.doingbusiness.org/data/exploreeconomies/jamaica/starting-a-business/>.

<sup>10</sup> See the Partnerships (Limited) Act, available at <http://www.moj.gov.jm/laws/partnerships-limited-act>. Also, see LexMundi World Ready, Guide to Doing Business: Jamaica, *supra* note 2, p. 16-18. See the Registration of Business Names Act, available at <http://www.moj.gov.jm/laws/registration-business-names-act>; the Registration of Business Names Rules, 1934, available at <http://www.moj.gov.jm/laws/registration-business-names-act-0>. Also, see Guidelines for formalizing a Business in Jamaica, Monroe College, available at

two or more persons, upon the terms, with the rights and powers, and subject to the conditions, limitations, restrictions, and liabilities provided in the PLA. Limited partnerships cannot be formed for the purpose of banking or insurance. The PLA provides that partnerships may consist of one or more persons, who will be general partners, subject to the same liabilities and charges, and shall be entitled to the same benefits and advantages, as co-partners are liable to, chargeable with, and entitled to, and of one or more persons who will contribute, in actual cash payments, a specific sum, as capital, to the common stock, who shall be called special partners, but who shall not be liable for, nor chargeable with, the payment of the debts of the partnership, beyond the extent of the fund so subscribed by him or them to the capital of the co-partnership. The PLA further provides that a special partner may from time to time examine the state and progress of the partnership concerns, and may advise as to their management; but he shall not transact any business in the name or on account of the partnership, nor be employed for that purpose, as agent, attorney, or otherwise; and if any such limited partner shall interfere, contrary to the provisions of the PLA, he shall be deemed and taken to be a general partner.

To form a limited partnership, the general partners shall sign a certificate of formation of limited partnership as prescribed in the PLA, which shall be acknowledged and proved by the persons signing the same. With the original certificate and acknowledgements shall be recorded a declaration of one or more general partners that the sums stated therein have been contributed by each partner have been paid. Such documents shall be filed in the Record Office, and also recorded at large in a separate book kept for that purpose, all at the same rate and charge as other records in the office. The terms of the partnership shall then be published for at least six weeks in the Gazette and in two newspapers published in Jamaica, and if such publication is not made the partnership shall be deemed general.

### 3. Joint Ventures<sup>11</sup>

Joint Ventures are permitted and utilized in Jamaica. The form of joint venture will determine the registration or incorporation procedure. If the joint venture is co-operation is through the vehicle of a company, the registration will be at the COJ as provided above for companies. If the joint venture is co-operation is through the vehicle of a business under the RBNA, the registration will be at the COJ as provided above for partnerships.

### 4. Sole Proprietorships<sup>12</sup>

An investor can also operate as a sole proprietor. A sole proprietor is individually liable for all losses and damages incurred when operating. Laws may require that certain businesses can only be carried on by a company and not by an individual. Registration of sole proprietorships will be at the COJ as provided above for partnerships under the RBNA.

### 5. Trusts<sup>13</sup>

Trusts are recognized in Jamaica pursuant to common law. Generally, the instrument (if any) creating the trust defines the trust. Trustees are regulated by the Trustees Act and the Trustees, Attorneys and Executors (Accounts and General) Act. An investor may be the grantor, trustee or beneficiary. However, the sole beneficiary cannot also be the grantor.

### 6. Other Requirements for the Establishment of a Business<sup>14</sup>

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<sup>11</sup> See LexMundi World Ready, Guide to Doing Business: Jamaica, *supra* note 2, p. 16-18.

<sup>12</sup> See LexMundi World Ready, Guide to Doing Business: Jamaica, *supra* note 2, p. 16-18.

<sup>13</sup> See LexMundi World Ready, Guide to Doing Business: Jamaica, *supra* note 2, p. 16-18.

<sup>14</sup> See LexMundi World Ready, Guide to Doing Business: Jamaica, *supra* note 2, p. 16-18.

As a matter of law, there is no standard business activity in which the Jamaican government will seek to participate in by way of direct ownership. However, certain industry-specific business activities will require government involvement in the form of operational approval and regulation; such as mining, telecommunications, securities trading, real estate development, life insurance and financial services. Obtaining government approval can take as long as 120 days and the fees vary depending on the type of business. The Jamaican government is currently involved in the ownership or operation of certain entities, known Public Private Partnerships (“PPP”) in recent years. These PPP’s include the construction of Jamaica’s central highway, the operation and renovation of the Norman Manley International Airport, and most recently the construction of university student housing accommodation.

Jamaica’s Fair Competition Act (FCA)<sup>15</sup> (i) regulates anti-competitive business practices, those that are an abuse of a dominant market position or have the effect of lessening competition in Jamaica and (ii) establishes the Fair Trading Commission (the FTC). The FTC has the power to carry out investigations in relation to the conduct of business in Jamaica and to determine whether an enterprise is engaging in practices that are in contravention of the FCA. If the FTC determines that an arrangement has contravened certain sections of FCA, they may prohibit the arrangement. In certain circumstances, the FTC may also direct the enterprise concerned to take steps that are necessary to overcome any anti-competitive effects resulting from the arrangement. The FTC has power to bring before the Court any business or individual who has been found guilty of anticompetitive practice and has failed to take corrective measures, after being instructed by the FTC to do so.

There are no regulations in Jamaica which make it mandatory for a business to be insured. It is, however, highly recommended that all businesses are insured against risks such as fire, hurricane or earthquake. There is currently no state monopoly on insurance.

## 7. Cessation or Termination of Business; Liquidation<sup>16</sup>

There are three main methods of winding up/liquidating the assets of a company:

1. Compulsory winding up/winding up by the court;
2. Voluntary winding up:
  - a. Members' voluntary winding up;
  - b. Creditor's voluntary winding up; and
3. Winding up subject to the Court's supervision.

A business that has ceased trading is required to notify the relevant regulatory authority of this fact. However, the business's filing and taxation obligations may continue notwithstanding the fact that it has ceased trading. The Companies Act permits a company which has ceased trading and has no assets or liabilities to request removal from the Register of Companies. In order to do this, the company will be required to do the following:

1. File any outstanding documents (annual returns, notices etc., to bring the company’s filings up to date).
2. Submit a request for removal in writing to the COJ. This letter must be signed by a director or authorized official of the company and must expressly state that the company wishes to be removed from the register of companies.

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<sup>15</sup> See Fair Competition Act, available at <http://www.moj.gov.jm/laws/fair-competition-act>.

<sup>16</sup> See LexMundi World Ready, Guide to Doing Business: Jamaica, *supra* note 2, p. 20-21.

3. Submit a letter from an auditor/chartered accountant certifying that the Company has neither assets nor liabilities.

The applicable fee for the removal (in addition to the fees for filing the outstanding documents) consists of the processing fee for the removal, and a charge for advertising the removal in the newspaper.

The Companies Act also empowers the COJ to strike from the Register any company where she has reasonable cause to believe that the company is not carrying on business or in operation. In such case, the Registrar may send the company a letter inquiring whether the company is carrying on business or in operation. If the Registrar does not within one month afterward receive an answer, he must send the company another letter 14 days after the expiration of the month. If the second letter is not answered within one month, or if the Registrar receives an answer stating that the company is not carrying on business or in operation, he may publish in the Gazette and in a daily newspaper in Jamaica, and send to the company by post, a notice that at the expiration of three months from the date of the notice, the company will be struck off the register and dissolved, unless cause is shown to the contrary. If at the end of such period, no cause is shown to the contrary, the company will be struck off the register, and notice thereof will be published in the Gazette, after which the company shall be dissolved.<sup>17</sup> In the event that a company is struck off the Register while it is still carrying on business or owns property, the assets of the company will go bona vacantia to the Crown (that is, the government of Jamaica becomes the owner of the property). If a company is struck off the Register while it owns property or is carrying on business, it may within 20 years of being struck off, request restoration to the register. A company seeking restoration would be required to bear the cost of restoration as well as payment to update its records.<sup>18</sup>

A company which still has assets or liabilities must proceed by way of liquidation. Once a company has been successfully wound up and assets liquidated and distributed in accordance with the prescribed ranking of claims, the Registrar of Companies ought to be notified, after which the company will be removed from the Register of Companies in due course.

#### b. Case Law

We were unable to find significant case law on this topic.

### B. Not-For Profit Organizations

#### a. Laws

##### 1. Friendly Societies

In Jamaica, not-for profit organizations may be registered either with the COJ as companies or businesses (as provided in section 1 above), or with the Department of Co-operatives and Friendly Societies (DCFS) as entities known as friendly societies. The Friendly Societies Act (FSA)<sup>19</sup> governs friendly societies. The FSA makes provision for three types of entities with membership of not less than 21 persons each to be registered.

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<sup>17</sup> See Section 337 of the Companies Act.

<sup>18</sup> Companies Office of Jamaica, Compliance and You: Legal Forms of Business, available at <https://www.orcjamaica.com/compliance/>.

<sup>19</sup> See the Friendly Societies Act, available at <http://www.moj.gov.jm/laws/friendly-societies-act>; the Friendly Societies Regulations, 1968, available at <http://www.moj.gov.jm/laws/friendly-societies-act>.

The first, friendly societies, function as organizations that facilitate assistance to members, their relatives and dependents in one or more of the following ways: the relief or maintenance of members, their families and relatives during sickness, old age or on becoming a widow or orphan; or insuring money to be paid on the birth of a member's child, on the death of a member, for funeral expenses of a member's dependent, as relief during unemployment or distressful circumstances, against fire for tools or implements used by a member in his trade, against fire for household furniture, or in the event of marriage of a member.

The second, benevolent societies, are established for charitable purposes and are mainly community based organizations to enhance the creation of community development organizations; make representation and recommendation to the relevant authorities for improvement of the community infrastructure; promote, assist and support the creation of a healthy lifestyle for families; or foster the creation of job opportunities via skills training.

The third, specially authorized societies, can only be established on the authorization of the DCFS, an agency within the Ministry of Industry, Investment & Commerce, under whose portfolio the registration of friendly societies falls. They can be organized for purposes other than societies carrying on the business of banking.

The criteria for registering a friendly society include the following:<sup>20</sup>

- At least 21 persons are required to form a friendly society. The group should elect a steering committee from its number, which should constitute an odd number of persons e.g. five, seven, nine, etc.
- Submission of application forms and registration agreement in duplicate duly signed by the required members and officers. Forms are available from the DCFS. Upon applying for registration, the group should state whether it is seeking registration as a friendly, benevolent or specially authorized society.
- Payment of the application fee.
- The presentation of three error-free copies of the proposed rules.
- Summary of intent of the group's major focus or project proposal, if applicable.
- A statement of affairs (including an income and expenditure statement and a declaration of assets and liabilities).
- Written proof of the proposed location for the registered office (such as a lease or rent agreement).

The steering committee should also be available itself for training in management of friendly societies. At the end of the training, an evaluation would be undertaken to determine the group's knowledge of the management of friendly societies and areas of the FSA.<sup>21</sup>

A friendly society may be dissolved in one of three ways.<sup>22</sup>

- After carrying out an inquiry or making an inspection (which may be on the Registrar's own motion, or upon application of a prescribed number of members, relating to the alleged insolvency of the society) under Section 55 under the FSA the Registrar may cancel the registration of a friendly society.
- If three-quarters of the members of the friendly society may request its dissolution.

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<sup>20</sup> See DCFS website at <http://dcfsjamaica.org/site/requirementsfriendly.html>.

<sup>21</sup> National Environment and Planning Agency, Development & Investment Manual, Volume 7, Section 2, Co-Operatives and Friendly Societies, available at <http://www.nepa.gov.jm/Development-Invest-Man/Volume%207%20-%20Finance/Section%202%20-%20Co-operatives%20%26%20Friendly%20Societies.pdf>.

<sup>22</sup> See Section 58 of the FSA.



- If at any time it is proved that the number of members has been reduced to less than 21, the Registrar may cancel the registration of any friendly society.

Liquidation may be done either voluntarily or in response to a declaration of bankruptcy as a way of repaying a portion of debtors. In most cases, liquidation occurs when a friendly society's business is terminated. The assets are sold and the proceeds are used to pay creditors, then any remaining money is distributed to members/shareholders. Section 61 of the FSA gives authority to the Registrar for appointment of a liquidator to undertake the duties and responsibilities of liquidation. Upon appointment the liquidator's powers in executing his/her functions are subjected to the direction and control of the Registrar and any limitations imposed by the Registrar.<sup>23</sup>

## 2. Registering Charities<sup>24</sup>

The process of registering charitable organizations as charities under Jamaica's Charities Act, 2013 commenced officially on December 24, 2013. A "charitable organization" is defined as (a) a charitable trust or (b) any institution, whether incorporated or not, which is established for a charitable purpose exclusively or is intended to and does operate for the public and has no part of its net income or assets inuring to the personal benefit of any governing board member or settler of the organization, or of any other private individual, but shall not include an excluded body.

Applications from all charitable organizations for tax relief/tax exemption must be made to the DCFS. All entities that are seeking charitable status will be required to obtain approval under Sections 14 and 15 of the Charities Act through the DCFS. Such entities must submit an application<sup>25</sup> and the relevant fee, and any additional information required by the DCFS, which may include, among other things, copies of the entity's governing documents, prior year audited financial statements, a fit and proper questionnaire and the entity's tax registration number. Upon receipt of an application, the DCFS (a) may cause an inspector to verify that the information furnished in the application is accurate; (b) shall forward a copy of the application to the Commissioner General; and (c) may invite, within such period as the DCFS may specify, the written comments or recommendations of such public body as it thinks appropriate. On receipt of the application, the Commissioner General shall review and indicate, within fourteen days from the date of receipt of the application, whether he objects to registration of the charitable organization. The DCFS shall not approve the application unless the Commissioner General has indicated that he does not object to registration of the charitable organization. Where the DCFS grants approval for registration as a charitable organization, it shall issue a certificate of approval to the charitable organization, which certificate will be valid for two years. Registered charities shall state that they are a registered charitable organization on all notices, advertisements, letters, bills, invoices and other documents issued by the charity.

Waivers and tax relief are provided to registered charitable organizations under the following elements of Schedule 3 to the Charities Act: the Customs Act, the General Consumption Act, the Income Tax Act, the Property Tax Act, the Stamp Duty Act, and the Transfer Tax Act. If approval of charitable status is granted, there should generally be no requirement to make separate applications for tax waivers/exemptions in respect of customs duty, general consumption tax, income tax, property tax, stamp duty, and transfer tax etc. In general, these exemptions will now be automatic. However, all charitable organizations should present the approved charitable organization certificate and a valid tax compliance

<sup>23</sup> Department of Co-operatives and Friendly Societies (DCFS) FAQ, available at <http://dcfsjamaica.org/site/faq.html>.

<sup>24</sup> See Charities Act, 2013, available at [http://www.japarliament.gov.jm/attachments/341\\_char.pdf](http://www.japarliament.gov.jm/attachments/341_char.pdf). Also see Jamaican High Commission, United Kingdom, at <http://www.jhcuk.org/citizens/diaspora-affairs/charitable-donations-under-the-charities-act-2013>.

<sup>25</sup> Form of application is available at <http://dcfsjamaica.org/site/download.html>.



certificate to the Collector of Customs for processing in order to receive duty free privileges from the Jamaica Customs Agency. The documents are then verified and affixed a locator number (cc#) and the relevant documents are sent to the respective customs directors and managers.

b. Case Law

We were unable to find significant case law on this topic.

C. Analytical comparison of the legal process of registration

As shown above, Jamaica has relatively efficient processes for registering companies, businesses and friendly societies, when compared to similar processes in other nations. In order for an entity to be qualified as a charitable organization and obtain tax and other relief as specified in the Charities Act, additional steps are required as noted above, in addition to the steps required for the registration of the entity itself, which is typical in most nations.

### III. Tax Laws

A. For-Profit Organizations

a. Laws

1. Tax Overview<sup>26</sup>

The principal taxes in Jamaica are as follows: (i) taxes on income and gains, (ii) transaction taxes, including general consumption tax (GCT or value added tax – VAT), transfer tax, customs duties and stamp duties, (iii) taxes on property, including land /property tax and asset tax, (iv) payroll taxes, including pay as you earn (PAYE -income tax), national insurance contributions (NIS or social security), national housing trust (NHT), education tax and human employment and resource training (HEART) contributions, and (v) other taxes, including annual company registration fees, stamp duties, motor vehicle license tax and travel tax.

A corporation resident in Jamaica is subject to income tax on its worldwide income. A non-resident corporation is subject to income tax if it carries out trade in Jamaica, or has an office or place of business in Jamaica, or derives income from any source in Jamaica.

Corporations pay income tax on their net income. However, non-trading income (e.g. interest) is generally taxed on a receipts basis. Dividends paid out of profits by a Jamaican corporation whose shares are quoted on the Jamaica Stock Exchange are not taxed. Dividends paid by an unlisted company are taxed. Where payment of the dividend is made to a foreign investor and there is a treaty in effect between Jamaica and the payee country, the lower treaty rates may apply. Payments to foreign affiliates for management fees, research and development, and general and administrative expenses, are deductible for income tax purposes, provided they are made at arm's length rates in consideration of the services rendered.

Foreign companies which are deemed to have a 'permanent establishment' (a term normally defined by the relevant treaty) in Jamaica may be subject to income or withholding tax. If the permanent establishment is a place of business in Jamaica, that is, an office or other location from which it carries on business activities, local law requires the registration of a branch. A separate legal entity may, instead, be

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<sup>26</sup> See UHY, *Doing Business in Jamaica*, *supra* note 5, p. 17-21.

registered. Various other registrations may also be required. A branch operation, irrespective of the nature of its business activities, is subject to Jamaican tax on income derived from the island and elsewhere to the extent remitted to the island. Transactions between the branch, its head office and affiliates should be at arm's length values.

The Transfer Tax Act 1971 provides for tax at the rate of 7.5 percent of the consideration of each transfer, limited to 37.5 percent of the capital gain. The tax is payable on certain classes of property situated in Jamaica. Such property comprises land and buildings, leases of land, securities of a company and beneficial interests under any settlement on these types of property. The tax is imposed on the transferor and is paid by the purchaser, who deducts it from the consideration for the transfer. Transactions on the Jamaica Stock Exchange are exempt from the tax.

A partnership is treated as a conduit and as such is not subject to income tax. Partners, corporate or individual, are taxed on their own share of the partnership income. Non-resident partners, including corporate partners, are subject to Jamaican tax on their share of the partnership profits that accrue in or are derived from Jamaica. In the absence of a definition provided by a relevant double tax convention, income is usually deemed to be derived from Jamaica if the activity is carried out within the island or if the partnership is managed and controlled from the island. Non-resident foreign corporations pay tax on their share of profits at the same rates as resident corporations. Non-resident individual partners are taxed at the same rates as non-resident individuals. Double taxation relief may be available under the relevant treaty. A joint venture is generally treated as a partnership and taxed in the way discussed above.

## 2. Tax Incentives.

The Jamaican government's stated policy on tax treaties is to negotiate them with those countries that carry out significant trade with Jamaica and are also likely to provide significant investment in the island. The government uses tax treaties primarily to promote capital inflow and expand foreign trade. By the treaty mechanism, it seeks to ensure as far as possible that the tax burden in Jamaica will be no greater than in the foreign investor's country of residence. It also tries to ensure that tax-sparing provisions are used to recognize special tax incentives granted to promote investment in the island. Legislation in Jamaica provides for relief from double taxation on income earned in Jamaica by citizens of other countries, thus incorporating the provisions of the bilateral double taxation treaties between Jamaica and other territories including the United States of America, France, the United Kingdom and the Kingdom of Spain. Under the Double Taxation Relief (Taxes on Income) (Caribbean Community) Order, Jamaica also allows relief from double taxation on income earned by nationals (including bodies corporate or other legal persons) of CARICOM member countries in another CARICOM country.

The Fiscal Incentives Act provides for the reduction of the effective corporate income tax rate by applying an employment tax credit (ETC) with a maximum value and a capital allowance applicable to a broadened definition of industrial buildings.

The Income Tax Relief (Large-Scale Projects And Pioneer Industries) Act is targeted at large-scale projects and/or pioneering projects and provides for an improved and more attractive rate for the ETC projects to be designated either as large-scale or pioneer will be based on the decision of Parliament having been informed by an economic impact assessment.

The revised Customs Tariff provides for zero percent duty on capital equipment and raw materials. Persons in manufacturing, tourism and creative industries stand to benefit from duty free importation of industry-related consumer goods.

The Revised Stamp Duty Act targeted at the manufacturing sector provides exemptions from additional stamp duty on raw materials and non-consumer goods.<sup>27</sup>

Under the Shipping Act, once a company is recognized as an “approved shipping corporation,” it may receive tax relief and concessions on import duties for up to 10 years.

The Modernisation of Industry Programme provides for the waiving of general consumption tax chargeable on the acquisition of machinery and equipment directly related to manufacturing processes.

The Urban Renewal Act is targeted at persons or organizations that facilitate or carry out urban development. Relief from income tax, stamp duty and transfer tax is given to those persons/entities who engage in transactions geared towards urban development ie in the metropolitan centers of Kingston and Montego Bay.

The Factory Construction Law targets companies which construct factories and lease or sell them to producers. It grants relief from import duties for items which are not available locally, and income tax on factory leasing or sales.

The Export Free Zone Act (EFZA) was intended to encourage manufacturing activities in Jamaica. Before a manufacturer can take advantage of the concessions made available by the EFZA, their company must be incorporated or registered under the Companies Act. A company can operate within the designated free zone area or outside as a single entity in the customs territory. In order for firms outside the free zone complex to benefit under the single entity ‘free-zone’ status, a company must be registered according to the provisions of the Companies Act and export at least 85 percent of its production. The free-zone status enables manufacturers and service providers (in the case of informatics free zones) to benefit from the exemption of income tax on profits in perpetuity, as well as import duties and licensing. Furthermore, there exists a special provision under the EFZA that permits the repatriation of foreign exchange by overseas investors to their parent companies without any form of recourse on the part of the government.

Qualified businesses taking advantage of the Accelerated Depreciation/Special Capital Allowance must be certified by the Ministry of Industry, Commerce and Technology. For data processing/system development businesses, at least 20 percent of their gross income must be derived from exports. Upon qualification, a certified business is granted a special allowance of capital expenditure for 50 percent of the full cost of any new machinery in the year of purchase and a further 50 percent in the second year.<sup>28</sup>

Jamaica is a signatory to the World Trade Organization (WTO) Doha Ministerial Declaration which requires the encouragement of free trade. Export financing is available from private financial institutions. There are several commercial banks, merchant banks and other regulated financial institutions which offer collateralized and unsecured business financing. The National Export-Import Bank of Jamaica Limited (EXIM Bank) specializes in providing financing for export businesses. There is no general requirement for a national to be a shareholder/director in an enterprise in order for the investor to receive grants or subsidies.<sup>29</sup>

Since 1984, Jamaica has been a beneficiary of the Caribbean Basin Initiative, a United States preferential trade program for imports from the region.

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<sup>27</sup> See LexMundi World Ready, Guide to Doing Business: Jamaica, *supra* note 2, p. 4.

<sup>28</sup> See UHY, Doing Business in Jamaica, *supra* note 5, p. 8-9.

<sup>29</sup> See LexMundi World Ready, Guide to Doing Business: Jamaica, *supra* note 2, p. 3, 12.

The International Technical Assistance Program (ITAP) covers the various programs that are funded by international agencies and administered by Jamaica's investment and export promotions agency (JAMPRO)/ITAP Department. These programs are made available to persons wishing to make investments that are deemed to have the potential to contribute to Jamaica on a developmental level. The main organization that presently funds these types of development programs is the European Union through the European Development Fund (EDF).<sup>30</sup>

a. Case Law

We were unable to find significant case law on this topic.

B. Not-For Profit Organizations

a. Laws

The income of registered charitable organizations is exempted from various taxes and duties. See Section II.B above for further information regarding charitable organizations. Per the FSA, a registered friendly society is exempt from income tax, and all instruments executed by or on behalf of a registered society or a branch thereof or by or on behalf of a member relating to the business of such society or branch shall be exempt from stamp duty.<sup>31</sup>

b. Case Law

We were unable to find significant case law on this topic.

C. Analytical comparison

As registered charitable organizations are exempt from various taxes and duties, many of the incentives described above would not be applicable to such entities. To the extent that registered charitable organizations are required to pay certain taxes and duties, from the limited information available, it appears that they would be eligible for the same incentives as for-profit businesses, provided that the registered charitable organizations meet the criteria for obtaining such incentives.

#### IV. Financial Transaction Laws

A. For-Profit Organizations

a. Laws

i. Foreign Investment/Foreign Funding Laws<sup>32</sup>

Jamaica welcomes foreign investment. JAMPRO is an Agency of Jamaica's Ministry of Industry, Investment and Commerce that promotes business opportunities in export and investment to the local and international private sector and provides the policy framework for the encouragement of investment. It is

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<sup>30</sup> See UHY, *Doing Business in Jamaica*, *supra* note 5, p. 8-9.

<sup>31</sup> See Section 27 of the Friendly Societies Act.

<sup>32</sup> See LexMundi World Ready, *Guide to Doing Business: Jamaica*, *supra* note 2, p. 3, 12. See 2011 Investment Climate Statement – Jamaica, U.S. Department of State, Bureau of Economic, Energy and Business Affairs, available at <http://www.state.gov/e/eb/rls/othr/ics/2011/157299.htm>.

a key policy advocate and advisor to the Government in matters relating to the improvement of Jamaica's business environment and the development of new industries.

There are no limits on foreign ownership or control of companies in Jamaica. Foreign investors are generally granted national or Most Favored Nation treatment, subject to the rules of their Bilateral Investment Treaties (BITS). There are no screening mechanisms for foreign investments, but if investors apply for government incentives, they could be required to meet some basic pre-requisites and due diligence may be done by the approving agency. This process is not discriminatory and is not intended to impede investment. Jamaica has also undertaken a comprehensive program of trade and financial liberalization, and no sector remains closed to foreign investment. However, projects that affect national security, have a negative impact on the environment, or involve sectors such as life insurance, media or mining are subject to regulation and certain restrictions. Jamaica's privatization program is also open to participation by foreign investors, except for assets that are on the restricted list due to national security concerns. The National Investment Bank, which administers privatization, is mandated to ensure that the process is fair and transparent. However, in some privatization transactions, the participation of local investors may lead to added points in the scoring of proposals. When large entities are being privatized, advertisements are placed in international newspapers such as the Financial Times, New York Times and Wall Street Journal to attract foreign investors. An information memorandum accompanies privatization proposals and includes the specific requirements under which bidders are allowed to participate and the criteria by which proposals will be evaluated.

Note, however, that under the Companies Act, investors are required either to establish a local company or to register a branch office of a foreign-owned enterprise. Branches of companies incorporated abroad must also register with the Registrar of Companies if they intend to operate in Jamaica. The Companies Act allows foreign companies to hold lands without registering in Jamaica. There are no laws or regulations requiring firms to adopt articles of incorporation or association, which limit or prohibit foreign investment, participation or control.

There are no foreign exchange controls in Jamaica preventing or restricting the use of foreign currency generally, nor is there a general restriction on foreign direct investment by private investors. The Exchange Control Act facilitates the free movement of capital to other countries, whether for investment or repatriation purposes. A person who is on the business of buying, borrowing or lending foreign currency or foreign currency instruments must however be approved as an authorized dealer under the Bank of Jamaica Act. There are also restrictions on foreign governments investing in banks and financial institutions. In particular sectors, a license from a Minister or other governmental or regulatory agency may be required to conduct business, including with respect to companies which are regulated by the Bank of Jamaica, the Financial Services Commission, the Office of Utilities Regulator or the Ministry of Finance & the Public Bodies.

#### ii. Political Contribution Laws

There do not appear to be any restrictions on political contributions in the laws governing for-profit entities in Jamaica.

### B. Not-For Profit Organizations

#### a. Laws

##### i. Foreign Investment/Foreign Funding Laws

See rules above for for-profit organizations.

## ii. Political Contribution Laws

A political party or a body that promotes a political party or a candidate of a political party is ineligible to be registered a charitable organization under the Charities Act.<sup>33</sup> However, there does not appear to be a restriction in the Act relating to political contributions by charitable organizations.

### b. Case Law

We were unable to find significant case law on this topic.

## C. Analytical Comparison

There appears to be no difference between for-profit and not-for profit organizations in the rules regarding financial transactions, other than the fact that political parties and associated entities cannot be registered as charitable organizations.

## V. Auditing/Reporting Requirements

### A. For-Profit Organizations

#### a. Laws

The Companies Act requires considerable disclosure and compliance requirements as well as providing for increased penalties for compliance failure. The Act addresses disclosure and other regulatory requirements in relation to incorporation and registration, disclosures to be made in a prospectus, capitalization minimums, management and administration, duties and responsibilities of directors and other officers, matters relating to winding-up, registration and inspections, accounts and audit, annual reports and meetings, and statutory filings

Companies are required to submit a form detailing any change in the particulars of directors, the company secretary or the address of the registered office within 14 days of any change therein. All companies are required to prepare annual financial statements, except for small companies which may claim exemption under the Companies Act. Financial statements must be audited and circulated to the members annually in a general meeting. The Articles of Incorporation usually outline the procedure for the keeping of local accounts, preparation and inspection of profit and loss accounts, balance sheets and group accounts (if any). Companies are also required to file annually with the COJ a true copy of the balance sheet and profit and loss account together with a copy of the auditors' report. It may be necessary for the company to provide its financial statements when filing documents relating to taxes and annual returns. Annual returns are due within 28 days of the anniversary of incorporation of a company, and annually thereafter.<sup>34</sup> All employers with 20 or more employees are also required to e-file employers' Annual Returns (SO2) and Monthly Statutory Declaration (SO1) as well as other statutory filings and payroll returns in the manner and time prescribed.

In addition to meeting the disclosure requirements, publicly listed companies are required to file with the Jamaica Stock Exchange and publish in the media quarterly abridged financial statements. These must be accompanied by a directors' report and signed by at least two directors. Companies file their

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<sup>33</sup> See Charities Act, 2013, available at [http://www.japarliament.gov.jm/attachments/341\\_char.pdf](http://www.japarliament.gov.jm/attachments/341_char.pdf).

<sup>34</sup> Companies Office of Jamaica, Compliance and You: Legal Forms of Business, available at <https://www.orcjamaica.com/compliance/>.



annual financial statements within 90 days of their financial year end and quarterly financial statements within 45 days of the end of the quarter.<sup>35</sup>

The Companies Act specifically requires all registered companies to present financial statements in accordance with generally accepted accounting principles (GAAP) promulgated by the Institute of Chartered Accountants of Jamaica. The Institute has promulgated international financial reporting standards (IFRS) as the national accounting standards since 2002. Qualifying small companies that elect exemption to prepare financial statements and accordingly may omit to do so, must apply the standards issued by the Institute of Chartered Accountants of Jamaica that are applicable to their nature and complexity to show a true and fair view of their state of affairs and results of operations. International Standards on Auditing (ISA) must be used for the purpose of auditing financial statements. Monitoring of the system is in place to ensure there is compliance with the Companies Act and IFRS in the preparation of financial statements and that the financial statements are audited in accordance with ISA. Qualifying small companies may also seek exemption under the Companies Act from audit of financial statements.

An overseas company is required to file the following in every calendar year:

- A copy of its balance sheet and profit and loss account and, if the company is a holding company, its group financial statements prepared in the form required under the Companies Act for companies incorporated in Jamaica, or
- A copy of its balance sheet and profit and loss account or, if the company is a subsidiary company, a copy of the balance sheet of its holding company, prepared in the form required under the law of the place of the company's incorporation, together with a profit and loss account of the company's operations in Jamaica, a statement showing the company's assets situated in Jamaica, and an auditor's report on both the statement of operations and statement of assets.

The declaration of assets tax, which is based on the total assets of the company, must be filed on or before September 1 in every year.<sup>36</sup>

#### b. Case Law

We were unable to find significant case law on this topic.

### B. Not-For Profit Organizations

#### a. Laws<sup>37</sup>

##### 1. Friendly Societies<sup>38</sup>

All registered friendly societies are empowered to make and amend their Rules (Sections 10 & 11 of the FSA). Such Rules shall be binding upon all members of the society and contain all provisions stipulated in Regulation 3 of the Friendly Societies Regulations (FSR). Every society shall supply members with copies of the Rules of the society at a cost to the members (Section 31 of the FSA).

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<sup>35</sup> See LexMundi World Ready, Guide to Doing Business: Jamaica, *supra* note 2, p. 19.

<sup>36</sup> See UHY, Doing Business in Jamaica, *supra* note 5, p. 22-26.

<sup>37</sup> See Charities Act, 2013, available at [http://www.japarliament.gov.jm/attachments/341\\_char.pdf](http://www.japarliament.gov.jm/attachments/341_char.pdf). Also see Jamaican High Commission, United Kingdom, at <http://www.jhcuk.org/citizens/diaspora-affairs/charitable-donations-under-the-charities-act-2013>.

<sup>38</sup> See DCFS website at <http://dcfsjamaica.org/site/factsfriendly.html>.

Every society shall have a registered office to which all communications may be sent (Section 20 of the FSA). Every society shall display its registered name legibly, in a conspicuous position outside its place of business (Section 21 of the FSA).

No later than January 31 in every year, every society shall send a Return of the members and investments to the Registrar for the year ending December 31st preceding, showing: the number of members on roll, including every person who at any time during the year was a financial member; the amount of money in the bank account of the society; the amount of money invested in stocks, shares or debenture of any bank or building society in Jamaica; the amount of money invested in real estate; the amount of money invested in shares in any Co-operative or authorized trustee securities; and the amount of money in the Treasurer's hands at the close of the 31st day of December (Section 22 of the FSA).

Full and proper Minutes of all Annual, Regular, Special and Committee meetings must be kept (FSR 4). At least 14 days' notice must be sent to members for all special meetings; or the alternative if notice is published once a week in a daily newspaper circulating in Jamaica during at least two consecutive weeks prior to such meeting (FSR 7).

The Committee of Management of every society shall cause proper books of accounts to be kept (FSR 22). The Committee of Management shall also present yearly to the general meeting a statement of account in respect to the operation of a loan fund, if any, showing the loan outstanding, deposits on hand, installments or repayments due and unpaid, the action proposed to be taken in case and a general review of operation of the said fund (FSR 25).

A book shall be kept for the purpose of recording all levies imposed upon members by a society during each year (FSR 39). Every bond shall upon execution be filed in the office of the Registrar without payment of a fee (FSR 42).

The Registrar shall audit or cause to be audited by some person authorized by him, the accounts of every society at least once per year (Section 23 (1) of the FSA). The Secretary of every society shall prepare a list of documents to be supplied to the auditors (FSR 29).

Every registered society no later than May 31 in each year shall send a return to the Registrar, known as the Annual Return. This Return shall show separately all receipts and expenditures of the society (Section 24 (i) of the FSA).

The Registrar may require every society at least once in every five years to submit a quinquennial valuation which includes: valuation of the assets and liabilities of the society by a valuer, who shall be appointed by the Society and approved by the Registrar; and a Return of the benefits assured and contributions received from all members and the debits and credits of all accounts accompanied by evidence in support thereof as the Registrar may require (Section 25 of the FSA).

It shall be the duty of the Secretary of every society to supply the auditors for the purpose of the annual audit with a certified list of the amount of contributions, levies, and fines in arrears in respect to every individual member. (FSR 20).

Every registered society shall keep a copy of the last annual balance sheet and the last quinquennial valuation together with any special report of the prescribed persons, always posted in a conspicuous place (Section 26 of the FSA). Every society shall on the application of any member interested in the funds of the society supply to that member: copy of the last annual return of the society; and a balance sheet or other audited documents containing the funds and effects of the society (Section 32 of the FSA).

Every society shall keep a book known as the list of pensioners to record the name, age, address, and reason for the declaration of pensionable status for every person declared a pensioner by the society. This book shall be kept opened at all times for inspection by the member at all reasonable times without payment of a fee (FSR 47).

## 2. Charities

Registered charities have an explicit list of duties, including reporting obligations to the DCFS and the COJ as Registrar of charities and a duty to keep financial and corporate records. In particular, charities will be required to periodically file corporate information and financial statements with the DCFS in order to maintain approved charitable status. As the Charities Act is relatively new, there is currently a lack of guidance on ongoing compliance obligations. However, it is clear that the registered charity will be obligated to maintaining proper financial records to facilitate an audit by the DCFS, taking minutes of board meetings, notifying the Registrar of changes to its name, its board members or changes to the registered office location, and stating the charity's registered status on documents which it issues (e.g. advertisements, bills, invoices, receipts, etc.). The DCFS will also have the right to appoint inspectors to examine the books of the registered charity.<sup>39</sup>

Where it is determined that the charity is not operating in accordance with its charitable purpose, the registration can be suspended or withdrawn. The Minister has the power to set guidelines for RCO in relation to:

- a) Operating the entity
- b) Investments of the charity

### b. Case Law

We were unable to find significant case law on this topic.

## C. Analytical Comparison

As noted in other sections of this summary, charitable organizations must comply with the auditing and reporting requirements applicable to their entity type, as well as additional requirements relating to their status as charitable organizations that are exempt from certain taxes and duties.

## VI. Penalties for Non-Compliance

### A. For-Profit Organizations

#### a. Laws

The COJ falls under the Ministry of Industry, Commerce and Technology with responsibility for the day-to-day administration of companies, trademarks, industrial designs, industrial and provident societies, business names and the recording of patents. The organization registers local and overseas companies, industrial and provident societies and individuals carrying out business in Jamaica. Its mandate is to ensure that there is compliance with the Companies Act, the Registration of Business

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<sup>39</sup> See Charities Act, 2013 – more tax concessions but more regulations for charities, KPMG, available at <http://www.kpmg.com/JM/en/IssuesAndInsights/ArticlesPublications/Documents/Tax%20Bulletin%20New%20Charities%20Act%202013.pdf>.

Names Act and the Industrial and Provident Societies Act. It also maintains up-to-date records of all companies and businesses registered.

All companies registered under the Companies Act must provide certain documents to ensure compliance with the Companies Act, including annual returns with the COJ. Each of these documents will attract late filing fees if they are not filed within the time specified by Act. Continued default in filing , and certain other offenses (such as those relating to disclosure to investors) may lead to prosecution, suit or disqualification of the company’s officers, directors and/or employees.<sup>40</sup>

b. Case Law

We were unable to find significant case law on this topic.

B. Not-For Profit Organizations

a. Laws

The Charities Act provides that the COJ may suspend the approval for the registration of an organization as a charitable organization granted under the Charities Act if the organization fails to pay required fees and charges or otherwise is in breach of any provision of the Charities Act or regulations thereunder. The Minister may also impose certain regulations which may provide in respect of a breach thereof for the imposition of penalties on summary conviction in a Resident Magistrate's Court of a fine not exceeding one million dollars or of imprisonment for a term not exceeding one year or of both such fine and imprisonment.<sup>41</sup>

b. Case Law

We were unable to find significant case law on this topic.

C. Analytical comparison

Penalties for non-compliance by both for-profit and not-for profit organizations involve a combination of fines and criminal penalties, as well as disqualification of officers and directors. Note that a charitable organization also faces the additional potential penalty of losing its status as a registered charitable organization and thus its exemption from taxes and duties.

**OVERVIEW CHART**

<b>Issue</b>	<b>For-Profit Organizations</b>	<b>Not-For Profit Organizations</b>	<b>Similarities</b>
Registration Procedures		Friendly societies have fewer requirements for registrations than companies.	Non-profit and for-profit companies and businesses have similar registration procedures.

<sup>40</sup> National Environment and Planning Agency, Development & Investment Manual, Volume 7, Section 2, Co-Operatives and Friendly Societies, available at <http://www.nepa.gov.jm/Development-Invest-Man/Volume%207%20-%20Finance/Section%202%20-%20Co-operatives%20%26%20Friendly%20Societies.pdf>; Companies Office of Jamaica, Compliance and You: Legal Forms of Business, available at <https://www.orcjamaica.com/compliance/>.

<sup>41</sup> See Charities Act, 2013, available at [http://www.japarliament.gov.jm/attachments/341\\_char.pdf](http://www.japarliament.gov.jm/attachments/341_char.pdf).

		There are also additional procedures in order for any type of entity to become a registered charitable organization.	
Tax Laws	Companies and businesses are subject to taxation, but tax and duty incentives apply, if the organization meets applicable requirements.	Friendly societies are exempt from income tax and stamp duties.  Registered charitable organizations are exempt from most taxes and duties.	
Financial Transaction Laws			Similar from a legal entity perspective.
Auditing/Reporting Requirements		Additional requirements relating to maintenance of status as a registered charitable organization.	Similar from a legal entity perspective.
Penalties		Additional penalty of loss of status as a registered charitable organization.	Similar from a legal entity perspective.