

THE TIMESHARE VACATIONS ACT, 2014

(Act of 2014)

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SCHEDULES.

ABILL

ENTITLED

AN ACT to Provide for the regulation of timeshare vacation schemes and for connected matters.

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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*

1. This Act may be cited as the Timeshare Vacations Act, 2014, and shall come into operation on a day appointed by the Minister by notice published in the *Gazette*.

Short title
and
commencement.

Interpretation. 2.—(1) In this Act—

“accommodation” means—

- (a) any building or premises, or part thereof (whether or not forming part of a strata plan), which is used, or designed for use, as overnight occupancy by one or more individuals;
- (b) any land made available for use as a campsite; or
- (c) any caravan, vehicle, boat or ship, used, or designed for use, as occupancy by one or more individuals for any period of at least one night;

“approved escrow agent” means—

- (a) a bank, as defined by section 2(1) of the Banking Services Act and duly licensed under that Act;
- (b) a financial institution, as defined by section 2(1) of the *Banking Services Act* and duly licensed under that Act; or
- (c) a partnership of attorneys-at-law designated by the Minister responsible for lands after consultation with the General Legal Council to be an approved escrow agent, by notice published in the *Gazette* for the purposes of this section;

“deed-based timeshare accommodation” means timeshare accommodation comprising buildings, premises or land falling within paragraph (a) or (b) of the definition of “accommodation” in respect of which a deed is, or is to be, issued by the Timeshare Registrar under the terms of the timeshare contract concerned;

“escrow account” means an escrow account established pursuant to section 9;

“facilities” includes any services or amenities connected with any timeshare accommodation;

“incumbrancer”, in relation to any timeshare accommodation—

(a) means any claimant to an estate, interest or right upon or in respect of the property concerned, which can be made adversely and preferentially to the title of the proprietor;

(b) excludes a person entitled to the benefit of a restrictive covenant;

“promote”, with respect to any timeshare accommodation, means the advertisement of the accommodation or the solicitation of persons to view the timeshare accommodation, or any information associated therewith, for the purpose of encouraging entry by such persons into timeshare contracts;

“proprietor” means the registered proprietor of the land comprising the timeshare accommodation, or a person who holds a leasehold estate for a term of not less than ten years in registered land on which the timeshare accommodation is situated;

“public offering statement” means the statement required to be given to a purchaser under section 6(2)(a);

“purchaser” means a person who acquires, or proposes to acquire, for consideration and subject to the terms and conditions of a timeshare contract, the right to occupy timeshare accommodation;

“Register Book of Titles” means the book kept under section 55 of the *Registration of Titles Act*;

“Registry” means the Timeshare Vacations Registry established under section 22;

“timeshare agent” means a person to whom section 3 applies;

“timeshare accommodation” means accommodation provided subject to a timeshare contract or comprised in a timeshare plan;

“timeshare contract” means an agreement between a proprietor and a purchaser—

- (a) under which the purchaser, for consideration, acquires from the proprietor the right to occupy accommodation for more than one period of occupation, each being a period of not less than three days nor more than six months at a time; and
- (b) which has a duration of three or more years (whether consecutive or not), or contains provisions allowing for the agreement to be renewed or extended so that it has a duration of more than three years (whether consecutive or not),

but excludes—

- (i) multiple reservations of any accommodation, to the extent that such reservations do not imply rights and obligations beyond those arising from the separate reservations;
- (ii) a lease agreement which provides for a single, continuous, period of occupation;
- (iii) any resort or holiday marketing arrangement specified by the Minister by order published in the *Gazette* to be excluded from the definition of a timeshare contract, or any vacation club scheme; and
- (iv) any loyalty scheme which provides persons with discounts on future stays at any accommodation, if—
 - (A) no consideration is payable in respect of membership in the scheme; and

(B) the consideration payable by such persons for accommodation is not payable primarily for the purpose of obtaining a discount or other benefit in respect of accommodation;

“timeshare exchange programme” means a programme which allows a purchaser access to timeshare accommodation or other facilities in exchange for giving other persons temporary access to the rights deriving from the purchaser’s timeshare contract;

“timeshare plan” means the plan required to be registered under section 4;

“Timeshare Registrar” means the Real Estate Board acting pursuant to section 22(2);

“unit of accommodation” with respect to any timeshare plan, means an area that includes at least one private sleeping area;

“vacation club scheme” means any arrangement for the provision of resort or holiday accommodation and any benefit associated therewith, at periodic intervals over any period of time, but which is not linked to a right to occupy any particularly identifiable property;

“withdrawal period” in relation to a timeshare contract, means a period of seven days starting from the latest of the following dates—

- (a) the date on which the purchaser is given a copy of the executed timeshare contract, pursuant to section 6(4); or
- (b) in any case where the information required under section 6(3)(c) is not included in the copy of the executed timeshare contract given to the purchaser, the date which is three months after the date on which execution of the timeshare contract is completed;

“working days” excludes Saturdays, Sundays and public general holidays.

(2) A timeshare contract shall not be construed to be a security within the meaning of the Securities Act.

(3) For the purposes of this Act, unless the timeshare contract concerned provides another method of determining the time of completion of execution, the execution of a timeshare contract shall be taken to be completed, after all the parties thereto have signed the contract—

- (a) at the time of signing by the party who is the last to sign the contract; and
- (b) at the place where the signing referred to in paragraph (a) takes place.

PART II. *Operational Requirements for all Timeshare Schemes*

Licensing requirements for timeshare agents.

3.—(1) This section applies to any person engaged in the business of—

- (a) offering timeshare contracts or providing public offering statements;
- (b) conducting tours or conducting presentations connected with the offering of timeshare accommodation; or
- (c) soliciting persons to view timeshare accommodation or attend at any tour or presentation mentioned in paragraph (b),

with a view to encouraging any person to enter into a timeshare contract.

(2) In this Act, “Outside Public Contact” means a person who carries on the business mentioned in subsection (1)(c) off-site of the timeshare accommodations concerned, on behalf of a proprietor.

(3) A person to whom this section applies, other than an Outside Public Contact, shall not engage in any business mentioned in subsection (1) except in accordance with a licence granted under this section.

(4) Where the prescribed licensing fee has been paid and the Timeshare Registrar is satisfied as to the matters specified in subsection (5), the Timeshare Registrar may grant a licence under this section, subject to such terms and conditions as may be specified therein or as may be prescribed.

(5) Subject to subsection (6), the Timeshare Registrar shall not grant a licence under this section to any person unless the Timeshare Registrar is satisfied that the person—

- (a) is an individual, or a company registered and in good standing under the *Companies Act*;
- (b) has obtained such qualifications as may be prescribed concerning the ethics, standards, legal requirements and best practices of the business of promoting timeshare accommodation; and
- (c) is a fit and proper person according to such criteria as may be prescribed.

(6) Where the proposed licensee is a company, the matters set out in—

- (a) subsection (5)(b) shall be satisfied by at least one of its directors, being a person who is engaged full-time in the day-to-day management of the company;
- (b) subsection (5)(c) shall be satisfied by all of its directors and senior managers.

(7) Every application for a licence under this section shall be made in such form and manner as may be prescribed.

(8) A licence granted under this section shall be for a duration of one year from the date of its issue, and renewable by application made under this section.

(9) It shall be the duty of a proprietor to ensure that—

- (a) each Outside Public Contact engaged by that proprietor is issued an identification document indicating that the Outside Public Contact is duly engaged by the proprietor;

- (b) the activities in respect of which the Outside Public Contact is engaged by the proprietor are limited to the matters mentioned in subsection (1)(c);
- (c) the Outside Public Contact does not collect or solicit any payment from purchasers in connection with the timeshare plan; and
- (d) the Outside Public Contact does not participate in—
 - (i) any viewing, tour or presentation in connection with the offering of timeshare accommodation; or
 - (ii) the execution of any timeshare contract.

Registration
of timeshare
plans.

4.—(1) No person shall—

- (a) promote, offer, or provide, any timeshare accommodation except in accordance with a timeshare plan registered under this section;
- (b) provide timeshare accommodation, unless a deed under section 16 is issued by the Timeshare Registrar in respect of the accommodation.

First
Schedule.

(2) Every application for registration under this section shall be made, by the proprietor concerned, to the Timeshare Registrar in the prescribed form and manner and shall be accompanied by the particulars set out in the First Schedule and the prescribed fee.

(3) The Timeshare Registrar may grant an application for registration under this section, if the Timeshare Registrar is satisfied—

- (a) as to the adequacy and accuracy of the particulars set out in the First Schedule, including the proposed public offering statement;
- (b) that the accommodations comprised in the timeshare plan concerned are licensed as tourist accommodation under the Tourist Board Act, except in any case falling within subsection (7);

- (c) that the accommodations comprised in the timeshare plan concerned meet the standards prescribed by regulations made under section 24;
- (d) that the applicant is the proprietor of the timeshare accommodations comprised in the timeshare plan concerned;
- (e) in the case of accommodation falling within paragraph (a) or (b) of the definition of “accommodation” set out in section 2(1), that the land on which the timeshare accommodation is situated, or proposed to be situated, is registered land;
- (f) that all incumbrancers—
 - (i) whose estate, interest or right is set out in a memorandum entered in the Register Book of Titles and with respect to which no memorandum of discharge is therein entered; or
 - (ii) who are caveators under section 139 of the *Registration of Titles Act*, in respect of any land concerned in the application,

have given their written consent to the issue of a deed under section 16; and

- (g) that the proprietor is up to date in the payment of all property taxes applicable in respect of the timeshare accommodations.

(4) Where the Timeshare Registrar grants an application under this section, the Timeshare Registrar shall—

- (a) issue a registration certificate, in such form as may be prescribed, to the proprietor, who shall deal with the certificate in such manner as may be prescribed; and
- (b) return a copy of the filed public offering statement, stamped “approved”, to the proprietor.

(5) For the purposes of subsection (4), the registration certificate shall include a statement that, for the purposes of section 63 of the *Registration of Titles Act*, the registration certificate and

all deeds issued by the Timeshare Registrar shall not have the effect of passing any estate or interest in the land but that the land shall become liable in the manner set out in section 17.

(6) A registration certificate issued under this section shall not be transferable without the approval of the Timeshare Registrar, which approval shall—

- (a) be evidenced by an endorsement made by the Timeshare Registrar in the prescribed form on the registration certificate; and
- (b) not be given unless the Timeshare Registrar is satisfied as to the matters set out in subsection (3), as relates to the proposed transferee.

(7) Where a registration certificate is issued under this section in respect of a timeshare plan which at the time of the application for registration includes accommodations or facilities which are under construction, the proprietor shall within such time as may be specified by the Registrar by notice in writing issued with the registration certificate, submit to the Timeshare Registrar—

- (a) a certificate of completion of construction, issued by the parish council for the relevant parish, certifying that the accommodations or facilities (as the case may be) are completed as described in the plan submitted pursuant to the requirements set out in the First Schedule;
- (b) a certificate of occupancy issued by the entity duly authorized as having responsibility for the development of standards for tourist accommodation, certifying that the accommodations or facilities (as the case may be) meet the standards prescribed by regulations made pursuant to section 24 and are ready for use as timeshare accommodations or facilities; and
- (c) after construction is completed, proof that arrangements are in place for public liability insurance in respect of the accommodations and facilities comprised in the

First
Schedule.

timeshare plan and that the tourism accommodation licence required under the *Tourist Board Act* has been issued.

(8) Where a proprietor fails to comply with subsection (7), within the time allowed for compliance (being the time specified in the notice or such longer period as the Timeshare Registrar may in writing allow), the registration shall, upon the expiration of that time, be deemed to be void and shall be struck from the Register.

(9) The proprietor of accommodations comprised in a timeshare plan registered under this section shall —

- (a) not effect any material additions or alterations to, or changes in the use of, the accommodations without the prior written approval of the Timeshare Registrar;
- (b) ensure that any changes to the documents submitted to the Timeshare Registrar pursuant to paragraph 12 of the First Schedule (public offering statements and other promotional documents) or any proposed additional documents of that kind, are approved by the Timeshare Registrar before they are issued to the public.

5.—(1) Where a proprietor has filed an application under section 4, the Timeshare Registrar may, at any time before the application is determined, upon the request of the proprietor made in such manner as may be prescribed, permit the proprietor to market, promote, and accept, non-binding reservations of rights to occupy timeshare accommodation comprised in the timeshare plan concerned and to accept monetary deposits from purchasers in respect of such reservations. Permission regarding reservations prior to registration.

(2) In making a request under subsection (1), the proprietor shall furnish the Timeshare Registrar with the following information—

- (a) the address and description of the timeshare accommodation, identifying its location with reference to the floor plan or other building plans submitted with the application for registration;

- (b) a copy of the reservation agreement to be used for accepting reservations;
- (c) the name and address of the approved escrow agent with which the escrow account required to be established under section 9 is to be maintained;
- (d) the written consent to the making of the request, given by all incumbrancers—
 - (i) whose estate, interest or right, in land comprised in the timeshare plan, is set out in a memorandum entered in the Register Book of Titles and with respect to which no memorandum of discharge is therein entered; or
 - (ii) who are caveators under section 139 of the *Registration of Titles Act*, in respect of any land comprised in the timeshare plan; and
- (e) such other information as may be prescribed.

(3) The Timeshare Registrar may grant permission under subsection (1) if satisfied that the reservation agreement to be entered into by the proprietor and purchasers provides that—

- (a) monetary deposits for reservations are to be paid directly into the escrow account referred to in subsection (2)(c); and
- (b) each purchaser concerned is entitled to cancel the reservation agreement and obtain a full refund of the deposit paid by the purchaser at any time prior to executing a timeshare contract in respect of the accommodation.

(4) Upon the execution of a timeshare contract in respect of the timeshare accommodation concerned in a reservation agreement, the money paid into the escrow account under the reservation agreement by the purchaser shall continue to be held in the escrow account in reduction of the sums due to be paid by the purchaser under the timeshare contract.

6. —(1) Before executing a timeshare contract, the proprietor shall give to the purchaser concerned the information set out in the Second Schedule, in the manner provided by subsection (2). Public offering statements and timeshare contracts. Second Schedule.

(2) The information referred to in subsection (1) shall be given by, or on behalf of the proprietor, to the purchaser—

- (a) in the form of a statement in writing;
- (b) free of charge, in a manner which is legible to, and easily accessible by, the purchaser; and
- (c) before the execution of the contract is completed.

(3) Every timeshare contract shall be in writing in the English language, setting out—

- (a) the identity, place of residence, and signature, of each of the parties;
- (b) the date on which, and place where, execution of the contract is completed;
- (c) the information referred to in subsection (1), specifically detailed in respect of the transaction concerned;
- (d) the standard withdrawal form set out in the Third Schedule; and Third Schedule.
- (e) a copy of each document issued to the purchaser during the promotion and offering of the timeshare accommodation,

and the matters specified in paragraphs (c), (d) and (e) may for convenience be set out in a schedule or appendix to the contract (and so identified accordingly).

(4) The proprietor shall, no later than thirty days after execution of the contract is completed, give to the purchaser—

- (a) a copy of the executed timeshare contract; and
- (b) a notice of acknowledgment, in the form set out in the Fourth Schedule, for completion by the purchaser. Fourth Schedule.

(5) A proprietor who fails to comply with subsection (1) or (4) commits an offence, and, in the case of a failure to comply with subsection (4)(a), the contract is unenforceable against the purchaser.

(6) A term in a timeshare contract is void to the extent that it purports to allow the purchaser to waive the rights conferred on the purchaser by this section.

(7) Nothing in subsection (3) precludes the contract also being translated into another language.

(8) Nothing in this section shall be construed as discharging a proprietor from the obligation of providing the purchaser with any other information which the proprietor is required to provide to the purchaser under any other law.

(9) Within seven days after receipt of the documents required to be given by the proprietor under subsection (4), the purchaser shall complete and return to the proprietor the notice of acknowledgement set out in the Fourth Schedule.

Fourth
Schedule.

Obligations
regarding
promotion of
timeshare
accommoda-
tion.

7.—(1) Any advertisement or other offer to the public concerning any timeshare accommodation shall indicate how the information referred to in section 6(1) can be obtained.

(2) Notwithstanding that a proprietor has engaged a timeshare agent—

- (a) it is the duty of the proprietor to supervise all aspects of the promotion of any timeshare plan comprising timeshare accommodation owned by him; and
- (b) the proprietor shall be liable for any offence committed under this Act or any regulations made thereunder, in connection with the promotion of the timeshare accommodation concerned, as well as the person who actually committed the offence, unless the proprietor shows that he took all reasonable steps to prevent the commission of the offence.

8.—(1) A purchaser may withdraw from a timeshare contract by giving the proprietor written notice of withdrawal within the withdrawal period.

Withdrawal
from
timeshare
contracts.

(2) For the purposes of subsection (1)—

- (a) the purchaser need not give any reason for the withdrawal;
- (b) the purchaser may use the standard withdrawal form in the timeshare contract as the notice of withdrawal, or any other written communication which clearly communicates the withdrawal;
- (c) the notice of withdrawal may be given by any of the methods referred to in paragraph (d);
- (d) the notice of withdrawal is to be regarded as having been given by the purchaser—
 - (i) in the case of delivery by registered post, at the time it is placed in the post, addressed to the proprietor at the address indicated in the timeshare contract;
 - (ii) at the time when it is delivered by hand to the proprietor or his agent so authorised to receive it; or
 - (iii) at the time it is sent by electronic means in accordance with a procedure specified in the timeshare contract.

(3) With effect from the date on which the purchaser gives a notice of withdrawal in accordance with this section, the obligations of the parties under the timeshare contract are terminated and the purchaser shall be entitled to a return of moneys paid by him under the contract, in accordance with section 10(3).

(4) For the purposes of subsection (3), the obligations terminated include—

- (a) all charges in respect of the provision of the timeshare accommodation;

- (b) all charges or other obligations under any other contract for facilities connected with the timeshare accommodation and provided by the proprietor or a third party on the basis of an arrangement between the third party and the proprietor;
- (c) any credit agreement under which credit that fully or partly covers any payment under the timeshare contract concerned is granted to the purchaser by the proprietor or by a third party on the basis of an arrangement between the third party and the proprietor.

(5) The proprietor shall forthwith notify the third party referred to in subsection (4)(b) or (c), as the case may require, and the approved escrow agent concerned, upon receiving a notice of withdrawal under this section.

Escrow
account.

9.—(1) Before promoting or offering any timeshare accommodation, the proprietor shall establish and maintain an escrow account with an approved escrow agent.

(2) All moneys deposited in an escrow account pursuant to section 5 or 10 and all interest earned thereon—

- (a) shall be held in the account and paid to, or applied for the benefit of, the persons entitled thereto in accordance with the provisions of this Act; and
- (b) may be withdrawn and deposited in another escrow account with another approved escrow agent subject to such conditions as may be prescribed, and the provisions of this Act shall apply to that other account and the moneys held therein as they apply to the original account.

(3) An escrow agent with whom an escrow account is established under this section shall—

- (a) administer the account with due care and diligence, and release money from the account only in accordance with the provisions of this Act and any regulations made thereunder;

- (b) retain all voluntary declarations received pursuant to section 10 for a period of not less than seven years; and
- (c) in the case of any conflicting demands for any money or other property held in escrow under this section, apply to—
 - (i) the Timeshare Registrar; or
 - (ii) if no response is received from the Timeshare Registrar within thirty days after an application is made under sub-paragraph (i), a Judge of the Supreme Court, in Chambers,

for directions as to how to proceed.

(4) An approved escrow agent which is a partnership of attorneys-at-law shall deposit all monies which the partnership is required to hold in an escrow account into an interest-bearing deposit account at—

- (a) a bank, as defined by section 2(1) of the *Banking Services Act* and duly licensed under that Act; or
- (b) a financial institution, as defined by section 2(1) of the *Banking Services Act* and duly licensed under that Act,

and that deposit account shall be deemed to be an escrow account with the partnership for the purposes of subsection (1) and shall be administered by the partnership in accordance with subsection (3).

(5) An approved escrow agent who acts in good faith and in accordance with subsection (3), and any directions issued pursuant to that subsection, shall not be liable for any loss or damage arising from so acting.

10.—(1) Subject to such conditions as may be prescribed, every **Payments.** proprietor or attorney-at-law, timeshare agent, or other agent, of a proprietor who receives any money from a purchaser pursuant to a timeshare contract shall pay the money into the escrow account within two working days after receipt thereof, and the money shall be held and applied in accordance with the provisions of this Act.

(2) Upon every payment of moneys into an escrow account pursuant to subsection (1), the person making such payment shall furnish the Timeshare Registrar with a report of the payment, specifying the timeshare plan to which the moneys comprised in the payment relate, and such other particulars as may be prescribed.

(3) Where a purchaser withdraws from a timeshare contract pursuant to section 8, or cancels a reservation agreement pursuant to section 5, the money paid into the escrow account by or on behalf of the purchaser pursuant to the contract or reservation agreement (as the case may be) shall be returned to the purchaser within twenty-one days after a written demand therefor is made by the purchaser, minus (in the case of a withdrawal pursuant to section 8) the proportionate cost of any benefits received by the purchaser under the contract, determined in such manner as may be prescribed.

(4) The costs referred to in subsection (3) shall be paid out to the proprietor at any time after payment is made to the purchaser of the money due to the purchaser under subsection (3).

(5) Subject to subsection (6), moneys paid into the escrow account by a purchaser pursuant to a timeshare contract shall be paid out to the proprietor upon the proprietor presenting to the escrow agent—

(a) a voluntary declaration by the proprietor stating that—

(i) the withdrawal period in respect of the contract concerned has expired; and

(ii) construction of the timeshare accommodations and any facilities to be provided therewith under the contract—

(A) are complete; or

(B) are incomplete but the Timeshare Registrar has approved the payment out of money to facilitate the completion of construction;

- (b) in any case referred to in paragraph (a)(ii)(A), a certificate, issued by the parish council for the relevant parish, that the accommodations and facilities are complete; and
- (c) proof that a copy of the voluntary declaration referred to in paragraph (a) was served on the purchaser concerned at least ten days prior to being presented to the escrow agent.

(6) In any case falling within subsection (5)(a) (ii)(B) —

- (a) the money paid out shall be limited to such amount as does not exceed ninety percent of the amount paid in, but in any event shall not exceed the amount certified by a qualified quantity surveyor or architect or other person having such qualification as may be prescribed for the purposes of this section (not being a person in the employment of, or having an interest in the business of, the vendor or the developer) as being properly due for work already done and materials already supplied in the construction of the building or works and not previously paid for; and
- (b) a copy of the certification mentioned in paragraph (a) shall be attached to the voluntary declaration.

(7) In any case where, after the withdrawal period, the purchaser defaults in the performance of any of the purchaser's obligations under the timeshare contract, and the default is one which under the terms of that contract would entitle the proprietor to the receipt of the moneys paid into the escrow account by or on behalf of the purchaser, the proprietor shall be entitled to be paid those moneys if the proprietor provides the escrow agent concerned at least ten days notice of the demand for payment, and includes with the notice—

- (a) a voluntary declaration—
 - (i) stating that the purchaser has defaulted and that the proprietor has not defaulted;

- (ii) giving a brief explanation of the nature of the default and the date of its occurrence; and
- (iii) stating that the proprietor has not received from the purchaser any written notice of a dispute between the purchaser and the proprietor or a claim by the purchaser to the money concerned; and

(b) proof that a copy of the voluntary declaration was served on the purchaser.

(8) Nothing in subsection (1) shall be construed as authorizing the payment of money by a purchaser to an Outside Public Contact in connection with any timeshare plan.

Purchasers
association
and capital
reserve fund.

11.—(1) The purchasers of rights to accommodation comprised in a timeshare plan shall constitute the purchasers association in respect of the plan.

(2) The purchasers association in respect of a timeshare plan shall establish and contribute to a capital reserve fund, in accordance with such regulations as may be prescribed for that purpose.

(3) Where a timeshare plan includes units of accommodation the rights to occupation of which are not held by any purchaser, the proprietor shall have the entitlements and obligations of a purchaser in respect of each such unit, including (for the avoidance of doubt) voting rights in the purchasers association as well as liability to contribute to the capital reserve fund.

(4) A purchasers association constituted under this section shall be a body corporate for the purposes of section 28 of the *Interpretation Act*.

Management
agent.

12.—(1) There shall be appointed a management agent in respect of each registered timeshare plan, being either—

- (a) a person who is licensed as a real estate dealer under the *Real Estate (Dealers and Developers) Act*; or

(b) the purchasers association,

as the holder of the majority of the voting rights in the purchasers association shall determine.

(2) Regulations made under section 24 shall prescribe—

- (a) the procedure for appointments under subsection (1) and the tenure of the management agent;
- (b) the duties of the management agent in respect of the timeshare plan; and
- (c) the duties of the management agent in respect of the capital reserve fund referred to in section 11.

(3) The management agent shall, in respect of the timeshare plan concerned, maintain a list setting out the name and address of the proprietor and of each purchaser, which list the management agent shall—

- (a) keep up to date; and
- (b) disclose to the Timeshare Registrar upon request.

13.—(1) The exercise of any of the rights or powers specified in subsection (2) in respect of any timeshare accommodation comprised in a registered timeshare plan shall not extinguish or impair the right of a purchaser to occupy the timeshare accommodation pursuant to a timeshare contract executed prior to the exercise of the right or power concerned.

Right to occupy not extinguished by foreclosure, etc.

(2) The rights and powers referred to in subsection (1) are—

- (a) a right of foreclosure, the exercise of a power of sale, or the pursuit of any other right or remedy available to a mortgagee or any other incumbrancer in respect of timeshare accommodation;
- (b) the right to terminate any leasehold estate in real property comprised in a timeshare plan;
- (c) the powers of a receiver, or any powers exercisable on the winding-up of a company;

- (d) any right or power under any order of a court affecting any estate or interest in property in which the timeshare accommodation is comprised.

(3) Upon the insolvency of a proprietor, any right to occupy timeshare accommodation under a timeshare contract in respect of any accommodation comprised in any property concerned in any insolvency proceedings in respect of the proprietor shall not be disclaimed without the consent of the purchaser.

(4) Nothing in subsection (1) or (2) refers to the holder of a mortgage, charge or other security interest given by a purchaser in respect of the purchaser's rights or obligations under a timeshare contract.

Denial of
access.

14.—(1) The proprietor or management agent of a timeshare plan may, in accordance with such procedure as shall be specified in the timeshare contract concerned, deny—

- (a) a purchaser who has not paid any sums due to be paid by that purchaser under a timeshare contract;
- (b) any third party claiming under that purchaser; and
- (c) any person claiming by virtue of any agreement with that purchaser for the exchange of accommodation permitted by the timeshare contract,

the use of any accommodation or facilities comprised in the timeshare plan.

(2) A denial under subsection (1) may include denying the right to make a reservation of the accommodation or facilities, or cancelling any such reservation.

(3) The procedure set out in a timeshare contract pursuant to subsection (1) shall provide for the purchaser to be given not less than thirty days notice of the proprietor or management agent's intention to deny use under this section.

(4) A denial shall not be made under subsection (1)(c)—

- (a) unless at least forty-eight hours notice has been given to the person prior to the denial; and

- (b) the notice referred to in subsection (3) has been given to the purchaser.

(5) Subject to subsection (7), a proprietor or management agent shall not deny a purchaser access to any timeshare accommodation—

- (a) which the purchaser has the right to occupy within any period specified in the timeshare contract; and
- (b) in respect of which the purchaser has complied with all contractual stipulations as to the exercise of that right,

on the grounds that the accommodation is occupied by another person.

(6) A proprietor or management agent who contravenes subsection (5) shall be liable to compensate the purchaser concerned in the amount which is the greater of—

- (a) twice the amount of the revenue paid to the proprietor or any other person arising from the occupation of the accommodation in question during the period of the contravention; or
- (b) three hundred dollars, in the currency of the United States of America or the equivalent amount in Jamaican currency according to the weighted average determined by the Bank of Jamaica, in respect of each day of the contravention.

(7) It shall be the duty of a proprietor or management agent to seek to avoid a contravention of subsection (5) by providing to the purchaser, in lieu of any timeshare accommodation described in that subsection, comparable or superior alternative accommodation for the period concerned, and a proprietor or management agent who so provides shall not be construed as having contravened that subsection.

(8) The Minister may by order subject to affirmative resolution amend paragraph (b) of subsection (6) so as to increase or decrease the sum specified in that paragraph.

PART III. *Procedure in Relation to Deeds*

Interpretation
for Part III.

15. In this Part—

“certificate of title” means a certificate of title under section 55 of the *Registration of Titles Act*;

“Registrar of Titles” means the person appointed as such under the *Registration of Titles Act*.

Issue of
deeds.

16.—(1) Where a registration certificate is issued under section 4(4) in respect of a timeshare plan, the proprietor shall apply to the Registrar of Titles, in such manner as may be prescribed, for an entry to be made in the Register Book in accordance with subsection (3).

(2) An application under subsection (1) shall be accompanied by—

- (a) a copy of the registration certificate, certified by the Timeshare Registrar;
- (b) the duplicate certificate of title in respect of the land concerned in the application;
- (c) the consent of each incumbrancer, in writing, to the application;
- (d) the prescribed fee; and
- (e) such other matters as may be prescribed.

(3) Upon receipt of an application made in accordance with this section, the Registrar of Titles shall—

- (a) enter, on the *folium* of the Register Book of Titles constituted by the certificate of title concerned, a memorandum of the registration certificate in accordance with sections 61 and 62 of the *Registration of Titles Act*, stating that the property is the subject of a timeshare plan registered under the *Timeshare Vacations Act*, as evidenced by the registration certificate; and

- (b) return to the applicant the duplicate certificate of title, duly endorsed.

(4) Upon being satisfied that the memorandum referred to in subsection (3) has been entered in relation to the property concerned, and on receipt of the matters referred to in subsection (5), the Timeshare Registrar shall at the request of the proprietor, made in such manner as may be prescribed, issue a deed in the name of the purchaser.

(5) For the purposes of subsection (4), the proprietor shall furnish to the Timeshare Registrar for inspection—

- (a) the duplicate certificate of title to the property concerned;
- (b) the registration certificate;
- (c) the executed timeshare contract with the purchaser concerned; and
- (d) such other matters as may be prescribed,

together with such fee as may be prescribed for the purposes of this subsection.

17.—(1) A deed issued under section 16 shall be in such form as may be prescribed. Form and effect of deed.

(2) A purchaser in whose name a deed to any timeshare accommodation is issued under section 16 shall be entitled to—

- (a) exercise the rights, and shall be subject to the obligations, attributable to the purchaser under the timeshare contract concerned;
- (b) subject to subsection (5), assign or transfer those rights and obligations by an assignment or transfer of the deed; and
- (c) create a mortgage, charge or other security interest, in any rights or interest of the purchaser arising under the timeshare contract concerned.

(3) No mortgage or transfer of, or other dealing with, the property comprised in timeshare accommodation shall be entered in the Register Book of Titles unless the written permission of the Timeshare Registrar is issued to the mortgagor, transferor or other person (as the case may require) seeking to effect the dealing with the property.

(4) The Timeshare Registrar shall issue permission for a mortgage or transfer of, or other dealing with, the property comprised in timeshare accommodation, to be entered in the Register Book pursuant to subsection (3) if the consent of all purchasers concerned, and all holders of a mortgage, charge or security interest created pursuant to subsection (2)(c) in respect of the timeshare accommodation, is evidenced in writing.

(5) An assignment or transfer under subsection (2)(b) shall not be valid—

- (a) unless the assignment or transfer, as the case may be, is in the prescribed form; and
- (b) until notice is given to the Timeshare Registrar in the prescribed form and manner.

(6) In this section “security interest” has the meaning assigned to it by the *Security Interests in Personal Property Act*.

Cessation of
timeshare plan,
etc.

18.—(1) Where any registered land ceases to comprise deed-based timeshare accommodation, the proprietor shall—

- (a) apply to the Timeshare Registrar, in such form and manner as may be prescribed, for the de-registration of the accommodation; and
- (b) upon the grant of de-registration, apply to the Registrar of Titles for an entry to be made in the Register Book of Titles in accordance with subsection (4).

(2) The Timeshare Registrar shall grant an application under subsection (1)(a) if satisfied that the property has ceased to operate as timeshare accommodation.

(3) Upon receipt of an application under subsection (1)(b), the Registrar of Titles shall, in accordance with sections 61 and 62 of the *Registration of Titles Act*, enter on the *folium* of the Register Book of Titles constituted by the certificate of title a memorandum of discharge stating that the property is released from its obligations as a timeshare accommodation.

(4) Where the registration of a timeshare plan is struck from the Register under section 4(8) or any registered land ceases to comprise timeshare accommodation, the Registrar of Titles may exercise the powers under paragraph (b) of section 80 of the *Registration of Titles Act*, in accordance with the procedure set out in that section.

PART IV. *Administration*

19.—(1) In this section, “authorised officer” means any officer ^{inspection.} authorised to carry out an inspection under subsection (2), being an officer of—

- (a) the Timeshare Registrar;
- (b) the entity duly authorized as having responsibility for the development of standards for tourist accommodation;
- (c) the Kingston and St. Andrew Corporation, in the case of accommodations or facilities situated in the parish of Kingston or St. Andrew, or the parish council for the relevant parish in the case of accommodations or facilities situated in any other parish;
- (d) the Ministry responsible for health; or
- (e) the Jamaica Fire Brigade.

(2) The Timeshare Registrar may direct an authorised officer to make—

- (a) any one or more inspections of any property or premises described in an application for registration of a timeshare plan as being accommodations or facilities comprised in the plan; and

- (b) periodic inspections, in accordance with an inspection schedule determined by the Timeshare Registrar, of any—
 - (i) accommodation or facilities comprised in a timeshare plan registered under this Act; or
 - (ii) records or other information required to be kept under this Act,

for the purpose of ascertaining the level of compliance with the requirements of this Act.

(3) For the purposes of subsection (2), the proprietor or occupant shall permit the authorised officer access to the property, premises, accommodation or facilities (as the case may be), at all reasonable times, upon the authorised officer—

- (a) presenting evidence of the direction made to that officer under subsection (2) and a valid form of identification that he is an authorised officer; and
- (b) giving at least forty-eight hours notice of his intent to carry out the inspection.

(4) At any inspection conducted under this section, the proprietor shall be entitled to have a representative present.

Enforcement. 20.—(1) Where the Timeshare Registrar is satisfied that—

- (a) any registered timeshare plan is being operated in breach of any provision of this Act or any regulations made under this Act, or any of the conditions of registration imposed thereunder, and directions issued by the Timeshare Registrar to the proprietor and the purchasers association to remedy the breach within a specified time have not been complied with; or
- (b) a proprietor has been convicted of an offence under section 21(1) or (2),

the Timeshare Registrar may, after giving the proprietor and the purchasers association notice in writing of the Timeshare Registrar's

intention to act under this subsection and giving the proprietor and the purchasers association the opportunity to be heard on the matter, suspend the registration of the timeshare plan.

(2) Where the registration of a timeshare plan is suspended under subsection (1), the proprietor may apply, in such form and manner as may be prescribed, for the restoration of the registration after providing evidence to the satisfaction of the Timeshare Registrar that the breach referred to in subsection (1) has been remedied, and the procedure set out in section 4 shall apply to the application.

(3) Where the Timeshare Registrar is satisfied—

- (a) that any accommodation is being used as timeshare accommodation without a timeshare plan in respect thereof being registered under this Act; or
- (b) after any inspection conducted pursuant to section 19, that any accommodations or facilities comprised in a timeshare plan pose a danger to the safety or health of persons thereon or to the public,

the Timeshare Registrar may give such directions as the Timeshare Registrar considers necessary to ensure that—

- (i) the provisions of this Act are complied with; or
- (ii) the danger to persons or the public is prevented or minimized.

(4) For the purpose of ascertaining whether an offence under this Act, or any regulations made thereunder, has been committed, the Timeshare Registrar may—

- (a) by notice in writing require a proprietor, purchasers association, or management agent (as the case may require) to produce any books, documents or other information, relating to the business of the timeshare plan, for inspection at such place and time as shall be specified in the notice; and

- (b) take copies of the books, documents or other information, or of any entry made therein.

Offences.

21.—(1) Any person who, in connection with the making of an application for a licence, or for registration, under this Act, makes a statement which that person knows to be false in any material particular or, had that person exercised due care and diligence, ought to have known to be false, commits an offence and shall be liable upon conviction on indictment in a Circuit Court, before a Judge alone, to a fine or in default of payment thereof to imprisonment for a term not exceeding twelve months.

(2) Any person who, in the course of promoting or offering any timeshare accommodation, makes a statement which that person knows to be false or, had that person exercised reasonable care and diligence, ought to have known to be false, with respect to—

- (a) the time at which, the manner in which, or the person by whom, the accommodation, or any services or facilities attached thereto, will be provided;
- (b) the location of the accommodation, services or facilities;
- (c) the nature, extent or scope of the accommodation, services or facilities;
- (d) a prediction of any increase in the price or value of the accommodation; or
- (e) any matter set forth in the information required to be provided under section 6(1),

commits an offence and shall be liable on conviction on indictment in a Circuit Court, before a Judge alone, to a fine or in default of payment thereof to imprisonment for a term not exceeding three months.

(3) Any person who—

- (a) wilfully obstructs an authorised officer in the performance of any functions conferred on that officer under this Act, or fails to comply with a requirement made under section 20(4) by the Timeshare Registrar; or
- (b) fails without reasonable excuse to furnish any information required to be furnished by that person under section 12 or 19,

commits an offence and shall be liable on conviction on indictment in a Circuit Court, before a Judge alone, to a fine or in default of payment thereof to imprisonment for a term not exceeding six months.

(4) Any person who—

- (a) promotes, offers, or provides timeshare accommodation without a timeshare plan in respect thereof being registered under this Act;
- (b) promotes or offers timeshare accommodation, or knowingly executes a timeshare contract in respect of any timeshare accommodation, being timeshare accommodation comprised in a timeshare plan the registration of which is suspended under section 20(1); or
- (c) provides any timeshare accommodation, or services or facilities connected therewith, in contravention of any provision of this Act,

commits an offence and shall be liable on conviction on indictment in a Circuit Court, before a Judge alone, to a fine or in default of payment thereof to imprisonment for a term not exceeding six months.

(5) A person who wilfully misappropriates all or any part of the capital reserve fund or any other money or other property of a timeshare plan commits an offence and shall be liable upon conviction on indictment in a Circuit Court, before a Judge alone,

to a fine or in default of payment thereof to imprisonment for a term not exceeding twelve months.

(6) A proprietor who contravenes section 4(9) (requirement to seek approval of Timeshare Registrar regarding changes to accommodation or to marketing material) commits an offence and shall be liable upon conviction on indictment in a Circuit Court, before a Judge alone, to a fine or in default of payment thereof to imprisonment for a term not exceeding three months.

(7) A person who commits an offence under this Act, or any regulations made under this Act, for which no specific penalty has been provided, shall be liable on conviction on indictment in a Circuit Court, before a Judge alone, to a fine.

(8) Where a body corporate commits an offence under this Act and the Court is satisfied that a director, manager, secretary, or other similar officer, of that body corporate—

- (a) connived in the commission of the offence; or
- (b) failed to exercise due diligence to prevent the commission of the offence,

such director, manager, secretary or other similar officer, as well as the body corporate, commits the offence and may be proceeded against and punished accordingly.

Registry and
Registrar.

22.—(1) There is hereby established a Timeshare Vacations Registry.

(2) The Real Estate Board established under the *Real Estate (Dealers and Developers) Act* shall be responsible for the administration of the Registry and shall perform the functions of the Timeshare Registrar under this Act.

(3) The Timeshare Registrar shall be responsible for—

- (a) determining applications for licences under this Act;

- (b) determining applications for registration of timeshare plans under this Act;
- (c) monitoring compliance with the provisions of this Act and providing any necessary regulatory guidance with respect thereto;
- (d) performing any other functions as may be conferred on the Timeshare Registrar by this Act or any regulations made under this Act.

(4) The Timeshare Registrar may do anything or enter into any transaction necessary or incidental to the proper discharge of the functions of the Registrar.

(5) Upon the payment of the prescribed fee the Timeshare Registrar shall make the Register available for inspection by the public during normal working hours.

(6) The funds and resources of the Registry shall consist of—

- (a) the income generated from all fees and charges empowered to be imposed under this Act or any regulations made under this Act;
- (b) such sums as may be provided to it by Parliament; and
- (c) such other sums as may lawfully be paid to the Registry.

(7) The Timeshare Registrar shall keep proper accounts and records in accordance with generally accepted accounting principles promulgated from time to time by the Institute of Chartered Accountants of Jamaica, or such other body as the Minister responsible for finance may specify by order.

(8) As soon as possible after the end of each financial year, but not more than four months thereafter, the Timeshare Registrar shall submit an annual report including audited financial statements, in relation to the operations of the Registry, to the Minister, who shall cause the report and statements to be laid on the Table of the House of Representatives and of the Senate.

Register.

23.—(1) The Timeshare Registrar shall, in addition to such other functions as are assigned to the Timeshare Registrar under this Act and any regulations made under this Act, be responsible for maintaining—

- (a) a Register of timeshare plans registered under this Act (hereinafter called “the Register”) in which shall be recorded, in respect of each registered timeshare plan—
 - (i) the name and address of the proprietor;
 - (ii) the address of the accommodations and facilities comprised in the timeshare plan;
 - (iii) the number of units of accommodation comprised in the timeshare plan and, where those units consist of different types, a brief description of each type;
 - (iv) the number of purchasers under the timeshare plan;
 - (v) the name and contact information of the timeshare agents;
 - (vi) the name and contact information of the management agent;
- (b) a database, including—
 - (i) a copy of each deed issued pursuant to section 16(4), together with a memorandum of every notification received by the Timeshare Registrar under section 17(5)(b);
 - (ii) the particulars of the purchasers under each registered timeshare plan;
 - (iii) all the documents required to be filed with the Timeshare Registrar under this Act; and

(iv) such other information as the Timeshare Registrar considers appropriate.

(2) The information required to be kept under subsection (1)(b) as relates to any particular timeshare plan—

- (a) shall be kept for at least seven years after the date on which the timeshare plan ceases to operate; and
- (b) shall not be disclosed except in accordance with regulations made under section 24(3)(j).

(3) Subject to subsections (4) and (6), an entry in the Register shall be received in all courts as evidence of the matters set forth therein.

(4) The Timeshare Registrar may, of the Timeshare Registrar's own volition, or on the application of any interested person, amend the Register where the Timeshare Registrar is satisfied that the amendment is necessary to correct any manifest error or clerical error or omission made in respect of any matter contained in the Register.

(5) Before making an amendment under subsection (4), the Timeshare Registrar shall give written notice of the Timeshare Registrar's intention to make the amendment, to any person who it appears to the Timeshare Registrar may be affected by the amendment.

(6) A Judge of the Supreme Court may, upon application of the Timeshare Registrar or any interested person and after notice is given, by the applicant, to any other interested party, direct that such amendments be made to any entry in the Register as the Judge thinks just.

24.—(1) The Timeshare Registrar may, with the approval of the Minister, make regulations for the purpose of carrying out the provisions of this Act. Regulations.

(2) Subject to negative resolution, regulations made under subsection (1) may provide for penalties, in respect of offences under the regulations, in excess of the amounts specified in section 29(b) of the *Interpretation Act*.

(3) Without prejudice to the generality of subsection (1), regulations made under that subsection may—

- (a) provide for the development, promotion, provision, and management, of timeshare accommodations in such manner as is likely to enhance the growth of Jamaica's tourism sector through fair and honest business practices and the creation of safe and hygienic products which meet established standards;
- (b) prescribe the information to be given in advertisements relating to the promotion or offering of timeshare accommodation;
- (c) regulate the operations of timeshare exchange programmes which operate in Jamaica;
- (d) prescribe standards for the safety and hygiene of accommodations, services and facilities comprised in timeshare plans;
- (e) prescribe minimum standards for—
 - (i) the fixtures and fittings (including furniture) to be provided in timeshare accommodation;
 - (ii) the maintenance of timeshare accommodations, and all other property comprised in any timeshare plan;
- (f) prescribe the form and manner in which applications for licensing and registration under this Act may be made, and the fees applicable thereto;
- (g) prescribe the financial requirements to be met by proprietors, management agents, and persons required to be licensed under section 3(3);

- (h) prescribe the form and manner in which any records required to be maintained under this Act are to be kept, and the maximum fees which may be charged by the Timeshare Registrar for receiving documents, for inspections of the Register and for providing copies of extracts from the Register, and, where the regulations permit the provision of copies of filed documents, the fees for providing copies of such documents;
- (i) regulating generally the functions and operations of persons licensed under section 3(3) and management agents;
- (j) prescribing the kinds of information kept in the database referred to in section 23(1)(b) which may be disclosed, the persons to whom the information may be disclosed, the form and manner of disclosure and the fees payable for such disclosure;
- (k) regulating the establishment and maintenance of the capital reserve fund referred to in section 11(2) and the use or application of moneys in the fund;
- (l) as to the duties and functions of approved escrow agents;
- (m) prescribing the form of assignments and transfers of deeds, and of notices pertaining thereto, for the purposes of section 17;
- (o) the matters mentioned in section 12(2); or
- (p) prescribing anything required under this Act to be prescribed.

(4) The Minister may make regulations governing the marketing of, sale of membership in, and the operation of, any scheme or other arrangement excluded from the definition of “timeshare contract” by virtue of paragraph (b) (iii) of that definition.

PART V. *General*

Exemption
from
registration
under *Real
Estate
(Dealers and
Developers)
Act.*

25.—(1) A proprietor who develops property solely for use as timeshare accommodation comprised in a timeshare plan registered under this Act shall be exempt from any requirement for registration under the *Real Estate (Dealers and Developers) Act*.

(2) For the avoidance of doubt, a development is not exempted under subsection (1) if the area comprised in the timeshare plan concerned includes any property intended for use other than under a timeshare plan.

Transitional.

26.—(1) A proprietor who immediately before the date of coming into operation of this Act provides any timeshare accommodation under a timeshare contract, shall not be taken to be in breach of section 4 if the proprietor applies under that section, for registration of a timeshare plan comprising the timeshare accommodation, within two years after that date and has not been notified that his application is refused.

(2) The Timeshare Registrar may, as the Timeshare Registrar considers appropriate, modify the application of any provision of Parts II and III of this Act as they relate to any timeshare plan registered pursuant to subsection (1) or any proprietor or purchaser under such plan.

Amendments
to other Acts.

27.—(1) The *Electronic Transactions Act* is amended in section 28(2) by re-lettering paragraphs (h) and (i) as sub-paragraphs (i) and (j) and inserting the following as paragraph (h)—

“(h) governed by the Timeshare Vacations Act, 2014;”.

(2) The *General Consumption Tax Act* is amended in the Fourth Schedule by renumbering the existing provisions of that schedule as paragraph 1 of the Fourth Schedule and inserting the following as paragraph 2—

“ 2. For the purposes of paragraph 1(d), the consideration provided under a timeshare contract under the Timeshare Vacations Act shall be construed as a sale of real property.”.

(3) The *Real Estate (Dealers and Developers) Act* is amended in section 5(e) by inserting next after the words “this Act” the words “, or the Timeshare Vacations Act, 2014”.

(4) The *Tourist Board Act* is amended in section 23 by inserting next after subsection (2) the following as subsection (2A)—

“ (2A) Notwithstanding subsection (2)(a), a licence granted in respect of any accommodation which is intended to be used as timeshare accommodation within the meaning of section 2 of the Timeshare Vacations Act, 2014, shall be for such period as may be stipulated in the licence, not exceeding three years, and may be renewed upon application in the prescribed manner.”.

FIRST SCHEDULE

(Section (4))

Particulars Required in Respect of Timeshare Plan

1. A description of the accommodations, facilities and services to be offered, specifying—
 - (a) whether the plan is a single site plan, being a plan in which the timeshare contract submitted under paragraph 7 concerns the right to occupy accommodations located on a single site, or a multi-site plan, being a plan in which the timeshare contract submitted under paragraph 7 concerns the right to occupy accommodations located—
 - (i) on a specific site, together with the rights to occupy accommodations located on one or more other sites in accordance with a reservations programme; or
 - (ii) on one or more sites, in accordance with a reservations programme, but without a right to occupy any specific accommodation;
 - (b) the total number of units of accommodation and, where those units consist of different types, a description of each type and a statement of the number of units of each type; and
 - (c) how voting rights in the purchasers association are to be allocated.
2. A floor plan of each type of unit of accommodation and a plan showing the location of all accommodations and facilities so described, together with a description of the fixtures and fittings (including furnishings and other such amenities) provided with each type of unit of accommodation.
3. The prescribed information about the proprietor of the accommodations described in paragraph 1.
4. The prescribed particulars as to the persons designated to undertake the promotion of timeshare accommodation, including evidence that the persons so designated are duly licensed under section 3.
5. Evidence that the financial requirements prescribed pursuant to section 24(3)(g) are met.
6. The prescribed particulars as to the nature of the rights, terms and conditions connected with the accommodations, facilities and services to be offered.
7. A copy of the form of the timeshare contract subject to which the accommodations comprised in the timeshare plan will be provided.

8. A copy of all licences, permits or other authorisations required under any other law (including the tourism accommodation licence required under the *Tourist Board Act*).

9. Evidence that the escrow arrangements required to be made in order to comply with this Act are in place.

10. Where construction of the timeshare accommodation is already completed, proof that arrangements are in place for public liability insurance in respect of the accommodations and facilities comprised in the timeshare plan.

11. A copy of the original certificate of title, with a certified copy of each document comprising any lien, judgment, lease, mortgage, or other interest or incumbrance, affecting title to the property, together with the written consents of all persons holding any such interest or entitled to enforce any such incumbrance, for the purposes of section 4(3)(f).

12. Copies of all documents to be issued to the public in the promotion of the timeshare accommodation, including two copies of the public offering statement.

13. Copies of—

- (a) any financial assurances given by an approved financial institution, in connection with the development of the timeshare accommodation;
- (b) any documents to be issued to the public relating to any offer of financing to purchasers;
- (c) a copy of the forecasted budget for the operation and maintenance of the timeshare plan for its ensuing financial year.

14. Any other matter which may be prescribed.

SECOND SCHEDULE

(Section (6))

*Information to be Provided to Purchaser
Before Execution of Timeshare Contract*

1. The identification information, place of residence and legal status of the proprietor.
2. A description of the nature of the timeshare accommodation concerned, including a description of their type, and number, and the fixtures and fittings provided therewith.
3. All consideration to be paid by the purchaser for the rights of accommodation under the timeshare contract and, in respect of all charges to the purchaser, a detailed statement as to—
 - (a) how the charges will be allocated, how and when such charges may be increased, and the method of calculating those charges; and
 - (b) the purchaser's liability to contribute to the charges for maintenance, repairs and taxes in respect of accommodations the rights to occupation of which are not held by any purchaser.
4. The existence of, and an explanation regarding, any priority reservation features that affect a purchaser's ability to make reservations for the use of the accommodations concerned on a first-come, first-served, basis, including the exact period within which those rights may be exercised and, where applicable, their duration.
5. The price to be paid by the purchaser for acquiring the rights referred to in paragraph 3.
6. If the timeshare contract concerns a specific accommodation under construction—
 - (a) the date when the accommodation and the services or facilities connected thereto will be ready for use in accordance with the contract; and
 - (b) a guarantee of reimbursement of any payment made under the contract if the accommodation is not completed on time.
7. A summary of all material facilities and services available to the purchaser under the timeshare contract and the amount to be paid by the purchaser for those facilities and services, and the conditions attached thereto.

8. Where the timeshare contract permits the purchaser the option to participate in a timeshare exchange programme, all material information about the programme, including—

- (a) the name and address of the person operating the programme;
- (b) a copy of the rules governing access to, and use of, the programme;
- (c) a description of the contractual relationship which a purchaser would be required to enter into in respect of the programme, and the procedure by which changes may be made;
- (d) a description of the limitations, restrictions and priorities employed in the operation of the programme; and
- (e) the fees or range of fees for participation in the programme, and the circumstances under which those fees may be changed.

9. An accurate statement of the purchaser's right of withdrawal.

10. A statement as to any gifts or pre-purchase inducements given by the proprietor to the purchaser which must be returned (or value given therefor) by the purchaser in the event of the purchaser's withdrawal from the timeshare contract.

11. A statement that the purchaser shall not bear any charges or obligations in connection with the timeshare contract, other than those specified in the contract.

12. Where the timeshare contract provides for rights to occupy accommodation to be selected from a pool of accommodation, information on the restrictions on the purchaser's ability to use any accommodation in the pool at any time.

13. The conditions and procedure for terminating the timeshare contract (and any ancillary contracts), and the consequences of such termination.

14. An accurate statement of the provisions of section 11 (1) that purchasers will constitute a purchasers association and a statement as to—

- (a) the voting rights that the purchaser will enjoy in relation to the association; and
- (b) the role of that association in appointing a management agent pursuant to regulations made under this Act.

15. A statement that the proprietor shall continue to be liable to contribute to the charges for maintenance, repairs and taxes in respect of accommodations the rights to occupation of which are not held by any purchaser.

16. The procedure for making queries or complaints to the purchasers association or management agent.

17. Information on the restrictions on the purchaser's ability to use the rights of occupation of the timeshare accommodation (for example, any limitations on availability, offers provided on a first-come-first-served basis, or time limits on particular promotions or discounts).

18. A statement as to whether the proprietor has entered into any code of conduct in relation to the provision of timeshare accommodation, and the location where a copy of the code concerned may be examined.

19. The conditions and procedure for denial of the purchaser's right to use accommodation, or the services or facilities connected therewith, upon default in payment of any charges payable under the timeshare contract and the details of any liability for costs or damages arising therefrom.

THIRD SCHEDULE

(Section 6(3))

Standard Withdrawal Form

Section 8 of the Timeshare Vacations Act provides that—

(1) A purchaser may withdraw from a timeshare contract by giving the proprietor written notice of withdrawal within the withdrawal period.

(2) For the purposes of subsection (1)—

- (a) the purchaser need not give any reason for the withdrawal;
- (b) the purchaser may use the standard withdrawal form in the timeshare contract as the notice of withdrawal, or any other written communication which clearly communicates the withdrawal;
- (c) the notice of withdrawal may be given by any of the methods referred to in paragraph (d);
- (d) the notice of withdrawal is to be regarded as having been given by the purchaser—
 - (i) in the case of delivery by registered post, at the time it is placed in the post, addressed to the proprietor at the address indicated in the timeshare contract;
 - (ii) at the time when it is delivered by hand to the proprietor or his agent so authorized to receive it; or
 - (iii) at the time it is sent by electronic means in accordance with a procedure specified in the timeshare contract.

(3) With effect from the date on which the purchaser gives a notice of withdrawal in accordance with this section, the obligations of the parties under the timeshare contract are terminated and the purchaser shall be entitled to a return of moneys paid by him under the contract, in accordance with section 10(3).

(4) For the purposes of subsection (3), the obligations terminated include—

- (a) all charges in respect of the provision of the timeshare accommodation;
- (b) all charges or other obligations under any other contract for facilities connected with the timeshare accommodation and provided by the proprietor or a third party on the basis of an arrangement between the third party and the proprietor;
- (c) any credit agreement under which credit that fully or partly covers any payment under the timeshare contract concerned is granted to the purchaser by the proprietor or by a third party on the basis of an arrangement between the third party and the proprietor.

(5) The proprietor shall forthwith notify the third party referred to in subsection (4)(b) or (c), as the case may require, and the approved escrow agent concerned, upon receiving a notice of withdrawal under this section.

If you wish to withdraw from the timeshare contract, you may complete and submit, in accordance with section 8 of the Act, the following notice of withdrawal:

NOTICE OF WITHDRAWAL

To: _____
(Name and address of the proprietor—to be filled in before providing the form to the purchaser).

The purchaser hereby gives notice of withdrawal from the contract, the particulars of which are set out below:

Date of execution of contract: _____

Name of purchaser: _____

Address of purchaser: _____

Signature of purchaser: _____

Date of notice: _____

FOURTH SCHEDULE (Section 6(4) and (9))

Notice of Acknowledgment of Receipt of Executed Timeshare Contract

To: _____, Proprietor of Registered

Timeshare Plan No. _____.

I _____ hereby acknowledge receipt of:
Purchaser

- A copy of the executed timeshare contract between myself and the proprietor.
- The standard withdrawal form.
- A copy of each document identified as a Schedule or Appendix in the said contract.

I understand that the withdrawal period begins on the date of the receipt by me of the abovementioned information.

Date of receipt

Signature

Passed in the House of Representatives this 21st day of October, 2014 with five (5) amendments.

MICHAEL A. PEART
Speaker.

MEMORANDUM OF OBJECTS AND REASONS

A decision has been taken to enact legislation to regulate the provision of timeshare accommodation in Jamaica. The legislation proposed will—

- (a) give legal recognition to timeshare vacation schemes in the form of right-to-use agreements (timeshare contracts) supported by a deed issued in respect thereof; and
- (b) regulate the marketing, promotion and provision of, timeshare accommodation.

This Bill seeks to give effect to that decision. It includes provision for—

- (a) the licensing of agents of proprietors of timeshare plans;
- (b) the registration of the timeshare plans under which timeshare accommodation is offered;
- (c) the standard information to be provided to purchasers before any timeshare contract is entered into and to be included in such contracts;
- (d) a withdrawal period to be available to purchasers after entry into timeshare contracts;
- (e) the management of timeshare plans;
- (f) consequential amendments to other Acts.

The Bill provides for a deed to be issued to each purchaser under a timeshare plan.

Under the deed, the rights of occupation are transferable and a notation to the effect that the property is subject to a timeshare plan will be entered on the certificate of title to the property. However, such notation will not convey any proprietary estate or interest in the land. The Bill makes transitional provisions for existing timeshare contracts.

WYKEHAM MCNEILL
Minister of Tourism and Entertainment

A BILL

ENTITLED

**AN ACT to Provide for the regulation of
timeshare vacation schemes and for
connected matters.**

As passed in the Honourable House of Representatives.

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(GOVERNMENT PRINTERS), DUKE STREET, KINGSTON, JAMAICA.**

SECTION 28(2) OF THE ELECTRONIC TRANSACTIONS ACT WHICH
IT IS PROPOSED TO AMEND

28.—(1)

(2) This section does not apply to any transaction—

(a) for financial services, including investment services, insurance
and reinsurance operations and banking services;

... ..

(h) for the provision of gaming or lottery services; or

(i) for the provision of accommodation, transport, catering or leisure
services or facilities, which the supplier undertakes to provide
(when the transaction is concluded) on a specific date or within
a specific period.

... ..

SECTION 5(e) OF THE REAL ESTATE (DEALERS AND DEVELOPERS)
ACT WHICH IT IS PROPOSED TO AMEND

5. The functions of the Board shall be to regulate and control the practice
of real estate business, the disposition of land in development schemes and
the operation of such schemes and, without prejudice to the generally of the
foregoing, the Board shall have power—

(a) to consider and determine applications for—

... ..

(e) generally to take all such other lawful measures as it may consider
necessary or desirable to assist it in carrying out its functions
under this Act and in protecting the mutual interests of persons
entering into land transactions.

SECTION 23 OF THE TOURIST BOARD ACT WHICH IT IS
PROPOSED TO AMEND

23.—(1)

(2) A licence granted in respect of any tourist accommodation—

(a) shall, subject to any power of the Board to revoke or suspend
such licence, be granted for an indefinite period; and

- (b) may be granted either unconditionally or subject to such restrictions and on such conditions as may be specified in the licence.

FOURTH SCHEDULE OF THE GENERAL CONSUMPTION TAX ACT
WHICH IT IS PROPOSED TO AMEND

FOURTH SCHEDULE (Section 18(8))

TAXABLE SUPPLIES WHICH CONSTITUTE THE PROVISION OF
SERVICES

The following shall be regarded as the provision of services—

- (a) the production of goods consequent on the treatment of processing of other goods;
- (b) the supply of—
 - (i) water (other than in a container);
 - (ii) electricity;
 - (iii) refrigeration;
 - (iv) air-conditioning;
- (c) hiring (other than under a hire-purchase agreement), leasing or renting of goods;
- (d) the supply, other than the sale of real property, of anything for a consideration which is not a supply of goods;
- (e) the supply of drinks or meals in the operation of a bar, canteen, club, hotel, restaurant or other place of business similar thereto or a catering service other than drinks or meals supplied in the cafeteria or canteen of an educational institution approved by the Minister of Education.