

Amendments to the Companies Act

Reform of Beneficial Ownership Reporting Regime



- On 01 April 2023, the Companies (Amendment) Act (“the Act”) was enacted. The Act:
- seeks to enhance the quality of beneficial ownership information entered in the Register of Members;
 - reduces the threshold of a beneficial owner to 25%;
 - and, introduces the Beneficial Ownership Return which is required to be filed by each company.

In this Newsletter, we highlight the main changes arising from the Act.



Objective

The objective of the Act is to ensure the provisions of the Companies Act:-



Conform with the Financial Action Task Force Standards relating to beneficial ownership of companies



Empower the Registrar with regulatory oversight to verify beneficial ownership information for companies



Provide for mutual exchange of information between the Registrar and competent authorities and law enforcement, including foreign authorities



Provide effective and proportionate sanctions to deter non-compliance by companies in relation to their obligations to declare beneficial owners



New requirements

A. Register of Members

The information entered in the Register of Members must be: (a) accurate; (b) adequate; and (c) up-to-date.

The following particulars are required to be included for each member and beneficial owner:-

Beneficial Owner and Individual Members

- Name, date of birth and nationality
- Address and occupation
- Taxpayer registration number or other tax identification number or alternatively, the number, place of issue and expiry date of any valid passport or driver’s licence held
- Date membership/beneficial ownership was acquired, commenced or ceased

Members that are Companies

- The member’s name and date of incorporation, registration or establishment
- Country, state or jurisdiction of incorporation, registration or establishment
- Registered address or address of principal place of business
- Taxpayer registration number, or other tax identification number

Members that are Companies having a share capital

A statement of shares held by the member:-

- Distinguishing each share by its number
- The amount paid or agreed to be considered as paid on the shares of each member
- The voting rights of that member

Joint Ownership of shares

- The interest held by each joint holder
- The date on which joint ownership commenced



Record Keeping

Every company shall keep such documents relating to members and beneficial owners for a period of not less than 7 years



Failure to keep records may lead to a fine not exceeding

JMD 500,000

B. Beneficial Ownership Return

A beneficial ownership return shall be made:-

1. During the incorporation of a new company
2. **Annually**, made up to a date not later than the company's return date
3. Upon the delivery of a return of allotment in respect of each allottee
4. Within 14 days after any change of beneficial ownership information

For overseas companies, the returns are to be delivered to the Registrar of Companies within 28 days from the date to which it is made up.

Information required for each beneficial ownership return

The following information is required:-

- a. Date to which the return is made up
- b. Company's name
- c. Registered address and in the case of an overseas company its principal place of business
- d. An **accurate, adequate** and **up-to-date** list of all persons who, on the date of the return:-
 - Are members and beneficial owners of the company
 - Have ceased to be members and beneficial owners since the date of the last return

For each member who is an individual and each beneficial owner, the list shall state their:-

- Name, date of birth and nationality
- Address and occupation
- Taxpayer registration number or other tax identification number or alternatively, the number, place of issue and expiry date of the valid passport or driver's licence held.



Failure to deliver a beneficial ownership return may lead to a fine not exceeding

JMD 5,000,000

Duty to provide the company with information on beneficial ownership

A beneficial owner shall notify the company of the particulars of their beneficial ownership including whether their beneficial ownership is by direct or indirect means.

C. Expansion of the powers of the Registrar of Companies

The Registrar has the power to:-

- Inspect the Register of Members of each company and supporting documents and to obtain a copy or an excerpt of relevant documents

Refusal by the company may lead to:-

- ⊗ **A fine not exceeding JMD 3,000,000 for a 1st offence**
- ⊗ **A fine not exceeding JMD 5,000,000 for a 2nd or subsequent offence; and**

Every officer may receive:-

- ⊗ **A fine not exceeding JMD 2,000,000 or imprisonment not exceeding 1 year or both for a 1st offence**
- ⊗ **A fine not exceeding JMD 3,000,000 or imprisonment not exceeding 5 years or both for a 2nd or subsequent offence**



- Enter into company premises and request the production of relevant documents

Wilful obstruction or refusal may lead to:-

- ⊗ **A fine not exceeding JMD 1,000,000 or to a term of imprisonment not exceeding 1 year or to both in the case of an individual**
- ⊗ **A fine not exceeding JMD 3,000,000 in the case of a body corporate**

- Request information from the company or a public entity (whether local or foreign) to determine whether the information contained in the Register of Members is accurate, adequate and up-to-date
- Strike off a company for default in keeping its Register of Members
- Issue Fixed Penalty Notices for any offence created under the Act or Regulations and prescribed to be subject to a fixed penalty

D. Who can request access to the Register of Beneficial Owners?

The Register of Beneficial Owners at the Companies Office of Jamaica shall not be made available for inspection except:-

- With the written consent of the beneficial owner/former beneficial owner
- Where there is a written request to the Registrar from:
 - a. A competent authority
 - b. An authority of a foreign state or country carrying out functions analogous to the functions of a competent authority
 - c. The designated authority
 - d. A constable not below the rank of Sergeant
 - e. The Commissioner of Customs, Jamaica Customs Agency
 - f. The Commissioner General, Tax Administration Jamaica
 - g. The Director of Public Prosecutions
 - h. A procuring entity
 - i. With the consent of the beneficial owner, a financial institution or a designated non-financial institution.

E. No company under the Act shall have a Nominee Shareholder or appoint a Nominee Director





Key Definitions relating to beneficial ownership

The following key definitions are included in the Act:-

Accurate- in relation to information on beneficial ownership, means correct in all details, exact and without mistakes

Adequate - in relation to information on beneficial ownership, means information that is sufficient to identify the individual who is the beneficial owner and the means and mechanisms by or through which that individual acquired beneficial ownership

Annual beneficial ownership return - means the beneficial ownership return delivered annually

Beneficial owner- means:-

- a. The individual who exercises whether directly or indirectly ultimate effective control and ultimate ownership of a company;
- b. If there is no individual exercising both ultimate effective control and ultimate ownership of the company, the individual who exercises, whether directly or indirectly, either ultimate ownership or ultimate effective control;
- c. The individual who exercises control or ownership in any of the ways stated above over a company, body of persons, trust or other legal arrangement, who owns **25% or more of a company**;
- d. In the absence of an individual referred to in paragraphs (a) or (b), an individual who is an officer of the company who exercises ultimate effective control of the management of the company.

Beneficial ownership return - means the return required to be made in respect of the beneficial ownership of a company

Chain of ownership - in relation to a company, means the ownership of the company by a series of successive owners

Return Date – means the date, that is:-

- the anniversary of the company's incorporation;
- the anniversary of the establishment of the company's place of business in Jamaica; or
- If the company's last return delivered to the Registrar was made up to a different date, the anniversary of that date

Tax identification number- means an identification number assigned to a person, pursuant to foreign law, in the jurisdiction of a foreign country or state, for a purpose analogous to the purpose of a tax registration number

Ultimate effective control- means the control exercised by an individual, through means or mechanisms other than by direct control, who is in a position to determine the company's policy or to make the final determination as to the decisions made by the company

Ultimate ownership - means any circumstance in which the ownership of a company, by an individual, is exercised indirectly through a chain of ownership:-

- Through companies, corporations or any other mechanisms
- By himself or jointly with another person

Up-to-date - in relation to information, means current in all details and updated within fourteen days after any communication or the occurrence of any event which renders the information inaccurate or outdated



Let's talk



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