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BENEFICIAL OWNERSHIP

COMPANIES (AMENDMENT) ACT 2023

This booklet will highlight the amendments to the Companies Act and assist you with maintaining compliance with the Companies Office of Jamaica

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BENEFITS OF AMENDING THE ACT



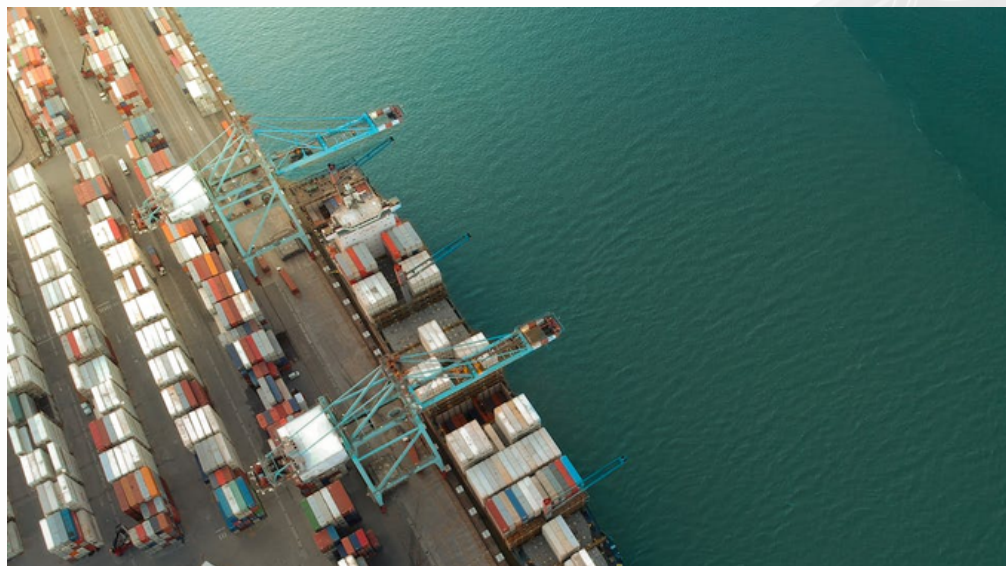
The Companies (Amendment) Act will help to ensure Jamaica's continued participation in the international financial and trade markets. Jamaica's compliance with international standards indicates to the world that it is committed to transparency and accountability. It also provides exposure for the island's MSME Sector to access global markets and financial opportunities.

Promotes Financial Inclusion and Trading Opportunities for the MSME Sector

Enhances Jamaica's Financial and Business Sectors' reputation on the international market

Promotes Transparency and Accountability among businesses operating in Jamaica

Promotes Jamaica as a country that is safe to make investments



ABOUT

The Companies (Amendment) Act 2023 was passed on March 31, 2023. This focuses on Beneficial Ownership with the objective of strengthening Jamaica's anti-money laundering, counter-terrorism, and proliferation of arms financing efforts as it relates to legal persons.

The amendments, among other things, enhance Jamaica's transparency framework by giving additional powers to the Registrar of Companies; and imposing on the Registrar an obligation to maintain a Register of Shareholders/Members and Beneficial Owners.

The Companies Act, through the Companies Amendment Act 2017, requires beneficial ownership information from companies limited by shares. In reviewing this requirement, the Financial Action Task Force (FATF) determined that all types of companies needed to provide beneficial ownership information and that the beneficial ownership regime at the Companies Office of Jamaica (COJ) needed to be more extensive. As such, the COJ in partnership with local and international stakeholders embarked on a project to revise the current beneficial ownership requirements in the Act and to add further provisions to ensure that the beneficial ownership regime meets international standards set by the FATF.

These amendments should ensure greater transparency in corporate governance and reduce the risk of legal persons such as companies being abused and used for money laundering and terrorism financing. These amendments were passed into law by the Companies Amendment Act 2023.

COMPANIES (AMENDMENT)
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BENEFICIAL OWNERSHIP MEANS

COMPANIES
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The term 'beneficial owner' refers to the natural person (that is, the real, living person) who ultimately owns or controls a company.

the individual who exercises, whether directly or indirectly, ultimate effective control and ultimate ownership of a company, or

the individual who exercises, whether directly or indirectly, either ultimate ownership or ultimate effective control, or

the individual exercising control or ownership in any of the ways previously stated over a company, body of persons, trust or other legal arrangement, who owns twenty-five percent or more of a company; or

an individual who is an officer of the company who exercises ultimate effective control of the management of the company;



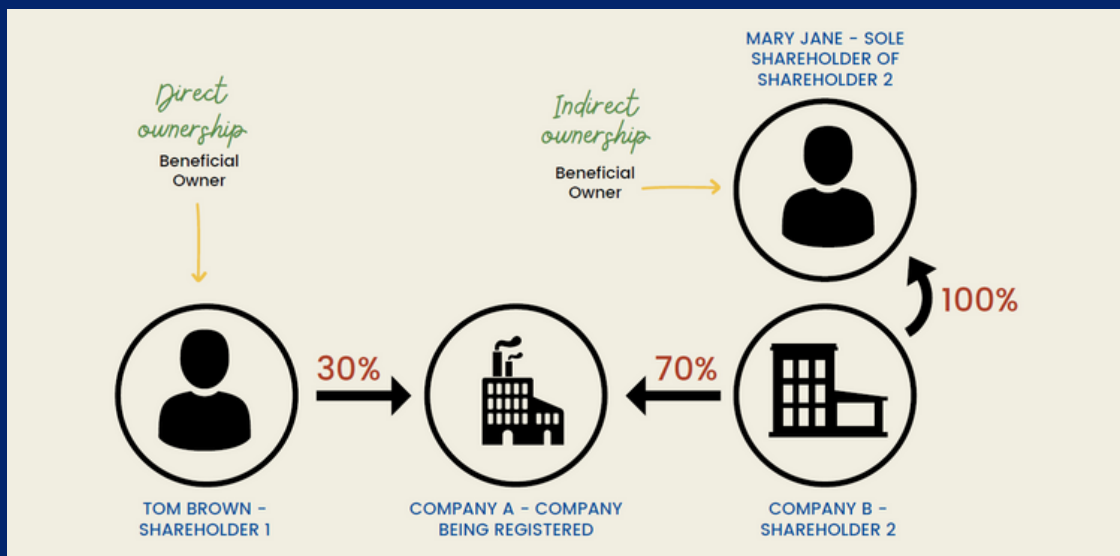
IDENTIFYING A BENEFICIAL OWNER

COMPANIES
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Identifying a Beneficial Owner using the Cascading Effect

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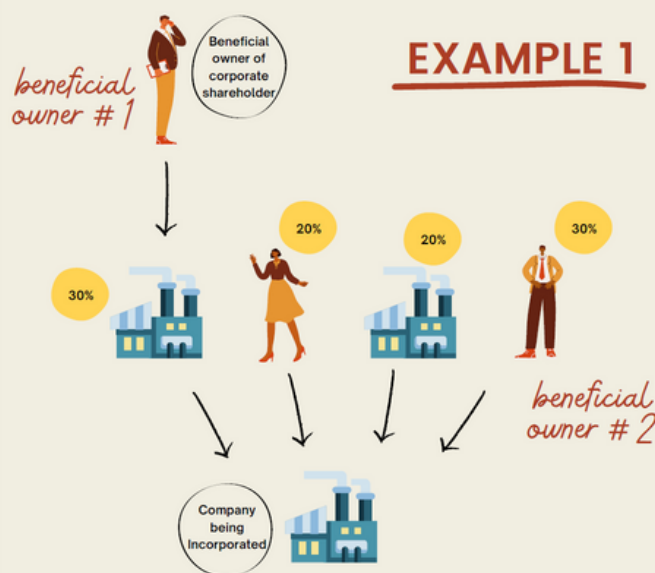
END



It is possible to have multiple beneficial owners

When applying the cascading test, it is possible that several persons may qualify as the beneficial owner of the company.

The example to the right is most applicable in a company limited by shares.



WHO IS THE LEGAL PERSON

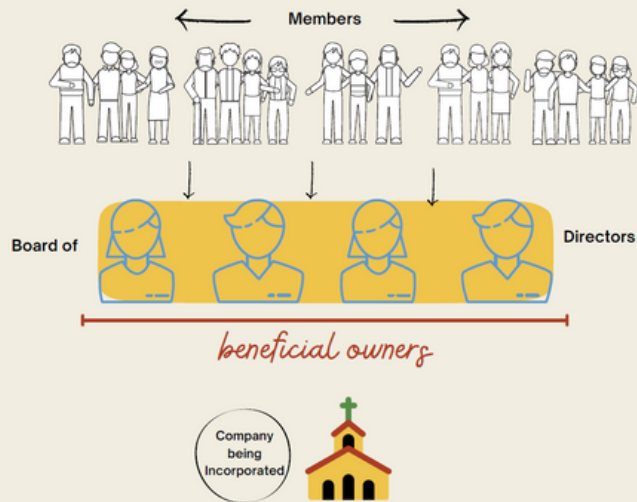
The legal owner is the person named in the Register of Members as a shareholder. The legal owner does not have to be the same person as the beneficial owner.

IDENTIFYING A BENEFICIAL OWNER

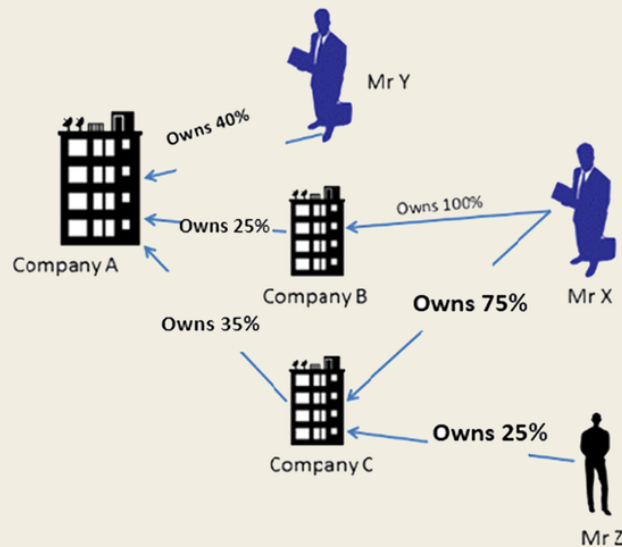
In the case of a company limited by guarantee with several different members

EXAMPLE 2

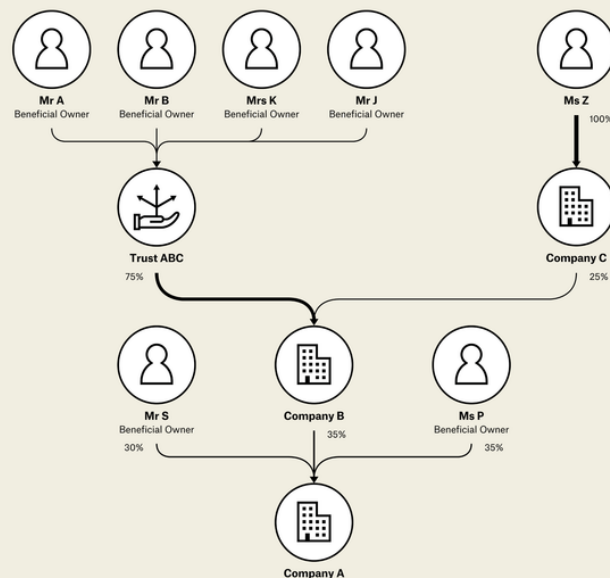
In the case of a company limited by guarantee with several different members, the board of directors could be named as beneficial owners.



Beneficial owners in a chain of ownership with trusts and legal arrangements



Beneficial owners in a chain of ownership with trusts and legal arrangements



Access to Beneficial Ownership Information

The authorities that may request information from the Beneficial Ownership Registry are:

- (a) competent authorities
- (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;
- (f) the Commissioner General;
- (g) the Director of Public Prosecutions.

All companies, profit and non-profit, will be required to state the beneficial owner of the company.

The Beneficial Ownership threshold was lowered from 50% to 25% for companies with shares.

New powers of the Registrar/COJ to verify beneficial ownership information through investigation and inspection.

The COJ will no longer charge the Annual Return penalty under Section 121. Only late fees will be collected. However, a fine of up to \$5,000,000 may be applicable to delinquent companies.

Beneficial ownership information will not be publicly accessible. Information will only be accessible by local and foreign competent authorities, law enforcement, and regulatory bodies, upon written request to the COJ. Financial institutions and designated non-financial institutions may also make an application to the COJ to view beneficial ownership information.

Companies are required to keep beneficial ownership information after closure.

Increase in current sanctions and introduction of new sanctions.

Beneficial ownership information must be up-to-date, adequate, and accurate.

The beneficial ownership information collected will be extended to collect additional pieces of information. For example, name, nationality, occupation, etc.

KEY FEATURES

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THE ROLE OF THE AML/CFT UNIT



Investigation and Inspection

The AML&CFT Department is the investigative arm of the organization. The department is responsible for ensuring that the information received by the COJ in relation to the persons exercising ultimate ownership and control of companies are accurate and up to date by adequately and actively verifying, monitoring and implementing other measures to ensure the consistency and reliability of the Register of Members and Beneficial Owners.

Duties:

Conducting detailed examination and verification of beneficial ownership and membership information.

Processing of all incoming investigative requests from external stakeholders/competent authorities.

Preparing and issuing of Registry Notices & Reminders.

Processing of all incoming investigative requests from external stakeholders/competent authorities.

Notifying companies of registry discrepancies in beneficial ownership and membership information.

Conducting field visits to audit company registers.

POWERS OF THE REGISTRAR

Power to inspect the Register of Members of a company where notice is issued to the company.

Obligation to notify the company seven (7) days before the intended inspection date of the inspection.

Power to apply to the court for an order that will compel an immediate inspection where inspection is refused by the company.

Obligation to notify the company of any inaccurate, inadequate, or out-of-date information in the register of members after an inspection and inform the company of the consequences of non-compliance.

Obligation to issue a certificate of inspection after completing the inspection.

Power to request information from the company, any public entity, or any foreign entity state (that has similar functions to a public entity in Jamaica) to verify beneficial ownership information.

Power to verify the accuracy of beneficial ownership information submitted on a beneficial ownership return.

Power to request (in writing) information to substantiate the information in a beneficial ownership return

Obligation to keep an accurate, adequate, and up-to-date Register of Beneficial Owners.

Obligation to ensure proper standards of conduct among its employees when maintaining accurate, adequate, and up-to-date Beneficial Ownership Register.

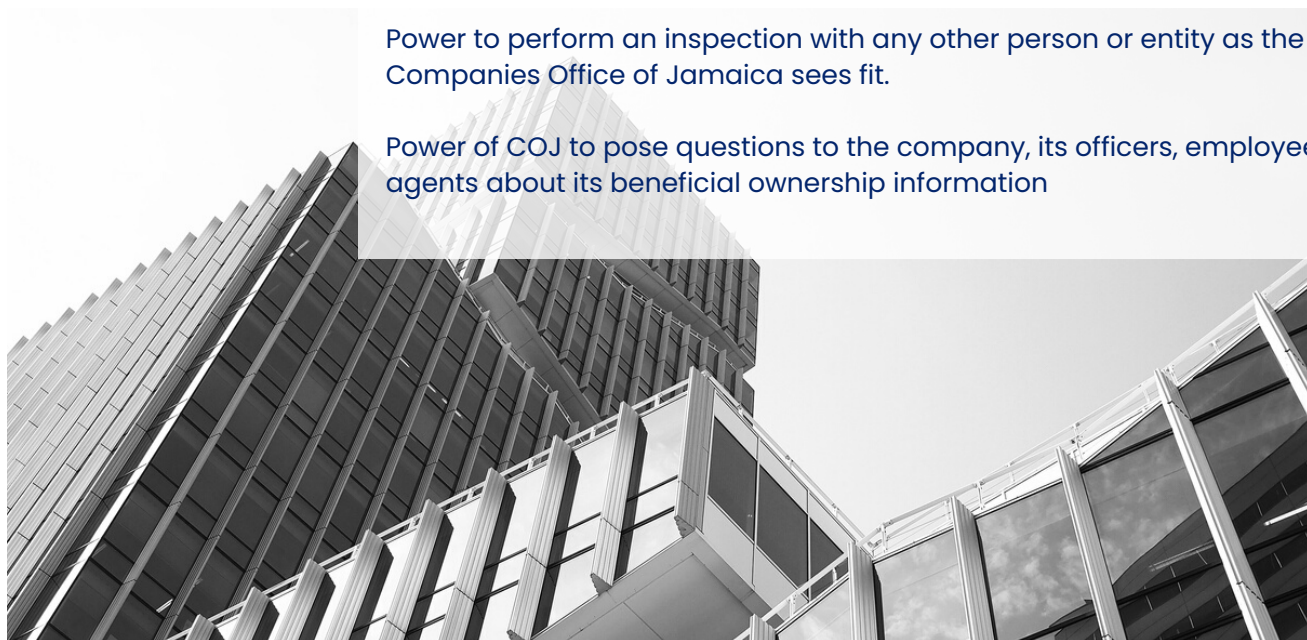
Power to examine the records and procedures of a company to ensure said company is compliant with the beneficial ownership requirements in the Act.

Obligation to send a report of its examination of the company within 90 days of the examination and make any recommendations necessary to ensure compliance.

Power to enter the registered office address of the company to perform inspection between the hours of 8 AM and 5 PM.

Power to perform an inspection with any other person or entity as the Companies Office of Jamaica sees fit.

Power of COJ to pose questions to the company, its officers, employees, or agents about its beneficial ownership information



OBLIGATIONS OF COMPANIES

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Collect and maintain Beneficial Ownership Information

Collecting Additional Beneficial Ownership and membership information:

Names, Nationalities, Addresses, Occupations, Dates of Birth, TRN, and PEP Status.) These must be provided by all companies at incorporation. After incorporation, companies will also be under an ongoing obligation to maintain and ensure that beneficial ownership information held is adequate, accurate, and updated.

Obligation to timely notify the registrar of changes

Provisions are being proposed that will require that companies notify the Registrar of any changes to the information on the Register of Members and Beneficial Owners within fourteen (14) days of any changes. These changes include: change in name, address, shareholding, and occupation. See Forms 27A, 27b, or Form C.

Obligation to retain Beneficial Ownership Information

Companies will be required to keep a record of the beneficial ownership information and the measures taken to confirm the accuracy of beneficial ownership information for a minimum of seven years from the day the last business transaction is conducted.

Local companies

- Obligation to keep membership and beneficial ownership information in the Register of Members.
- Obligation to notify the COJ of the location of Register of Members (including where there is a change in the address) and changes to information kept therein within 14 days from the date the change occurs.
- Obligation to obtain beneficial ownership and membership information before entering an allottee as a member in the Register of Members.
- Obligation on companies with 50+ members to keep an index of members and beneficial owners.
- Obligation to notify the COJ of any changes to beneficial ownership information within 14 days from the date the change occurs.
- Obligation to answer any question posed by the COJ regarding its beneficial ownership information, in writing in the manner and timeframe specified by the COJ.
- Obligation on all former and current officers, employees, auditors, and agents of the company to permit the COJ's access to the property to carry out inspection and examination.

OBLIGATIONS OF COMPANIES



- Obligation on the company to record measures and methods used for verifying beneficial ownership information and to record substantiating documents used to verify beneficial ownership information.
- Obligation on all former and current officers, employees, auditors and agents of the company give the COJ documents relating to the Register of Members and/or beneficial ownership.
- Obligation of the company to enter the particulars of beneficial owners where the company receives notice of any trust, whether express, implied, resulting, or constructive that affects the membership of the company.
- Obligation to rectify any inaccurate, inadequate, or out-of-date information in the register of members, upon notice of same from the COJ after an inspection.
- Obligation to keep documents of the company for 7 years after the company is wound up or struck off the register.

Overseas companies

- Obligation to keep register of directors in addition to register of members.
- Overseas companies are prohibited from having and appointing nominee directors.
- It is now mandatory for overseas companies to provide beneficial ownership information. The word "any" has been deleted.
- Overseas companies are to submit a copy of their certificate of incorporation with a beneficial ownership return form.

FORMS

With changes to Beneficial Ownership, all Incorporation Forms for Companies will be amended along with forms that provide updates to company particulars to include additional information on Beneficial Owners. The Filed by Pages of the Forms will also expand as more information will be collected.

Amended Forms

- The Articles of Incorporation (Form1A,1B,1C,1D)
- All Annual Return Forms (Forms 19A, Form 19B and 19E)
- Forms that Deal with the Allotment of shares (Form 9)

New Forms

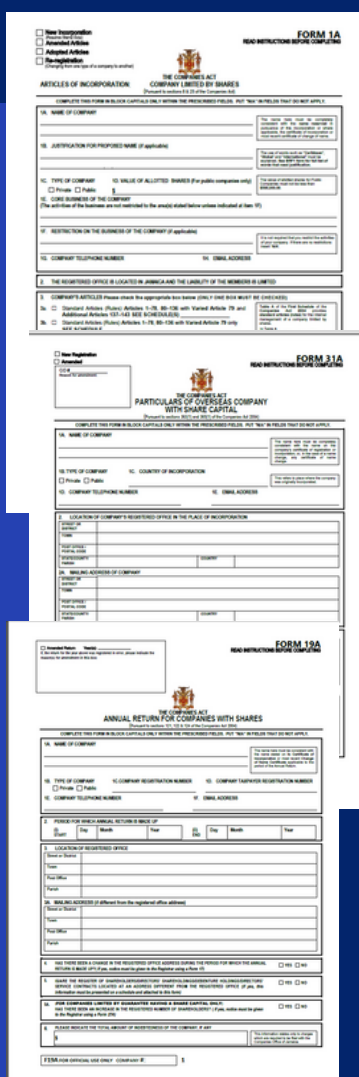
- Forms 27A & 27B – Changes to members and shareholder information
- Forms 31A & 31B – Registration of overseas companies with shares and without shares
- These forms were once one form, Form 31
- Form 5A – Notification to the registrar of changes with identification
- Beneficial Ownership Return – Form A
- Beneficial Ownership Return – Form B

Companies will now be required to file Beneficial Ownership information when:

- Filing a new incorporation
- Filing an Annual Return
- Changing the Shares Allocation
- Annual filing for Overseas Companies

Filing Changes for Companies When filing Beneficial Owner changes for companies, the following forms are required:

- Form 5A: Changes or renewal of identification
- Form 27A: To update members and Beneficial Owner for Companies with Share Capital
- Form 27B: To update members and Beneficial Owner for Companies without Share Capital
- Beneficial Ownership Return – Form A
- Beneficial Ownership Return – Form B
- Beneficial Ownership Return – Form C



SANCTIONS



Penalty fees for failure to maintain adequate, accurate and up-to-date Beneficial Ownership and membership information.

Increase in fines and sentencing guidelines for officers and companies that are not compliant with Beneficial Ownership provisions.

Penalty fees for failure to correct Beneficial Ownership information and membership information on a company's records at the Companies Office of Jamaica.

Obligations

Relating to Annual Returns

- Failure to file Annual Returns

Sanctions

Fine up to 5 million dollars

Relating to the Register of Members

- Failure to Keep a Register of Members
- Failure to Keep a Register of Members adequate, accurate and up to date for a period of not less than 21 days after the company is made aware of a change
- Failure to Obtain Membership & Beneficial Ownership Information
- Relating to the Registrar/COJ
- Refusal by a company to allow COJ inspection
- Failure to notify the COJ of changes the location of the Register of Members within 14 days

Fine of up to 5 million and a fine of each officer of up to 3 million
 Fine of up to 5 million and a fine of each officer of up to 3 million
 Fine of up to 5 million and a fine of each officer of up to 3 million
 Fine of one million
 Fine of up to 5 million and a fine of each officer of up to 3 million

Relating to Members and Beneficial Owners

- Failure to record verification measures and substantiating documents
- Failure to notify the member and/or beneficial owner of their duties to furnish information to the company
- Failure of a member to notify the company about the Beneficial Owner of their shares
- Failure of a Beneficial Owner to notify company of the particulars
- Failure of the Agent of the company to comply with BO obligations

Fine of up to 5 million and a fine of each officer of up to 3 million
 Fine of up to 5 million and a fine of each officer of up to 3 million
 Fine of up to 5 million and a fine of each officer of up to 3 million
 Fine of up to 3 million on the Beneficial Owner
 Fine of up to 3 million

Relating to the Registrar/COJ

- Failure to notify the COJ of any changes to Beneficial Ownership information within 14 days
- Failure to answer the COJ in writing to a question about Beneficial Ownership information within specified time
- Failure to comply with any requirement of the COJ regarding Beneficial Ownership
- Unlawful behaviour towards to COJ or its representatives or pretends to the COJ
- Failure to allow the COJ to inspect Register of Members and failure to provide a copy
- Obstructs, hinders or impedes the COJ during an Inspection of the Register of Members
- Refusing to Produce a document related to the Register of Members during an Inspection
- Failure to rectify inaccurate, inadequate and/or outdated information within 30 days of notice

Fine on the company of up to one million dollars
 Fine up to one million or imprisonment for a year
 Fine of up to one million or imprisonment for a year
 Fine of up to one million or imprisonment for a year
 Fine of up to 3 million will apply for the first offence and 7 million for the second offence
 Fine up to 3 million and in the case of an individual to a fine up to 1 million and/or 1 year imprisonment
 Fine up to 3 million and in the case of an individual to a fine up to 1 million and/or 1 year imprisonment
 Fine on the company of up to 3 million for the first offence and a fine of up to 5 million for the second offence

Relating to Shares

- Use of Shares Warrants

Fine and/or/imprisonment

THINGS TO NOTE

My company Details

Company Name: _____

Company Number: _____

Company Incorporation Date: _____

Here are some tips when filing

- Write in BLOCK LETTERS and date the form before submission
- Ensure that all required signatures are applied to the form in the appropriate sections
- Ensure that the word 'Limited' is always written as part of your company name
- For your records and next filing, you may request an uncertified copy of your last filing
- Ensure that names, dates, and addresses are consistent throughout the form and with records at the Companies Office.

Go Online ... Skip the Line

Our online platform facilitates the following services

- Registration of company and Business Name
- Request Letters of Good Standing, Status Letters, and Certified Copies
- View and Print documents

The screenshot displays the homepage of the Companies Office of Jamaica. At the top left is the logo with the motto 'Innovation, Freedom, Commerce'. The main header includes the text 'COMPANIES OFFICE OF JAMAICA' and 'Government of Jamaica' with the national flag. A navigation menu contains links for HOME, ABOUT US, CITIZENS CHARTER, SERVICES, FEES, COMPLIANCE, FORMS, HELP, and CONTACT US. A 'LATEST NEWS' section lists several updates, including a customer satisfaction survey and various job vacancies. Below this are service tiles for 'ONLINE BUSINESS REGISTRATION', 'FIND A DOCUMENT OR REGISTERED ENTITY', and 'REQUEST CERTIFIED COPIES OF DOCUMENTS'. A 'Quick Services' menu is also visible at the bottom of the main content area.

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ACT 2023

COMPANIES OFFICE OF JAMAICA

COMPLIANCE IS KEY

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