

FEBRUARY 2023

COMPANIES OFFICE OF JAMAICA



Companies Amendment Bill 2023 *Explained!*

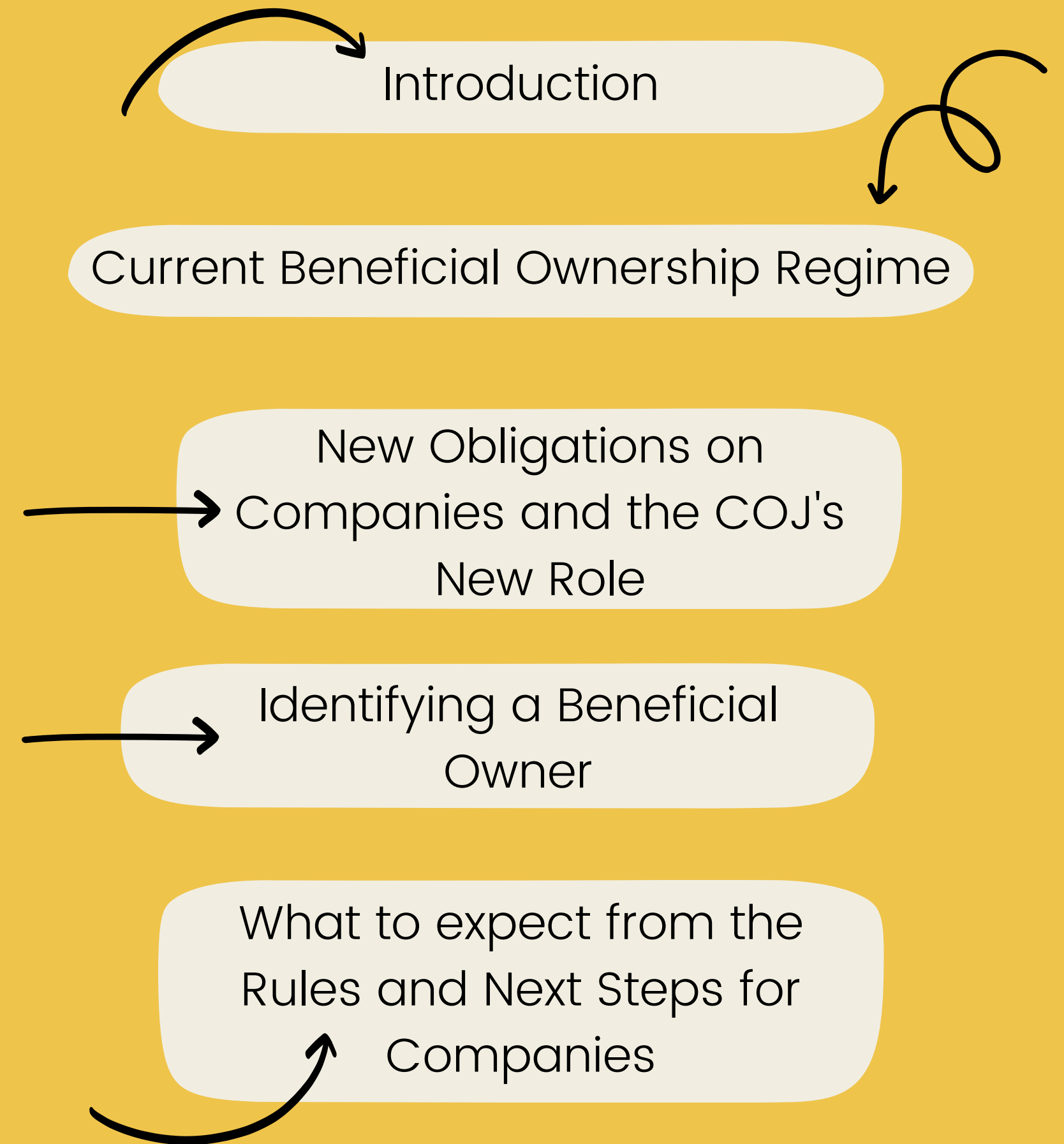
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Flow of the Presentation

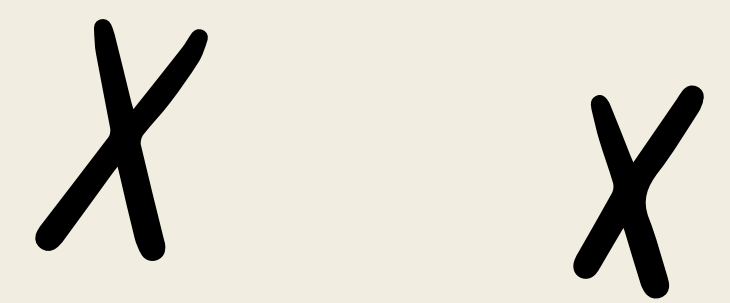
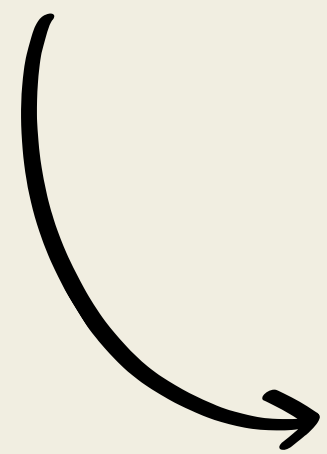


Introduction

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 much 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.

The amendments to be discussed in this presentation have NOT yet been passed into law, however, it is the intention of the Government of Jamaica to enact same before the end of this year, 2023.



Current Beneficial Ownership Regime

The following slides will provide a refresher on what the current beneficial ownership regime is.



The Companies Amendment Act 2017 established the requirement for beneficial ownership information to be recorded by companies and also filed at the COJ.

It amended s. 109 to require that the register of members must now include specified details of beneficial owners.

It amended s. 116 to require that where companies receive any notice of trusts that affects the membership of the company, they shall record the beneficial owner of same.

It amended s. 122 to require information on beneficial owners on the annual returns form.

It amended s. 363 to require that beneficial ownership information be submitted on the registration documents of overseas companies.

The Companies Amendment Act 2017 only requires companies limited by shares to provide beneficial ownership information. All other types of companies are NOT required to file beneficial ownership information.

Except in in the instance of the Form 9 that notifies the COJ of new allotments of shares

Companies limited by shares have to provide beneficial ownership information on the Form 1A and the 19A

There is no requirement for companies to give the COJ notice of changes in membership and beneficial ownership information.

The COJ does not currently verify the beneficial ownership information provided by companies, it merely accepts it as is.

The beneficial ownership information collected currently is name, address, occupation and nationality of the beneficial owner.

The Companies Amendment Act 2017 further requires the following information from companies registered under the Companies Act:

In identifying the beneficial owner of a company, the threshold is set at 50% or more interest in the company.

Requirement to state who is the beneficial owner of the company and shares issued.

No explicit sanction for not stating beneficial ownership information. Only an implied sanction of non-registration of company and company documents.

Abolition of bearer shares

The beneficial ownership requirements aforementioned were reviewed by the FATF.

The FATF, along with being the global money laundering and terrorist financing “watchdog” also coordinates global responses to prevent organized crime, corruption and terrorism. They found Jamaica’s performance in relation to “beneficial ownership” to be lacking. Consequently, Jamaica was placed on FATF’s “Grey List” and was consequently “black-listed” by the European Union.

In light of the **review** conducted by the FATF, the Act is now being revised.

The points in the following slides summarize very briefly how the current beneficial ownership regime will shift to create more obligations on companies, create sanctions that are proportionate, effective and dissuasive and create a new role for the COJ.

Proposed Amendments

The Ministry of Industry, Investment and Commerce and the COJ have proposed the following amendments in keeping with the recommendations from these international stakeholders.

Threshold lowered from 50% to 25%

The beneficial ownership information collected will be extended to collect additional pieces of information

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

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

Requirement to record and file beneficial ownership information now applies to ALL companies.

Requirement to state beneficial owner of shares removed. Only required to state beneficial owner of the company.


Increase in current sanctions and introduction of new sanctions

Requirement to keep beneficial ownership information after closure



Identifying the Beneficial Owner

The following slides will explain how to identify the beneficial owner of a company by examining the company's structure.



A simple definition of the term **beneficial owner** is as follows:

A beneficial owner is a natural person who ultimately owns or controls a company.



A **beneficial owner**

must be *identified*

in all circumstances.

The Cascading Test

Step 1: Primary method is to first identify all individuals who ultimately have a controlling ownership interest (25% or more) in the company, either directly (in their own names) or indirectly (through a chain of other entities or arrangements).

Ultimate Ownership

Step 2: Where there is doubt as to whether the persons with the controlling ownership interest are the beneficial owners, or where no natural person exerts control through ownership interests then, the beneficial owner shall be the natural persons (if any) exercising control of the legal person through other means.

Ultimate Effective Control

Step 3: Where no natural person is identified under the previous steps, companies should identify and take reasonable measures to verify the identity of the relevant natural person who holds the position of senior managing official

Highest Management Authority

Identifying the beneficial owner in a company limited by shares

*Starting
Point*

*End
Point*



Ultimate
Ownership:
25% or more
issued
shares or
voting
rights



Ultimate
Effective Control:
appoint/remove
directors or
determine the
policy of the
company



Effective control of the
management of the company:
High ranking management
officials of the company
including General Manager,
CEO, Operations Manager, etc.

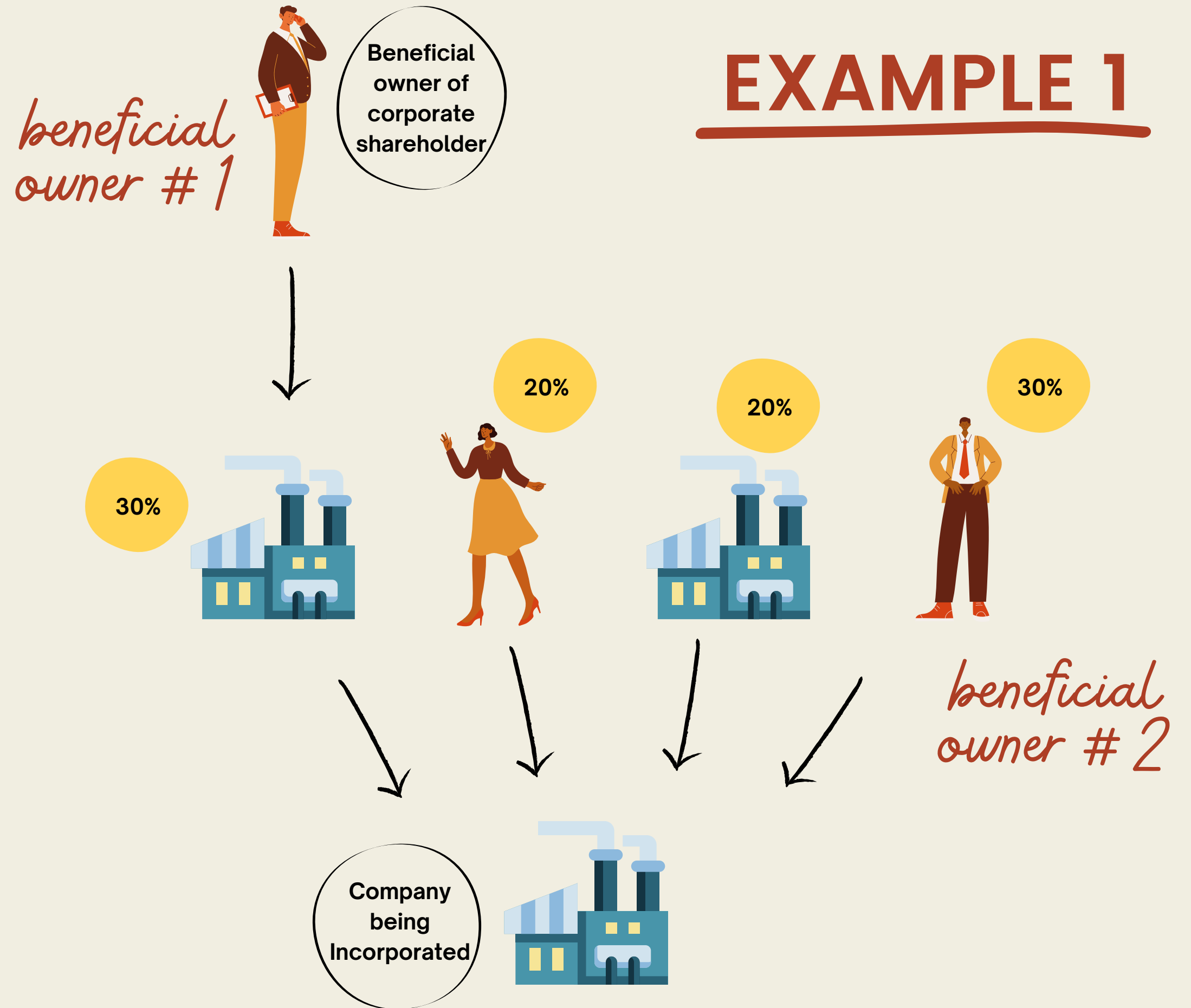


Can there be multiple
beneficial owners of a
company?

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.

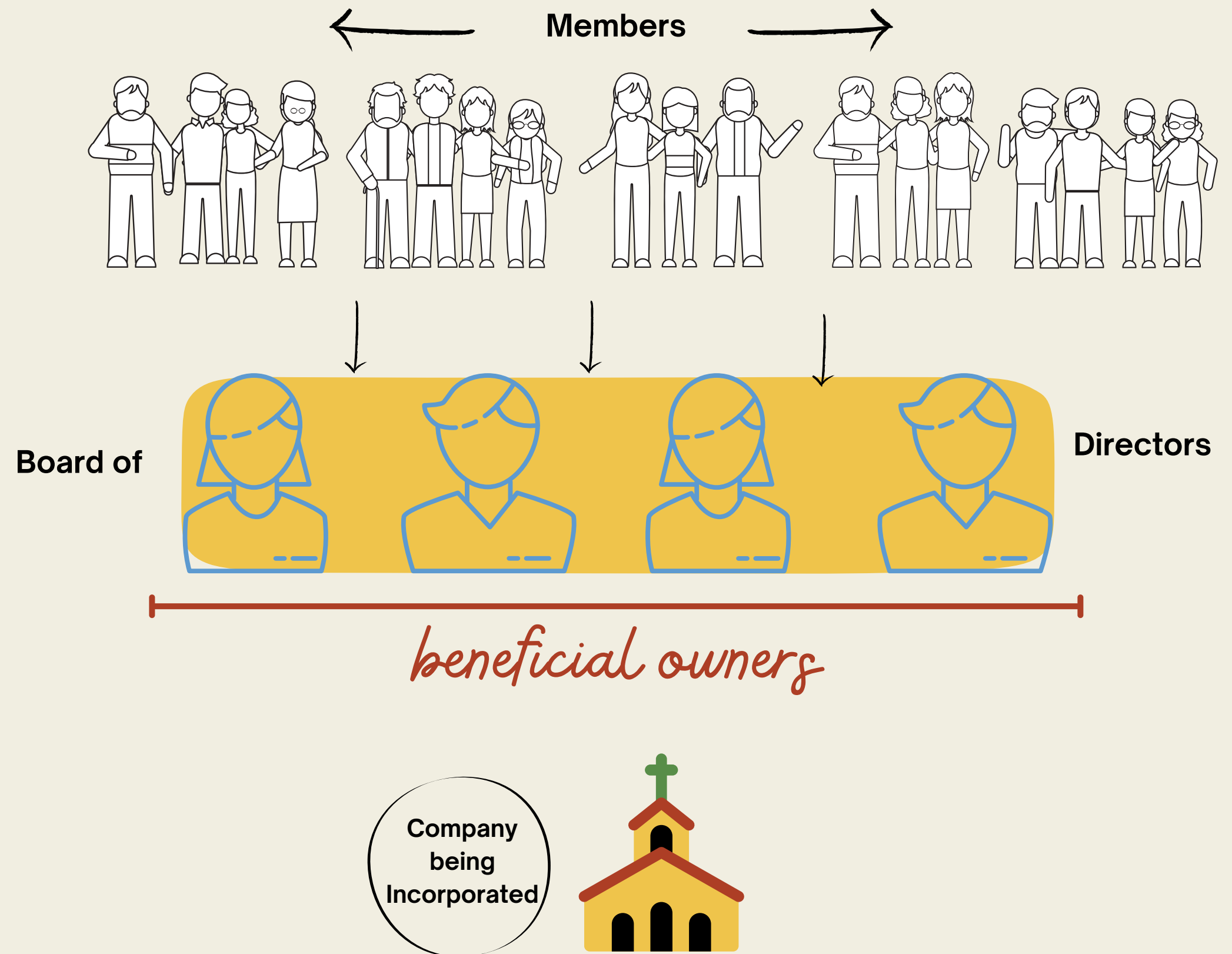
The example to the right is most applicable in a company limited by shares.

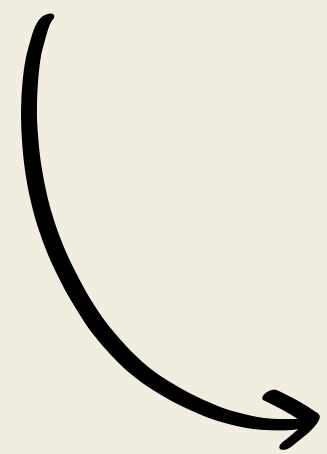


In the case of a company limited by guarantee with several different members

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.





New Obligations on Companies and the COJ's New Role

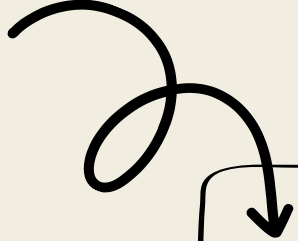
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The following slides will explain how the changes to the Act will create new obligations on companies and how the COJ's role will change to ensure compliance with these new obligations.



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New Obligations On Companies



OBLIGATION TO COLLECT AND MAINTAIN ADEQUATE, ACCURATE AND UP-TO-DATE BENEFICIAL OWNERSHIP AND MEMBERSHIP INFORMATION

OBLIGATION TO TIMELY NOTIFY REGISTRAR OF CHANGES TO BENEFICIAL OWNERSHIP AND MEMBERSHIP INFORMATION

OBLIGATION TO RETAIN BENEFICIAL OWNERSHIP INFORMATION FOR A MINIMUM PRESCRIBED PERIOD

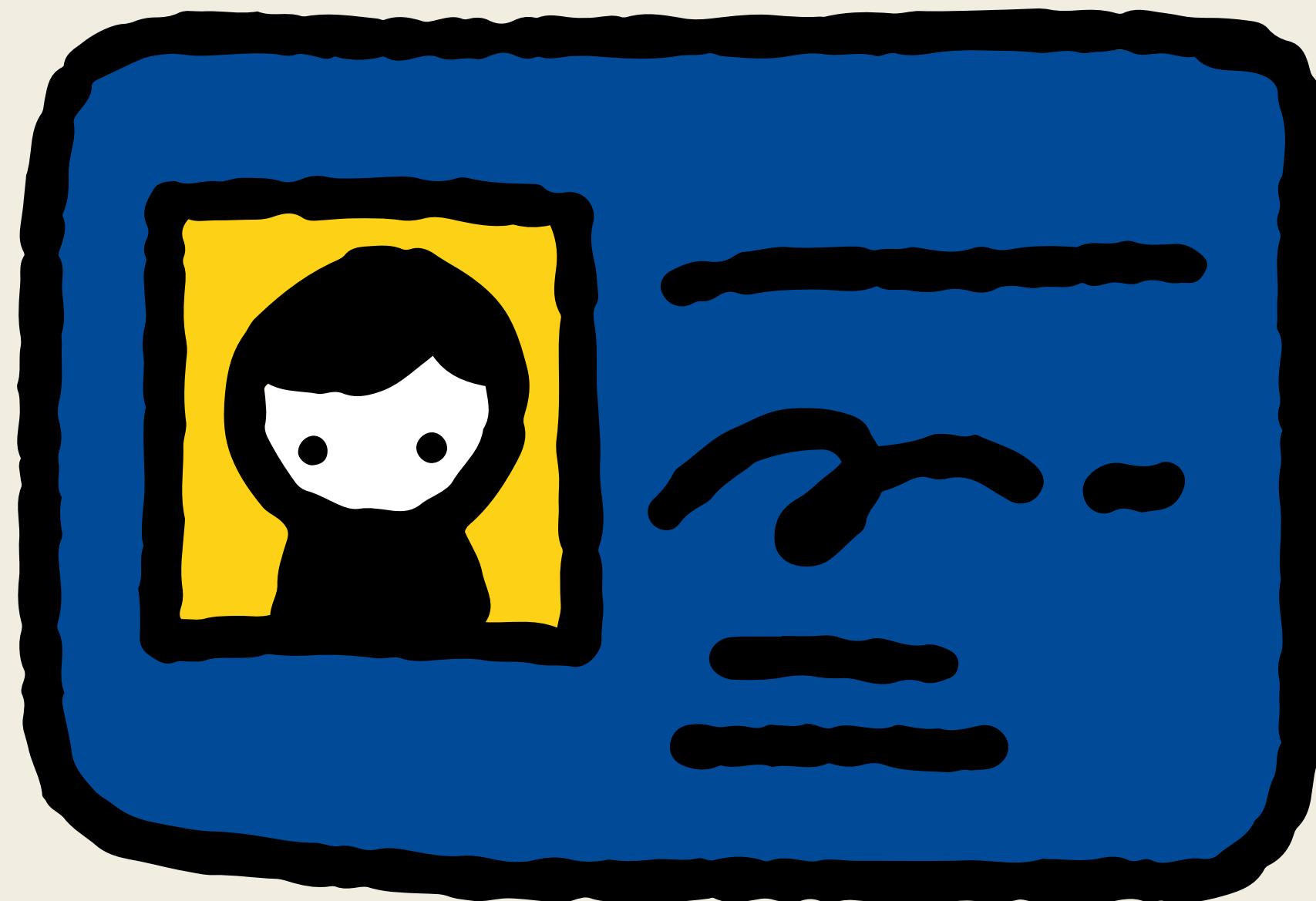


Collect

and Keep

Beneficial Ownership Information

Beneficial ownership and membership information (names, nationalities, addresses, occupations, date of birth, and TRN) must be provided by the company at incorporation. Following incorporation, companies will also be under an ongoing obligation to maintain and ensure that beneficial ownership information held is adequate, accurate and updated.



Meaning of:

Adequate

Satisfactory or acceptable in quality and quantity.

Accurate

Correct in all details, exact and without any mistakes.

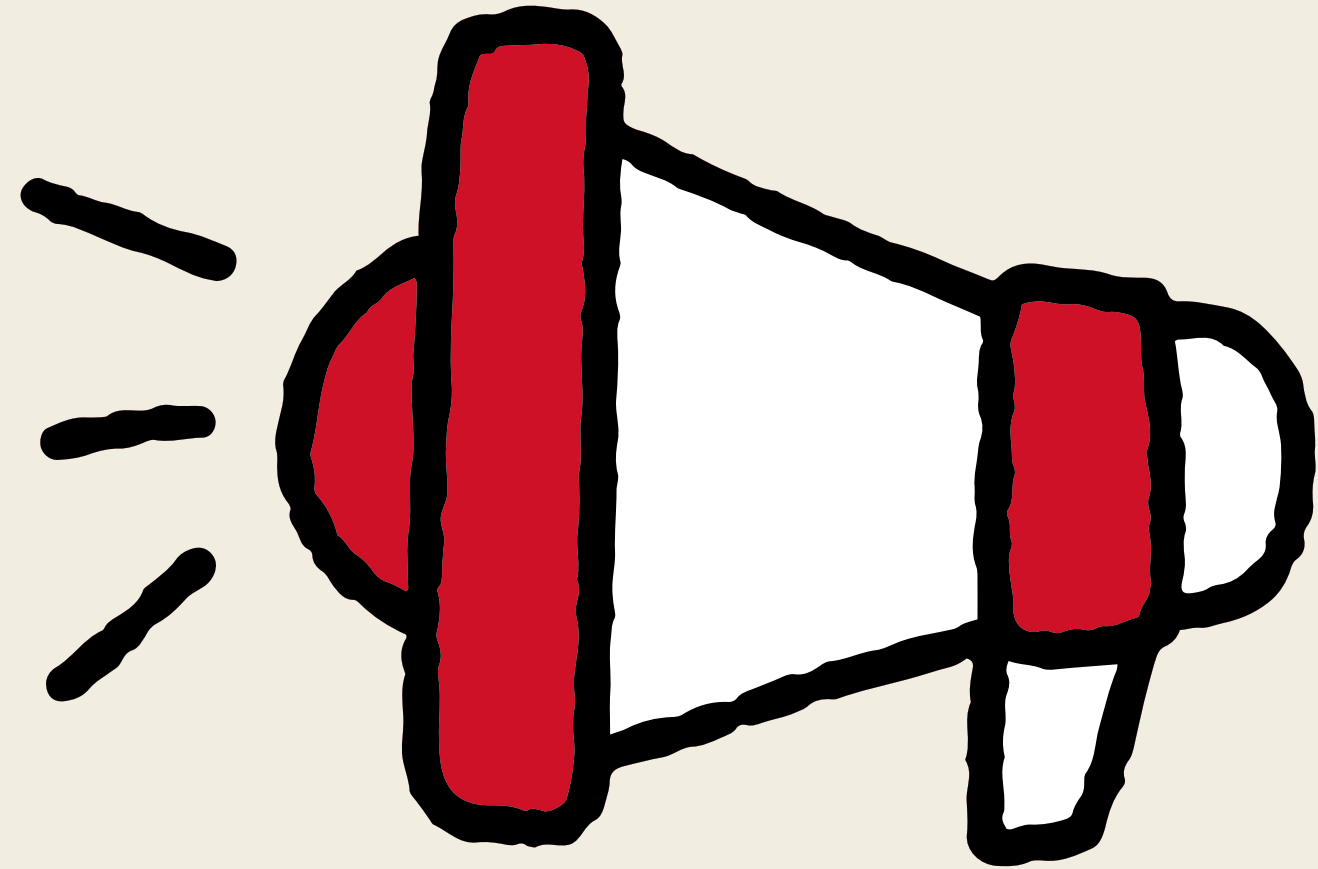
Up to date

Current and accurate information up to the time it is presented.

Where an individual does not possess a TRN, then a passport number or driver's licence number must be stated.

Notifying the COJ

*of Changes to Beneficial
Ownership Information*

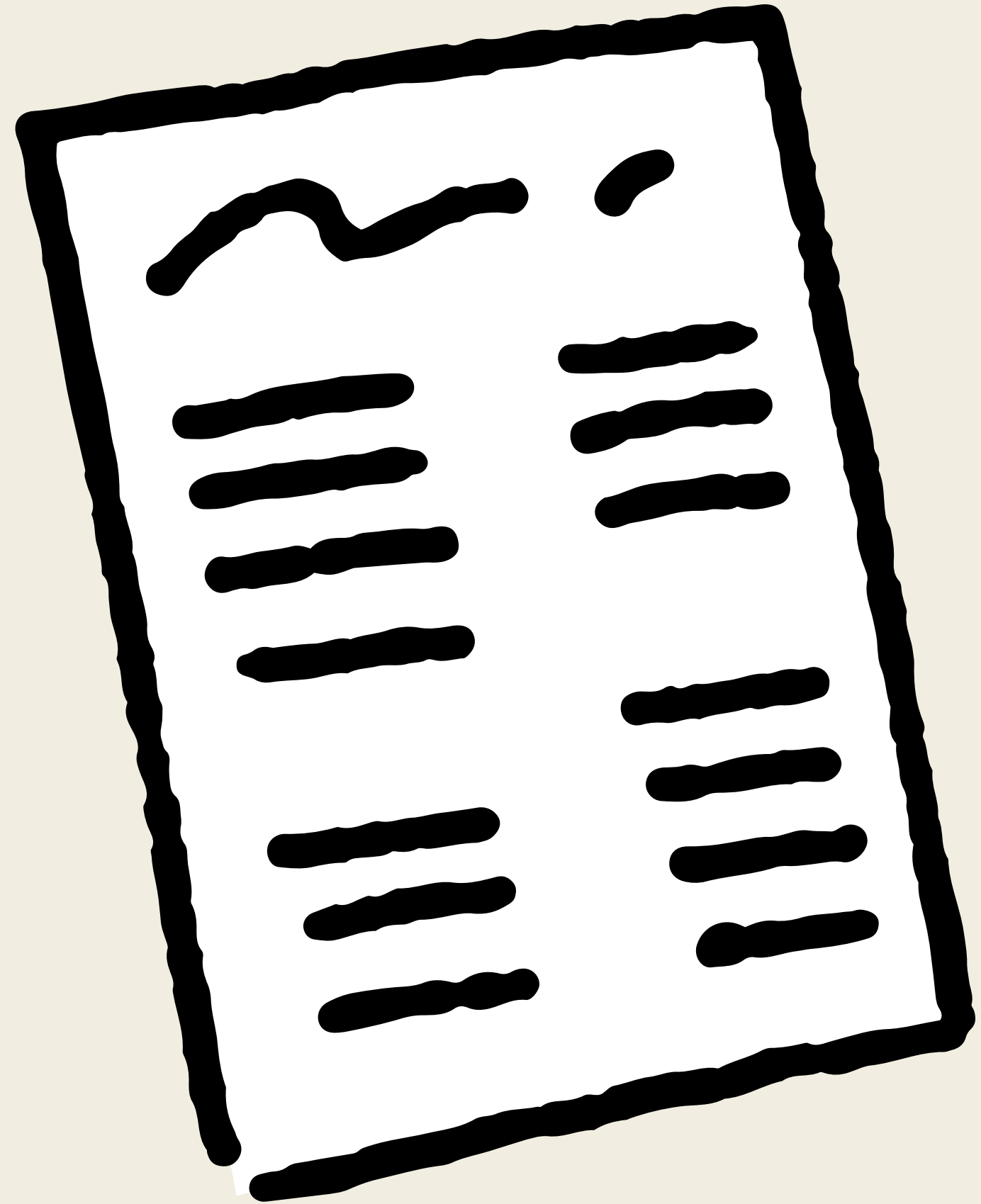


Provisions are being proposed that will require that companies notify the Registrar of any changes to the information on the Register of Members and Beneficial Owners within fourteen (14) days of any changes. These changes include, change in name, address, shareholding and occupation. Also, where an existing beneficial owner ceases to be so, the company shall notify the COJ. Likewise where a new beneficial owner has been appointed, the company shall notify the COJ.

Keeping & Retaining

Beneficial Ownership Information

Companies will be required 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.



X X

New Sanctions

On

Companies

PENALTY FEES FOR FAILURE TO MAINTAIN ADEQUATE, ACCURATE AND UP-TO-DATE BENEFICIAL OWNERSHIP AND MEMBERSHIP INFORMATION IN THEIR REGISTER OF MEMBERS

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 COJ.

Failure to keep a Register of Members.

Failure to notify the COJ of Change in Register of Members.

Failure to notify the COJ of location of Register of Members.

Failing to give the COJ access to inspect or examine company documents.

Failing to provide the COJ with further or additional information requested.

Monetary Penalty for Officers

Failing for five consecutive years to keep Register of Members.

Failing for five consecutive years to keep an adequate accurate and up to date Register of Members.

Failure to comply with the three warning letters issued regarding an Annual Return.

Being struck off the Register

Failure to keep information in Register of Members accurate and up to date.

Failure to file annual returns.

Periodic Monetary Penalties

Failure to file Annual Return in 100 days.

Failure to comply with first warning letter.

Failure to comply with second warning letter

Issuance of a Warning Letter

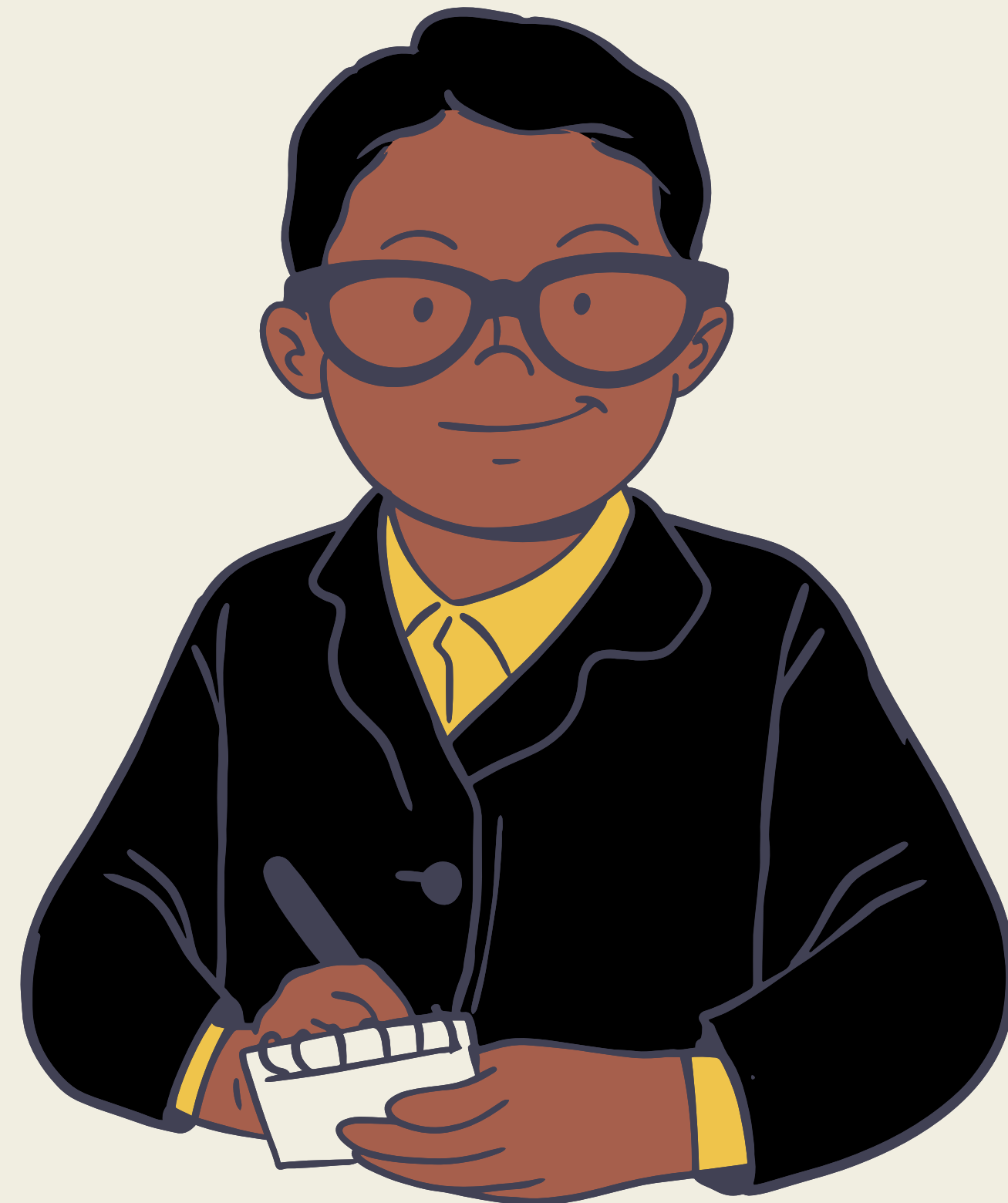
Failure to file Annual Return on time

Loss of Compliant Status at Financial Services Commission and Bank of Jamaica

The COJ's *New Role*

FATF Recommendations requires that the COJ be granted legal powers in order to monitor and verify Beneficial Ownership information held by companies through inspections and investigations.

Consequently, it is being proposed that a new Section 109A be inserted into the Act to set out the powers to be granted to the COJ. These powers will empower the COJ to verify beneficial ownership information. In an effort to achieve this, the COJ will be also be empowered to investigate the records and books of companies to ascertain information needed to verify beneficial ownership information.



Responsibilities of the New Department

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 is 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.

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

Conducting field visits to 'audit' company registers.

Preparation and issuing of Registry Notices & Reminders.

Providing a pool of referrals to inform the Investigation, Litigation & Removal Proceedings.

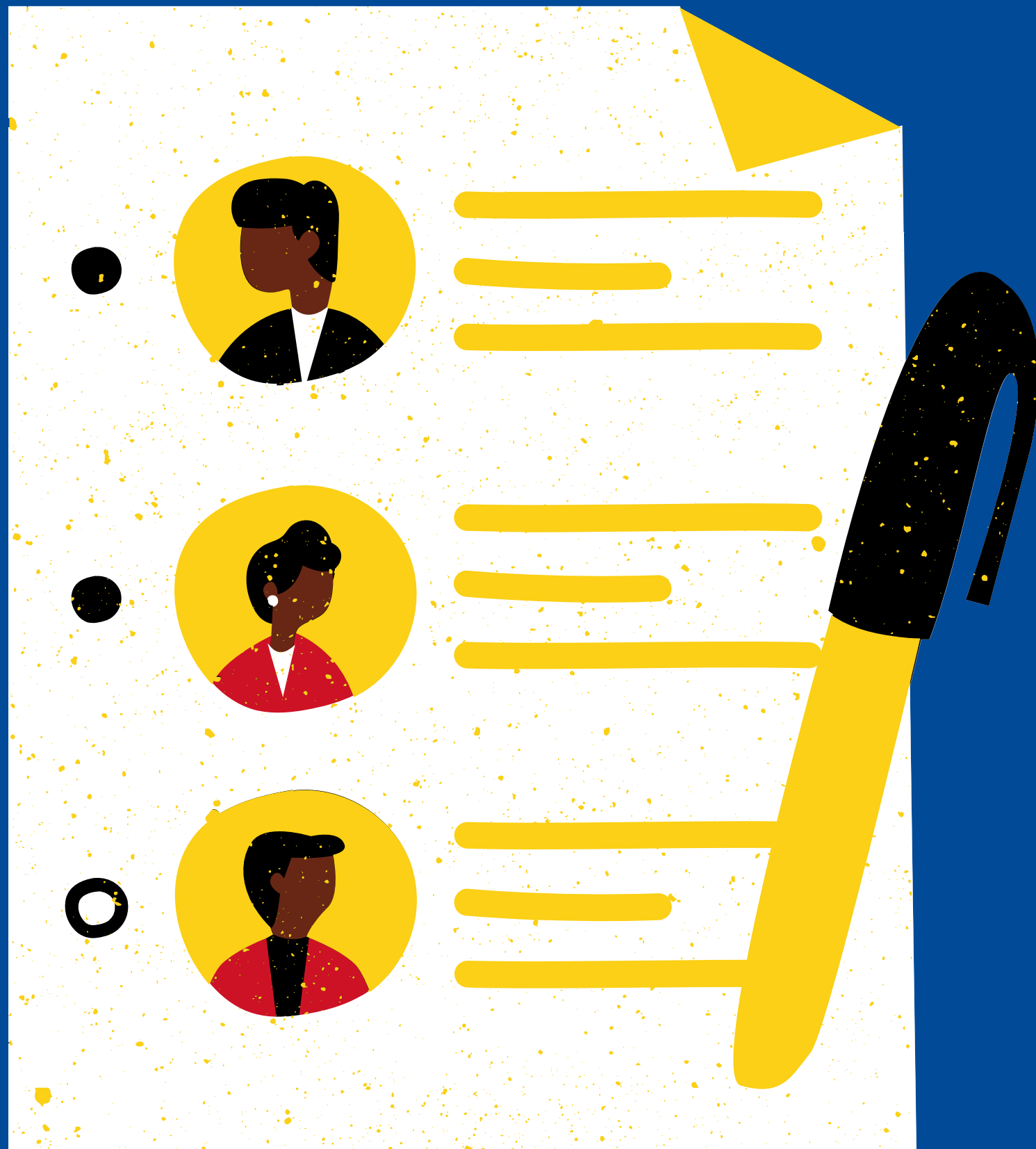
Notifying companies of registry discrepancies in beneficial ownership and membership information..

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

Beneficial Ownership Register

Currently, it is being proposed that the Register of Beneficial Ownership be established to show the beneficial ownership information for each company.

As beneficial ownership information is collected on the forms, then the public will be able to access this through a basic search of the website. Private information such as the date of birth, and TRN, however, remain private and only accessible to specific entities named in the Amendment Act.



Two Tiers of Access

There are two tiers of access to the private beneficial ownership information on the Register. The complete access is given to competent authorities and restricted access is for private and public entities, both local and foreign, that apply to the Registrar for permission to access.

Grounds for the application:

- the functioning of the law enforcement and regulatory authority;
- conducting investigations; or
- conducting civil and criminal proceedings

Competent authorities include:

- Bank of Jamaica;
- Financial Services Commission;
- Real Estate Board;
- Betting, Gaming and Lottery Commission;
- Public Accountancy Board;
- Casino Gaming Commission; and
- Any other authority designated as such by an Order of the Ministers with Portfolio.

Entities that can apply for access:

- law enforcement authorities
- regulatory authorities
- Other non-governmental bodies (for example private regulatory bodies and banks)

What to expect from the Regulations?

When the Amendment Act passes, there will be Rules that expound further on the new requirements outlined in the Amendment Act.

Maintaining Beneficial Ownership Information in the Register of Members: Duty of company, legal owners and beneficial owners

Identifying the Beneficial Owner in different Corporate Structures

Filing of Beneficial Ownership and Membership Information

Verification and Inspection Powers of the Registrar

Notices and Measures to ensure adequate, accurate and up to date information

The Register

Exceptions to the General Requirement to file Membership Information

Tools to help with the Understanding the new Amendments

The COJ intends to have these tools available to the public to help with the understanding of the incoming Amendments.

A Guidance Note

Sensitization Sessions

What should companies start doing in preparation for the incoming Amendments?

Although the new Amendments have not yet been passed, companies can prepare for the new obligations they will have by doing the following:

Explore and acquire software to manage member and beneficial owner information and due diligence documents.

Identifying all the beneficial owners of the company

Ensuring that the information they have on the beneficial owners are accurate, up to date and adequate.

Seek out and insert any missing beneficial ownership information.

Prepare to file the information found with the Registrar.

Getting all the required information on members updated in the company's Register

What should companies start doing in preparation for the incoming Amendments?

cont'd

Update the Compliance Obligations of Existing Entities as well as Upgrade packages presented to new registrants.

Amend Company Incorporation Questionnaire

Set up systematic approach to verifying membership and beneficial ownership information and changes

Amend Articles to provide for compulsory buy-back of shares due to failure to cooperate.



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Questions?