

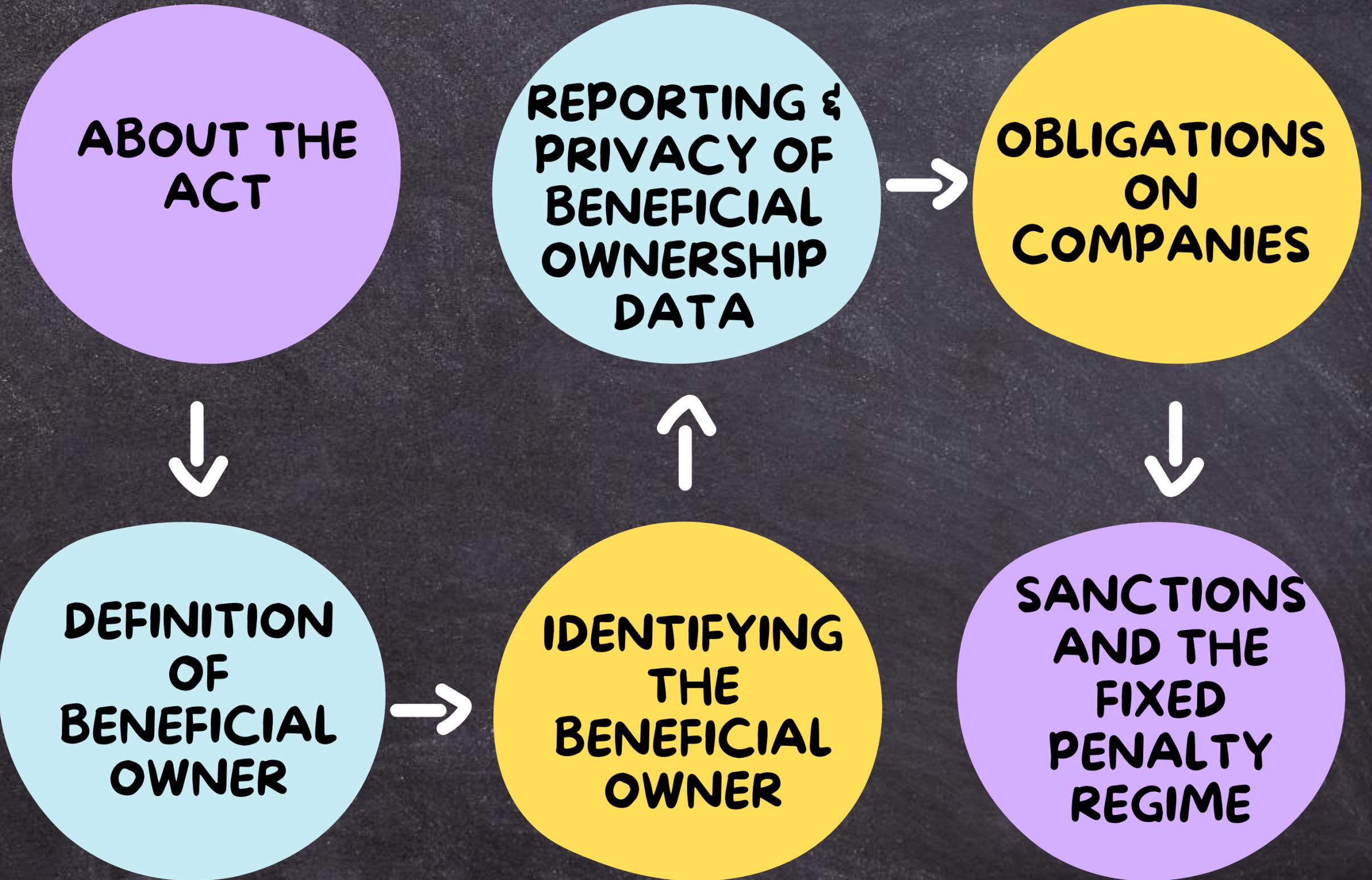
COMPANIES OFFICE OF JAMAICA

COMPANIES AMENDMENT ACT 2023

MAY 2023

30 min Review!

OUTLINE OF THE PRESENTATION



INTRODUCTION

THIS ACT WAS INFORMED
PRIMARILY BY RECOMMENDATION
24 OF THE FATF GUIDELINES

The Companies Act, through the Companies Amendment Act 2017, established the first beneficial ownership regime at the Companies Office. However, in reviewing this regime, the Financial Action Task Force (FATF) determined that the regime needed to be much more extensive. As such the COJ, in partnership with local and international stakeholders, embarked on a project to revise the previous regime to ensure it meets international standards set by the FATF.

This new regime 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.



BENEFICIAL OWNER

means the individual that...

- exercises whether directly or Indirectly ultimate effective control and ultimate ownership of a company;
- where there is no individual exercising both ultimate effective control and ultimate ownership of the company, , whether directly or indirectly, either ultimate ownership or ultimate effective control;
- exercises control or ownership in any of the ways stated in paragraph (a) or (b) over a company, body of persons, trust or other legal arrangement, who owns twenty-five percent or more of a company; or
- in the absence of an individual referred to in paragraphs (a) or (b), is an officer of the company who exercises ultimate effective control of the management of the company.

OTHER TERMS TO BE NOTED

definition of key terms used in the definition for beneficial owner

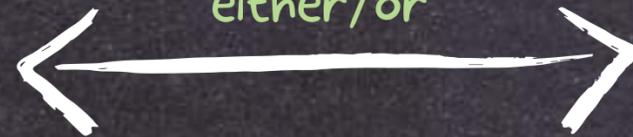
BENEFICIAL OWNER



DIRECTLY

{ obvious association and connection with a company. }

either/or



INDIRECTLY

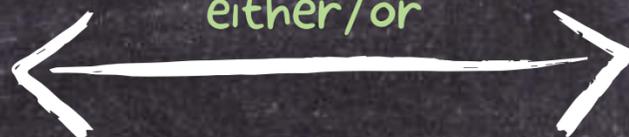
{ not as easy to identify or associate with a company. }



ULTIMATE OWNERSHIP

{ control exercised by an individual, through means or mechanisms other than by direct control }

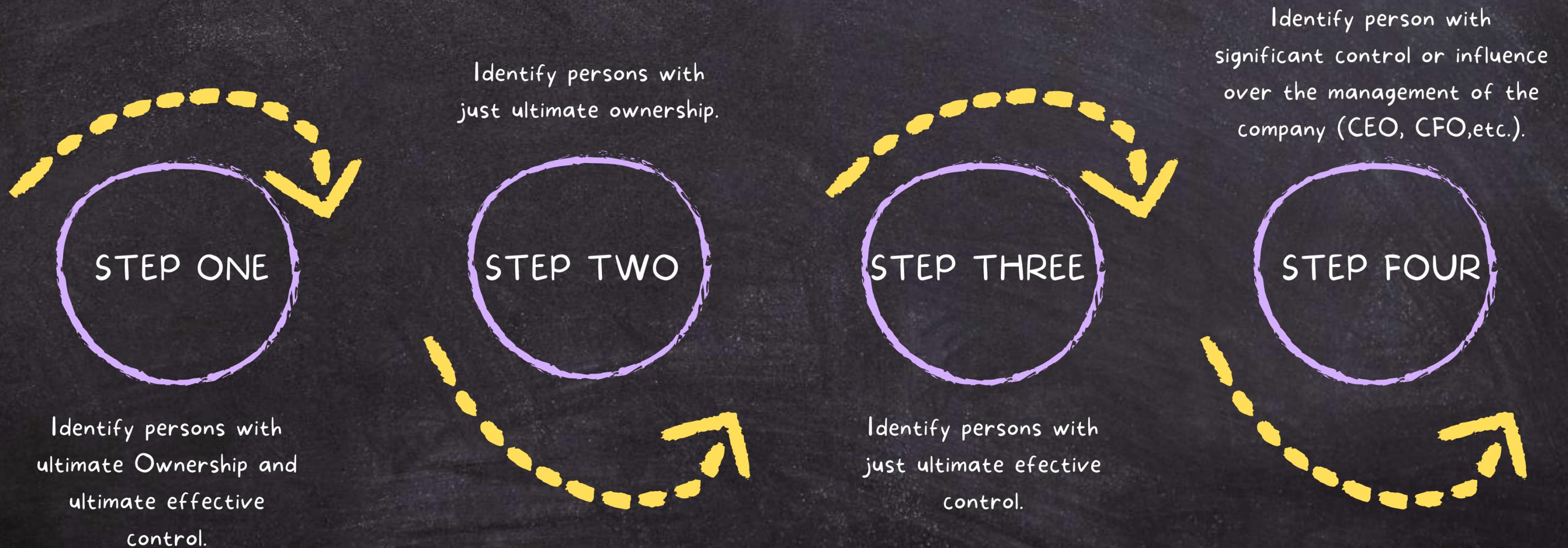
either/or

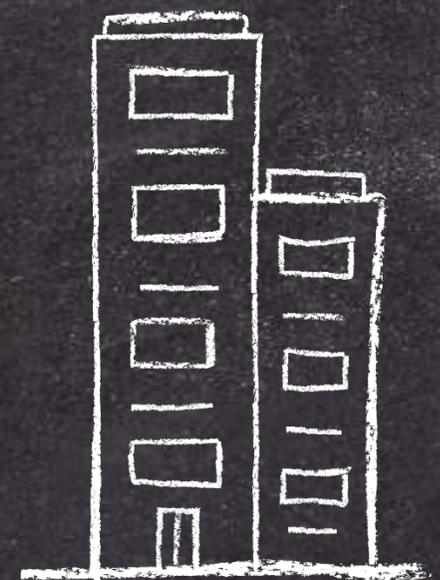


ULTIMATE EFFECTIVE CONTROL

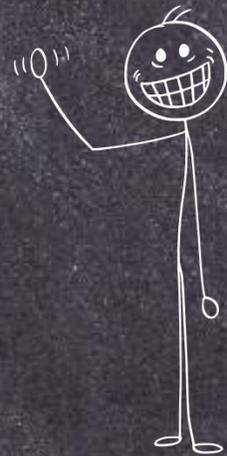
{ where ownership of a company is exercised through a chain of ownership or by an individual by himself or jointly with another person. }

CASCADING TEST - IDENTIFYING A BENEFICIAL OWNER





COMPANY A



JOHN BROWN -
40% SHARES



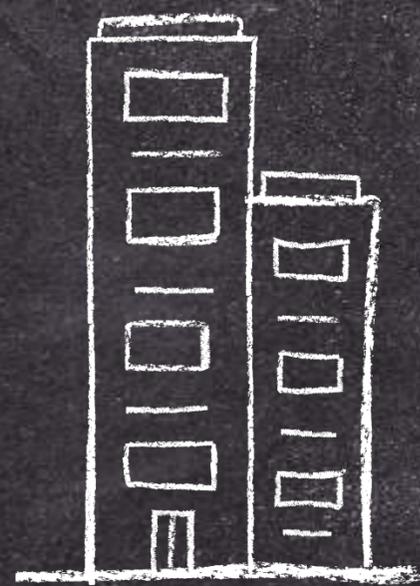
MARY JANE -
50% SHARES



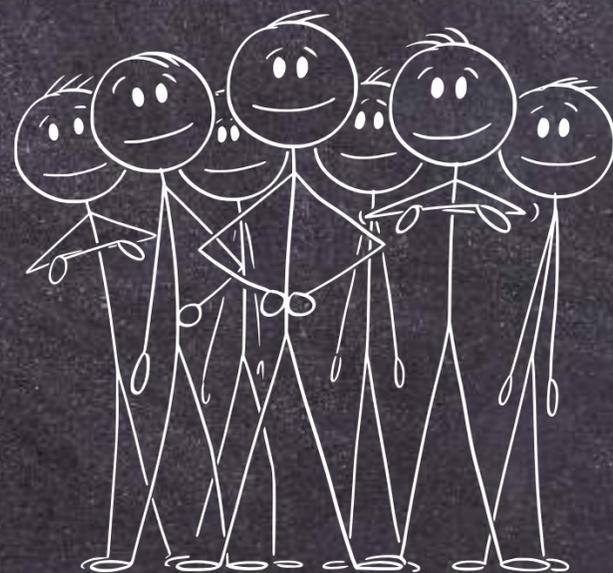
DAVID SMITH -
10% SHARES

This is a basic example of direct beneficial ownership through ultimate ownership.

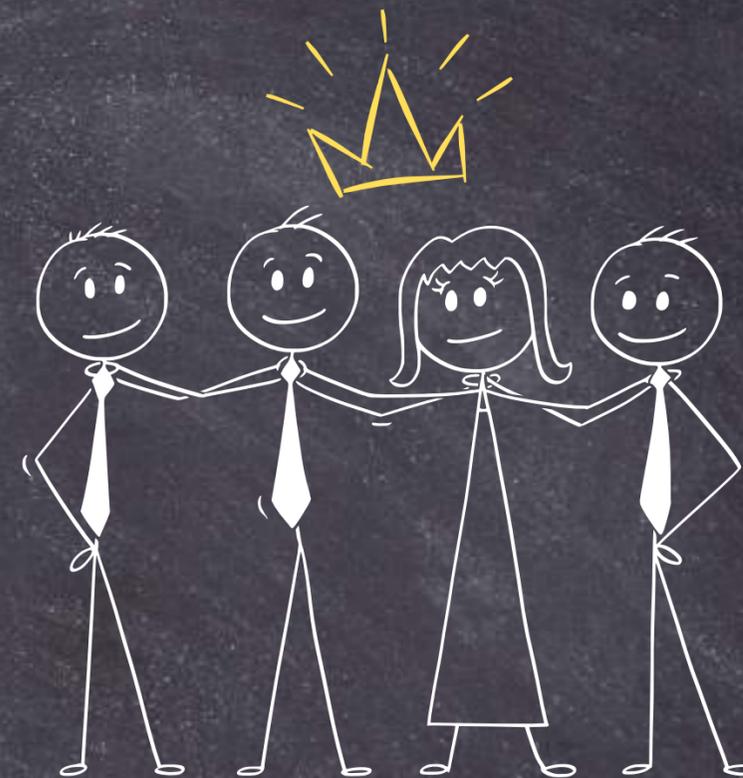
In this case both Mary Jane and John Brown would be beneficial owners of Company A as they both have 25% or more shares in the company.



COMPANY A

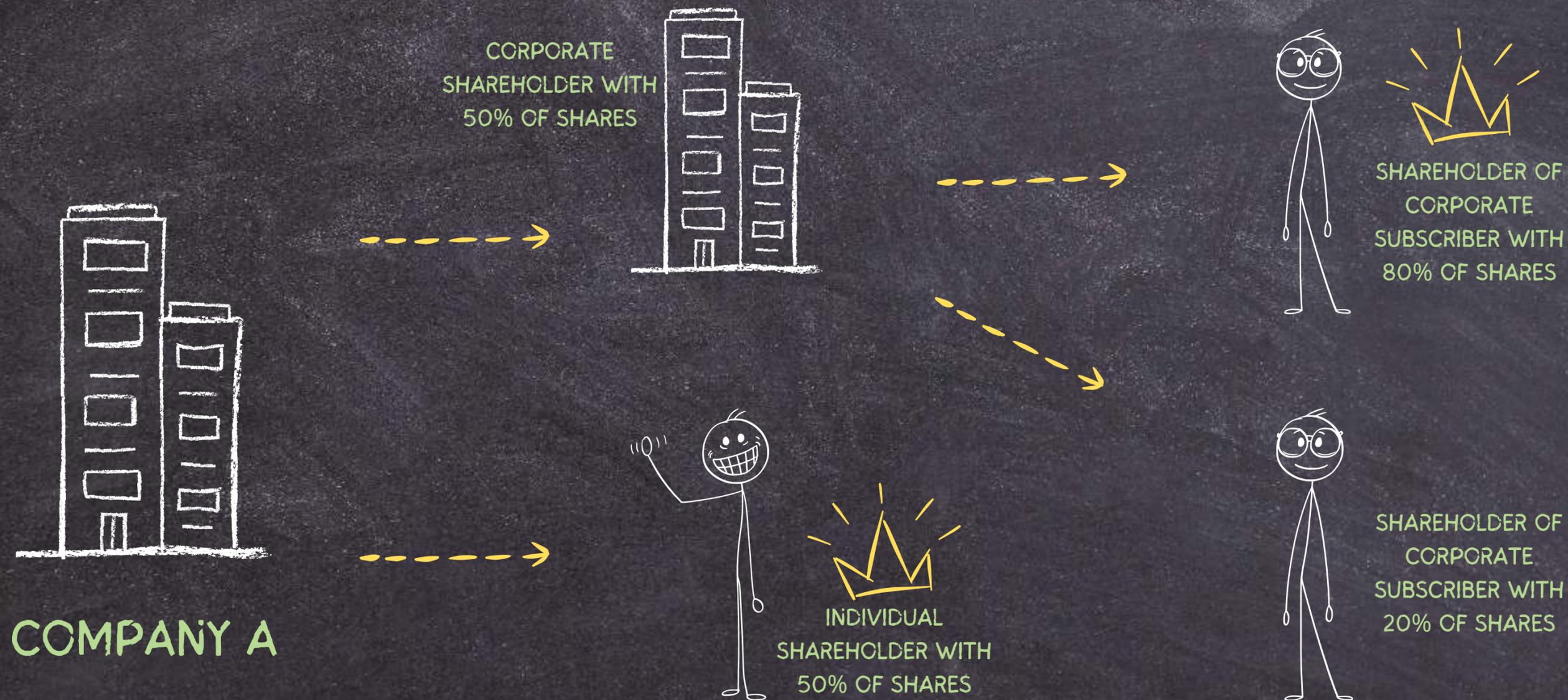


MEMBERS



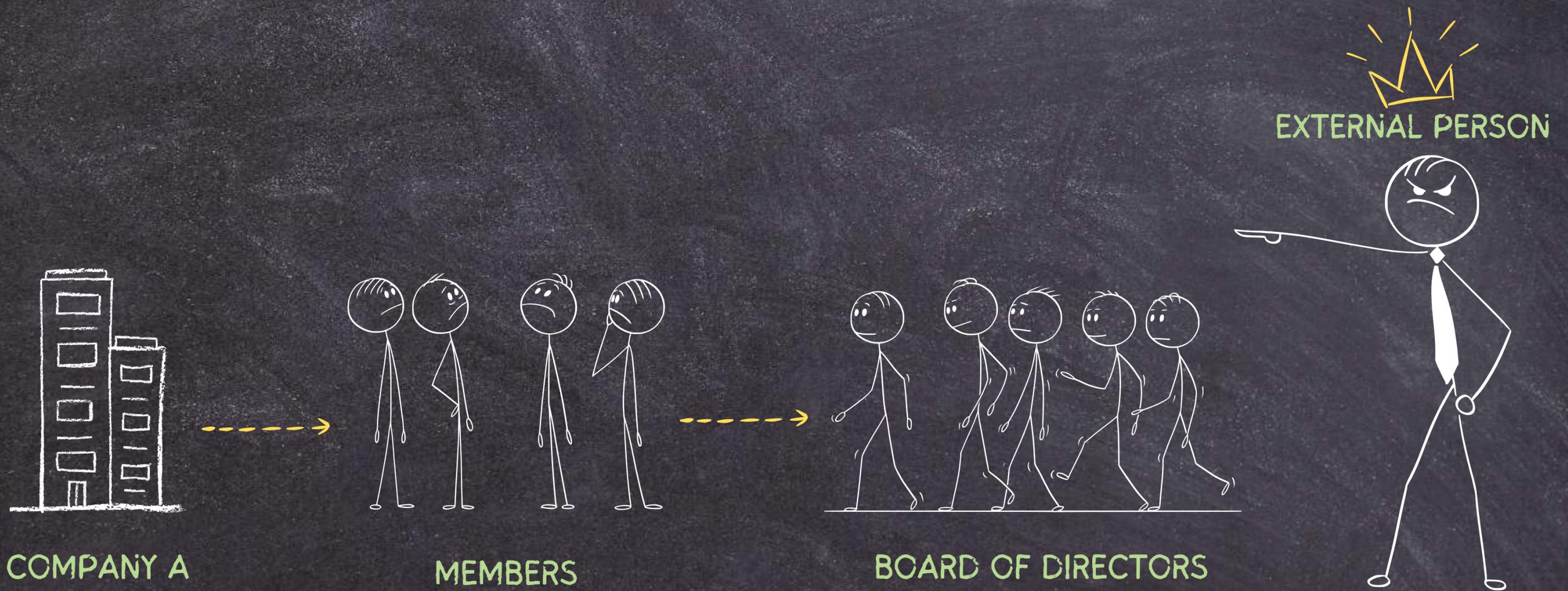
BOARD OF DIRECTORS

This is a basic example of direct beneficial ownership through ultimate effective control. In this case, the board of directors would be the beneficial owners as there are no members that each have 25% or more of shares.

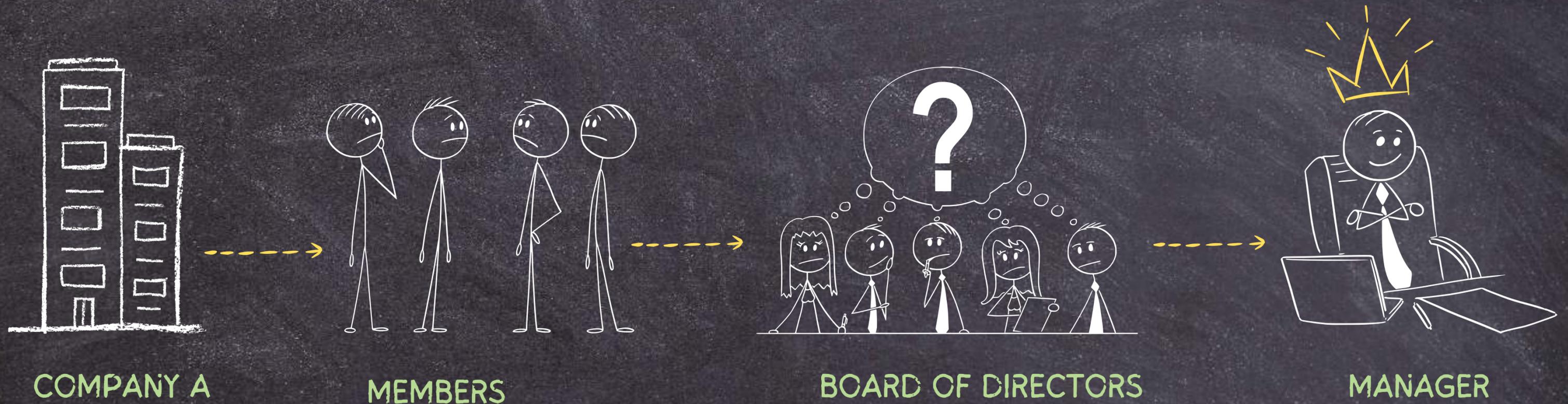


This is a basic example of direct beneficial ownership through ultimate ownership.

In this case the individual shareholder with 50% of shares in Company A would be a beneficial owner; and the shareholder with 80% of shares in the corporate subscriber would also be a beneficial owner.



This is a basic example of indirect beneficial ownership through ultimate effective control. In this case the external person would be the beneficial owner as he has significant control and/or influence over the company.



This is a basic example of direct beneficial ownership through control over the management of the company.

In this case the manager would be the beneficial owner of Company A as he has control over the management of the company.

REPORTING BENEFICIAL OWNERSHIP INFORMATION



AT ALLOTMENT
OF SHARES



AT
INCORPORATION



ANNUALLY



WHERE THERE
IS A CHANGE

Beneficial ownership information must be filed on the
BENEFICIAL OWNERSHIP RETURN FORM.

PARTICULARS REQUIRED: Name, Address, Occupation, Nationality, Date of Birth, TRN or other tax ID number or passport/driver's licence number.

PRIVACY OF BENEFICIAL OWNERSHIP INFORMATION

Beneficial ownership information shall be private and only available for viewing upon request.

Request made by Members of the Public

Must be made in writing and addressed to the Registrar of Companies. It will be processed by the AML/CFT Unit.

&

The written request must be accompanied by the written consent of the beneficial owner.

Members of the public include banks, other financial institutions, lawyers, accountants, governmental and non-governmental regulatory bodies.

Request made by an Authority

Must be made in writing and addressed to the Registrar of Companies. It will be processed by the AML/CFT Unit.

&

The written request of the beneficial owner need not be included with the request by an authority.

Authorities include local and foreign competent authorities, designated authorities, sergeant or higher rank, Commissioner of Customs, DPP, Commissioner General.

Must keep register of members and register of beneficial owners.

Must notify the COJ about the location of the Register of Members/Beneficial Owners.

Current & former employees, officers, auditors and agents must facilitate COJ's inspections and investigations

Must record measures and methods used to obtain and verify beneficial ownership information.

Must notify the COJ of any changes in beneficial ownership and membership information within fourteen days.

Must rectify any inaccurate, inadequate and outdated information in the Register of Members/Beneficial Owners.

Must respond to any queries posed by the COJ and in the manner specified by COJ.

Must keep documents relating to membership and beneficial ownership information for at least 7 years.

OBLIGATIONS ON COMPANIES

OBLIGATION ON ALL COMPANIES TO PROVIDE BENEFICIAL OWNERSHIP INFORMATION

All companies incorporated or registered under the Companies Act are now required to provide beneficial ownership information. There are no exceptions to this rule. All companies must state who their beneficial owners are.

OTHER OBLIGATIONS



MEMBERS

members with 25% or more shares in the company to notify the company of the beneficial owner of their interest

at incorporation and allotment



BENEFICIAL OWNERS

beneficial owner(s) to notify the company of particulars, relationship to company and changes to particulars

at incorporation, allotment & where there is a change

NEW POWERS OF THE COJ

POWER TO INSPECT THE REGISTER OF MEMBERS ONCE NOTICE IS GIVEN 7 DAYS BEFORE DATE OF INSPECTION.

POWER TO APPLY TO THE COURT FOR AN ORDER TO INSPECT WHERE INSPECTION REFUSED BY COMPANY.

NOTIFY COMPANY OF INACCURATE/IN ADEQUATE/OUT DATED INFORMATION AFTER INSPECTION.

POWER TO REQUEST FROM COMPANY OR LOCAL/FOREIGN AUTHORITY INFORMATION TO VERIFY BO INFORMATION.

DUTY TO KEEP A REGISTER OF BENEFICIAL OWNERS FOR COMPANIES REGISTERED UNDER THE ACT.

POWER TO EXAMINE THE RECORDS AND PROCEDURES OF A COMPANY TO ENSURE COMPLIANCE WITH THE ACT.

POWER TO PERFORM INSPECTION WITH ANY OTHER PERSON OR ENTITY AS THE COJ SEES FIT.

DUTY TO ENSURE PROPER STANDARDS OF CONDUCT AMONG ITS EMPLOYEES WHEN MAINTAINING THE BO REGISTER.

SANCTIONS

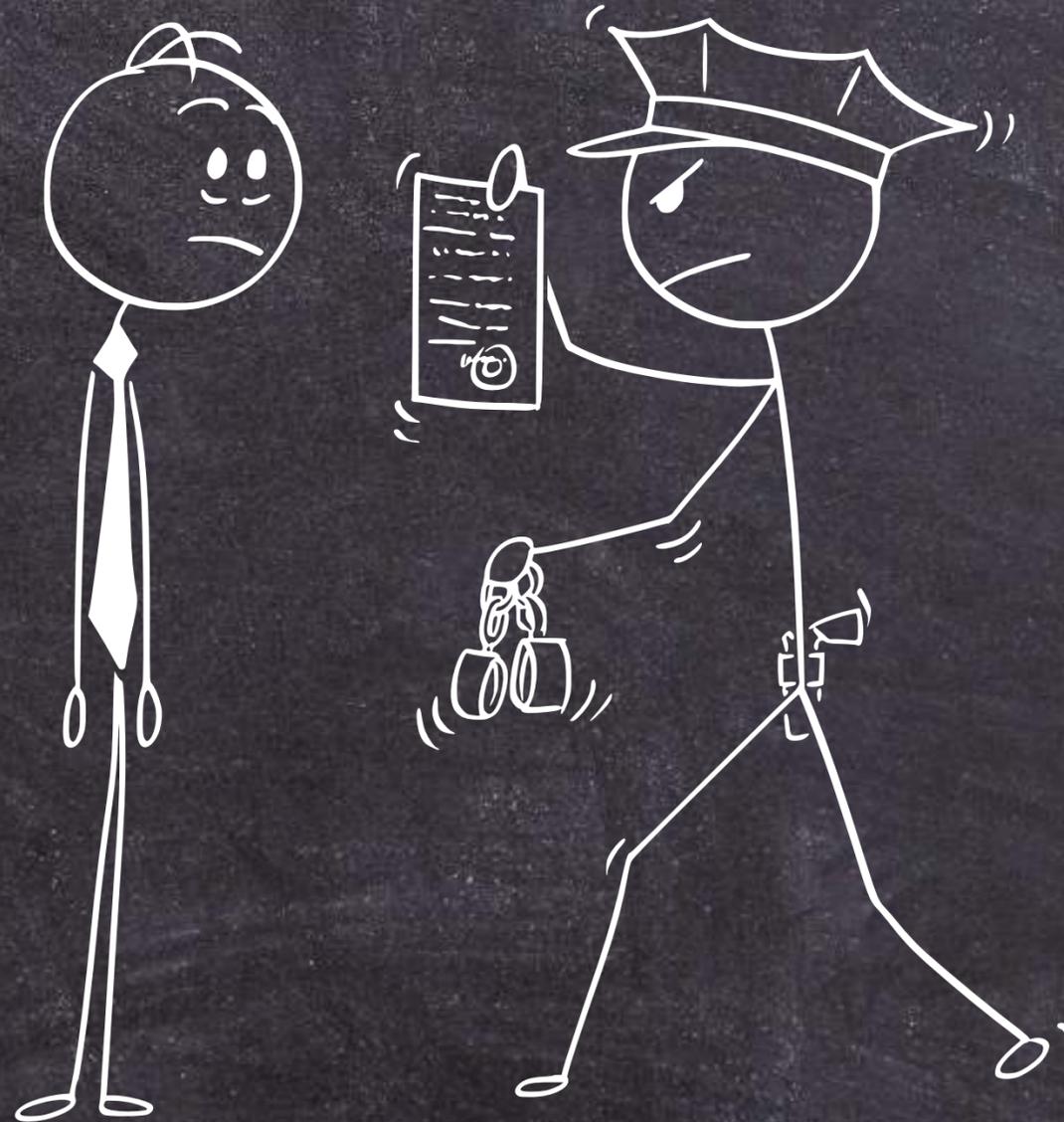
Fine of 5/3 million and/or Imprisonment

Failure to notify member and beneficial owner to give their details

Failure to have Register of members

Having an inadequate, inaccurate & outdated Register of Members

Failure to notify the COJ of change in location of the Register of Members



Fine of 5/3 million and/or Imprisonment

Failure to notify the COJ of changes to beneficial ownership and membership information

Failure to record verification measures and substantiating documents

Failure of member and beneficial owner to give company their particulars

SANCTIONS

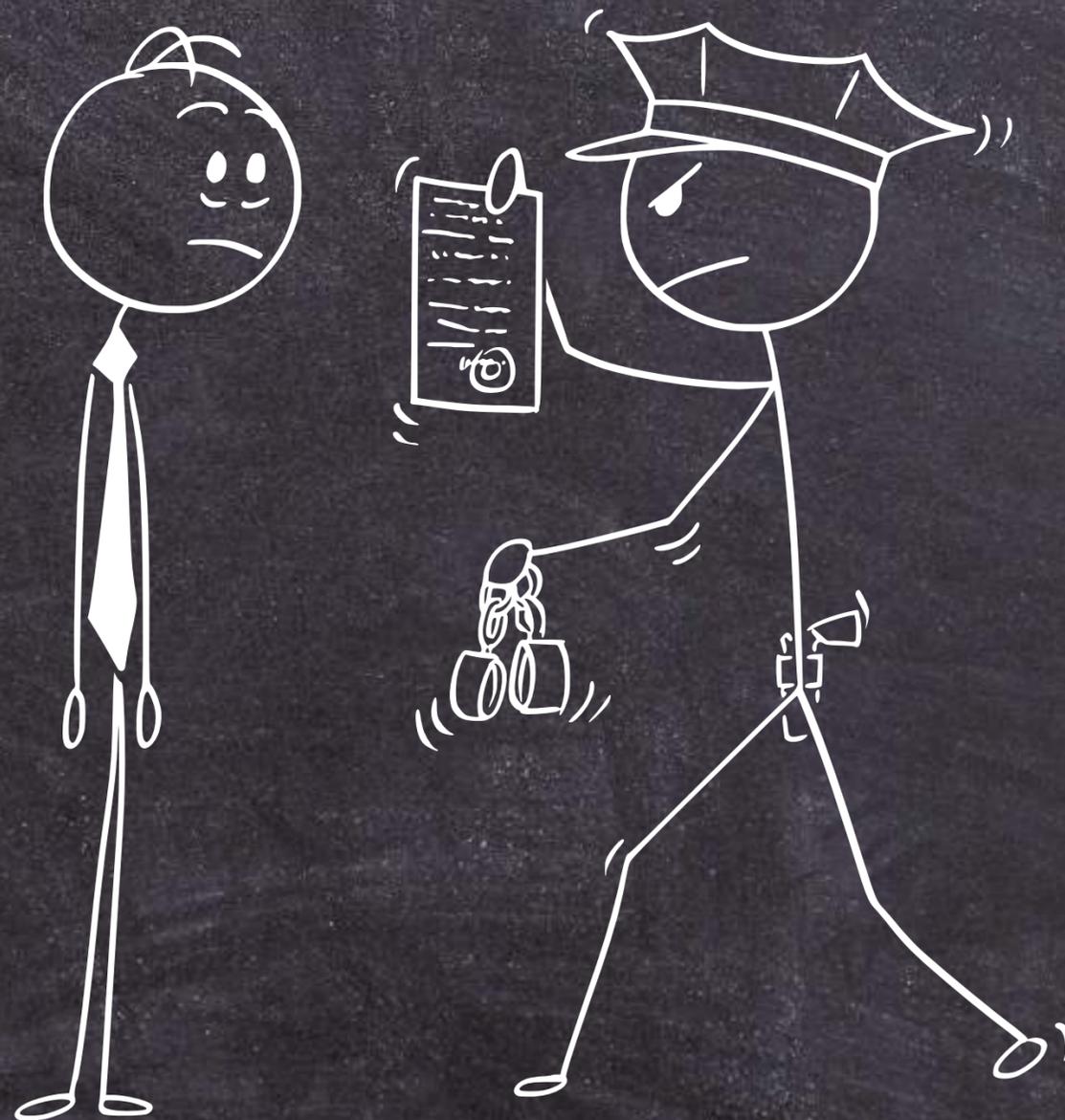
Fine of one million and/or Imprisonment

Failing to allow inspection

Failing to answer COJ's request for information

Failing to comply with any request of the COJ

Unlawful behavior towards COJ's representatives



Removed from the Register of Companies

Failure to rectify register of members after conviction

Overseas company ceased to carry on business in Jamaica

Failure to deliver annual beneficial ownership return

Missing/inadequate/inaccurate/outdated beneficial ownership return

FIXED PENALTY REGIME

The FPR shall apply to all offences punishable by summary conviction.

- issues notice to company to discharge liability of conviction of an offence by the payment of a fixed penalty, which is percentage of the maximum fine amount for the offence.
- a fixed penalty shall be paid to the Collector of Taxes within the 30 days and can be done electronically and a certificate of payment or non-payment will be issued as evidence of the facts stated therein..
- where a FPR notice is issued, no proceedings shall commence until after 30 days from the date of the notice, and where the fixed penalty is paid, no proceedings shall be commenced regarding that offence.
- it shall give information on the offence, how long the proceedings shall be halted, amount to be paid, state that the failure to pay will result in proceedings resuming and that it is to be construed as a information and summons.

REQUIRED FORMS FOR INCORPORATION

Form IA or IC or ID

Business Registration Form

Beneficial Ownership Return - Form A

With Share Capital
(local)

Form IB

Business Registration Form

Beneficial Ownership Return - Form B

Without Share Capital
(local)

Form 3IA

Copy of constituent documents

Beneficial Ownership Return - Form A

Overseas Company
(without share capital)

Form 3IB

Copy of constituent documents

Beneficial Ownership Return - Form B

Overseas Company
(with share capital)

REQUIRED FORMS - ANNUALLY

- Form 19A
- Beneficial Ownership Return - Form A

With Share
Capital
(local)

- Form 19B
- Income and Expenditure
- Beneficial Ownership Return - Form B

Without
Share Capital
(local)

- Financial Statements
- Beneficial Ownership Return - Form A

Overseas
Company
(without share capital)

- Financial Statements
- Beneficial Ownership Return - Form B

Overseas
Company
(with share capital)

RETURN OF ALLOTMENT

NOTICE OF CHANGE

- Form 9
- Beneficial Ownership Return - Form A
- Form 9
- Copy of constituent documents
- Beneficial Ownership Return - Form A

With Share Capital
(local)

Overseas Company
(with share capital)

- Form 27B
- Beneficial Ownership Return - Form C
- Form 27A
- Beneficial Ownership Return - Form C

Without Share Capital
(local and overseas)

With Share Capital
(local and overseas)

WWW.BO HUB JAMAICA.COM

Beneficial Ownership Hub
Companies (Amendment) Act 2023

Home FAQ News Forms Publications About

The amendments to the Companies Act 2023 aims to strengthen Jamaica's anti-money laundering, counter-terrorism, and proliferation of arms financing efforts as it relates to legal persons.

[Read the Companies Act](#)

COMPANIES AMENDMENT ACT 2023 explained

No upcoming events at the moment

Resources

Toolkit: Beneficial Ownership

Forms Companies Act

Guide to Legal Persons Information Booklet

Let's Chat!

CHECK OUT OUR NEW BO HUB!

THANK YOU!

