

AMENDMENTS TO THE  
COMPANIES ACT 1995

**AEGIS**

 Caribbean  
Corporate Governance  
Conference

# Understanding Beneficial Ownership and Bearer Shares

# Beneficial Ownership



Companies (Amendment) Act 2019

Section 337 (B) Beneficial Ownership

“The obligation to ascertain and obtain beneficial ownership information.”

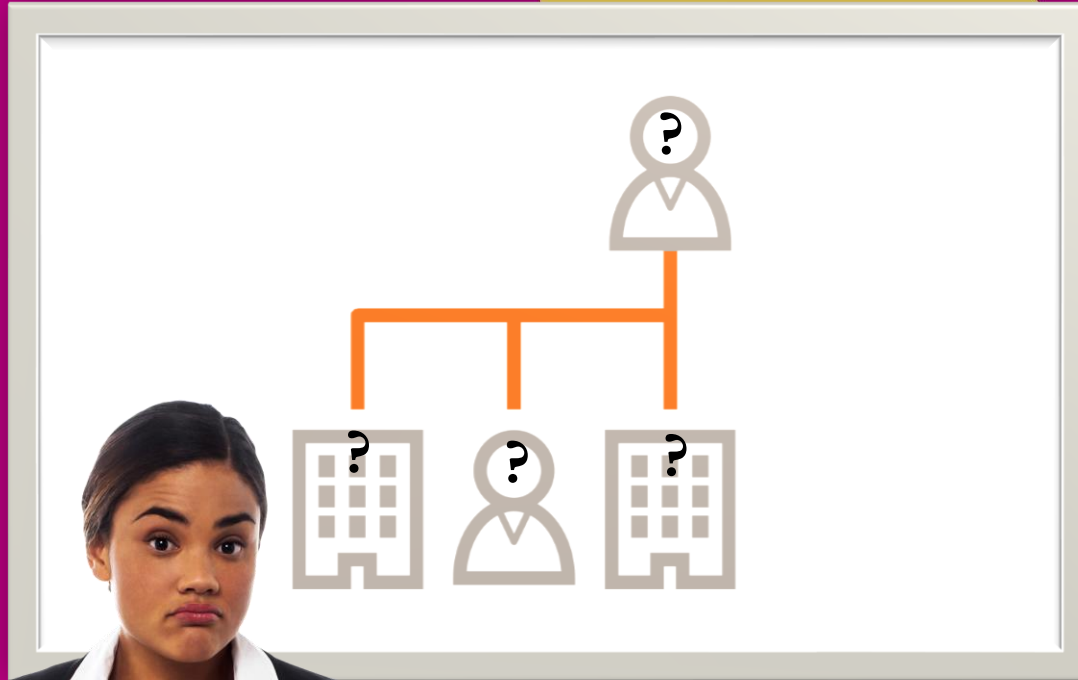


# Caribbean Financial Action Task Force (CFATF)

## Mutual Evaluation Report

Shortcomings of the Companies Act that facilitates the misuse of corporate vehicles for tax evasion, money laundering and terrorist financing purposes.

# Who is a Beneficial Owner?



Section 9 of the Companies Act defines a beneficial owner as:

“the **natural person** who is the ultimate owner of a company. In the event that a natural person cannot be identified as owner, the beneficial owner will be deemed to be the natural person(s) who exercises control over the company.”

Section 4 defines 'control' as the power of a person to secure by means of:

- a) The holding of shares or the possession of voting power in relation to that body corporate; **or**

Section 4 defines 'control' as the power of a person to secure by means of **(continued)**:

b) Any other power conferred by the Articles of Incorporation or other documents regulating the body corporate, that the business affairs of the body corporate are conducted in accordance with the wishes of that person.

Section 337A (2), specifies a Beneficial Owner as the natural person:

- a) On whose behalf a transaction is conducted, **or**
- b) Who exercises ultimate effective control over a legal person or arrangement, **or**



Section 337A (2), specifies a Beneficial Owner as the natural person (continued):

- c) Who ultimately owns or controls the company, through indirect or direct ownership, or control through other means, **or**
- d) Who exercises control of a legal person or arrangement, **or**

Section 337A (2), specifies a Beneficial Owner as the natural person (continued):

- e) Who holds the position of senior managing official,
- f) And, in the case of trusts, the settlor, trustee, protector, beneficiaries or any other person exercising ultimate effective control, or other types of legal arrangements.



Natural Persons

You

and



Me!



# Companies must now:

- Issue a notice to all shareholders requiring that a declaration of beneficial owners holding interest be submitted to them via:

**Form 40 - Notice to Shareholders of the Company to Declare Non-Beneficial Ownership**

**Form 41 - Declaration of Non-Beneficial Ownership**

**Form 42 – Declaration of Beneficial Ownership**

These forms must accompany the notice (Form 40) to each shareholder, and **must** be submitted to the company within 30 days.

# Companies must now

- Maintain a register of declarations submitted by shareholders and beneficial owners;
- Submit a “Return of Beneficial Interest in the Shares of a Company” (Form 45) to the Companies Registry;
- Submit a “Return of Issuance or Transfer of Shares” (Form 46) to the Companies Registry.

**Shareholders and beneficial owners must now submit declarations to the company:**

- **Stating who the beneficial owners are;**
- **Providing particulars as to his/her ownership interest;**



Shareholders and beneficial owners must now submit declarations to the company:  
**(continued):**

- Specifying, amongst other things, the nature of the interest acquired in the shares of a company;
- Specifying the nature of the change to information previously provided.

# Penalties for Non-Compliance

Failure to meet these requirements will result in the company, every director and officer, and in the case of the shareholder and/or beneficial owner being liable for:


# Penalties for Non-Compliance

- A summary conviction to a fine of \$10,000 and
- Three years imprisonment; and
- \$300 for each and every day that the offence continues



# Bearer Shares



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The Act States that “bearer share warrant” means a negotiable instrument that accords ownership in a legal person to the person who possesses the bearer share certificate.

## Section 33 of CAA 2019, no company may:

- Issue a bearer share, bearer share certificate, share warrant or bearer share warrant, or
- Convert or exchange any share into a bearer share, bearer share certificate, share warrant or bearer share warrant.

- The Company is also obligated to issue a Notice requiring the holder of any bearer shares to bring in the share for registration by the company within six (6) months.
- The CAA extends the prohibition of the issuance of bearer shares to external companies.

- If an External Company prior to the CAA previously issued said instruments in Trinidad and Tobago it shall, within twelve (12) months of the commencement of the CAA 2019, notify the Registrar in the prescribed form of the previous issue(s).



# Quiz Time!



## History:

*Beneficial Company Limited*  
has the following shares in  
issue:

- Graceful Gazelle Limited – 1 Ordinary Share
- The Estate of Classy Chenet – 1 Ordinary Share
- Jane Precocious – 1 Ordinary Share



## History (continued):

Within the year, the following took place:

- Jane got married, and her name is now Jane Fabulous
- The company issued shares to Pepper Trail Limited in order to raise capital

It is the intention of the company to be liquidated.

What are the steps in completing this process?

# History

*Beneficial Company Limited* has the following shares in issue:

- Graceful Gazelle Limited – 1 Ordinary Share
- The Estate of Classy Chenet – 1 Ordinary Share
- Jane Precocious – 1 Ordinary Share

## However

During the course of the year, Jane got married, and her name is now Jane Fabulous. The company also issued shares to Pepper Trail Limited in order to raise capital. Eventually, it is the intention of Beneficial Company Limited to be liquidated.

# Let's work together!

**Head Office**  
**18 Scott Bushe Street**  
**Port of Spain**

**[www.aegistt.com](http://www.aegistt.com)**

**1 868 625 6473**

**[info@aegistt.com](mailto:info@aegistt.com)**

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