

## Setting the Record Straight - to File or Not to File

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Profit making, tax avoidance and successfully competing in a global environment are usually the aspects of business to which we enthusiastically look forward. Keeping up to date records at the Companies Office of Jamaica (COJ) is not usually viewed with equal enthusiasm.

A company, in accordance with the Companies Act 2004 ("the Act"), is required to file an Annual Return with the COJ which contains information regarding the directors, company secretary, shareholders and registered office of the company. The date on which an Annual Return ought to be filed may differ depending on date of incorporation of the company and whether it is filing its first Annual Return. It is always useful to consult the appropriate legal professional if there is doubt as to the correct date for filing. A company is also required to file notices of any change or appointment of directors and company secretary and any change in the address of the registered office.

It is important to note that the requirements for filing may attract statutory penalties if not complied with. The COJ's records are public records which should accurately reflect the company's status. Whether or not filings may be considered tedious, time-consuming, unnecessary and burdensome, non compliance with the company's filing obligations has serious and far reaching implications.

### Suit by the Registrar of Companies

Among the several tools of enforcement available to the Registrar of Companies is the instituting legal proceedings against a defaulting company. Such a company may not only be compelled by court order to make the necessary filings, but also to pay the costs incurred by the Registrar in commencing the suit. It is in the best interest of the company to avoid non-compliance as, in addition to paying the Registrar's legal costs, it must obtain its own legal advice and the overall cost of proceedings can be substantial if the matter goes to trial.

### Change of Officers

With respect to the directorship of the company, it is important to notify the COJ of any resignations or appointments. This has practical significance to the directors, the company itself and to the public at large.

It is prudent for any person who ceases to be a director of a company to ensure that his resignation or retirement is noted in the COJ's records thereby notifying the public that his obligations and liability as a director have ceased.

From the company's perspective, filing the relevant notice with COJ may serve to advise the public that the retired director no longer has the capacity to transact business on its behalf. Further, a failure to note these changes may result in delay as a party may be reluctant to deal with an officer on behalf of the company where COJ's records do not reflect the appointment of that officer.

On the other hand a company which consistently satisfies its filing obligations tends to bolster its credibility in the eye of a potential investor and the public at large.

In a practical sense, even the conduct of day-to-day transactions that are necessary for the functioning of the company, such as the removal or addition of signatories to a bank account, may be adversely affected by a failure to update the COJ's records. A bank may refuse to add an officer as signatory where it is unable to verify this change in the status quo with the COJ. This may prove particularly inconvenient when the company requires urgent access to funds held on account or where an unauthorised party retains access to the company's accounts.

### Service of Legal Process

The Act permits a company to be served with legal process by registered post or leaving the document at its registered office. It is therefore incumbent on every company to ensure that the COJ's records reflect the current address of the company's office at which legal process is to be served.

If a Claimant is able to provide evidence to the Court that service was effected by leaving the claim form at the registered office of the company noted in the COJ's records, service will be deemed to be properly effected even if the company no longer has any connection with that address and does not have actual notice of the suit. Similarly, a company may be served with legal process through its directors and hence, it possible that a company could be deemed to be served through a director who ought to have been removed from the record.

#### Removal from the Register of Companies

Some companies may be incorporated for a specific purpose and may discontinue trade after that purpose is achieved. Be that as it may, it is prudent that if the company has no assets or liabilities, an application be made expeditiously to remove the company from the register of companies.

As long as the company remains on the register its filing obligation continues, not only with the COJ, but also with the other relevant government agencies, with relevant fees continuing to accrue. It must also be noted that the Registrar is not inclined to remove a company from the record unless all outstanding COJ filings have been made.

This application to be removed does not apply to a company which has assets or liabilities. Such an entity must employ the necessary winding up/ insolvency procedures in order to be dissolved, and thereafter removed from the register.

#### Striking off

Pursuant to the Act, the Registrar has the discretion to strike a company from the register where there is reasonable cause to believe that it has ceased to be in operation. This may be the case if the company has not filed returns for an extended period. Where she writes twice to the company at its registered office and receives no response within a specified period, a notice will be published in the Jamaican Gazette and in a daily newspaper, with a view to striking the name of the company from the register. If a company has in fact continued to trade, the publication of this notice may be embarrassing and injure the credibility of the company. It must also be noted that the officers of the company may become personally liable with respect to transactions entered into after the company has been struck from the register.

In summary, compliance with the company's filing obligations is in the best interest of your company, so do ensure that your company continues to set the record straight with the Companies Office of Jamaica.

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