

Companies (Beneficial Ownership) Bill 2012
Clauses considered

5.1. Mr Teare to move.

The Speaker: We turn now to the Bill for Consideration of Clauses, the Companies (Beneficial Ownership) Bill to be moved by the Hon. Member for Ayre, Mr Teare. Clause 1, please.

Mr Teare: Mr Speaker, Hon. Members, this Bill seeks to address a recommendation of the International Monetary Fund in respect of the old Financial Action Task Force recommendation 33, which has been replaced by new recommendation 24. The renumbering and consolidation of the recommendations has had no effect on an application and the matters they seek to address. This is the access to beneficial ownership and control of information of legal persons.

The Bill does not introduce any new powers for law enforcement bodies to obtain beneficial ownership information. It simply introduces a new power that requires a specific person within a company to know or to hold that information. The person who must know this information is the nominated officer. The Bill contains 14 clauses. Should the branches of Tynwald support this Bill, it will come into operation by order made by the Treasury.

Mr Speaker, turning to the Bill itself, clause 1 provides the short title of the Bill. I beg to move that clause 1 do stand part of the Bill.

Mr Henderson: I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 1 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Teare: Clause 2 provides for the Bill to come into operation on one or more days appointed by the Treasury. Provision is made to allow the Treasury to make saving and transitional provisions by order.

Mr Speaker, I beg to move that clause 2 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 2 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 3, please.

Mr Teare: Clause 3 inserts a definition of 'beneficial owner' and clarifies that this means the person who is beneficially entitled to an interest in a company.

Clause 3 also considers that legal ownership of an interest in a company may not necessarily reflect the beneficial ownership of the interest.

Mr Speaker, I beg to move that clause 3 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 3 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

Mr Teare: Clause 4 clarifies that the provisions in respect of beneficial ownership will apply to all companies that are incorporated or registered under the Companies Act 1931. This includes protected cell companies, incorporated cell companies and those companies that have continued or redomiciled under the 1931 Act, transferring their domicile to that of the Isle of Man.

This clause also excludes some companies from the scope of the Act. This considers those circumstances where the size of the membership of companies and the frequency with which they may change makes it

impractical to include them within the scope. Companies that are excluded from the scope will, in any event, be subject to the oversight of additional and other provisions. This includes collective investment schemes and companies that are traded on stock markets. The Treasury has the power to grant further exemptions by order.

Mr Speaker, I beg to move that clause 4 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 4 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 5, please.

Mr Teare: Clause 5 requires every company to which the Act applies to have a nominated officer. The nominated officer must either be an individual who is resident on the Island, or must be a corporate service provider licensed by the Financial Supervision Commission. The clause also makes provision for a company to appoint more than one nominated officer. Failure to appoint a nominated officer is an offence under this clause.

Mr Speaker, I beg to move that clause 5 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

Mr Teare: Clause 6 sets out the information that a company must keep in respect of its nominated officer. This is primarily a name and address of an individual and the name and business address of a corporate nominated officer.

Notification must be made to the Department of Economic Development Registrar of Companies of the appointment of a nominated officer or any change to the details that had previously been notified. This must be done within the existing standard notification period of one month. It will be an offence to fail to comply with the requirement to notify the Registrar of Companies of the appointment of a nominated officer and of any changes to the details of the appointment.

Mr Speaker, I beg to move that clause 6 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 6 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

Mr Teare: Clause 7 applies where a member of a company is not the beneficial owner of the interest in the company. In the absence of information to the contrary, the nominated officer is entitled to rely on the record of the legal ownership of an interest in a company to be that of the beneficial owner.

Under clause 7(2), the onus is on any person, legal or individual, acting in a nominee capacity, to declare to the nominated officer who the beneficial owner is of the interest in that company.

Clause 7(3) requires the member to inform the nominated officer within three months of the occurrence of any of the following events after this provision comes into operation: 7(3)(a), where an existing interest in a company is not held by the beneficial owner of the interest; 7(3)(b), where a legal interest is acquired in a company that is not held by the beneficial owner of the interest; and 7(3)(c), where both the beneficial and legal title to an interest in a company have previously been held by a person and the legal title is transferred to another, with the beneficial interest retained by that person.

Clause 7(4) creates the offence of a member failing to comply with the requirements of clause 7. This also

creates the offence of providing a nominated officer with information that is known to be false, deceptive or misleading.

Mr Speaker, I beg to move that clause 7 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 7 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 8, Mr Teare.

Mr Teare: Thank you, Mr Speaker.

Clause 8 sets out what details of a beneficial owner must be provided to the nominated officer in the circumstances set out in clause 7 above, where the legal interest in a company is held by a member on behalf of the beneficial owner of the interest.

Under clause 8(a), beneficial owners who are individuals must provide the following details: name; residential address; nationality; and date of birth.

Clause 8(b) requires a beneficial owner that is a body corporate to provide the following: name; jurisdiction of formation, incorporation or establishment; legal form and the relevant applicable law; the registered office or business address; and, if any, its registered number.

Clause 8(c) considers those circumstances where the beneficial ownership interest may be held by a class of persons. Where the class of persons is too large to reasonably identify each person with a beneficial interest, the information provided must be sufficient to describe and identify the class of persons.

Mr Speaker, I beg to move that clause 8 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 8 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 9, please.

Mr Teare: Thank you, Mr Speaker.

Under clause 9, a nominated officer must inform the companies, where he is of the opinion that a member has, without reasonable excuse, either failed to inform the nominated officer of the details of the beneficial ownership of the interest, or has provided information that is known to contravene clauses 7(3) and 7(4).

Under clause 9(3) a company has the ability to apply sanctions in respect of such a member's interest in the company. These sanctions include placing restrictions on transferring the interest of the member; restricting the voting rights in respect of that member's interest in the company; preventing the exercise of pre-emption rights in respect of an interest held; withholding any payments due in respect of the interest, such as a dividend payment. In an extreme case where the company has exhausted all other options, the member's interests in the company can be cancelled.

Clause 9(5) gives a member who has been deprived of his interest in the company a right to appeal to the High Court. Under clause 9(6) the Court is given the power to confirm or overturn the decision and may make any other orders that it thinks appropriate.

Mr Speaker, I beg to move that clause 9 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 9 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 10, sir.

Mr Teare: Thank you.

Clause 10 does not introduce any additional powers to compel the production of beneficial ownership information.

This clause does, however, require the nominated officer to provide information that is requested if a notice to do so is received.

Clause 10(3) lists the persons entitled to give written notice to a nominated officer. These include: the Attorney General; the Assessor of Income Tax; the Chief Constable; an officer of the Financial Crime Unit; the Insurance and Pensions Authority; and the Financial Supervision Commission. Provision is also made to allow written notice to be given to the nominated officer by a person appointed and authorised on behalf of any of the persons entitled to give notice under clause 10(3).

Clause 10(4) ensures that information requested within a notice must state what information is required and the purpose for which the information is required, such as a criminal or a regulatory matter. The notice must also confirm that the information requested in the notice is proportionate to the purpose of the request.

Clause 10(7) makes it an offence for the nominated officer to either fail to provide information on request or to knowingly provide false information.

Mr Speaker, I beg to move that clause 10 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir and reserve my remarks.

The Speaker: I put the motion that clause 10 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 12.

Mr Teare: Sorry, sir, clause 11, I think.

The Speaker: I beg your pardon. Clause 11.

Mr Teare: Clause 11 considers the offence of tipping off. This is not a new offence. Clause 11(1) clarifies that a nominated officer commits an offence if a notice under clause 10 has been, or is likely to be issued in respect of a company and the nominated officer discloses information that may prejudice the investigation to which the notice relates.

Clause 11(2) allows for the exemption of legal advice, or of disclosure in relation to legal proceedings.

Clause 11(3) expressly disapples the exception insofar as any disclosure relates to the furthering of a criminal purpose.

Clause 11(4) contains a defence where it can be proved that disclosure was made in the absence of suspicion or knowledge that the investigation would be prejudiced by the disclosure.

Mr Speaker, I beg to move that clause 11 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir and reserve my remarks.

The Speaker: I put the question that clause 11 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 12.

Mr Teare: Clause 12 ensures that legal professional privilege is protected, where this is appropriate.

Mr Speaker, I beg to move that clause 12 do stand part of the Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir and reserve my remarks.

The Speaker: I put the question that clause 12 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 13 please.

Mr Teare: Clause 13 sets out penalties in respect of offences under the Bill. Offences under the Bill are either conviction on information only, or summary offences. This clause considers that offences may be committed by individuals, or by bodies corporate. Where an offence has been committed by a body corporate, the officers of that body corporate can also be held liable for that offence.

Mr Speaker, I beg to move that clause 13 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir and reserve my remarks.

The Speaker: I put the question that clause 13 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Finally, clause 14 please.

Mr Teare: Clause 14 clarifies that the Bill does not limit or restrict certain provisions in other Acts, or in the articles of association of a company, where these might otherwise be seen to conflict with the Bill.

Before moving this clause, Mr Speaker, I would like to thank my seconder, Mr Henderson for his help and co-operation in the movement of this Bill and the consideration also given by Hon. Members during the clauses stage today.

Mr Speaker, I beg to move that clause 14 do stand part of this Bill.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I beg to second, sir and reserve my remarks.

The Speaker: I put the question that clause 14 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

That brings us to the end of the clauses stage of the Companies (Beneficial Ownership) Bill.

That concludes the business of the House today. The House will now stand adjourned until the next sitting, which will be at 10 o'clock on Tuesday, 8th May in our Chamber.