

Companies (Beneficial Ownership) Bill 2012
First Reading approved

1. Mr Braidwood to move:

That the Companies (Beneficial Ownership) Bill 2012 be now read a first time.

The President: We come to the Companies (Beneficial Ownership) Bill. Mr Braidwood to take the First Reading please.

Mr Braidwood: Thank you, Madam President.

This Bill is the Companies (Beneficial Ownership) Bill 2012. The Bill will only apply to companies that are incorporated under the Companies Act 1931.

The purpose of the Bill is to address a recommendation of the IMF in respect of old FATF recommendation 33, which has been replaced by new recommendation 24. These both address access to beneficial ownership and control information of legal persons. The Bill introduces a new provision to require a specific person within a company to have access to information regarding the beneficial ownership of membership interests. The person who must know this information is a nominated officer.

The Bill is divided into 14 clauses. I will now give a brief explanation of what they are intended to achieve.

The first clause gives the Act resulting from the Bill its short title.

Clause 2 provides for the Bill to come into operation on one or more days appointed by the Treasury. This clause also caters for the making of transitional and saving provisions.

Clause 3 defines what is meant by the term 'beneficial owner'.

The fourth clause lists those companies to which the Bill applies. It also exempts certain companies from the provisions. The current exemptions are in respect of those companies where the membership classes are large and subject to frequent changes. This relies on other rules being in place, such as those of a regulated stock exchange. The Treasury has given powers to grant further exemptions by order.

Clause 5 confirms that a nominated officer must either be a Manx resident individual or a corporate service provider.

Clause 6 sets out the information that a company must hold in respect of its nominated officer. Provision is also made to require that the nominated officer and changes to the details of the holder of this role are notified to the Registrar of Companies.

Clause 7 considers those instances where the members of a company hold shares as nominee on behalf of the beneficial owner of the interest. The obligation to inform the nominated officer of the beneficial owner of the interest falls to the nominee. Failure to do so will be a criminal offence.

Clause 8 lists the information that must be provided to the nominated officer in respect of the beneficial owner of an interest in the company.

Clause 9 sets out the sanctions that can be applied by a company where the nominated officer has not been informed of the identity of the beneficial owner of the interest in a company.

Clause 10 considers the circumstances in which a nominated officer will be required to disclose the identity of the beneficial owner of an interest in a company. The persons who made the request and circumstances in which a request may be made are set out. This clause also makes it an offence for a nominated officer to fail to provide information on request or to knowingly provide false information.

Clause 11 considers the offence of tipping off a person under request for information under clause 10. The giving of legal advice or disclosure of information in respect of legal proceedings are exempted under this clause. Disclosures made to further a criminal purpose are not covered by the exemption.

Clause 12 makes provisions to ensure that legal, professional privilege is protected, where appropriate.

Clause 13 sets out penalties in respect of offences under the Bill.

Clause 14 clarifies that the Bill does not limit or restrict provisions in other Acts, or the company's articles of association that might otherwise be seen to conflict with the Bill.

Mr Braidwood: Madam President, I beg to move the First Reading of the Companies (Beneficial Ownership) Bill 2012.

Mr Lowey: I beg to second, Madam President, and reserve my remarks.

The President: Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Yes, an interesting piece of legislation and, as the hon. mover has said, it is to bring our legislation into line

with the requirements of the IMF and FATF, which are obligations that we have to do to keep our record keeping up to scratch and in the highest standards possible.

The requirements really are quite onerous, as in clause 8, the details are clear that there has to be as much information as one would have on a passport, so it is clear that ownership can be determined, but it is all kept within the record keeping of the nominated official or the owner because it is not open to public scrutiny. The only time it is available is when the powers to seek information are under clause 10 where it would be noticed by the Attorney General, the Chief Constable and other officials. So for legitimate companies, the details are kept within the confines of the company records.

The interesting part, I would say, is where usually companies do not show a trust – for a trust not to be entered on the register is part of the Companies Act 1931 – but this piece of legislation overrides that and allows, when information is being sought, to in effect override that. So it is an interesting piece of legislation.

I will be supporting this. I have responsibilities in the Department of Economic Development involved in the Companies Registry, so I am aware of this Bill and the reasons behind it. So I will be supporting this Bill.

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you, Madam President.

Referring, as the previous Member did, to trusts, I would like clarification as to whether this Bill will deal with the beneficial ownership of private family trusts.

I refer to that because of what happened with Crossag Farm and the problems there with the maze of companies that were involved in that. In fact, Tynwald gave approval for the Department of Local Government to deal with J G Kelly Ltd as the contractors, but as it later turned out, they then had to deal with three companies which were Jackson Holdings, J G Kelly and Jackson Homes (Southern) Ltd. All of this, of course is in the Report of the Committee.

There was a quite complex web of companies in the structure that was involved in this, which not only involved J G Kelly, but Jackson Holdings Ltd and Southern Ltd and Charterhouse Capital and so on. However, all of these were controlled by a family trust and it was impossible to find out who the beneficial owners of the family trust were by that Committee, so Government, in fact, did not know who they were ultimately answerable to, when they went in to try and take forward this contract. From that point of view, in my opinion, it is necessary that any company that Government is dealing with should know who the beneficial owners are and I wonder if that could be confirmed by the mover?

Thank you, Madam President.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I am supportive of the Bill and I fully understand the reasons why we are bringing forward legislation like this. Company structures are renowned worldwide for the more unscrupulous to channel ill-gotten gains and it is important, of course, that we have the right legislation in place to be able to enforce the law and try and shut down these activities.

On the wider points of principle, it is a shame, of course, that there is a large number of trading entities that are not in these sort of structures, that, because of these activities, are burdened fully with more and more legislation, which gets in the way of them running their businesses; but if you do not have legislation such as this, that is when illegal activities can hide.

So unfortunately, it is always the majority that suffer, because of the actions of the minority. It is a shame there was not specific framework for smaller trading bodies to incorporate under, but of course, as soon as you do that, then the criminal world will find a way of utilising those procedures.

I do support the provisions. It is important, because the Isle of Man is an international centre for finance and as such, will be a target for some of these organisations to try and set up and channel their funds here and all these requirements that we are bringing forward will ensure the Isle of Man continues to be renowned as a well-regulated jurisdiction.

So I do support the provisions in the Bill, even though it will add a little more bureaucracy to the smaller trading businesses, which I do like to champion time to time.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I think it has been the practice for many years that most companies find out who the beneficial owner is and make a record of that, but they are not going to answer who they are. It is quite surprising in a way that this is not already part of legislation.

I have a question for the mover which he could, perhaps, answer at a later sitting: have the local corporate service providers been consulted on this, because this seems to apply to every company that is in existence?

I can imagine with a lot of companies and corporate service providers, in particular, they may have hundreds of companies on their books, who either now need to retrospectively, perhaps, find out who their beneficial owners are and get their records up to date. First of all, have they been consulted with? Secondly, is there any leeway in terms of time when they have to have things ready and up to date, or is it once the Act comes into force, they should be ready and have every beneficial owner recorded?

The President: The Hon. Member of Council, Mr Lowey.

Mr Lowey: Thank you.

I just think that no legitimate company has anything to fear from this particular bit of legislation. I think it has been well signposted and the IMF Report is a couple of years or three years ago, so I am sure the providers, as referred to by Mr Butt are well aware of the need and our acceptance as a jurisdiction that we want to be, if we are an international player, we play by the international rules. We have accepted that principle. I think the IMF are right and as has been rightly pointed out, no matter, it is a shame that we have to put it in statute good practice, which I think we would hopefully see it would be practised here in the Isle of Man anyway. The size I do not think matters because if you are criminal, they will do a multiplicity of small deals to get a big sum.

But there is ingenuity out there and I think this particular piece of legislation will benefit the reputation of the Isle of Man and increase the business for all the providers of the services.

The President: Hon. Member, Mr Wild.

Mr Wild: Yes, Madam President, just to say that this Bill has my support, with one minor reservation. It is sensible and practical to take the 1931 legislation and bring it into the 21st century. Like my hon. colleague, Mr Turner, I do worry about some of the smaller companies out there and speaking from, as personal interest which is registered properly, the Laxey and Lonan Heritage Trust and the Great Laxey Mines Railway Company Limited, it does put on additional responsibilities to some of these smaller charitable concerns.

I agree entirely that in terms of a nominated officer and a record of a nominated officer, it is more of a sort of bookkeeping and good practice. I just think we need to make sure that some of those small entities out there, be they charitable or business, get a good briefing in terms of this legislation, if it is enacted, just to make sure that they are aware of what is happening; but otherwise, I agree it is an entirely appropriate piece of legislation which has my support.

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I have no problem supporting the principles outlined in the Bill and the need to have this international perspective, which will help us to tick the boxes with the OECD and FATF and any other organisation, but I feel that there are still going to be what I would term 'domestic issues' to resolve here.

As my colleague, Mr Callister, referred to an issue where Government was in a position where it did not really know who it was dealing with over some land, I am sure we can all quote plenty of examples. For instance, there was a severe fire in a property in Demesne Road a few years ago and the company and the ownership changed that many times, nobody actually knew who to serve the summonses on because there were breaches there of fire regulations, and so on. I think to this day the matter is not really resolved.

We know there are... well, we think we know there are people from the Channel Islands and other jurisdictions who perhaps own properties. Strand Street properties are often cited. I suppose the nub of the question is, will all these companies, who have been established since 1931, all have to step up to the plate now and have to come up with a beneficial ownership structure, and actually have someone on the Isle of Man who we can say that they are responsible for what goes on within that company, to make sure that they comply with the legislation?

The President: Mr Braidwood to reply.

Mr Braidwood: Thank you, Madam President.

Once again, a full house, the Members in the other place, I do not think anybody actually spoke on this Bill.

But I would like to start with Mr Crowe and his support and it was to make the highest reputation of our finance sector – but I am just trying to gather all my thoughts together, Madam President – but Mr Crowe did mention trusts. Under section 102 of the Companies Act 1931, trusts are not to be entered on the register.

Mr Callister mentioned private family trusts, and wherever there is a company, there must be a nominated

officer. Every nominated officer must know who the beneficial owners are, which is in the Bill and provided the beneficiaries are known of the interests, that is guaranteed this information will be known already on the private family trusts.

I think if I can refer to what Mr Downie has just said. He was supportive because of the international perspective. However, he quoted where there was a problem with the fire in Demesne Road. If we had actually known the beneficial owner and this Bill had been in, then the summons could have been directed straight to the individual anyway, so that shows you why there should be the beneficial owner of the company and there would not be this running around who to serve the summons on. In a way that shows how supportive that is to the Bill.

Mr Turner was also supportive, but did mention about smaller companies. In fact, what we are trying to do as well, in response for smaller companies is that they have the same obligations as any others. It is likely they will not have to take any action apart from satisfying themselves that they know who the beneficial owners are. The International Monetary Fund was particularly concerned about locally owned companies that do not receive services of a company service provider. There is less risk with companies which were administered by CSPs, than there would be by local owners.

Mr Butt also mentioned about, had there been consultation and yes, there has been consultation and again to try to take the burden off a lot of the companies and this is also in reply to Mr Turner, the appointment of nominated officers will be phased in over a year to coincide with the annual return date of each company. So it is attempting to reduce the number of filings and this will reduce pressure as well on the registry, so it is going to be a stage in going forward.

I thank my colleague in Treasury, Mr Lowey, for his support. Again with regard to the comments by the Hon. Member of Council, Mr Wild, who was supportive, I think I answered some of the points that he raised, which were very similar to Mr Turner.

I think, Madam President, I have actually answered Mr Downie's concerns, and so I would like to again, move the First Reading.

The President: The motion is that the Bill be read the first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Council will now sit in private.