

Companies (Beneficial Ownership) Bill 2012
Second Reading approved

1. Mr Braidwood to move:

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

The President: We continue our consideration of the Companies (Beneficial Ownership) Bill 2012. I call on the Hon. Member, Mr Braidwood, to take the Second Reading and clauses, please.

Mr Braidwood: Thank you, Madam President.

This Bill seeks to address a recommendation of the IMF in respect of the FATF recommendation 33, which has been replaced by new recommendation 24.

The renumbering and consolidation of the recommendations has had no effect on their application and the matters that they seek to address. This is the access to beneficial ownership and control information of legal persons.

The Bill does not introduce any new powers for law enforcement bodies to obtain beneficial owner information; it simply introduces a new power that requires a specific person within a company to know or 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, the Bill will come into operation by order made by the Treasury.

Madam President, I beg to move the Second Reading of the Companies (Beneficial Ownership) Bill 2012.

The President: Hon. Member, Mr Lowey.

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

The President: If no Hon. Member wishes to speak to the Second Reading, the motion is that the Bill be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Companies (Beneficial Ownership) Bill 2012
Clauses considered

The President: We continue with clauses. Perhaps we could take clauses 1 and 2 together, and I will then take the votes separately.

Mr Braidwood: Thank you, Madam President.

Clause 1 provides the short title of the Bill.

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.

Madam President, I beg to move that clauses 1 and 2 stand part of the Bill.

The President: Mr Lowey.

Mr Lowey: I beg to second, Ma'am, and reserve my remarks.

The President: The motion before the Council is 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.

Clause 2, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

Mr Braidwood: Thank you, Madam President.

Clause 3 inserts a definition of beneficial owner and clarifies that this means a 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.

Madam President, I beg to move that clause 3 stand part of the Bill.

Mr Lowey: I beg to second, Ma'am, and reserve my remarks.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Can I ask the hon. mover if the beneficial owner's name or ownership will be in the internal records, or will it be a public record?

The President: Mr Braidwood.

Mr Braidwood: Madam President, the nominated officer will know the beneficial owner of the interest in the company, and it is not public.

Mr Crowe: Thank you.

The President: Mr Callister.

Mr Callister: Thank you, Madam President.

Still in relation to that issue... So the officer will have that information. Are there any other bodies of Government that can get that? For instance, a select committee, if they wish to know who the beneficial owner is?

The President: Does any other Member wish to speak before the mover replies?
If not, Mr Braidwood to respond, please.

Mr Braidwood: Thank you, Madam President.

It is only the nominated officer who will know the beneficial owner. Clause 10(3) lists the persons entitled to give written notice to the nominated officer to obtain the beneficial owner of the company, and 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). Those list...

However, Madam President, I would think if a select committee is looking at this, I think it is under the Act of Tynwald, the 1876 Act of Proceedings, they will be able to obtain that information.

Mr Callister: Thank you.

The President: The motion is that clause 3 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 4.

Mr Braidwood: Thank you, Madam President.

Clause 4 clarifies that 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, on 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 in which this 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 have traded on stock markets. The Treasury has the power to grant further exemptions by Order.

Madam President, I beg to move that clause 4 stand part of the Bill.

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

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Can I just ask the mover for clarification on part (2), section (d), about charities and charitable trusts, how, in fact, will that be regulated?

The President: Does any other Member wish to speak?

Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

I think this was mentioned actually in the First Reading of the Bill. Even in private family trusts and also for charitable trusts, there must be a nominated officer.

Mr Crowe: Thank you.

The President: The motion is, then, that clause 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

Mr Braidwood: Thank you, Madam President.

Clause 5 requires every company to which the Act applies to have a nominated officer. The nominated officer must either be an individual who was 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.

Madam President, I beg to move that clause 5 stand part of the Bill.

The President: Mr Lowey.

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

The President: Mr Wild.

Mr Wild: Thank you, Madam President.

Only to make the observation that we did have this debate because there was a little concern expressed for perhaps smaller incorporated charities on the Island where there would need to be clear communication supporting the enactment. Just to make sure that officers were aware of the future requirement on an ongoing basis and to make sure charity officials understood where we were.

The President: The Hon. Member, Mr Lowey... Sorry, Mr Downie.

Mr Downie: Thank you, Madam President.

I would just like to ask the mover if he would just repeat again what the qualifications were for a nominated officer. Does he have to be authorised as a full-blown corporate service provider by the Financial Supervision Commission or is there another route to obtain the position of nominated officer?

The President: Mr Braidwood to reply.

Mr Braidwood: Thank you, Madam President.

In answer to Mr Downie, no, the nominated officer does not need to be a corporate service provider. It can be another person within the company.

The President: The motion before Council is 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 Braidwood: Thank you, Madam President.

Clause 6 sets out the information that a company must keep in respect of its nominated officer. This is primarily the 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 of any change to the details that have 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 their nominated officer or of any changes to the details of the appointment.

Madam President, I beg to move that clause 6 stand part of the Bill.

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

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

Clause 7.

Mr Braidwood: Thank you, Madam President.

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 a member to inform the nominated officer within three months of the occurrence of any of the following events after this provision comes into operation, and those are: clause 7(3)(a), where an existing interest in the company is not held by the beneficial owner of the interest; 7(3)(b), where a legal interest is required 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 had previously been held by a person and the legal title was 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 the nominated officer with information that is known to be false, deceptive or misleading.

Madam President, I beg to move that clause 7 stand part of the Bill.

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

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Can I just ask the hon. mover, when this Bill becomes law, whether there will be this time period for everybody to register with the Companies Registry, or will it be picked up at the annual return and done on a phased basis?

The President: If no other Member wishes to speak, Mr Braidwood to reply.

Mr Braidwood: Thank you, Madam President.

This will be on a phased basis and will be when the annual return goes in to the Companies Registry.

Mr Crowe: Thank you.

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

Mr Braidwood: Thank you, Madam President.

Clause 8 sets out what details of the beneficial owner must be provided to the nominated officer in the circumstances considered in clause 7 above, where the legal interest in the 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 relevant applicable law; the registered office or business address; and if any, its registration 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 person.

Madam President, I beg to move that clause 8 stand part of the Bill.

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

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you, Madam President.

In the case where there is a UK-based company that has a subsidiary company here, for instance, Joe Bloggs UK Ltd, and then Joe Bloggs Isle of Man, as a subsidiary to that main company, is there a necessity then to be a beneficial owner to both the UK main company and the Isle of Man subsidiary of it? If you can follow that question!

The President: Mr Braidwood to reply.

Mr Braidwood: Thank you, Madam President.

If it was just a UK-registered company, then this Bill does not apply. However, if it is registered in the Isle of Man as a company, then there must be a nominated officer and the beneficial ownership must be known to that nominated officer.

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

Clause 9.

Mr Braidwood: Thank you, Madam President.

Under clause 9, a nominated officer must inform the company 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 clause 7(3) and clause 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 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 interest in the company can be cancelled.

Clause 9(5) gives a member who has been deprived of his interest in the company the 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.

Madam President, I beg to move that clause 9 stand part of the Bill.

The President: Mr Lowey.

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

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

Clause 10.

Mr Braidwood: Thank you, Madam President.

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 a written notice to the 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 a 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 in a notice must state what information is required and the purpose for which the information is required, such as a criminal or 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.

Madam President, I beg to move that clause 10 stand part of the Bill.

Mr Lowey: I beg to second –

The President: The Hon. Member, Mr Butt.

Mr Butt: Yes, Madam President.

The mover stated that it provides no extra powers to obtain disclosure of beneficial ownership, but it does seem to make it much easier for authorities to actually obtain that information. I wonder why this is in here, if there are no extra powers involved? Or is it just a question of naming the nominated officer as being the source of information?

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

I think that the hon. mover could confirm that the safeguard on this is subsection (4)(b) that it must be required for a criminal or regulatory investigation, which is being carried out on the Island or elsewhere. So, I think it seems to zero in on a particular issue that is of concern, where these authorities have the power to seek information.

Mr Lowey: I did second, for the avoidance of any doubt.

Could I say, I think this was quite clear. We do not want fishing expeditions –

Mr Crowe: That is exactly right.

Mr Lowey: This is specific, restricted to these various people to do, so it does not widen it, I think it focuses it and prevents the fishing element, which a lot of people would be suspicious of.

Mr Crowe: Yes. Thank you.

The President: Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

Again, more of an observation. To me, this is a very practical clause in that it brings in, effectively, suspicious transaction reporting within a corporate perspective, with all the safeguards that has within the wider finance sector.

The President: Mr Braidwood to reply.

Mr Braidwood: Thank you, Madam President.

I thank Mr Lowey who seconded the clause for mentioning that this is not anything to do with fishing expeditions.

In answer to the Hon. Member of Council, Mr Butt, I think really now because of a nominated officer of the company has the beneficial ownership, therefore it lists only those people who are entitled to receive the beneficial owner. So they can go straight to the nominated officer.

Can I thank Mr Wild for his support of this clause, Madam President and I beg to move.

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

Mr Braidwood: Thank you, Madam President.

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 the giving of legal advice or of disclosure in relation to legal proceedings.

Clause 11(3) expressly disappplies the exemption 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.

Madam President, I beg to move that clause 11 stand part of the Bill.

The President: Mr Lowey.

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

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

It is just that subclause (4) gives this defence, which is helpful in that somebody who does it unwittingly or unknowingly has a defence in law against tipping off, so there is a reasonable excuse built into legislation.

The President: Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

I think Mr Crowe has answered his own question, Madam President –

Mr Crowe: It is self-explanatory. Yes, but I am pleased that that defence is there in the law.

Mr Braidwood: – and I beg to move.

The President: The motion is that clause 11 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 12.

Mr Braidwood: Thank you, Madam President.

Clause 12 ensures that legal professional privilege is protected where this is appropriate.

Madam President, I beg to move that clause 12 stand part of the Bill.

The President: Mr Lowey.

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

The President: The motion is that clause 12 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13.

Mr Braidwood: Thank you, Madam President.

Clause 13 sets out the 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 the offence.

Madam President, I beg to move that clause 13 stand part of the Bill.

Mr Lowey: I beg to second, Ma'am, and reserve my remarks.

The President: The motion is that clause 13 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Braidwood: Thank you, Madam President.

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.

Madam President, I beg to move that clause 14 stand part of the Bill.

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

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Yes, clause 14 is interesting, Madam President, in that it has always been a fact that public or private companies could not enter trusts on the register. So, in effect, this piece of legislation still embodies that in the law that it does not affect or restrict trusts not to be entered on the Register of Companies, so it still allows the Company Registrar not to have trusts registered on the company's shareholding.

The President: Mr Braidwood.

Mr Braidwood: Again, I think it is self-explanatory, Madam President, and again, Mr Crowe (*Interjection*) has already answered his query.

I beg to move, Madam President.

The President: As he says, he is putting what he wants to say on the record.

The motion is that clause 14 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.