

**Companies (Beneficial Ownership) Bill 2012**  
**Third Reading approved**

1. Mr Braidwood to move:

*That the Companies (Beneficial Ownership) Bill 2012 be read a third time.*

**The President:** I call on Mr Braidwood to take the Third Reading of the Companies (Beneficial Ownership) Bill.

**Mr Braidwood:** Thank you, Madam President.

Madam President, the Bill is the Companies (Beneficial Ownership) Bill 2012. This Bill applies to all companies that are incorporated or registered under the Companies Act 1931.

Madam President, at the last reading of the Bill on 26th June, several points were raised by Hon. Members. Although these were addressed at the time, it may be helpful to revisit and confirm the points.

I was asked if the details of the beneficial owner would be a matter of public record. I can confirm that the identity of the beneficial owner will not be a matter of public record. The nominated officer must, however, know who the beneficial owner of a company is, or beneficial owners, if there are more than one. The Bill also makes express provision for certain named parties to obtain the details of the beneficial owner of a company.

Clause 10(4) of the Bill makes it clear that the circumstances in which this information must be provided is only in respect of official investigations in certain circumstances. The persons who are able to request this information are set out in clause 10(3) and include, for example, the Assessor of Income Tax.

The power to obtain this information is not a new power. It was included to make it clear that information would not be freely available on demand – what has come to be known as ‘fishing expeditions’. The nominated officer will *not*, without an official request made within defined parameters, be compelled to provide information about the beneficial owner of a company.

The treatment of charitable companies was also raised. These companies are a special case. They are not owned in the same way that other companies are. They are also currently subject to additional requirements for levels of transparency in excess of those applied to non-charitable private companies. Consideration will be given to whether it would be appropriate to exempt charities, by order, under clause 4(2)(d).

The question of whether a nominated officer must be a corporate service provider was also asked. I can confirm that there is no requirement for this. The position of nominated officer is not regulated activity. Corporate service providers will, however, have an easy job complying with the task of confirming that they know who the beneficial owner of a company is. This is because they are required to know this under the anti-money laundering legislation and the conditions of their licences.

It is intended that the provisions of this Bill will be phased in over the course of a year to coincide with the filing of the annual return of a company. This is to minimise the impact of the legislation on both industry and at the Companies Registry

Madam President, the purpose of the Bill is to address a recommendation of the International Monetary Fund in respect of the 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 and membership interests. The person who must know this information is the nominated officer.

The Bill is divided into 14 clauses. Madam President, I will now give Members an 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. Certain companies are exempted from the provisions under this clause. The exemptions apply to 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 is 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 details the information that a company must hold in respect of its nominated officer. The Registrar of Companies must be informed who the nominated officer is and of any changes to the details of the holder of this position.

Clause 7 consider shares held by a nominee shareholder on behalf on the beneficial owner of the interest. The nominee is obliged to inform the nominated officer of this fact. The nominee must also inform the nominated officer of the identity of the beneficial owner of the interest. Failure to do so would 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 a 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. This clause also lists the persons who may make the request and in what circumstances a request may be made. It is also an offence under this clause 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 in respect of a notice issued under clause 10. This clause also exempts the giving of legal advice or disclosure of information in respect of legal proceedings. 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.

Madam President, I have been rather long in explaining, but it has been four months since we last reviewed the Bill and the clauses. Therefore, Madam President, I beg to move the Third Reading.

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

**The President:** Hon. Member, Mr Crowe.

**Mr Crowe:** Thank you, Madam President.

Yes, I am speaking in support of the Bill. Mr Braidwood has very clearly outlined all the details, the provisions and the requirements under the IMF scrutiny that we are always under, so I will be supporting the Bill.

I was interested again to hear that it will be phased in over a period, so it allows recognition of an annual return to give the relevant details to be provided and so it will be smoothly phased in, to give CSPs and others a chance to conform to the legislation in a gradual way.

Thank you, Madam President.

**The President:** Mr Butt.

**Mr Butt:** Thank you, Madam President.

Yes, I will support the Third Reading of this Bill and thank the mover for the clear summing up, after four months, of what actually it means. It is obvious when you read the Bill again and hear his résumé that this is a very clear example of how the Isle of Man now is more or less completely transparent in providing information to those that need to know it, to ensure that we are regulated in the best way possible.

So I do support the Third Reading.

**The President:** The Hon. Member, Mr Callister.

**Mr Callister:** Yes, thank you, Madam President.

There is still a doubt, because I raised this issue about Tynwald Committees and the information that they are able to get. I certainly served on a Tynwald Committee where it was impossible to find out who the beneficial owner was, hidden behind a whole rigmarole of companies, and so if that contract had taken place – it was housing estates – and something had gone wrong, the Committee certainly would not have known the beneficial owner. I am not quite clear who would.

But here it tells us that the only person to know who a beneficial owner is is the nominated officer, then he can be applied in writing from – and it listed on in the clauses stage – the Attorney General, the Assessor of Income Tax, the Chief Constable, an officer with the Financial Crime Unit, the Insurance and Pensions Authority and the FSC. It still does not deal with the matter of Tynwald Select Committees.

However, as we know, there is now another Select Committee looking into the powers of what Tynwald Select Committees are able to do and achieve, so maybe that is the area where that could perhaps be sorted out.

Thank you, Madam President.

**The President:** The motion, Hon. Members, is that the Bill be read a third time. Those in favour, please say aye.

**Members:** Aye.

**Mr Crowe:** We have not let him wind up, Madam President.

**Mr Braidwood:** Yes, (*Laughter*) thank you, Madam President.

**The President:** I am sorry, Mr Braidwood.

**Mr Braidwood:** Madam President, it is four months since you have had to deal with Bills.

**The President:** It is.

**Mr Braidwood:** Can I just thank Mr Crowe, Mr Butt and also Mr Callister for their support. As Mr Callister said, there is a Select Committee looking into the 1874 Act of proceedings and the power of that legislation. So I thank everybody, Madam President, for their support.

**The President:** Good job they were all in favour, wasn't it? (**Several Members:** Yes!)  
Right, we move then to the vote. The motion is that the Bill be read a third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.