



Isle of Man

Ellan Vannin

**BENEFICIAL OWNERSHIP (AMENDMENT)
BILL 2020**

BENEFICIAL OWNERSHIP (AMENDMENT) BILL 2020

Explanatory Memorandum

1. This Bill is promoted by Mr Cannan M.H.K.
2. *Clauses 1 and 2* deal with the short title of the resulting Act (“the Act”) and its commencement.
3. *Clause 3* states that the Bill amends the *Beneficial Ownership Act 2017* (“the BOA2017”).
4. *Clause 4* amends section 3 of the BOA2017 (interpretation) by making grammatical changes to the definitions of “Authority” and “Department” and by adding a category to the definition of “permitted purpose” which provides for the disclosure of statistical data to a Department or Statutory Board.
5. *Clause 5* amends section 7 of the BOA2017 (notice of appointment of nominated officer) by amending the period within which notice of the appointment of a nominated officer must be given to the Department.
6. *Clause 6* amends section 9 of the BOA2017 (duty of legal owners) by substituting a cross reference in subsection (2) and by substituting subsection (3) so as to provide for the period within which a legal owner must give notice to the legal entity’s nominated officer following the incorporation of the company and receipt of a notice under subsection (2).
7. *Clause 7* amends section 12 of the BOA2017 (changes to required details) by substituting the period within which a legal owner must give notice to the nominated officer after learning of or having cause to suspect a change in the required details (as defined in section 11 of the BOA2017 (required details)).
8. *Clause 8* amends section 14 of the BOA2017 (further consequences of failure to disclose beneficial ownership) by substituting the reference to “2 weeks” to ensure consistency of drafting style throughout the BOA2017.
9. *Clause 9* amends section 15 of the BOA2017 (disclosure of beneficial ownership information by nominated officer) to ensure consistency of terminology and timescales throughout the BOA2017.
10. *Clause 10* amends section 20 of the BOA2017 (compulsory submission of registrable beneficial ownership information to the Department) by inserting a new subsection (1A) by which the Department for Enterprise may make regulations in connection with the reasonable steps a nominated officer must take in order to comply with section 20(1) and the compulsory submission of registrable beneficial ownership information. The amendments to section 20 also require, where such regulations have been made, that the information to be

provided, includes a statement confirming that the regulations have been complied with.

11. *Clause 11* amends section 21 of the BOA2017 (voluntary submission of non-registrable beneficial ownership information) and inserts a similar power under which the Department for Enterprise may make regulations regarding the voluntary submission of non-registrable information by a nominated officer and where such regulations are made, a requirement to comply with them is imposed on a nominated officer.
12. *Clause 12* amends section 25 of the BOA2017 (Department not liable for accuracy of information submitted) by renumbering the existing text as subsection (1) and inserting additional subsections by which the Department may make enquiries to establish the accuracy of information submitted to the Database and where it considers such information is false, inaccurate or misleading, it may remove, correct or annotate the information, but in such circumstances it must give notice to the nominated officer of the relevant legal entity. The Department for Enterprise is empowered to make regulations in respect of the enquiries it may make.
13. *Clause 13* inserts a new section 26A into the BOA2017 (requirement to notify errors in the Database) by which a person specified in section 26(2)(d) or (e) who accesses the Database must notify the Department for Enterprise within one week if that person knows or suspects that any entry on the Database is materially incorrect. Failure to do so, without reasonable excuse, is an offence punishable by a maximum fine of level 5 on the standard scale.
14. *Clause 14* makes a grammatical amendment to section 32 of the BOA2017 (regulations).
15. *Clause 15* amends section 42 of the BOA2017 (statement of compliance in annual returns) so as to require a legal entity to submit a statement of compliance by the date on which its annual return is due to be filed, but not with the annual return. The amendments to section 42 more clearly separate the respective responsibilities of the legal entity and the nominated officer in relation to the statements of compliance.
16. *Clause 16* makes a number of amendments to paragraph 8 of Schedule 1 to the BOA2017 (civil penalties) including the addition of a Tynwald procedure in relation to regulations made under subparagraph (6) of that paragraph.
17. *Clause 17* makes consequential amendments to a number of enactments as a result of the amendment to section 42 of the BOA2017.
18. If approved, the resulting Act is not expected to have any financial or human resource implications.
19. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the *Human Rights Act 2001*.



Ellan Vannin

BENEFICIAL OWNERSHIP (AMENDMENT) BILL 2020

Index

Section	Page
<i>Introductory</i>	7
1 Short title	7
2 Commencement	7
<i>Amendments to the Beneficial Ownership Act 2017</i>	7
3 Beneficial Ownership Act 2017 amended	7
4 Section 3 (interpretation) amended	7
5 Section 7 (notice of appointment of nominated officer) amended	8
6 Section 9 (duty of legal owners) amended	8
7 Section 12 (changes to required details) amended	8
8 Section 14 (further consequences of failure to disclose beneficial ownership) amended	8
9 Section 15 (disclosure of beneficial ownership information by nominated officer) amended	9
10 Section 20 (compulsory submission of registrable beneficial ownership information to the Department) amended	9
11 Section 21 (voluntary submission of non-registrable beneficial ownership information) amended	10
12 Section 25 (Department not liable for accuracy of information submitted) amended	11
13 New section 26A inserted	11
14 Section 32 (regulations) amended	11
15 Section 42 (statement of compliance in annual returns) amended	12
16 Schedule 1 (oversight by the Authority) amended	12
<i>Closing provisions</i>	13
17 Consequential amendments	13



Ellan Vannin

BENEFICIAL OWNERSHIP (AMENDMENT) BILL 2020

1 **A BILL** to amend the Beneficial Ownership Act 2017 in accordance with the
2 recommendations of the Committee of Experts on the Evaluation of Anti-
3 Money Laundering Measures and Financing of Terrorism and so as to separate
4 the requirement to submit an annual statement of compliance from the
5 requirement to submit an annual return under other specified Acts; and for
6 connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

7

Introductory

8

1 Short title

9

The short title of this Act is the Beneficial Ownership (Amendment) Act 2020.

10

2 Commencement

11

(1) This Act (other than section 1 and this section) comes into operation on such day or days as the Treasury may by order appoint.

12

13

Tynwald procedure — laying only.

14

(2) An order under subsection (1) may include such consequential, incidental, supplementary, transitional and transitory provision as the Treasury considers necessary or expedient.

15

16

17

Amendments to the Beneficial Ownership Act 2017

18

3 Beneficial Ownership Act 2017 amended

19

The *Beneficial Ownership Act 2017* is amended as follows.

20

4 Section 3 (interpretation) amended

21

In section 3(1) (interpretation) —

- 1 (a) in the definition of “Authority”, for ““Authority””, substitute
2 ““the Authority””;
- 3 (b) in the definition of “Department”, for ““Department””, substitute
4 ““the Department””; and
- 5 (c) in paragraph (a) of the definition of “permitted purpose”—
6 (i) at the end of subparagraph (iv), omit “and”; and
7 (ii) after subparagraph (v), insert —
8 “(vi) the disclosure of statistical data relating to beneficial
9 ownership information and the Database to a
10 Department or Statutory Board; and”.

11 5 Section 7 (notice of appointment of nominated officer) amended

12 In section 7(3) (notice of appointment of nominated officer), for “within one
13 month”, substitute “as soon as reasonably practicable but in any event within 21
14 days”.

15 6 Section 9 (duty of legal owners) amended

16 In section 9 (duty of legal owners) —

- 17 (a) in subsection (2), for “Subsection (3)”, substitute “Subsection
18 (3)(b)”;
- 19 (b) for subsection (3), substitute —
20 “(3) The legal owner must as soon as reasonably practicable but in any
21 event within 21 days of —
22 (a) the incorporation of the legal entity; and
23 (b) the date of a notice received under subsection (2),
24 give notice to the legal entity’s nominated officer of the required
25 details specified in section 11 in respect of each beneficial owner
26 of the legal owner’s interest.”.

27 7 Section 12 (changes to required details) amended

28 In section 12(2) (changes to required details), for “within one month after”,
29 substitute “as soon as reasonably practicable but in any event within 21 days of
30 the date on which”.

31 8 Section 14 (further consequences of failure to disclose beneficial 32 ownership) amended

33 In section 14(5) (further consequences of failure to disclose beneficial
34 ownership), for “2 weeks”, substitute “14 days”.

1 **9 Section 15 (disclosure of beneficial ownership information by**
 2 **nominated officer) amended**

3 In section 15(4) (disclosure of beneficial ownership information by nominated
 4 officer) —

- 5 (a) in paragraph (c), for “as soon as possible”, substitute “as soon as
 6 reasonably practicable”; and
 7 (b) in subparagraph (c)(ii), for “within one month”, substitute
 8 “within 21 days”.

9 **10 Section 20 (compulsory submission of registrable beneficial ownership**
 10 **information to the Department) amended**

11 In section 20 (compulsory submission of registrable beneficial ownership
 12 information to the Department) —

- 13 (a) for subsection (2), substitute —

14 “(1A) The Department may by regulations make further provision about
 15 the steps referred to in subsection (1).

16 Tynwald procedure — negative.

- 17 (2) Without limiting subsection (1A), the steps referred to in
 18 subsection (1) must include issuing a notice to obtain the
 19 information specified in subsection (5) —

20 (a) under section 9(2) (duty of legal owners), where the
 21 nominated officer considers a legal owner has failed to
 22 comply with section 9 or 12(1) (changes to required
 23 details); or

24 (b) under section 10(2) (duty of beneficial owners and
 25 intermediate owners to assist), where the nominated officer
 26 considers a beneficial owner or an intermediate owner has
 27 failed to comply with section 10.”;

- 28 (b) at the end of subsection (5)(a)(ii), omit “and”;

29 (c) at the end of subsection (5)(b), for the full stop, substitute “; and”;

- 30 (d) after subsection (5)(b), insert —

31 “(c) a statement of confirmation —

32 (i) if any regulations have been made under subsection
 33 (1A), that the regulations have been complied with;
 34 and

35 (ii) where the circumstances specified in subsection
 36 (2)(a) or (b) apply, the steps specified in that
 37 subsection have been taken.”;

- 38 (e) in subsection (6)(b), for “within one month”, substitute “as soon
 39 as reasonably practicable but in any event within 21 days”;

- (f) for subsection (7), substitute —
- “(7) In relation to a legal entity coming into existence after this subsection comes into operation, the nominated officer must submit the information to the Department under subsection (3) as soon as reasonably practicable but in any event within 21 days —
- (a) of the information being notified to the nominated officer under section 9(3)(a) (duty of legal owners); or
- (b) of —
- (i) information being notified to the nominated officer under section 9(3)(b) (duty of legal owners) or assistance being provided to the legal owner or nominated officer under section 10(2) (duty of beneficial owners and intermediate owners to assist); or
- (ii) notice being given to the nominated officer under section 12 (changes to required details),
(as the case may be).”;
- (g) immediately after subsection (16) insert —
- “ Tynwald procedure — negative.”; and
- (h) omit subsection (17).

11 Section 21 (voluntary submission of non-registrable beneficial ownership information) amended

In section 21 (voluntary submission of non-registrable beneficial ownership information) —

- (a) after subsection (1), insert —
- “(1A) The Department may by regulations make further provision about the information referred to in subsection (1).
Tynwald procedure — negative.”; and
- (b) for subsection (2), substitute —
- “(2) Submission of information under subsection (1) must —
- (a) be in accordance with any regulations made under subsection (1A);
- (b) include a statement of confirmation referred to in section 20(5)(c); and
- (c) be in accordance with section 22 (beneficial ownership information to be submitted online).”.

12 Section 25 (Department not liable for accuracy of information submitted) amended

In section 25 (Department not liable for accuracy of information submitted) —

- (a) renumber the existing text as subsection (1); and
- (b) after subsection (1), insert —
 - “(2) Despite subsection (1), the Department may —
 - (a) make such enquiries as it considers appropriate in the circumstances to establish the accuracy of any such information; and
 - (b) remove, correct or annotate any information submitted to the Database which the Department considers to be false, inaccurate or misleading in any way.
 - (3) Where the Department takes any action under subsection (2)(b), it must notify the nominated officer of the relevant legal entity.
 - (4) To give effect to subsection (2)(a), the Department may make regulations in connection with the enquiries it may make to establish the accuracy of information submitted to it.
 - Tynwald procedure — approval required.
 - (5) Without limiting subsection (4), regulations may provide for —
 - (a) the information the Department may request; and
 - (b) the retention of such information.”.

13 New section 26A inserted

After section 26, insert —

“26A Requirement to notify errors in the Database

- (1) A person specified in section 26(2)(d) or (e) who accesses the Database must notify the Department within one week if the person knows or suspects any entry on the Database is materially incorrect.
- (2) A person who, without reasonable excuse, fails to comply with subsection (1) commits an offence.
 - Maximum penalty (summary) - a fine not exceeding level 5 on the standard scale.”.

14 Section 32 (regulations) amended

In section 32 (regulations), for “Authority or Department”, in both places, substitute “the Authority or the Department”.

15 Section 42 (statement of compliance in annual returns) amended

In section 42 (statement of compliance in annual returns) —

(a) in the section heading, omit “in annual returns”;

(b) for subsection (1), substitute —

“(1) By the date by which a legal entity to which this Act applies is due to submit its annual return, an annual statement must be submitted to the Department —

(a) by the legal entity, which confirms that —

(i) the entity has complied with its obligations under this Act; and

(ii) the required details in respect of any beneficial owner have been submitted to the nominated officer; and

(b) by the nominated officer in relation to the entity, which confirms that —

(i) the officer has complied with his or her obligations under this Act;

(ii) without limiting subparagraph (i), the required details in respect of any registrable beneficial owner have been submitted to the Department; and

(iii) all information entered on the Database in relation to the legal entity is up to date and correct.”; and

(c) omit subsection (2).

16 Schedule 1 (oversight by the Authority) amended

In paragraph 8 of Schedule 1 (civil penalties) —

(a) for subparagraph (1), substitute —

“(1) If the Authority is satisfied that a relevant person has —

(a) committed an offence under paragraph 7(3);

(b) contravened a provision specified in subparagraph (2); or

(c) knowingly or recklessly furnished the Authority or the Department, as the case may be, with information that is false, inaccurate or misleading in a material particular,

it may require the person to pay a civil penalty.”; and

(b) in subparagraph (2) —

(i) in paragraph (b), for “9(5)”, substitute “9(3)”;

(ii) in paragraph (c), for “duty of intermediate owners to assist”, substitute “duty of beneficial owners and intermediate owners to assist”; and

- 1 (iii) in paragraph (e), after “required details”, insert “and
2 verifying information”;
- 3 (c) in subparagraphs (4) and (6), for “this section” substitute “this
4 paragraph”; and
- 5 (d) after subparagraph (8) insert —
6 “(8A) Regulations under subparagraph (6) must not come into operation
7 unless approved by Tynwald.”

8 *Closing provisions*

9 **17 Consequential amendments**

10 Omit the following provisions —

- 11 (a) section 109A of the *Companies Act 1931* (annual return: statement
12 concerning beneficial ownership);
- 13 (b) section 85(3A) of the *Companies Act 2006* (annual return to be
14 made by a company);
- 15 (c) section 10(2A) of the *Limited Liability Companies Act 1996* (annual
16 returns);
- 17 (d) section 51(1D) of the *Partnership Act 1909* (registration of changes
18 in partnerships); and
- 19 (e) section 44(3A) of the *Foundations Act 2011* (foundation to make
20 annual return).

IN THE KEYS

BENEFICIAL OWNERSHIP (AMENDMENT) BILL 2020

A **BILL** to amend the Beneficial Ownership Act 2017 in accordance with the recommendations of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and Financing of Terrorism and so as to separate the requirement to submit an annual statement of compliance from the requirement to submit an annual return under other specified Acts; and for connected purposes.

Approved by the Council of Ministers
for introduction in the House of Keys

MR CANNAN

DECEMBER 2020