

## **COMPANIES (BENEFICIAL OWNERSHIP) BILL 2012**

### **EXPLANATORY NOTES**

*These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, the Hon W E Teare MHK.*

#### **1. Introduction**

- 1.1 These explanatory notes relate to the Companies (Beneficial Ownership) Bill 2012. They have been prepared by the Treasury in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
- 1.2 The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

#### **2. Background**

- 2.1 The Bill introduces a new provision that requires a specific person within a company (the Nominated Officer) to be provided with information regarding the beneficial ownership of membership interests.

#### **3. Overview of clauses**

- 3.1 Clause 1 gives the Act resulting from the Bill its short title.
- 3.2 Clause 2 provides for the Bill to come into operation on one or more days appointed by the Treasury and caters for the making of transitional and saving provisions.
- 3.3 Clause 3 defines “beneficial owner” and clarifies that this means those persons with beneficial title to the interest in a company.
- 3.4 Clause 4 lists those companies to which the Bill applies. It also exempts certain companies from its provisions. The Treasury is given powers to grant further exemptions by order.
- 3.5 Clause 5 confirms that a Nominated Officer must be either a Manx resident individual or a licensed corporate service provider (Class 4 Licenceholder).  
  
This clause also creates the offence of failing to comply with the requirement to appoint Nominated Officer.
- 3.6 Clause 6 sets out the information that a company must hold in respect of a Nominated Officer. This clause also requires that the company must notify the Registrar of Companies of the appointment, or any changes in respect of, the Nominated Officer.
- 3.7 Clause 7 requires members of a company who do not own their membership interests beneficially (as well as legally) to give notice to the Nominated Officer and to provide certain required details. Failure to comply will be a criminal offence.
- 3.8 Clause 8 sets out the information that must be provided to the Nominated Officer in respect of the beneficial owner of an interest in a company.
- 3.9 Clause 9 sets out those sanctions that can be taken by a company in the event that there has been a failure, on the part of a member, to comply with their obligation to disclose the identity of the beneficial owner to the Nominated Officer.

- 3.10 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 may make a request for this information, and the circumstances in which the request may be made are set out.

This clause also makes it an offence for the Nominated Officer to fail to provide information on request or to knowingly provide false information.

- 3.11 Clause 11 considers the offence of “tipping off” a person where a request for information is made in connection with a request for information under clause 10.

The clause also allows for the exemption of the giving of legal advice or disclosure in relation to legal proceedings. However, such exemption does not apply to disclosures to further a criminal purpose.

- 3.12 Clause 12 makes provision to ensure that legal professional privilege is protected where appropriate.

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

- 3.14 Clause 14 clarifies that the Bill does not limit or restrict certain provisions in other Acts (or in a company’s articles of association) that might otherwise be seen to conflict with the Bill.

### **Other points**

The Bill —

- (a) will come into operation by Appointed Day Order;
- (b) is not expected to give rise to any additional public expenditure or public revenue;  
and
- (c) is considered to be compatible with the Convention rights within the meaning of the Human Rights Act 2001.