



## **TREASURY**

## **CONSULTATION**

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### **Beneficial Ownership Bill 2017**

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## Introduction

The Beneficial Ownership Bill that is the subject of this consultation has come about against a background of important international developments over the last few years.

Arising from a series of Action Plan Principles which were agreed at the G8 summit hosted by the UK in Lough Erne in June 2013, the Isle of Man published an [action plan](#) in which it agreed to review its existing provisions on beneficial ownership and consider whether the introduction of a centralised registry would improve the transparency of the ownership and control of companies in the Isle of Man.

A consultation paper was issued by the Cabinet Office in June 2014 on the [Transparency of the Beneficial Ownership of Companies](#) with the responses, together with a summary of key developments, published in February 2016. The European Union's Fourth Anti-Money Laundering Directive<sup>1</sup>, with a current proposal to further amend, has subsequently raised the bar with the emergence of a new EU standard requiring the establishment of a central register of beneficial ownership accessible (at the very minimum) by law enforcement authorities. At around the same time, the G5 grouping of the five largest economies in the EU (the UK, France, Germany, Italy and Spain) announced its commitment to a pilot initiative looking at the potential for automatic exchange of beneficial ownership information; an initiative which with the Isle of Man has [agreed to engage](#).

In consequence of negotiations between the Crown Dependencies and the Overseas Territories, the Isle of Man signed an Exchange of Notes with the UK in April 2016 concerning the sharing of beneficial ownership information.

The Bill being consulted upon seeks to place the commitments given in the Exchange of Notes and accompanying documents on a statutory footing, particularly the commitment to introduce a central database of beneficial ownership by 30 June 2017 of the widest possible range of corporate and legal entities incorporated in the Isle of Man.

The Bill repeals the Companies (Beneficial Ownership) Act 2012 ("the 2012 Act") and, unlike that Act, covers a much wider range of entities, including companies formed under the Companies Act 2006 and Foundations. The Bill therefore seeks to place all legal entities (in the sense of entities with separate legal personality) under one legislative instrument and that is why, contrary to the 2012 Act, all companies (both 1931 and 2006 Companies Act companies) are now dealt with by the same piece of legislation.

This consultation document is concerned with the Beneficial Ownership Bill rather than broader developments in the beneficial ownership space. The main body of the document is divided into three sections: a summary of the Exchange of Notes with the UK to remind readers of the commitments the Isle of Man has made; a bullet point summary of the key features of the Bill; and a more detailed overview of the Bill to be read in conjunction with the Bill itself.

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<sup>1</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

An Impact Assessment is annexed to this consultation document and the document is accompanied by the draft Beneficial Ownership Bill 2017 and a clause by clause feedback form which can be completed and submitted electronically.

## Exchange of Notes with the UK

The primary catalyst for the draft Bill is the [Exchange of Notes](#) in respect of sharing beneficial ownership which the Chief Minister signed with the UK Government on 12 April 2016. As well as being the main catalyst for the new legislation, the Exchange of Notes sets many of the parameters for the Bill; the new legislation has to give effect to the agreement with the UK.

The Exchange of Notes is a clear demonstration of the partnership between the two jurisdictions to enhance their long-standing law enforcement cooperation in respect of the ongoing sharing of beneficial ownership information. In headline terms, the agreement commits the participants (the Isle of Man and the UK) to:-

- Providing corresponding law enforcement agencies with adequate, accurate and current beneficial ownership information for corporate and legal entities incorporated in their respective jurisdiction;
- Holding adequate, accurate and current beneficial ownership information for the above entities, held in a secure central electronic database or similarly effective arrangement;
- Ensuring that law enforcement authorities have the automatic right to the provision of unrestricted and timely (within 24 hours and where urgently required within one hour) beneficial ownership held in the other jurisdiction for certain law enforcement purposes (set out in paragraph 2 of the Exchange of Notes); and
- Ensuring that searches are carried out securely and confidentially.

Attached to the Exchange was a Technical Protocol, which included further details on the obligations of both participants (the Isle of Man and the UK). The Technical Protocol sets out that:-

- The Isle of Man's central database, searchable by name of corporate or legal entity and name of individual, will be held and maintained by the Companies Registry and overseen by the Financial Services Authority ("IOMFSA");
- UK law enforcement agencies, acting only in furtherance of their functions, will be able to request from the Financial Intelligence Unit ("FIU"), all the adequate, accurate and current beneficial ownership information contained on the Isle of Man database (the same being true in reverse for information suppressed from the UK public register);
- Participants will establish designated points of contact (in the case of the Isle of Man, the FIU), appropriately vetted and permanently staffed who will receive (on a

designated form) and respond to each other's law enforcement requests for beneficial ownership information;

- The points of contact will provide information which is both complete and helpful, including in response to requests for sequential searches. Searches can include those for the beneficial owner of a named company and for the identification of all other corporate and legal entities in which the owner has an interest as well as the names of other individuals with interests in those entities;
- There will be appropriate security and confidentiality arrangements attached to the request framework; and
- Information supplied through the designated point of contact can be used by the recipient without any further procedural conditions. The information may be used in criminal and/or civil proceedings and may be disclosed by law enforcement authorities in accordance with applicable legal provisions.

## **A Summary of the Beneficial Ownership Bill 2017**

In headline terms, the key features of the Bill include:-

- A central database containing the required details of beneficial owners of the widest possible range of corporate and legal entities incorporated in the Isle of Man (1931 Act and 2006 Act companies are covered as are Foundations);
- The database will be maintained by the Companies Registry and overseen by the IOMFSA;
- The threshold for inclusion on the database is beneficial ownership or control of 25% or more of a legal entity (referred to as 'registrable beneficial ownership');
- Beneficial ownership can be traced through any number of persons or arrangements of any description to the natural person who ultimately owns or controls a legal entity;
- Each legal entity must appoint a nominated officer. Existing nominated officers under the 2012 Act can continue with their appointment;
- Legal owners must provide nominated officers with the required details of all beneficial owners of their interests (not just registrable beneficial owners);
- Nominated officers must submit the required details of registrable beneficial owners and can amend, but not delete, submitted information as and when required details change. All of these actions must be undertaken online;

- Requests for registrable beneficial ownership information from external intelligence and law enforcement agencies will come to the FIU, for permitted purposes, under the terms of the agreement with the UK;
- The Bill facilitates the Companies Registry's commitment to the online filing of company annual returns once it becomes technically feasible;
- Nominated officers have to provide beneficial ownership information not contained on the database to competent authorities, following the serving of notice, for permitted purposes with restrictions on further disclosure;
- The database will go live on 1 July 2017, with submission of registrable beneficial ownership details phased in the first year to coincide where possible with the filing of annual returns but with a back-stop first submission date of 30 June 2018;
- There are separate time-scales for entities created once the Act comes into force;
- Legal entities must include a statement of compliance in their annual returns;
- Access to the database is limited to competent authorities and a small number of other bodies with similar functions for permitted purposes. There are restrictions on further disclosure of the information;
- A legal entity can access the database to view, submit and amend information in relation to that entity and authorise access to information by third parties (subject to technological feasibility);
- The Bill sets out the framework for access by obliged entities and persons with a legitimate interest, including safeguards on protected information. Before any such access is permitted, further regulations have to be approved. To be clear, there are no plans to extend access to the database to obliged entities or persons with a legitimate interest at this stage; and
- A number of offences and corresponding penalties are included in the Bill.

### **Detailed Overview of the Beneficial Ownership Bill 2017**

The purpose of this overview is to aid the reader's understanding of the Bill and to assist in the making of comments on the clauses in the accompanying online feedback form. It is not intended to provide a comprehensive review of the Bill or be a substitute for reading it. The Bill is divided into 4 Parts; it contains 50 clauses with 4 Schedules. Below, the title and number of specific clauses appear in **bold**.

## Part 1: Introductory (Clauses 1 – 5)

The Bill has a standard **commencement (clause 2)** provision to allow for different sections to come into force on different days. It is particularly relevant in a number of ways, including:-

- to permit existing nominated officers to confirm in writing their consent to continuing with their appointment and thereby allowing the legal entity to take advantage of the savings provision (clause 49) so that they do not have to notify the DED<sup>2</sup> of a new appointment;
- to allow the Government to undertake the necessary preparatory work to facilitate the online filing of annual returns at a future point; and
- to allow the Government to assess developments at home and internationally before making a decision in respect of access to the database by obliged entities and persons with a legitimate interest.

Key definitions which are used in the Bill are set out the **interpretation (clause 3)** clause. Particular attention is drawn to:-

- External intelligence or law enforcement agency: by which requests for registrable beneficial ownership information can be made to the FIU (with the FIU being bound by the response timeframes in the Exchange of Notes with the UK highlighted above). The Bill defines such agencies as those outside the Isle of Man carrying on activities equivalent to those carried on by the FIU, the Chief Constable, the Assessor of Income Tax and the Collector of Customs and Excise;
- Permitted purposes: the purposes for which notices for beneficial ownership information can be served on nominated officers; for which access to the database can be made; for which requests can be made to the FIU; and to which further disclosure of beneficial ownership can be restricted;
- Registrable beneficial ownership: sets the threshold at which beneficial ownership information has to be submitted onto the database. This figure can be amended, but the Bill sets it as a beneficial owner who owns or controls 25% or more of the beneficial ownership of a legal entity.

**The meaning of beneficial owner (clause 4)** has a separate clause in the Bill. The Exchange of Notes with the UK requires the Isle of Man to identify the natural person who is the beneficial owner; the Bill therefore provides for a look through any number of persons or arrangements of any description in order to identify and, where appropriate, submit the required details of that natural person. 'Beneficial owner' means:-

*a natural person who ultimately owns or controls a legal entity to which this Act applies, in whole or in part, through direct or indirect ownership or control of shares or voting rights or other ownership interest in that entity or its assets, or who*

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<sup>2</sup> Note: references throughout the Bill are to the Department (meaning the Department of Economic Development). The detailed overview refers to the DED. In practice, the vast majority of references to either should be taken to mean the Companies Registry (which is a division of the DED).

*exercises control via other means, and “beneficial ownership” is to be construed accordingly.*

If two or more natural persons each own or control an interest in a legal entity then each is treated as owning or controlling that interest. So, for example, if two persons jointly own or control a 30% interest in a legal entity, they are each treated as owning the 30% interest and each is a registrable beneficial owner.

That the tracing of beneficial ownership may take place through any number of persons or arrangements of any description will, in appropriate cases, necessitate identification of the trustee or other person who exercises ultimate effective control over a trust. In the case of a foundation, this will similarly necessitate identification of the natural person who exercises ultimate effective control over the foundation.

In order to aid understanding, the IOMFSA may issue and revise guidance about the meaning of ‘beneficial ownership’ and associated terms. Moreover, the Treasury can revise the meaning of ‘beneficial owner’ and ‘registrable beneficial owner’, including the percentage at which a beneficial owner becomes registrable.

The scope of the Bill is established by **legal entities to which the Act applies (clause 5)**. In order to fulfil our obligation to capture the ‘widest possible range of corporate and legal entities incorporated in the Isle of Man’, the Bill covers:-

- a company to which the Companies Acts 1931 to 2004 apply;
- a company to which the Companies Act 2006 applies;
- a limited liability company to which the Limited Liability Companies Act 1996 applies;
- a limited partnership to which section 4B of the Partnership Act 1909 applies (that is, limited partnerships with legal personality); and
- a foundation, within the meaning of the Foundations Act 2011.

This clause also sets out the entities which, by virtue of the foregoing, might be deemed to fall under its scope but do not. The Bill does not apply to a legal entity which is:-

- formed, incorporated or established outside the Island, other than a company which is continued in the Island under Part I of the Companies (Transfer of Domicile) Act 1998 or section 162 of the Companies Act 2006;
- listed on a stock or investment exchange recognised by the Treasury;
- a collective investment scheme which is an authorised scheme, an international scheme or an exempt scheme within the meaning of the Collective Investment Schemes Act 2008; or
- an unregistered company within the meaning of section 306 of the Companies Act 1931 (meaning of unregistered company) to which subsection (1) does not apply.

The list of entities above can be amended. For the avoidance of doubt, trusts do not fall within the Bill’s scope.



## Part 2: Nominated Officer to maintain beneficial ownership information (clauses 6 – 16)

This Part creates, for all entities covered by the Bill, the **requirement to have a nominated officer (clause 6)**. The officer must be either a natural person resident in the Island or the holder of a licence issued under section 7 of the Financial Services Act 2008 which permits the holder to carry on the regulated activity of providing corporate services. A legal entity can have more than one nominated officer where their functions and liabilities under the Bill are joint and several.

The **savings** (see clause 49) provision means that those nominated officers appointed under the 2012 Act automatically become nominated officers under this Bill, subject to the legal entity recording the nominated officer's written consent of their agreement to continue in post within two weeks of the Act coming into force. In practice, it is proposed that the savings provision is brought into force two weeks after the main provisions in the Act, after which time legal entities should have completed the necessary internal confirmation so that they can take advantage of a smooth transition without the need to notify the DED.

For those entities not covered by the 2012 Act, **notice of appointment of a nominated officer (clause 7)** has to be given to DED within one month of the section coming into force. Also, a legal entity must give notice to DED within one month of a change in the details of its record of a nominated officer, a change in the officer and the subsequent appointment of a nominated officer.

A legal entity which fails to comply with this section commits an offence.

All entities must keep **a record of nominated officer (clause 8)** including written confirmation of the officer's consent to the appointment. In the case of a nominated officer who is a natural person, the officer's name and home address on the Island must be recorded. For nominated officers who have legal personality but are not natural persons, a record must be kept of the officer's corporate firm or name and the officer's registered office or place of business in the Island.

The Bill imposes a **duty of legal owners (clause 9)** to give notice to the nominated officer of the following **required details (clause 11)** (which the Treasury can amend) in respect of each beneficial owner of the legal owner's interest:-

- his or her name;
- his or her usual residential address;
- a service address;
- his or her nationality;
- his or her date and place of birth;
- his or her occupation;
- his or her gender;
- the date on which he or she acquired an interest in the legal entity; and
- the nature and extent (expressed as a percentage) of his or her interest in the legal entity.

In respect of a class of beneficial owners of such a size that it is not reasonably practicable to identify each beneficial owner, the Bill requires the submission of details sufficient to identify and describe the class of persons who are beneficial owners. It is unlikely that this provision will be relied upon often, but it may be relevant in the case of Foundations.

A notice from an existing legal owner to the nominated officer must be given within one month of the appointment of the nominated officer or within 2 months of the relevant section coming into force (whichever is sooner). For those who become legal owners once the section is in force, the notice must be given within one month of becoming a legal owner.

In the case of a legal owner who ceases to be the beneficial owner of an interest after the section comes into force but retains legal ownership of that interest, the notice must be given within one month of the legal owner ceasing to be the beneficial owner of such an interest. In such cases, the notice must contain the required details in respect of the natural person to whom beneficial ownership of the legal interest has transferred.

All notices in this section must be accompanied by information from a reliable and independent source which verifies the required details.

Failure to comply with the obligation in this section is an offence, as is making a false or deceptive statement.

The requirement for information from a reliable and independent source, whilst not defined in the Bill, is relevant in a number of clauses. For ease of reference, the references are summarised in Table 1.

**Table 1: Clauses which refer to verifying information from a reliable and independent source**

Clause	Context
<b>s.9(6)</b>	Requires a notice provided by a legal owner to the nominated officer to be accompanied by verifying information
<b>s.12(3)</b>	Requires any changes in required details to be notified by legal owner to nominated officer, to be accompanied by verifying information
<b>s.13</b>	Requires a nominated officer to preserve the required details and verifying information
<b>s.15</b>	When a nominated officer provides beneficial ownership information in response to a notice under section 15, the notice must have stated what information is required and the nominated officer must provide "any information the officer holds in respect of the beneficial ownership of the legal entity specified or referred to in the notice". As such, if a competent authority requests the verifying information, the nominated officer would have to provide it
<b>s.34</b>	The FSA's oversight role would include checking that a nominated officer is preserving the required details and verifying information in accordance with their obligations

Beneficial ownership can be traced through any number of persons or arrangements of any description (see clause 4). In order to ensure that legal owners can fulfil their obligations,

there is a **duty on intermediate owners to assist (clause 10)** a legal owner so as to enable the legal owner to ascertain the beneficial owner of their interest. The duty applies to a person who has an interest in a legal entity but who is not the beneficial owner or the legal owner of that interest. Failure to cooperate is an offence. To aid understanding, the Bill provides the following example:-

*The legal owner holds shares in Company A on behalf of X.*

*X is nominee for Y.*

*Y is nominee for the beneficial owner.*

*The legal owner is obliged under this section to provide beneficial ownership information in relation to the beneficial owner.*

*X and Y are intermediate owners.*

**Changes to required details (clause 12)** must be notified by the legal owner to the nominated officer if the former knows or has reasonable cause to believe that a change in required details has occurred. Notice has to be given within one month of the legal owner learning of the change or when they first have reasonable cause to believe that the change has occurred. The notice must detail the changes and be accompanied by information from a reliable and independent source which verifies them.

Failure to comply with this section is an offence.

The nominated officer has obligations in respect of **the preservation of required details (clause 13)**. Accordingly, they must ensure that all required details and the information which verifies them are maintained and preserved. The required details must be maintained so as to be capable of disclosing the beneficial ownership of the legal entity at any time and the details (and verifying information) must be preserved for a minimum of 5 years from the end of the period to which the information relates.

In the event of an entity being wound up, dissolved, struck off, removed from a register or otherwise ceasing to exist, the person who was nominated officer immediately before one of the above occurring must comply with the requirements of this section.

The 5 year retention period in the clause coincides with the current standard under the AML/CFT Code. It should be noted that there are other international standards, both set and evolving, which may be relevant to the length of time for which records need to be preserved.

Failure by a nominated officer to comply with this section is an offence.

There can be **further consequences of failure to disclose beneficial ownership (clause 14)** for legal owners. The consequences become relevant if a nominated officer is of the opinion that a legal owner has, without reasonable excuse, failed to provide relevant details or changes thereto or has made a misleading statement. On receipt of a notice by the nominated officer, the entity must take such action as it thinks fit in respect of the legal

owner's interest in the entity. The actions are specified in the clause and include, for example, limiting voting rights. If it takes any action, the legal entity must inform the DED within two weeks of so doing who can then make it a matter of public record. The legal owner can appeal to the High Court.

There are provisions in the Bill for the **disclosure of beneficial ownership information by nominated officer (clause 15)** if they receive a notice from one of the competent authorities listed below. The proposed structure is based upon the 2012 Act with certain modifications (such as the permitted purposes for which a notice can be served (see clause 3) and the timeframe for providing the information (as soon as possible and in any event within 14 days)).

The competent authorities able to serve a notice are:-

- the FIU;
- the Attorney General;
- the Assessor of Income Tax;
- the IOMFSA;
- the Chief Constable;
- the Collector of Customs and Excise; or
- a person appointed by any of the above (with proof of appointment stated in the notice).

A notice under this section must also state what information is required. Here, information includes any information that the nominated officer holds on the beneficial ownership of the entity, so it includes verifying information from a reliable and independent source which has to be supplied to the officer by the legal owner.

If a nominated officer fails to comply with this section they commit an offence.

For the competent authorities, there are **restrictions on further disclosure of information provided by a nominated officer (clause 16)** which means that information cannot be further disclosed except for the permitted purpose(s) specified in the notice. However, information can be used by the recipient as evidence in criminal, civil and regulatory proceedings. Failure to comply with this section is an offence.

**Disclosure of information obtained from a nominated officer by the FIU when responding to external requests (clause 17)** is subject to a separate provision. In such circumstances, disclosure to an external intelligence or law enforcement agency is allowable if it is made in response to a request made by an agency in a manner required by the FIU and for a permitted purpose (see clause 3). Section 25 of the FIU Act 2016 does not apply to information disclosed by the FIU under this clause<sup>3</sup>.

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<sup>3</sup> Section 25 of the FIU Act 2016 reads: **Restrictions on further disclosure** (1) Information disclosed by the FIU under section 23 to any person or body must not be further disclosed except — (a) for a purpose connected with any function of that person or body for the purposes of which the information was disclosed by the FIU, or otherwise for any permitted purposes; and (b) with the written consent of the FIU. (2) Consent under subsection (1) may be given — (a) in relation to a particular disclosure; or (b) in relation to disclosures made in circumstances specified or described in the consent.

The final clause in this Part concerns **tipping off resulting from the issue of notices by competent authorities (clause 18)**. Accordingly, a person commits an offence if they know or suspect that a notice has been, or is going to be, issued and they disclose prejudicial information connected to the issue of the notice.

Within defined parameters, disclosure by an advocate or legal adviser is not an offence and it is a defence to prove that a person did not know or suspect that the disclosure was likely to be prejudicial.

### **Part 3: Isle of Man Database of Beneficial Ownership (Clauses 19 – 33)**

**The Database (clause 19)** is created under this clause, with a duty on the DED to establish and maintain it and for the database to contain the required details and any changes thereto of all registrable beneficial owners.

Nominated officers are bound by the provisions in relation to the **compulsory submission of registrable beneficial ownership information to the Department (clause 20)**. In addition to the required details, nominated officers must also submit any relevant changes thereto and, where the legal entity has no registrable beneficial owner, a statement to confirm that fact.

The effectiveness of the database for the purposes of the Exchange of Notes with the UK is dependent upon the number of entities which submit information on to it. This clause sets the timeframes for which information has to be submitted, setting the back-stop date a year after the database has been established. On the first occasion for entities already in existence, nominated officers have to submit the required details to the DED as soon as reasonably practicable after it has been submitted to them and in any event by the date on which the legal entity's next annual return must be filed or 30 June 2018, whichever is earlier.

On subsequent occasions and for entities which come into existence after the Act comes into force, nominated officers must submit information onto the database within one month of being notified of it.

In all cases, nominated officers must submit changes to the information on the database within one month of being notified of it.

This clause should be read in conjunction with clause 45, the statement of compliance on annual returns.

There are offences in this clause for nominated officers and other persons for failure to comply with its provisions. Given the central importance of submitting beneficial ownership information, this clause also contains an obligation to rectify in instances where information has not been submitted and prosecution proceedings commenced. Even in such instances, there is an obligation to submit the information and it becomes a matter of contempt of court for failure to do so.

With the consent of the beneficial owner, nominated officers can submit required details of beneficial owners other than registrable beneficial owners under the clause on **voluntary**

**submission of non-registrable beneficial ownership information (clause 21).** The provision has been added to provide flexibility in circumstances where, for their own reasons, beneficial owners are content to have their details submitted onto the database even though the Bill does not require them to be.

The Bill's provisions for **beneficial ownership information to be submitted online (clause 22)** are based upon similar requirements under the Income Tax Act 1970. The default position under the Bill is the submission of registrable beneficial ownership online through the Online Services part of the Government website. The Government Technology Service ("GTS") is working with partners to design and build the necessary systems as part of the broader ongoing work on establishing the database and the modes of access to it.

There is provision for entities to apply to the DED for an exemption from this requirement which would be granted if the DED is satisfied that the nominated officer does not have access to the internet or is otherwise unable, with reasonable excuse, to comply.

Although there is an appeal to the Financial Services Tribunal against a decision by the DED, as failure to comply with this section is an offence, it is anticipated that there will be very few applications to the DED for exemptions from this requirement.

There are clauses on **access to the database (clause 23)** and **mode of access (clause 24)**. The first means that access is controlled by this Part, as is the further disclosure of information obtained through that access. Under the second clause, the DED has control over the database by such means and in such manner as it determines and it can make further provision about access to the database (although not the persons or bodies who can access it through clause 26).

The DED does not have a quality control function over the beneficial ownership information which is submitted so there is a clause to confirm that the **DED is not liable for accuracy of information (clause 25)** submitted onto the database. There is a requirement for legal entities to include on their annual returns a statement that all the information submitted for entry on the database is up to date and correct (see clause 45).

The Bill sets out the parameters for **persons who may access the database (clause 26)**. In addition to the competent authorities listed in clause 15, who are able to access the database for a permitted purpose (see clause 3), the following persons or bodies also have access:-

- the DED, for the purpose of its functions under this Act;
- the Isle of Man Gambling Supervision Commission, for the purpose of the Commission's functions under any other enactment;
- the Isle of Man Office of Fair Trading, in relation to matters of consumer protection and trading standards;
- a person appointed by a competent authority who provides evidence of their appointment for such purpose;
- a legal entity to which this Act applies, for the purpose of accessing its own beneficial ownership information (to view the information and to submit and amend but not delete) the required details; and

- a third party, authorised by a legal entity to access beneficial ownership information in relation to that entity. This provision allows, when technologically possible, a legal entity with the consent of the nominated officer, to share its registrable beneficial ownership information with third parties should it wish to.

As with the notice regime discussed above, there are **restrictions on further disclosure of information accessed from the database (clause 27)**. The exact nature of the restrictions differs slightly depending upon the purposes for which access is permitted. Information accessed by a competent authority must not be further disclosed except for a permitted purpose (see clause 3) and, in the case of the FIU, disclosure also has to be in accordance with clause 28 (see below). For all competent authorities, information disclosed may be used by the recipient in criminal, civil or regulator proceedings.

For the DED, Gambling Supervision Commission and Office of Fair Trading, the information cannot be further disclosed except for the limited purposes for which they can access the database.

The restrictions on further disclosure in this clause do not apply to information accessed by obliged entities or persons with a legitimate interest. Future regulations may make provision for restrictions on further disclosure in this regard (see clause 30).

A person who fails to comply with this section commits an offence.

As noted above, there is an additional provision in respect of **disclosure of information by the FIU when responding to external requests (clause 28)**. As such, disclosure to an external intelligence or law enforcement agency is permissible if it is made in response to a request and is made for a permitted purpose (see clause 3). Section 25 of the FIU Act 2016 does not apply to information disclosed under this clause<sup>4</sup>.

The Bill contains a provision in respect of **tipping off resulting from access to database (clause 29)**. Accordingly, a person commits an offence if they know or suspect that information on the database has been, or is going to be, accessed and they disclose prejudicial information connected with such access.

Within defined parameters, disclosure by an advocate or legal adviser is not an offence and it is a defence to prove that a person did not know or suspect that the disclosure was likely to be prejudicial.

The DED can make regulations to make further provision about access to the database by **obliged entities and persons with a legitimate interest (clause 30)**. To restate, it is not the Government's intention to extend access to the database to either of these groups at the present time; these provisions are contained in the Bill to provide the enabling powers and legal framework should a decision be made to extend access at a future point.

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<sup>4</sup> See footnote 3.

The Bill proposes a straightforward **meaning of obliged entities (clause 31)**, namely, those persons or bodies which are required by law to carry out customer due diligence measures. The Bill sets the parameters for the **meaning of person with a legitimate interest (clause 32)**, but does not seek to define the term. Instead, it sets the framework for a person with a legitimate interest as being:-

- a) a person or body so specified in regulations (see clause 30); or
- b) the DED, following an application, confirms that it is satisfied that the person or body has a legitimate interest in the information on the database.

Guidance can be issued on the meaning of 'a person with legitimate interest' and 'legitimate interest'.

The Government appreciates the potential issues which may arise from broadening access to the database beyond competent authorities and other governmental agencies. As such, the Bill lays the foundations for **the meaning of protected information (clause 33)** and its provisions in this regard are similar to corresponding safeguards in the European Union's 4th Anti Money Laundering Directive and the relevant UK legislation.

Accordingly, registrable beneficial owners can apply to the DED for confirmation that their required details be classed as protected information and therefore unavailable to either obliged entities or persons with a legitimate interest (without the beneficial owner's consent).

In making a determination, the DED has to be satisfied that it believes disclosure of that information may expose the registrable beneficial owner to one or more risk (fraud; kidnapping; blackmail; violence or intimidation) or it relates to a registrable beneficial owner who is a minor or lacks legal capacity.

The information in question remains protected until the DED determines otherwise, or if the decision is appealed, until the Tribunal has determined that the information is not protected information.

#### **Part 4: General (Clauses 34 – 50)**

This Part contains a number of general provisions significant to the effective functioning of the Bill.

The **oversight functions of the IOMFSA (clause 34)** are conferred through this clause. Schedule 1 sets out additional powers; for example, in respect of inspections and investigations and requests for information. The IOMFSA will be responsible for assessing compliance by relevant persons (a legal entity, nominated officer, etc.).

The Bill provides the IOMFSA with flexibility in its oversight role (see schedule 1). It may make a report of its findings resulting from the exercise of its functions specifying in cases where there are compliance issues, actions to be taken and the timescale for taking such action. If the IOMFSA is satisfied that certain criteria have been met, it has the power to



charge civil penalties and in more serious cases to refer offences to the Attorney General's Chambers for potential prosecution.

Integral to the range of sanctions in the Bill, the DED is able to **strike off (clause 35)** an entity from the relevant register where there is reasonable cause to believe that it has failed or is failing to comply with its obligations. The strike off provision is included as a back-stop provision which should be viewed within the context of the Bill's other sanctions.

Subject to consultation with the DED and the IOMFSA, the Bill has a general power for the Treasury to make **regulations (clause 36)** other than in the areas where the DED can make regulations.

This provision is also the general enabling provision for further regulations to be made under the Bill. It allows, for example, regulations to permit a person to exercise discretion in respect of any matters specified in the regulations and require compliance with standards or the adoption of practices recommended or specified from time to time.

The DED may set **fees (clause 37)** in respect of the legal entity's requirement to notify it of the appointment of a nominated officer (see clause 7) and in respect of the nominated officer's obligation to submit beneficial ownership information (see clause 20). It is anticipated that fees charged under this clause will operate in a similar manner to the current late filing fees charged by the Companies Registry.

The Bill creates an **appeals (clause 38)** route to the Financial Services Tribunal against decisions made by the DED in respect of whether a nominated officer is exempt from the requirement to submit beneficial ownership information online (see clause 23) and in respect of an application from a registrable beneficial owner regarding protected information (see clause 33). The Tribunal can also hear appeals against the imposition of civil penalties by the IOMFSA (see paragraph 8 of schedule 1).

A decision of the Tribunal is binding although a further appeal lies to the High Court on a point of law.

A final provision in respect of penalties and offences is that of **offences by legal entities other than natural persons (clause 39)**. Accordingly, if an offence is committed by a legal entity and it is proved that one of its officers was complicit, the officer as well as the entity is guilty of the offence and is liable to the penalty provided for the offence.

A requirement imposed under this Bill has effect despite any obligation as to **confidentiality (clause 40)** or other restriction on the disclosure of information imposed by statute, contract or otherwise. Therefore, a disclosure made or the sharing of information in accordance with the Bill does not breach any obligation of confidence or any other restriction on access to or disclosure of the accessed information (subject to the Data Protection Act 2002).

The **Data Protection Act 2002 (clause 41)** is not affected by this Bill, meaning that nothing authorises a disclosure in contravention of that Act of personal data which is not

exempt from its provisions. In short, this Bill does not override any of the protections on personal information established by the Data Protection Act 2002.

The Bill makes explicit that the existing exemption under the **Freedom of Information Act 2015 (clause 42)** for information the disclosure of which is restricted by law applies to information prohibited from disclosure under this Bill. In short, information held on the database cannot be disclosed following a freedom of information request to the DED.

In respect of **privileged information (clause 43)** nothing in the Bill compels the production or divulgence by an advocate or other legal adviser of an item subject to legal privilege, but an advocate or legal adviser may be required to give the name and address of any client.

There is a provision to ensure that **other provisions concerning beneficial ownership are not affected (clause 44)** by this Bill.

There are a number of short, linked provisions in this Part relating to annual returns.

A new **statement of compliance in annual returns (clause 45)** is required by the Bill. As such, a legal entity must confirm that both it and its nominated officer have each complied with their respective obligations; the required details in respect of any registrable beneficial owners have been submitted; and all information submitted is up-to-date and correct. The statement must be countersigned by the nominated officer.

The Bill amends relevant legislation in relation to **annual returns for companies (clause 46)** so that, if applicable, a company may authorise its nominated officer to file its annual return on its behalf.

Looking to the future, the Bill provides for the **compulsory online submission of annual returns for companies (clause 47)** (see schedule 4 for details of which Acts are amended to facilitate online submission). Online filing of annual returns is not yet technologically possible, but the Government has commenced the necessary preparatory work which, when complete and properly tested, will allow this section to be brought into force.

The Bill makes a small number of **consequential amendments (clause 48)** to the Financial Services Act 2008 to align the appeals under this Bill within the scope of the Financial Services Tribunal and to add this Bill to the list of other Acts which confer functions on the IOMFSA.

In order to ease the transition for those entities which are required to have a nominated officer under the Companies (Beneficial Ownership) Act 2012 (which this Bill **repeals at clause 50**), there is a **savings (clause 49)** provision through which existing nominated officers continue in their appointment, subject to the legal entity receiving the written consent of the nominated officer for said continuation. Nominated officers who carry their appointment through to the new Act must comply with the Act as if they were appointed under it.

## Schedules

### **Schedule 1: Oversight by the Authority**

This Schedule details the powers which the IOMFSA has to facilitate its oversight role as required by clause 34 of the Bill.

The IOMFSA will conduct its oversight using a risk based approach. A large number of Isle of Man incorporated companies are currently managed by, or have relationships with, licenceholders or other entities overseen by the IOMFSA. The IOMFSA will leverage from and expand upon its current supervisory processes. This could include checking the credibility of the processes used by those licenceholders and other entities for identifying beneficial ownership, undertaking a review of a random selection of files to determine whether the process is adhered to, and testing the consistency of the beneficial ownership information from these sampled files with that held on the database to determine its accuracy. In addition, it is intended to use data from various sources to identify areas that warrant further enquiries.

### **Schedule 2: Amendments – Striking Off**

This Schedule sets out the necessary legislative amendments to facilitate the striking off of entities which fail to comply with the requirements of the Bill as required by clause 35 of the Bill.

### **Schedule 3: Amendments – Statement of Compliance in Annual Returns**

This Schedule sets out the necessary legislative amendments to facilitate the statement of compliance with the Act in annual returns as required by clause 45 of the Bill.

### **Schedule 4: Amendments – Compulsory Online filing of Annual Returns for Companies**

This Schedule sets out the necessary legislative amendments to facilitate the compulsory online filing of annual returns required by clause 47 of the Bill. Note: as discussed above, this clause will not be brought into force until the systems are in place to receive annual returns filed online.

## Consultation Process

The closing date for the receipt of comments is **5pm on Friday 16 December 2016**.

An accompanying online feedback form has been prepared to allow you to provide your comments. There is a 'submit' function on the form to assist this process.

If you do not wish to use the form, respondents can send their comments by email to: - [treasuryconsultations@gov.im](mailto:treasuryconsultations@gov.im).

If you do not have access to email or the internet, responses can also be submitted to:

Rose Dawson  
Legislation and Policy Officer  
Corporate Strategy Division  
Treasury  
Government Office  
Bucks Road  
Douglas IM1 3PG

Unless specifically requested otherwise (see below), responses received may be published either in part or in their entirety, together with the name of the person or body submitting the response. If you are responding on behalf of a group it would be helpful to make your position clear. To ensure that the process is open and honest, responses can only be accepted if you provide your full name with your response.

The purpose of consultation is not to be a referendum. It is an information, views and evidence gathering exercise from which to take an informed decision on the content of proposed legislation or policy. As with any consultation exercise, the responses received do not guarantee changes will be made to the draft legislation.

The Treasury would welcome your views on the draft Bill. The Treasury will aim to publish a summary of the responses within 3 months of the closing date for this consultation.

## Confidentiality

In line with the Treasury's policy of openness, at the end of the consultation period copies of the responses we receive may be published in a summary of the responses to this consultation. If you do not consent to this, you must clearly request that your response be treated as confidential. Any confidentiality disclaimer generated by your IT system in email responses will not be treated as such a request.

Respondents should also be aware that there may be circumstances in which the Treasury will be required to communicate information to third parties on request, in order to comply with any future obligations under the Freedom of Information Act 2015.

## Appendix: Impact Assessment

<b>DEPARTMENT: TREASURY</b>		
<b>IMPACT ASSESSMENT OF: BENEFICIAL OWNERSHIP BILL</b>		
<b>Stage: Draft Bill</b>	<b>Version: 1.0</b>	<b>Date: 25 October 2016</b>
<b>Related Publications:</b> <a href="#">Exchange of notes between the UK Government and the Isle of Man Government</a>		
<b>Responsible Officer:</b>		
<b>Email Address:</b>	<b>Telephone:</b>	
<b>SUMMARY: INTERVENTION AND OPTIONS</b>		
<b>Briefly summarise the proposal's purpose and the intended effects</b>		
<p>The Isle of Man signed an Exchange of Notes and Technical Protocol with the United Kingdom Government (April 2016) confirming its commitment to enhance arrangements for providing information on the beneficial ownership of corporate and legal entities. Under the agreement the Isle of Man has committed to establishing and maintaining a central electronic database of registrable beneficial ownership information that will allow accurate and current information to be provided to law enforcement and tax authorities as quickly as within one hour in urgent cases.</p> <p>The Bill seeks to give effect to the Island's obligations arising from the agreement with the UK as the existing legislative framework does not provide for the creation of a central database or cover a sufficient number of entities.</p>		
<b>What are the options that have been considered</b>		
<p>Firstly, the Isle of Man Government considered the 'Do Nothing' option and concluded that this would not meet the policy objectives.</p> <p>Option 1: Implementation of an access restricted central database of beneficial ownership information. This is the preferred option as it is the most cost effective way of meeting the policy objectives and international commitments, particularly in terms of delivering benefits to law enforcement agencies and society at large through tackling unlawful activity.</p> <p>Option 2: Implementation of a public central registry of beneficial ownership information. Although this will deliver the same benefits as Option 1 in terms of delivering benefits to enforcement agencies and wider society through tackling unlawful activity, public access to the database has been ruled out (see Evidence Base section). In reaching this decision, the Government was cognisant of the feedback that was received from its Consultation on the Transparency of the Beneficial Ownership of Companies published in February 2016.</p>		

Option 3: A non-regulatory option of a Government-led media campaign to promote the importance of corporate transparency. Although costs would be lower than Option 1, this is the least preferred option as it is unlikely to deliver significant benefits in terms of meeting the Islands international commitments.

**Link to Government Strategic Plan**

Strategic Objective: We will be recognised internationally for our transparency and cooperation and we will defend and protect our national interests.

**Link to Department/Statutory Board/Office Aims and Objectives**

**Responsible Departmental Member**

**Ministerial sign off**

I have read the Impact Assessment and I am satisfied that the balance between the benefit and any costs is the right one in the circumstances.

Signed by the Responsible Minister Date

[final version to be signed]

**OPTION 1 SUMMARY: ANALYSIS AND EVIDENCE**

**IMPACT OF PROPOSAL:**

**Resource Issues - Financial (including manpower)**

**Statement**

Costs to Government: The delivery of the above components comprising the database, online service and reporting services has been costed as follows:-

- o External software development £100,000
- o GTS Online £42,000
- o Project Management £40,000
- o Hardware £10,000
- o Total £192,000

The £42,000 of online services costs is already within GTS budget and will displace other activities, therefore the actual additional spend GTS will incur is £150,000. Ongoing maintenance costs are set to be in the region of £10,000 per annum (to be determined). There will be additional costs for communication with industry on the changes.

Cost to Businesses: Yet to be finalised. The Government welcomes feedback in the consultation to help provide further evidence in this regard. Further consideration will have to be given to whether there will be additional Government charges on business and other third parties associated with the introduction of the database.

There may be an adverse impact on Island investment from increased disclosure and business costs but these are mitigated by similar arrangements in place in many competitor jurisdictions.

*Likely Financial Costs*

*One Off* - As above (for Government).

*Average Annual (excluding one off)* - As above (for Government).

*Likely Financial Benefits*

There is limited qualified data about the benefits from this policy proposal. Benefits will be associated with a reduction in crime and increased efficiency by law enforcement agencies. There is also likely to be efficiency and welfare gains to the economy and increased transparency which could potentially have an impact on economic growth.

*If the proposal introduces provisions that will require another Department, Board, Office or Body to take on additional work or responsibility please ensure that they have been consulted with early on in your considerations. Please provide a brief statement as to who they are and the consultation that has taken place.*

The Treasury has worked closely with all affected Government agencies in the drafting of the Bill. The agencies most affected by its proposals are: the Department of Economic Development (Companies Registry), the Isle of Man Financial Services Authority and the Cabinet Office (Government Technology Services).

*Are there any costs or benefits that are not financial i.e. social*

The Island's international reputation would be diminished if this Bill is not introduced.

*Which Business sectors/organisations will be impacted, if any, and has any direct consultation taken place?*

The provisions of this Bill are broad and cover the widest range of corporate and legal entities incorporated in the Isle of Man. Treasury and the DED have discussed the Bill in broad terms at various industry forums during its drafting (see consultation section).

*Does the proposal comply with privacy law? Please provide a brief statement as to any issue of privacy or security of personal information.*

Beneficial ownership information that identifies living individuals (as opposed to corporate entities) is personal data of those individuals and therefore will be subject to the protections of the DPA. The key concern would be ensuring that the collection and use of that data remained consistent with the purposes for which it was collected. The Information Commissioner has been consulted during the drafting of the Bill and has not raised any concerns in this regard.

*Has Treasury Concurrence been given for the preferred option*

Treasury agreed that the Bill could be subject to public consultation at its meeting on 2 November 2016.

*Key Assumptions / Sensitivities / Risks*

Private sector not keen, happy with what is in place at the moment and feel that the database will just be a costly administration process with no gain.

Expenses and consequences of FATCA are still being incurred and experienced so there is a potential for compliance overload.

Disadvantaging companies on the Island if the Isle of Man moves more quickly than competitor jurisdictions.

That a public database will become the international standard.

*Approximate date for legislation to be implemented if known*

Under the terms of the agreement with the UK, the database has to be established by 30 June 2017, with submission of details on to it thereafter to broadly coincide with the filing of annual returns. A drop-dead date of 100% population of the database is proposed for 30 June 2018. Some provisions in the Bill will not be brought into force straightaway, such as access to the database by obliged entities and persons with a legitimate interest and the compulsory online filing of annual returns.

**SUMMARY: CONSULTATION**

*Consultation in line with Government standard consultation process* Yes

Date      1<sup>st</sup> Consultation: June 2014      2<sup>nd</sup> Consultation: November 2016

1<sup>st</sup> Consultation: Cabinet Office published the '[Consultation on the transparency of the beneficial ownership of companies](#)' in June 2014. This document invited comment as to whether a centralised registry would improve transparency of the ownership and control of companies in the Isle of Man. The document outlined developments and sought views and opinions from individuals and representative bodies, whether in their private or professional capacities, who felt that they might be affected in any way.

The Cabinet Office published a [summary of responses](#) to the consultation in February 2016, concluding that whilst a public register would not be introduced, the Isle of Man Government would carefully consider ways in which the Island's current beneficial ownership systems could be improved to provide more timely and relevant information whilst keeping essential safeguards in place.

2<sup>nd</sup> Consultation: Treasury are consulting on a Beneficial Ownership Bill 2017 from 4 November 2016.



**EVIDENCE BASE**

The Isle of Man Government has concluded that a public register of beneficial ownership is not an appropriate option for the Island. However the Government is committed to maintaining domestic legislation, policies and procedures which ensure effective compliance with international standards and in the case of a central database, the Exchange of Notes with the UK.