



# CONSULTATION

## Companies (Beneficial Ownership) (Exemptions) Order 2013

1 May 2013 – 31 May 2013

Issued by:  
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The consultation on the Companies (Beneficial Ownership) Act 2012 (“the Act”) took place between 7 June 2011 and 5 August 2011. The Act received Royal Assent in December 2012.

This Act only affects companies incorporated under the Companies Acts 1931 – 2004.

The first consultation paper considered that the Isle of Man has worked hard to ensure that the international community recognises that it conducts its affairs in an open and transparent manner. It also noted that for the Isle of Man to be able to continue to survive and thrive in an increasingly competitive world, it is vital that it constantly re-evaluates its position and seeks to make improvements where these are required.

The International Monetary Fund (the IMF”) 2008/2009 Financial Sector Assessment Programme Inspection of the Isle of Man considered, amongst other things, the Island’s compliance with international standards for anti-money laundering and countering the financing of terrorism.

The IMF scored the Isle of Man as “largely compliant” in respect of its ability to provide the appropriate authorities access to the beneficial ownership information of companies, where a proper request for information has been made. A proper request for information is one that is made via the appropriate channels e.g. a request made to the Attorney General. It cannot simply be due to the idle curiosity of an individual.

The Isle of Man addressed the points raised by the IMF, in respect of beneficial ownership of a company, in the Companies (Beneficial Ownership) Act 2012. The Act does not seek to increase the administrative burden on companies any further than absolutely necessary. As a result, there are several exemptions that are allowed under section 4 of the Act itself.

The Treasury is, within section 4, also given the power to make further exemptions where it is satisfied that the requirement to know the beneficial ownership of companies is already covered under other legislation. There are also certain limited circumstances where the Treasury has determined it to be appropriate to make additional exemptions - largely on grounds of practicality.

The draft Companies (Beneficial Ownership) (Exemptions) Order 2013 (“the Order”) has the dual objectives of rectifying the deficiencies identified, while minimising the effects felt by the Isle of Man, its business community and its residents.

The draft Order takes account of comments received during the initial consultation on the Act itself.

The Treasury is inviting comments on the scope of the exemptions proposed in the draft Companies (Beneficial Ownership) (Exemptions) Order 2013.

This document aims to provide stakeholders with sufficient background information on the reasons for the proposed legislation to allow them to make informed comments.

The draft Order and supporting documents (for information purposes only) can be found at the following links:

Please note that submission of a response will not automatically result in a change being made to the draft legislation.

A summary of the responses received will be posted on the Companies Registry website at <http://www.gov.im/ded/companies/allnews.gov> and on the Treasury website at <http://www.gov.im/treasury/consultations.gov>.

Respondents must please provide contact details with their submissions. Please note that the summary document will not contain sufficient information to permit identification of respondents. However, anonymous submissions will be disregarded.

Responses should be sent in writing or by email to:

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**Please ensure that comments are received by no later than Friday 31 May 2013.**

## **1. Background**

- 1.1 The IMF's report on the Financial Sector Assessment Programme gave the Isle of Man the rating of "largely compliant" in respect of Financial Action Task Force Recommendation 33 (new Recommendation 10): *Legal Persons – Access to beneficial ownership and control information*.
- 1.2 The IMF recommended that "the authorities should seek to put in place measures to ensure that accurate, complete, and current beneficial ownership information is available for all 1931 Companies".

## **2. The Current Position in the Isle of Man**

- 2.1 1931 Act Companies are "regular" companies that require two directors, one secretary and one (or more) shareholders (members). Unlike the 2006 Act Companies there is no requirement to appoint a registered agent that is regulated by the Financial Supervision Commission.
- 2.2 Local trading companies that are incorporated as 1931 Act companies, such as the local sweet shop, do not need to make use of the services offered by licensed Corporate Service Providers.

For these local trading companies, it is likely that the shareholders (owners) will also be the directors and secretary of the companies.

- 2.3 All companies that are licensed by the Island's regulators (the Financial Supervision Commission, the Gambling Supervision Commission and the Insurance and Pensions Authority) must already hold information on their beneficial ownership. This information must be made available to the Regulators.
- 2.4 Companies that are in receipt of the services of a company that is licensed by a regulator (licenceholders) must provide information on their beneficial ownership to the licenceholders.

## **3. The effect of the Companies (Beneficial Ownership) Act 2012**

- 3.1 The Companies (Beneficial Ownership) Act 2012 gives the appropriate Isle of Man authorities the power to request that details of the current beneficial owners of a company are provided to a relevant authority. It is acknowledged that, in the case of local trading companies, it is highly unlikely that this will ever prove to be necessary.
- 3.2 The details of the beneficial owners would only ever need to be made available, upon request by, for example, the Financial Crime Unit, Customs and Excise, the Assessor of Income Tax or the Attorney General.
- 3.3 "Fishing expeditions" (either to satisfy idle curiosity or an attempt by a foreign authority to see what they could find by accident) are not permitted. There needs to be a genuine and demonstrable reason need for a request to be made.

#### **4. Exemptions from the Beneficial Ownership Provisions**

- 4.1 Some companies are owned by a great number of people. Their size, and the frequency with which ownership changes through the trading of shares, makes it impractical to apply the Beneficial Ownership Provisions to them. In addition to this, these companies are more than likely already subject to additional layers of rigorously enforced regulation, such as that of a regulated stock exchange.
- 4.2 The Companies (Beneficial Ownership) Act 2012 exempts the following types of companies at section 2(c):
- Companies that are listed on a stock exchange;
  - Collective investments schemes; and
  - Any companies exempted by order of the Treasury.

#### **5. The draft Companies (Beneficial Ownership) (Exemptions) Order 2013**

- 5.1 It is proposed that the following companies will be exempted under paragraph 3 of the Order:
- Any public company;
  - Any registered charity;
  - Any company that is a club or society with members who are admitted solely on the fulfilment of certain criteria (they must meet the qualifications for membership such as a relevant professional qualification or sporting pursuit such as the local golf club);
  - Any company that is the holder of a licence issued by one of the Island's regulators (see paragraph 2.3 above);
  - Any company that is in receipt of services (is a "client") of the holder of a licence (see paragraph 2.4 above).

#### **6. Which companies are not exempt from the beneficial ownership provisions?**

- 6.1 All companies that do not qualify for one of the exemptions set out at paragraphs 4.2 or 5.1 are not exempted.
- 6.2 This means that any local company that does not meet the criteria for exemption under either the Act or the Order, will need to appoint a nominated officer.
- 6.3 In order to ensure that it is possible to determine which companies are unable to take advantage of any of the proposed exemptions, it will be necessary for companies to clearly indicate the exemption for which they are eligible. This will be achieved by making a small amendment to the Annual Return (for existing companies) and the Form 1 for new incorporations. This is considered in more detail at paragraph 8 below.

6.4 Appointments and resignations of nominated officers that occur outside of either of the situations considered at paragraph 6.3 above must be recorded on a separate form. This is considered below at paragraph 8.7.

## **7. Who can be a nominated officer and what is their role?**

7.1 A nominated officer can be anyone that the company wishes to appoint to hold this role. In a company where the directors are also the shareholders, it would probably be logical for one of the directors to take on this role.

7.2 The company secretary or another independent person could also be appointed to fulfil the role of nominated officer.

7.3 The person appointed to the role of nominated officer must, at all times, know who the beneficial owners of the company are.

## **8. How will we go about appointing a nominated officer?**

### **Existing Isle of Man companies under the Companies Act 1931**

8.1 Every company must file an annual return made up to the date of the anniversary of the date on which it was incorporated. The appointment of the nominated officer will be phased in over the course of a year, as and when each company's annual return falls due.

8.2 A change will be made to the annual return form. There will be several options that will need to be considered. If a company meets any one of the criteria for exemption from the requirement to appoint a nominate officer, the appropriate entry should be made on the form.

8.3 If there is no exemption available to a company, the company will need to provide the name and address of a person to undertake the role of nominated officer.

### **New companies incorporated under the Companies Act 1931**

8.4 With effect from 1 September 2013 the Form 1 (Statement of First Directors and Secretary and Intended Situation of Registered Office) will be amended.

8.5 This will again, provide several options and if a company cannot avail itself of any of the exemptions, a nominated officer must be appointed.

### **What happens in subsequent years?**

8.6 Every year, on completion of the annual return form, the nominated officer must confirm that they remain willing to undertake this role.

Please refer back to paragraph 8.2 if the company meets the criteria for exemption.

**8.7 What happens if the nominated officer changes?**

Notification of the details of the new nominated officer must be supplied to the Registrar of Companies within one month of the new appointment taking effect. This will be on a separate form and is likely to resemble the current Form 9N.

**9. Additional information and considerations**

- 9.1 A copy of the Companies (Beneficial Ownership) Act 2012 is included as part of this consultation for information purposes only. This Act will be brought into force in May.
- 9.2 The Act needs to be brought into force to enable the Companies (Beneficial Ownership) (Exemptions) Order 2013 to be brought into effect.
- 9.3 The full regime will be in place by 1 September 2013. The Order will take effect from this date.
- 9.4 Page 1 of the Annual Return has been revised and appears by way of practical illustration of how the changes will be brought into effect.