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## PRACTICE NOTE

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PN26/2021

Date: 20 August 2021

### BENEFICIAL OWNERSHIP ACT 2017

This Practice Note has been updated to assist with changes introduced to the Beneficial Ownership Act 2017 via the introduction of the Beneficial Ownership (Amendment) Act 2021 on the 1<sup>st</sup> September 2021.

Key changes introduced to the 2017 Act are:

- A reduced period of 21 days for changes to beneficial ownership or nominated officers to be notified to the Registry;
- A reduced period of 21 days for disclosure of beneficial ownership information by nominated officers;
- Powers for the Department to make regulations;
- Powers for the Department to make enquires to establish the accuracy of information and to remove, correct or annotate information which it considers to be false, inaccurate or misleading;
- Separate statements of compliance for the legal entity and nominated officer.

This practice note is intended as a guide to the introduction of the legislation and the changes that will occur as a result of its introduction. It is intended as a general guide only and must be read in conjunction with the relevant legislation (Note 1). It should not be relied upon as a substitute for legal advice.

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## 1. Summary of amendments to the 2017 Act

- 1.1 For full details please refer to the Beneficial Ownership (Amendment) Act 2021 which is available [here](#).
  - 1.2 **Section 3 (interpretation) amended** - the definitions of “Authority” & “Department” are substituted with “the Authority” & “the Department” respectively. And a new subparagraph is inserted to provide for “the disclosure of statistical data relating to beneficial ownership information and the Database to a Department of Statutory Board.”
  - 1.3 **Section 7 (notice of appointment of nominated officer) amended** - The period to notify the Department of any change to the nominated officer or the details of the nominated officer is changed from “one month” to “as soon as reasonably practicable but in any event within 21 days”.
  - 1.4 **Section 9 (duty of legal owners) amended** - The period in which the legal owner must give notice to the legal entity’s nominated officer of changes to the required details specified in section 11 in respect of each beneficial owner of the legal owner’s interest is changed from “one month” to “must as soon as reasonably practicable but in any event within 21 days of the incorporation of the legal entity or the date of a notice received under subsection (2).
  - 1.5 **Section 12 (changes to required details) amended** - The period in which the legal owner must give notice to the nominated officer after the legal owner learns of the change or first has reasonable cause to believe that the change has occurred is changed from “one month” to “as soon as reasonably practicable but in any event within 21 days of the date on which” the legal owner learns of or has reasonable cause to believe a change has occurred.
  - 1.6 **Section 14 (further consequences of failure to disclose beneficial ownership) amended** - The period of “2 weeks” stated in section 14(5) is changed to “14 days”.
  - 1.7 **Section 15 (compulsory submission of registrable beneficial ownership information to the Department) amended** - 15(4)(c) “as soon as possible” is substituted with “as soon as reasonably practicable” and in subparagraph (c)(ii) “within one month” is substituted with “within 21 days”.
  - 1.8 **Section 20 (compulsory submission of registrable beneficial ownership information to the Department) amended** - amongst other changes, subsection (6)(b) the timeframe for which a legal entity already in existence must submit information to the Department is changed from “one month” to “as soon as reasonably practicable but in any event within 21 days”.
- Subsection (7) which relates to a legal entity coming into existence after this subsection comes into operation, is substituted in its entirety and among other changes requires the nominated officer to submit the information to the Department “as soon as reasonably practicable but in any event within 21 days - (a) of the information being notified to the nominated officer; or (b) of (i) information being notified to the nominated officer under section 9(3)(b) or assistance being provided to the legal owner or nominated officer under section 10(2); or (ii) not being given to the nominated officer under section 12, (as the case may be).
- 1.9 **Section 21 (voluntary submission of non-registrable beneficial ownership information) amended.**
  - 1.10 **Section 25 (Department not liable for accuracy of information submitted) amended** - Subsections (2) - (5) inserted. This allows for the Department to (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. Where the Department takes any action with regards to changing the information, it must notify the nominated officer of the relevant legal entity.
  - 1.11 **New section 26A (Requirement to notify errors in the Department) inserted** - 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. *A person who, without reasonable excuse, fails to comply with 26A(1) commits an offence.*
  - 1.12 **Section 32 (regulations) amended** - for “Authority or Department”, in both places, substitute “the Authority or the Department”.

1.13 **Section 42 (statement of compliance in annual returns) amended** - Separate statements of compliance must be made by the legal entity and the nominated officer. The annual statement for the legal entity will be incorporated within the company's annual return. The nominated officer's statement of compliance must be made online.

## 2. What is beneficial ownership?

2.1 Most people looking at a shareholder list on a company file will assume that the shareholder as the legal owner of the shares actually owns the shares recorded against their name and that they will be the person receiving any dividend or share of the profits. This is not always the case; sometimes the actual or beneficial owner will appoint a nominee to hold the shares in their name. This is entirely legal and may be simply a personal preference for not wanting others to be aware of the owner's investment decisions.

2.2 In the Act, "beneficial owner" means the person who ultimately owns or controls a legal entity to which the 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 who exercises control via other means, and "beneficial ownership" is to be construed accordingly (whether or not this is the name recorded in the company's share register).

2.3 The Act defines any beneficial owner who owns or controls more than 25% of the beneficial ownership of a legal entity to which this Act applies as a "registrable beneficial owner" and the required details of any registrable beneficial owner must be submitted electronically to the Isle of Man Database of Beneficial Ownership by the nominated officer/CSP.

## 3. Requirement to have a nominated officer

3.1 The Act requires every legal entity (to which it applies) to appoint a 'nominated officer' unless the legal entity is in receipt of corporate services comprising Class 4 regulated activity provided by a CSP, who may undertake the role or responsibility for which a nominated officer is responsible (further information can be found in the Beneficial Ownership (Nominated Officer Exemption)(Class 4 Regulated Activity) Order 2017.

3.2 The nominated officer must be a natural person who is resident on the Isle of Man 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 (within the meaning of section 3(1) of that Act) of providing corporate services.

3.3 There is a statutory obligation on the legal owners to provide the nominated officer with details of the beneficial owner of the shares if it is not them. There is also a duty on the beneficial owners and intermediate owners to assist the legal owner to ascertain the beneficial owner. Failure to meet these obligations is an offence under the Act.

3.4 The nominated officer needs to be told the name, usual residential address, a service address where it differs from the residential address, nationality, date of birth, date on which the interest in the legal entity was acquired and the nature and extent (expressed as a percentage) of the interest in the legal entity. The nominated officer must be notified of any changes to these details as soon as reasonably practicable but in any event within 21 days of the date of the occurrence of the change.

3.5 Any changes to the Nominated Officer/CSP must be notified to Companies Registry as soon as reasonably practicable but in any event within 21 days of the occurrence of the change using the 'Form NO/CSP'.

## 4. Duty of the nominated officer

4.1 The nominated officer/CSP must hold the "required details" for every beneficial owner of a legal entity to which the Act applies.

The required details are;

- Name;
- Usual residential address;
- A service address where it differs from the residential address;

- Nationality;
  - Date of birth;
  - Date on which the interest in the legal entity was acquired;
  - The nature and extent (expressed as a percentage) of the interest in the legal entity.
- 4.2 Where any beneficial owner holds more than 25% of the beneficial ownership of a legal entity to which this Act applies, that person is a registrable beneficial owner and the nominated officer must submit the required details of each registrable beneficial owner to the Department to be held in the Isle of Man Database of Beneficial Ownership.
- 4.3 How is the information to be submitted? The Act states that the registrable beneficial ownership information must be submitted online, directly to the Isle of Man Database of Beneficial Ownership, by the nominated officer.
- 4.4 How do I access the Isle of Man Database of Beneficial Ownership? The Database will be accessed through Online Services on [www.gov.im](http://www.gov.im). Companies Registry will issue an enrolment code by post to the nominated officer for each company for which they are appointed, this will enable the nominated officer to link the company to their Online Services account. CSP's will be issued with a single activation code.
- 4.5 When does the information have to be submitted? For new incorporations, the nominated officer must submit the registrable beneficial ownership information as soon as reasonably practicable but in any event within 21 days. Any changes to the information must then be submitted to the database as soon as reasonably practicable but in any event within 21 days of the nominated officer being made aware of the said changes.

For legal entities already in existence the nominated officer must be submitted to the database as soon as reasonably practicable but in any event within 21 days of the nominated officer being made aware of the said changes.

Each time the nominated officer updates the information in the database they will be required to confirm that the information submitted is a true record of the required details of registrable beneficial ownership that has been provided to them as nominated officer.

If no changes occur during a year the nominated officer is still required to visit the Database at least once a year to confirm that the information held is both current and correct.

- 4.6 What if there are no registrable beneficial owners? The legal entity must still make a statement confirming its obligations under the Act have been met on the annual return.

The nominated officer is still required to visit the Database at least once a year (by the date by which the legal entity is due to submit its annual return) and confirm that there are no registrable beneficial owners for the legal entity and that the information held is both current and correct.

## 5. Oversight

- 5.1 The Isle of Man Financial Services Authority has oversight responsibilities to ensure the Act is complied with and the nominated officer or CSP comply with their obligations under the Act. Is it a criminal offence not to comply with the Act.
- 5.2 Guidance issued by the Isle of Man Financial Services Authority can be found here;

<https://www.gov.im/media/1357278/beneficial-ownership-act-2017-guidance-june-2017-gc-no-2017-0003.pdf>

## 6. Further information

Should you require any further information then please email your enquiry to [BOAEnquiries.DFE@gov.im](mailto:BOAEnquiries.DFE@gov.im). Our team will respond by e-mail as soon as possible but cannot give legal advice. If you require such advice you should consult an Advocate.

The e-mail address is: [BOAEnquiries.DFE@gov.im](mailto:BOAEnquiries.DFE@gov.im)

Statutory forms and practice notes are available free of charge from the website: [www.companiesregistry.gov.im](http://www.companiesregistry.gov.im)

A list of licenced TCSP providers is available on the Isle of Man Financial Supervision Authority website at <https://www.iomfsa.im/register-search/>.

Details of Isle of Man Advocates are available from the Isle of Man Law Society at:

Tel: +44 (0)1624 662910

E-mail: [enquiries@iomlawsociety.co.im](mailto:enquiries@iomlawsociety.co.im)

Website: [www.iomlawsociety.co.im](http://www.iomlawsociety.co.im)

Copies of Acts of Tynwald dealt with by the Companies Registry can be found on the following website administered by H.M. Attorney General: <http://www.legislation.gov.im/cms/index.php>

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