

4. BILLS FOR SECOND READING

4.1 Beneficial Ownership Bill 2017 – Second Reading approved

Mr Cannan to move:

That the Beneficial Ownership Bill 2017 be read a second time.

The Speaker: We turn now to Item 4 and Bills for Second Reading. The first is the Beneficial Ownership Bill 2017, which is in the hands of Mr Cannan.

The Speaker: Thank you, Mr Speaker.

I am pleased to present today the Beneficial Ownership Bill 2017.

The Bill has 46 clauses arranged over four Parts with four Schedules. At its core it establishes a central database of beneficial ownership of corporate and legal entities to be maintained as part of the Companies Registry by the Department of Economic Development and overseen by the Financial Services Authority.

The Bill sets out the entities which fall within its scope and establishes a framework and timetable for submission of beneficial ownership on to the database. All entities must appoint a nominated officer who has a number of obligations under the Bill and who must be based in the Isle of Man.

The Bill establishes the parameters for access to the database, who is able to access it and the reasons for doing so, and places restrictions on further disclosure of information that has been accessed.

The Bill also makes provision for accessing beneficial ownership information which is not required to be submitted to the database and replicates with modifications some of the provisions in the Companies (Beneficial Ownership) Act 2012, which this Bill repeals.

Finally, Mr Speaker, the Bill provides for external law enforcement and intelligence agencies to access the database via requests to the Financial Intelligence Unit under the terms of the beneficial ownership sharing agreement which the Isle of Man signed with the UK last year. This agreement, formalised through a set of notes, is the main catalyst of the Bill which we have in front of us for Second Reading today. That agreement provides for the sharing of adequate, accurate and timely beneficial ownership information upon request for the prevention and detection of serious and organised crime. In order to meet our obligations, the Isle of Man has to establish a central database of beneficial ownership of the widest possible range of corporate and legal entities incorporated in the Island by 30th June 2017 – so time is not on our side.

Although the Exchange of Notes was the main catalyst for this Bill, it was only one of a number of international developments which have consistently raised expectations in respect of how jurisdictions capture and share beneficial ownership information. Against this backdrop, the Island has been mindful of the need to clarify its position on beneficial ownership. In June 2013 the Government published an action plan which agreed to review existing provisions and consider whether the introduction of a centralised registry would improve transparency of the ownership and control of companies. This plan was followed in June 2014 by a public consultation on this important area of public policy.

Although the Government concluded from this consultation that a public register of beneficial ownership was not appropriate, not least because of the robustness that we have in place currently on the Island, pressure on international finance centres from a number of sources to have a central register has continued to grow. The Exchange of Notes was a direct result of this pressure, which in order to be put into effect requires new legislation. The Treasury, working closely with the Chief Secretary's Beneficial Ownership Group and the Attorney General's Chambers, produced a Bill which was subject to public consultation towards the end of last year.

Following close consultation and examination, all responses have been reviewed and a number of changes to the Bill were made. Where possible, given our commitments to the Exchange of Notes, we have sought to address concerns that were raised in the consultation. For example, the Bill now includes further restrictions on persons able to access the database, both internally and externally; there is better alignment with existing obligations under the anti-money laundering and combatting terrorism financing codes for those entities which are already covered by that code; the provisions in the consultation draft of the Bill which paved the way for potential future access by obliged entities – for example, financial institutions undertaking customer due diligence, and persons with a legitimate interest such as journalists – have been removed.

As the impact assessment makes clear, the Bill will have resource implications for a number of Government bodies, particularly for DED and GTS in respect of establishing and maintaining the database; the FSA in terms of its oversight; the Financial Intelligence Unit (FIU) in respect of responding to external requests under the terms of the Exchange of Notes. The resource implications are unavoidable but will be kept to a minimum wherever possible.

Although the heightened atmosphere that existed when the Exchange of Notes was signed has subsided, we should be clear that pressure for the introduction of public registers of beneficial ownership remains. The Island has been able to resist these pressures because of our commitment to introduce a central register, but of course we should be in no doubt that a significant constituency of international opinion remains for public access to such registers.

Finally, it is worth noting that successful passage of the Bill will help the Isle of Man address some of the shortcomings identified in the recent Moneyval report. It will also assist the Island in responding to the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes questionnaire which is currently being collated by colleagues in the Income Tax Division.

Mr Speaker, Hon. Members, the Beneficial Ownership Bill establishes a central database of beneficial ownership in the Isle of Man for the first time. In doing so, we honour our commitment to the UK and bring the Island in line with similar developments, not just in the EU but with other Crown Dependencies and Overseas Territories.

The tight timetable set out in the Exchange of Notes is challenging, but the Government has sought to strike the right balance within the time available between honouring our international commitments and producing a piece of legislation which meets the Island's needs.

I very much hope that Hon. Members will be able to support its passage through this House.

Thank you.

The Speaker: Hon. Member for Middle, Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: Hon. Member for Ramsey, Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

So, 'BOB' – as this Bill was referred to by one of my hon. colleagues.

I fully understand why we are bringing this Bill and I am very much in favour of ensuring the Island is up to date with its international agreements and with compliance, but I am not entirely sure why it is always the Isle of Man that is leading the way in some of these areas. (**A Member:** Hear, hear.) A great number of our competitor jurisdictions are far behind us in the field of international co-operation and transparency, and I am not convinced that jumping feet first into these sorts of arrangements is necessarily in our best interests. I would urge this Government to take caution with regard to being early adopters in this area and instead let others lead the way whilst we follow in their well-trodden footsteps. However, I appreciate that taking this Bill off the table and waiting to see how others handle the circumstances in which we find ourselves is not really an option at this stage.

Firstly, some positives about this draft: I am very glad that following consultation a number of positive changes were made, including the removal of the permitted groups able to access the data.

Set against this, I have a number of concerns. Firstly, we have not had any time to consider the consultation responses, which I note were published yesterday. How can we sensibly debate a Bill that has the potential to impact significantly on one of our largest industry sectors without having had chance to understand the effects this sector believes the Bill could bring? This consultation certainly was not complete. I know there are still a large number of concerns regarding the Bill as drafted, especially in relation to alignment with our current AML of CFT requirements, which have not been addressed and no further consultation is ongoing.

Secondly, extending the 2012 Beneficial Ownership Act is not the whole story. That Bill did not cover the CSP industry, who were exempt and who represent the vast majority of Isle of Man companies. This extension is a huge step.

And we have not decided to follow the UK approach of setting down clearly in legislation exactly what the criteria are for beneficial ownership. In the UK this is embedded in the detail of their Bill. Instead, we are choosing to allow the FSA to write this part of the law for us. The FSA is not a legislative body and yet the decision has been taken to allow them to define exactly who a beneficial owner is under the law. Yes, the FSC should be writing guidance as to how the law works in practice, but they should not be left to determine critical details like this, especially wholly without any form of parliamentary oversight. I urge the Treasury to rethink this approach and instead to set down the criteria clearly in the Act as the UK have done, or at the very least require that this guidance produced by the FSA comes back before Tynwald for approval before it is issued.

When looking at these criteria the Treasury need to consider exactly who they are looking to capture with this register. The UK equivalent register, the Persons of Significant Control Register, captures only 25%-plus shareholders, those with more than 25% voting rights, those with the ability to appoint the majority of directors, and individuals who can or do exercise significant control. Our register will include a broader range of people, and when this broad definition has to be clarified and interpreted by the FSA I am concerned at the route this will take us.

Why are we trying to reinvent the wheel? Why are we going so much further than the UK and at such a divergence? We have an Exchange of Notes that commits the Isle of Man and the UK to the same level playing field and yet we are ignoring the steps they have taken and going almost entirely our own way. If these Notes set down the same requirements on us and the UK, then surely our systems should be analogous – not identical but similar enough in application and in scope.

Another area in which we are not following the UK is in exempting certain types of business. The UK has opted to exempt limited partners in limited partnerships – for example if they are solely beneficial owners as a result of their shareholding. They have done this because they understand the nature of this type of relationship is that of investor and investment and because they understand the impact not exempting them could potentially have on their financial services industry – and we are not following suit.

Collective investment schemes, which were originally exempted under the consultation draft, now no longer are. There is no obvious reason for this removal. These are investment vehicles and it is this context that is missing from the Bill. These entities are already well regulated, the nature of which reduces the sort of risk we are looking to capture with this register. The requirement to search out a natural person that beneficially owns them, in some cases, will be a little over-simplistic and will place an undue burden on industry. This is why the UK Act has a clear definition of beneficial owners when looking up through corporate structures, compared to our draft that simply states:

Beneficial ownership may be traced through any number of persons or arrangements of any description.

Why has this decision been taken? We are ending up capturing a much wider range of people than I believe was ever intended by the Exchange of Notes, and certainly much more than is being captured by the UK, who are working to the same standard.

Beneficial Ownership is not simple, and yet we have somehow ended up with a very simple piece of legislation. Our designation is three paragraphs. The UK needed a whole schedule to get to grips with some of the complexities. That is because the UK has a number of commonsense exclusions.

Take a liquidation, for example. A liquidator would be exempt in the UK, but not under our Act. The creditors in a liquidation would be exempt in the UK, but not under our Act. Does anybody really believe these individuals are the beneficial owners of a company? I am actually looking forward to seeing my first liquidation with creditors that owe the Treasury money and seeing the Treasury Minister's name appear on the Register of Beneficial Owners as a beneficial owner of that entity.

The Act needs to be looked at again in the light of what has actually been done in the UK and what is actually required by this Exchange of Notes, and the detail needs to be here in the legislation and not in any subsequent guidance which is not subject to change by Tynwald, which is subject to the whims of the FSA and crucially does not have all the characteristics of law. Let's not fool ourselves, Hon. Members: this Act is not fit for purpose. We cannot rely on the FSA to draft our legislation for us and we cannot oversimplify this issue for expedience's sake.

Moving back into some more detail, what information are we actually being asked to record here? The UK Act requires the name, address, nationality and date of birth, as well as listing what the reason is they are on the register. We are also asking for somebody's occupation, gender and place of birth. This goes far beyond the Fourth Anti-Money Laundering Directive and in my view is not compatible with the Data Protection Act. Information recorded needs to be adequate, relevant and – this is key – limited to what is necessary. (**Mr Thomas:** Hear, hear.) The UK can identify an individual with less information, without knowing their gender or occupation, so it clearly not necessary. So why is it necessary that we record this information here? If the Treasury does not bring amendments to this clause I am minded to myself.

And whilst we are on this particular clause, if we define a beneficial owner as someone who has another ownership interest, how do we define the percentage of this? How do you define the ownership interest in a trust or a foundation, both of which can be entirely discretionary in nature? Surely this clause needs to incorporate this possibility.

Interestingly, the Act makes no reference to ownership that has vesting rights attached. So, for example, if there are conditions attached to your ownership in a company – you must be 21, or the ownership conditions take effect after a particular event – the Act would seem to treat these as always having been in place, rather than reflecting the reality of the ownership. This is clearly because the Bill needs to be read in conjunction with any detailed guidance – guidance that we do not have, guidance that cannot be written until the Bill has been finalised. That is exactly why the detail needs to be here and not introduced later. It is like purchasing a house off plan without seeing the plans.

One area in which some detail has been included is that of the functions and powers of the FSA. The FSA is being given the power to inspect the books, accounts and documents of a relevant person and also to take possession of these documents. Whatever happened to due process? We are not just talking about regulated entities here; we are talking about every corporate entity on the Island, their shareholders, their directors, their beneficial owners. And there is no right of appeal. If someone does not comply with this request, the FSA can take them to court to get a search warrant. And here is the fun part: to get a search warrant the FSA only have to prove that the person refused to comply with their notice; they do not have to prove the notice was reasonable in the first place.

If the FSA needs to access books and documents and needs powers to do so, then they should be exercisable only through the courts. (**A Member:** Hear, hear.) Sorry, the Clerk has now made me lose my place and confuse myself a little bit. I do apologise. These powers should be exercisable in exactly the same way the Police need a court order to seize documents and books for one of their cases. The FSA should not be given *carte blanche*.

Why is this so broad? We are told the purpose of the nominated officer is to provide somebody on Island who is accountable, and yet the Bill allows the FSA to also make everyone else in the chain of ownership accountable. So why do we need a nominated officer at all? Why create this new

corporate officer who takes some legal responsibilities away from the directors of the company, if they are not necessary?

Mr Speaker, these are not all of my concerns with this Bill, but they are my more significant or substantial ones. I would respectfully urge the Treasury Minister to go back and revisit this Bill in detail to look at exemptions, to look at the definitions and the application of the law to make sure we get it right.

Just to give Members some indication that I am not the only one who has these concerns, I will read some of the summarised consultation responses: 'The Bill exceeds what is required'; 'The Bill is overly complicated and not integrated with our existing requirements'; 'The scope of the Bill seriously undermines confidence in the Isle of Man as a jurisdiction for conducting business and could be detrimental to the Isle of Man's economy.'

I will close again by repeating that I am supportive of the introduction of a beneficial ownership register, but let's get it right, otherwise we run the risk of seriously damaging our industries and our ability to compete on the international stage.

I do appreciate the time pressures we are under, but I do not think in good conscience I could support the Bill as currently drafted without some commitments from the hon. mover that a number of these issues will be addressed and the negative impact on industry and the Island will be mitigated.

Thank you, Mr Speaker.

The Speaker: I call on Dr Allinson, Hon. Member for Ramsey.

Dr Allinson: Thank you, Mr Speaker.

Hon. Members, when I moved to the Isle of Man my family and friends accused me of being a tax dodger moving to a tax haven, and at the time we even got a mention in *The Sopranos* when Tony Soprano wanted to launder some money and bring it through the Isle of Man. In the last 16 years major changes have happened to bring this jurisdiction up to a decent quality, to make sure that our laws are fitting. However, that mud still sticks. There are people who will use 'tax dodger' and 'tax haven' against us as much as they can.

I would like to thank the Treasury Minister for giving some of the historical background for the Exchange of Notes which happened in April last year. The signing took place between our then Chief Minister, Allan Bell, and the Financial Secretary to the UK Treasury. Our Chief Minister said at the time it was to help set an example for a global solution to tackle corruption, money laundering, terrorism financing and other serious and organised crime. I cannot disagree with that, but should we be the ones setting the example?

Let's put this in its historical perspective. The signing of the Exchange of Notes was days after David Cameron released his income and tax payments for the last six years, which showed that he had benefited from the Panamanian-based offshore trust set up by his late father. It was after the whole Mossack Fonseca scandal due to hacking into a database and showing the beneficial owners of various companies. David Cameron at the time was campaigning for a referendum to stay in the EU. Well, haven't things changed since then! Only last week an eminent parliamentarian stated:

We have a much more transparent, much cleaner system than the countries that promulgate these rules in the first place. The popular notion that somehow there is something nefarious going on in a small island that is relatively successful is false.

That could have been our own Treasury Minister, but in fact it was Bermuda's Deputy Premier and Finance Minister. There are definitely moves afoot, by people who should know better, to paint us as a tax haven and tar us with this brush, and I think we need to oppose these.

I welcome legislation on beneficial ownership that brings our system up to modern standards. However, I think we need to think very carefully how this is brought in, when it is brought in and who it is brought in to benefit.

This House, this Government, does not necessarily create jobs, it does not create wealth, but it passes laws and legislation which enable private individuals and companies to do so. The continued

growth and prosperity of the finance sector is essential to our economy, an economy which we depend on to fund the NHS and social care systems which underpin our community.

The summary of the responses to the public consultation showed a lot of concerns by the finance industry. The conclusion was that respondents mostly acknowledged the position of the Government and the pressure it is under in what is a changing international landscape. However, most of the critical comments can be categorised under the broad concern that the Bill exceeds what is required to meet international standards, including the European Union's Fourth Anti-Money Laundering Directive and the Exchange of Notes with the UK. Industry respondents expressed concern that the scope of the Bill and the extent to which some of its provisions exceeded what was required for international compliance could make the Isle of Man a less competitive jurisdiction. Individual submissions looked at things like the Exchange of Notes, that such powers would enable the FSA to assist compliance by legal entities, nominated officers, legal owners, beneficial owners and intermediate owners. This we consider goes beyond the scope of the Exchange of Notes.

Furthermore there were concerns that the flexibility that exists within the Bill to extend the scope at any time may cause some parties to query why the Isle of Man is not creating a public register now, and put pressure on the Isle of Man to do so. Such assumptions do not provide the required certainty or stability for business to choose the Isle of Man.

Whilst I trust that our Government will make sure that the finance sector is protected, I do have some real concerns about this Bill, and some of the scope it represents. I will be voting for this Bill, because I have an intrinsic trust in the finance Minister and the team who is behind him in making sure that you listen to the consultations and I also have trust in our Chief Minister for battling against some people in Westminster who do seem to have their own agenda in terms of making such a database into a public database, perhaps for their own benefits.

However, I would like the finance Minister to take on board the result of the consultation and work with the private sector to make sure that they are not disadvantaged by this legislation. I would like to make sure that the finance sector on the Isle of Man is at the cutting edge and not put to the back of the bus.

Thank you.

The Speaker: Now, I understand that Mr Hooper, you wish to raise a point of order.

Mr Hooper: Point of order, Mr Speaker.

I have been advised that I should probably declare that, because my wife works for the financial services sector, I may have an indirect pecuniary interest and I should declare that here.

The Speaker: Thank you.

I call next on the Hon. Member for Douglas East, Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

Just one point that I would like to make, and I concur with many of the comments already made by the Members for Ramsey. But I must express my concern about if Mr Hooper's comments are correct, the ease with which it appears to be possible for the authorities to remove data from individual companies.

I remember very well, when we were dealing some years ago with the Criminal Justice (Miscellaneous Provisions) Bill, how concerned the House then was about making sure that removal of information from companies was strictly controlled. As it stands, and from what I understand from Mr Hooper, it does appear to me at this stage that the rights that we are wanting to empower the FSA with are potentially verging on the draconian.

I look forward to the Treasury Minister addressing this particular point.

The Speaker: Hon. Member for Middle, Chief Minister, Mr Quayle.

The Chief Minister (Mr Quayle): Thank you, Mr Speaker. If I can just pass a few comments.

I think considerable time has been taken on this issue in the previous House and we risk considerable and significant reputational damage, if we do not honour our commitment to play our part in the fight against financial crime, terrorism and corruption.

We do not want the Isle of Man being compromised or used for such illicit practices. I do understand the concerns that have been put forward by Members, but there are bigger, broader concerns of not doing this legislation. They are significant.

Thank you.

The Speaker: I call on the Hon. Member for Onchan, Mr Callister.

Mr Callister: Thank you, Mr Speaker.

I have not prepared a speech on this, but I will support the Beneficial Ownership Bill at this stage; but I also share the concerns by other Hon. Members in this House. I think Mr Hooper, MHK for Ramsey, summed it up very well and very eloquently.

But I do have an air of caution, following on from the Chief Minister's comments there. Maybe the Treasury Minister could confirm how many other offshore jurisdictions currently have a beneficial register currently in operation. I know, having worked in this industry for over 18 years, the hoops that the industry have to go through daily, monthly, annually. One of the ones that I did have serious concerns with was FATCA. It is such a minefield and an administrative burden on the CSP industry to submit this data every year to the Isle of Man Tax Office and I certainly do not want the industry to have to submit data similar to FATCA again in the future.

I hope, from what I have understood, the nominated officer does have an important role. It is right to have somebody accountable here in the Isle of Man that can suddenly answer the concerns and questions from the regulator as to who is behind any structure. But I do have serious concerns on this Bill. I will support it at this stage, but I hope the Treasury Minister can sum up and actually tell us how many other jurisdictions currently have a beneficial register of this type in operation as of today. Thank you.

The Speaker: I call on the Hon. Member for Middle, Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker.

Perhaps it might help some Members if I was just to share some conversations I have had with people in the industry on this matter, because I know there are some concerns. I have spoken to a number of senior people in the corporate service provider sector.

Their general view is that it is not welcomed but they accept that it is required, because of the overall international situation that we in. We are a reputable international finance centre. A number have acknowledged that concerns have been taken on board following the consultation process and changes have been made. The view, I think, is that this will result in additional cost and additional process.

But will it have a major detrimental negative impact on the local industry? That is not what I am hearing. I am hearing that this is some additional work, but actually, it is more about cost and process than a material factor in terms of the future of the industry. Just in terms of a couple ... or perhaps one particular point that was raised by the Hon. Member for Ramsey, in terms of the percentage ownership, the registrable beneficial owner is defined in the Bill as a beneficial owner who owns and controls more than 25% of the beneficial ownership, so there are some factors there.

Thank you.

The Speaker: I call on Mr Cannan to reply to the debate.

Mr Cannan: Thank you very much, Mr Speaker.

A very interesting debate, with some very interesting comments!

First of all, just in generic terms, the Hon. Member for Ramsey, who has clearly declared a matter of interest in that his wife is involved with a corporate service provider, has highlighted a huge number of points. But I question whether actually that is industrywide or whether those points are coming from one particular and specific source.

I must also say that yesterday afternoon I visited and was shown round one of our leading corporate service providers on the Isle of Man with a significant number of employees on the Island, with international offices – a growing reputation, I might add, and a diversified business base. I specifically asked them about the Beneficial Ownership Bill, and whilst like everybody else within the corporate service provider (CSP) and trust industry in general, it is not exactly a piece of legislation that has been universally welcomed. Nevertheless, they accepted the reason, the motivation, the need for it to be here and they had no significant issues with the terms or requirements placed on them by this Bill. And that was it – end of conversation. It was a very simple conversation.

Now, I know that there are people out there who are disturbed, shall we say, possibly bitter that this Bill is coming through and have raised a huge number of points. A consultation process has taken place. The Association of Corporate Service Providers (ACSP) has to be regarded as the main respondents, or certainly the people who are key to listen to – as well as the other 13 or so responses that we had. Yes, in their detailed response, just about all the issues that the Hon. Member for Ramsey has raised are contained in here.

We have given way on some of these issues. We have noted their concerns. We have listened to the concerns. We have understood the concerns, but following the representation that has been made to us, the Bill has been amended. We have already amended it. The express necessity to obtain required details of all beneficial owners regardless of size has been removed. Nominated officers who have obligations under the Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Code now have no significant obligations imposed by the Bill in relation to non-registrable beneficial ownership. The Hon. Member talks about his concern about having nominated officers. There are *already* significant requirements on company directors and other senior management officers, particularly under the Anti-Money Laundering Code within these businesses.

Yes, it is another requirement, but we need to have that specific requirement to ensure that we actually have a realistic opportunity of getting the proper information that we need. Isle of Man structures, by the very types of business that we do, are often complex structures. There are various different rules and regulations about the requirements of directors or registered agents on the Island. It is not simplistic. Yes, we could detail absolutely every nth degree in the Bill. But where is that going to get us? Probably into huge complications. It is almost a sort of filibustering attempt to prevent the Bill from going through.

I am quite willing for the FSA to bring back their regulatory guidance when they produce this in terms of how the application will be made to those relevant businesses. I do not have an issue with that. But we as an Island are taking the first steps forward here. I do not deny that this Bill is probably, by its very nature, as a first step likely to have some inconsistencies, nor that there will be questions because of the complicated structures that often exist within that corporate service world – often for very genuine reasons, but nevertheless, by necessity, there are complex structures.

I think it is probably unlikely that we will be able to define every single requirement and that those requirements will have to be built and developed in consultation, and in consultation with the regulatory authorities. There is a commitment within this Bill that if there are any changes to the requirements of beneficial ownership in terms of its definitions, the Treasury can bring it back by order. So what we are saying is that if a business ... if the FSA fails to get relevant agreement, yet feels that it needs to bring through the regulation and implant it into law, we can do that. There is plenty of scope here. We have to trust at times that those people to whom we pay vast amounts of money to be experts in their field are able to work together to achieve the relevant aims.

Now, you also talked about the FSA and its huge sweeping powers. Well, the FSA is the Financial Services Authority: it *has* huge sweeping powers! It can already march into a business and effectively shut it down, if it believes there to be money-laundering, terrorism or a failure by the directors to meet their obligations. So this is nothing new. When you read these things, yes – quite scary. But if people are going about their business as they ought to go about their business, then what is the problem? Why should there be a big issue?

Effectively all we are doing is ensuring that the Financial Services Authority has the authority to effectively regulate what we are requiring them to do. So I do not see that the Bill, although generic, is not explicit. I think it is very clear in terms of its definition.

Where there is likely to be work required, and possibly where the Hon. Member for Ramsey has a slight point is that in terms of determining the more complex structures, who will be the beneficial owner? But that work needs to possibly be done by those who are in the Authority and in the best position to judge it. I do not think that the Bill could possibly be any clearer in terms of intent, and what it is actually setting out to do:

‘Beneficial owner’ means a natural person who ultimately owns or controls a legal entity to which this Act applies ...

That is absolutely clear. We are not looking at nominees or some sort of complicated trust structure. We are saying, ‘You cut through that. We want the natural living person who is the beneficial owner.’

Now, there may well be arguments because we know that there are very clever people out in the industry who, whatever you try and determine down in law, may try to find a way around things. But that is why we need, by the same token, to ensure that the FSA has the power, because we will never get anywhere because any time something goes wrong, it will have to be brought back to this Hon. Chamber here and we will have to start having a discussion, when none of us, with due respect – or maybe some of us but none of us generally – have that kind of intricate knowledge unless you happen to be an expert in the field, such as the Hon. Member for Ramsey, who clearly understands some of the concepts that we are talking about here. But I am satisfied there has been strong and significant consultation with industry, to try and address some of those points.

There are other points as well, where we have actually given way or receded in terms of how the Bill is actually applied. I said that nominated officers who have obligations under the Code have no significant additional obligations imposed by the Bill in relation to non-registrable beneficial ownership. If trust and corporate service providers (TCSPs) wish to, they can now rely upon work that they had to do anyway. They have had to do the work anyway, under the AML/CFT Code – and let’s be clear, they have all got a responsibility to have this information on their records anyway. The only difference now is that they have actually got to provide it to the authorities, although the register is actually going to be confidential and is not going to be a public register.

The onus now – unfortunately, but necessarily so – is for companies to transfer that information to the beneficial ownership register and for companies effectively to have a nominated officer, so that we or the Authority can clearly identify who the person is within the business they need to speak to, if they need to query, challenge or check on details within the register. That seems perfectly, eminently sensible to me to have that.

As I said, there are other individuals who have those sorts of responsibilities within a business. It has not been a problem.

We talk about the guidance that is being issued by the FSA. As I said to Hon. Members, I am happy that we bring this guidance back to this Hon. Chamber for referral and if necessary, for further discussion. I do not have an issue with that.

I think, Hon. Members, I have really tried to cover the key points. The Hon. Member for Ramsey was incredibly technical about how he went about it. I have seen most of that, and most of you can clearly read that. It is within the Association of Corporate Service Providers’ response, and you could expect the industry body somewhat fighting against this because it is another piece of legislation, another piece of red tape that adds probably a bit more cost to their business. But from an Isle of

Man perspective, from a national perspective, in terms of our standing within the community, we are committed to this cause of ensuring that our business is free as much as possible from crime, from organised crime, from money-laundering and that those people, if they choose to engage in that type of business, are clearly identifiable. That is another step forward, and I think that is the responsible step forward. **(The Chief Minister: Hear, hear.)**

Over the last 12 months or so, or six to eight months since Brexit, we have been working incredibly closely with Westminster, to ensure that the Isle of Man has a credible role to play in the future, whatever that future holds, whether with international trade agreements or whether that future partially lies within the EU and further afield with international companies, and we will be able to go forward with the UK on a responsible footing. Already, our business levels since Brexit appear to be up. We have had some hugely positive news on this Island recently, over the last six months, in terms of receipts that are coming into Treasury, the numbers of people in employment.

I know there are concerns, I know there are levels and areas of concern, but in my opinion, whilst we will need further work in consultation with the FSA and the industry bodies in areas where they believe there to be technical challenges, in general terms the Bill is absolutely clear in its intent and its requirement.

I think it was the Hon. Member for Onchan who felt that we were leading the way. I can tell you that all the Crown Dependencies are signed up to this now, and that they are all working to produce their own pieces of legislation in that respect. The deadline is incredibly tight.

Not only by the time we have had, if we get through this – once we have gone through our clauses, we have gone through our Third Reading, we have gone through Legislative Council, we have got approval – we have got to get this register up and running, we have got to get the guidance issued by the FSA ... But we are committed to it. That is what we are doing. I do not believe the Isle of Man is going way beyond its requirements. My view is that in terms of definitions, in terms of the requirement on nominated officers, it is the responsible thing to do, that there can be no come-back and we can argue our cause strongly with those who are in Westminster, wanting us to have a public register, that we have taken the steps necessary as a responsible jurisdiction to be in a position to adequately and properly identify beneficial ownership in the case of crime, money-laundering or other criminal activities.

I beg to move.

Mr Callister: Mr Speaker, can I have a point of order, if possible?

The Speaker: Mr Callister.

Mr Callister: I did ask the Treasury Minister to give some sort of figure of how many other offshore jurisdictions actually have this type of register in place as of today.

It is important, because again, what I am trying to say is that the Isle of Man is having to lead –

The Speaker: Hon. Member, it is not a time for supplementary speeches. The Minister has had the chance to sum up **(Mr Callister: Okay.)** and try and encapsulate the debate as he sees fit.

The question before the House is that the Bill be read for a second time. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

**Beneficial Ownership Bill 2017 –
Referral to committee of three –
Motion not carried**

The Speaker: During the course of the Second Reading, I have been provided with a motion by Mr Hooper under Standing Order 4.10, that the clauses of the Beneficial Ownership Bill be referred to a committee of three Members with the powers to take written and oral evidence pursuant to sections 3 and 4 of the Tynwald Proceedings Act 1876 as amended, to consider and to report to the House.

Mr Hooper, I call on you to move.

Mr Hooper: Thank you, Mr Speaker.

I am actually quite glad the Treasury Minister says that we need to work in consultation with the FSA and industry bodies to get this Bill right, because that is exactly what I am proposing here: that we spend a little bit more time working on the detailed clauses of this Bill, with the industry and with the FSA to make sure that what we are bringing back for the clauses stage is the right Bill.

I take exception to a number of the Treasury Minister's comments, to be honest. I have not seen the ACSP response, Mr Cannan. All I have seen is the responses that have been submitted and were posted online by the Treasury yesterday. So if many of my concerns are reflecting those being reflected by the wider industry, then surely that is a good thing.

You mentioned that the Bill itself does not go beyond its requirements, but that is directly in contradiction to the consultation responses we have received. The consultation responses clearly identify that there is a feeling that the requirements of this Bill go further than the current AML Handbook, and that is going to place a burden on industry.

The Treasury Minister identifies that we are unlikely to develop requirements if we need to put the specifics in the Bill, but the UK have managed to do this. I cannot believe that something the UK can achieve is beyond us.

I have already set out all my concerns originally. I do think we need to work with industry and work with the FSA and work with it in respect of our Exchange of Notes and our international requirements, to get a Bill together that is not going to be too burdensome for industry but also does meet the requirements that we have signed up to.

I do not want to delay this Bill any more than is absolutely necessary, and I do not want to put us at risk of missing our timetable. But I do think, if we are going to be passing legislation, it has to be fit for purpose.

Thank you, Mr Speaker.

The Speaker: Motion moved?

Mr Hooper: I beg to move:

That the clauses of the Beneficial Ownership Bill be referred to a Committee of three Members with powers to take written and oral evidence pursuant to sections 3 and 4 of the Tynwald Proceedings Act 1876, as amended, to consider and to report to the House.

The Speaker: I look for a seconder, if there is one? Dr Allinson.

Does any Member wish to speak? I call the Treasury Minister, Mr Cannan.

Mr Cannan: Thank you, Mr Speaker.

I have already outlined to Hon. Members, first of all, our international commitment in an Exchange of Notes that took place in April 2016. Whether we like it or not, whether that Exchange of Notes was signed by a previous administration or by this administration is frankly irrelevant. The fact is we have signed an international agreement and we must honour that international agreement. That international agreement has set us a timescale and we need to abide by that.

I just want to go back to this business of the industry. I have already told you that the industry is not a hundred percent happy with the Bill, but can you expect the industry to be jumping up and

down for joy with the fact that they have got additional regulations to comply with? It is unlikely. I accept that some people will be unhappy about this for various reasons, but predominantly as I said to you, if it is so widespread – and I give Hon. Members absolute assurance, I am not going to name the business, but I was with a leading corporate and trust services business on the Island – why did they not say to me yesterday, when I specifically asked about the Beneficial Ownership Bill and specifically asked them if they had any issues, did they not tell me anything other than they accepted the reasons why we had to have this?

Now, Hon. Members, I would suggest to you that the only thing that will be resolved by going to a committee at this stage is an in-depth analysis of differences between 2006 and 1931 companies; Hon. Members getting to grips with why an offshore business should have directors either based overseas and a registered agent over here ... We have already made a commitment to this House to try and allay some of these issues, if they are genuine issues, or rather than perhaps, dare I say it, an attempt to destabilise what is a vital agreement in terms of our national interests and our way forward.

I have already made a commitment that I will come back with the FSA guidelines and guidance on this matter, and I will present that to this Hon. House, and in fact to Tynwald, for approval, to ensure that we get a proper guidance measure from the FSA and to reassure Members.

I hope that Hon. Members will accept that that actually will probably deal with what the Hon. Member is saying; but I hope Hon. Members will also say that this business of the industry is not necessarily widespread – that the sentiment is not necessarily reflected from one individual company to another individual company; and that Hon. Members will accept that we have the strategic group that has dealt with this has had consultation, has listened to that consultation, has accepted some of the concerns, has made amendments already to the Bill to reflect those concerns, and that we have to press ahead with a realistic Bill that covers and meets our international commitments and gives the scope for proper protection to be given to the authorities so that we can properly identify the beneficial ownership. I think the Bill covers that and the key perhaps to delivering this completely, afterwards for the Members, is that commitment to bring forward the FSA guidelines.

Thank you.

The Speaker: If no other Member wishes to speak, I call on Mr Hooper to reply to the motion.

Mr Hooper: Thank you, Mr Speaker.

The Treasury Minister seems overly focused on this idea that industry is not a unified body and I would agree with that. I agree with his comments that we need a Bill that is fit for purpose, that we need to get this in with the right scope. My feeling is this Bill does not have the right scope. This Bill is, for want of a better phrase, a gold-plated standard, and I do not understand why the Isle of Man is being the one to put their foot forward first and say, 'This is what we're going to do.' We are going to have some very onerous requirements here on the Island, which our competitor jurisdictions will not follow. I will be shocked if our competitor jurisdictions follow our method here –

Mr Cannan: Point of order, Mr Speaker, if I may?

The Speaker: If it is a point of order, yes.

Mr Cannan: The Hon. Member has made a statement, assuming that jurisdictions will not follow when actually, can I just make it clear that they *have* completed an Exchange of Notes –

The Speaker: Fine, that is not a point of order –

Mr Cannan: I ask the question, can he make that statement?

Mr Hooper: I am happy to clarify.

The Speaker: If the Hon. Member wishes to give way, that is one thing, but I do not think it is a point of order.

Mr Cannan: Well, point of order, Mr Speaker.

Can I ask whether an Hon. Member can make a statement about the intentions of other jurisdictions in such a manner, to say they will not follow what they have agreed to do?

The Speaker: Mr Hooper.

Mr Hooper: I will clarify my comments, Mr Speaker.

They have signed up to the Exchange of Notes. I am aware of this. They have committed to providing a beneficial ownership register by the same date that we have. I cannot see them going as far as we are; that is all I am saying here. I am not saying they will not or they shall not; I am just saying that I cannot see them going as far as we are in respect of some of the requirements in this Bill and that is primarily because I see a lot of the requirements in this Bill are not reflecting the Exchange of Notes. I think this Bill is going too far in a lot of areas and maybe not far enough in others. That is why I think it needs to go out to a committee to be looked at in detail, to revisit the principles – sorry, not the principles behind the Bill, because there is nothing wrong with those, but the actual detail of the Bill is what I am talking about here.

That is all I have to say, Mr Speaker. Thank you. I beg to move.

The Speaker: The motion is that the clauses of the Beneficial Ownership Bill be referred to a committee of three Members with powers to take written and oral evidence pursuant to sections 3 and 4 of the Tynwald Proceedings Act 1876, as amended, to consider and to report to the House.

Those who are in agreement with that motion, please say aye; against, no. The noes have it.

A division was called for and electronic voting resulted as follows:

FOR

Mr Callister
Ms Edge
Mr Hooper
Mr Moorhouse
Mr Perkins
Mr Speaker

AGAINST

Dr Allinson
Mr Ashford
Mr Baker
Miss Bettison
Mr Boot
Mrs Caine
Mr Cannan
Mrs Corlett
Mr Harmer
Mr Malarkey
Mr Peake
Mr Quayle
Mr Robertshaw
Mr Shimmins
Mr Skelly
Mr Thomas

The Speaker: There are 6 votes for, 16 votes against. The noes have it. The noes have it. We turn now to Item 4.2 on our Order Paper, the Fraud Bill 2017, in the hands of Miss Bettison.

Mr Cannan: A point of order, Mr Speaker. Do we not need to –?

The Speaker: One moment. A point of order?

Mr Cannan: Do we not need to approve the Bill for Second Reading?

The Speaker: We have approved the Bill for Second Reading, Mr Cannan. We did that before. It was done without division.

Mr Cannan: Sorry. Apologies.

The Speaker: We then had the motion to committee.

Mr Cannan: Apologies, Mr Speaker.

Mr Speaker: Okay. That was a point of order. That is fine. *(Laughter)*