

4. Beneficial Ownership Bill 2017– First Reading

Mr Henderson to move:

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

The President: With your permission, Hon. Members, I would like to begin the remaining business with Item 4, the First Reading of the Beneficial Ownership Bill. Are Members content?

Members: Agreed.

The President: Agreed, thank you.
I call on Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane and I thank Hon. Members for their agreement on being allowed to move the First Reading as the first Item of business.

Eaghtyrane, I wish to present to the Council the Beneficial Ownership Bill 2017. My introduction will be longer than usual as I feel the Hon. Council require a more in-depth presentation as this Bill is complicated and has important international ramifications for the Island.

This Bill is a direct consequence of a commitment given by the Isle of Man Government last year by way of signing an agreement with the UK Government, known as the Exchange of Notes, which means we have committed to two new levels of transparency and law enforcement commitments in connection with beneficial ownership issues with registered companies here on the Island. The same principles have been agreed with our sister Crown Dependencies, Guernsey and Jersey.

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 incorporated within the Isle of Man.

The Bill applies to companies established under the 1931 and 2006 Companies Act, a limited liability company to which the Limited Liability Companies Act 1996 applies, a limited partnership to which section 48B of the Partnership Act 1909 applies and foundations within the meaning of the Foundations Act. Foundations are aimed at people from countries that do not have trusts as a basic way of explanation, Eaghtyrane.

There are a small number of exemptions to this general application such as those companies listed on a stock exchange recognised by Treasury. Also, Treasury can by order amend the companies or entities to which the Bill applies.

The central database will be maintained as part of the Companies Registry by the Department of Economic Development and overseen by the Isle of Man Financial Services Authority. The Bill establishes a framework and timetable for submission of beneficial ownership information onto the database. The Bill also 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. To be clear, the database will not be accessible to the general public. All information on the database will be accessible to competent authorities in the Isle of Man – for example, the Assessor of Income Tax, Her Majesty's Attorney General and the Chief Constable for permitted purposes which are themselves defined in the Bill.

Eaghtyrane, the Bill also provides for external law enforcement and intelligence agencies to access the database via requests to the Financial Intelligence Unit, a competent authority named in the Bill under the terms of the Exchange of Notes. These terms include, for example, the 24-hour response time for requests which in urgent cases could be as little as one hour. The Bill controls the external intelligence or law enforcement agencies which are able to make requests to the Financial Intelligence Unit on these terms. It is only those from a country with which the Isle of Man has a beneficial ownership sharing agreement so, in effect, it is only the UK at the present time.

The Bill also makes provision for competent authorities to access 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. To access such information, which could include information which relates to beneficial owners whose ownership level falls below the threshold for submitting it onto the database, that is to say 25% or less than 25%, competent authorities have to serve a notice in that case.

The Bill requires all the legal entities to which it applies, that is to say the companies that I have referred to or foundations, to appoint a nominated officer who has a number of obligations under the Bill. The nominated officer must be either a flesh and blood person or natural person as referred to in the Bill, resident on the Isle of Man or the holder of a licence which permits the holder to carry on the regulated activity of providing corporate services. So, a corporate service provider based on the Isle of Man can in itself be a nominated officer. The nominated officer does not have to be a named person but the CSP itself, to make that clear.

Nominated officers appointed under the Companies (Beneficial Ownership) Act 2012 or the registered agents of 2006 companies, limited liability companies and foundations can automatically transition to be nominated officers under the Bill, subject to written confirmation of the officer's agreement to the appointment. In such circumstances there is no need to notify the Department of Economic Development of appointments separately.

The Bill also has the effect of repealing the Companies (Beneficial Ownership) Act 2012, which should bring comfort to some Hon. Members who have queried if the effects of this Bill will have the effect of causing legal entities to have two nominated officers. The potential for this does not in fact arise as the Bill repeals the 2012 Act.

In remaining committed to our obligations to the UK under the Exchange of Notes, the Government does not wish to unnecessarily burden our industry at a time when the regulatory burden appears greater than ever in a number of areas. As Hon. Members are aware, the requirement for all entities to appoint a nominated officer has been challenged by sections of industry. I can confirm that officers have met with representatives from industry on a number of occasions and very recently communicated via letter, email and other documents to discuss what options may be open to the Treasury in helping to help address these ongoing concerns. I am sure that the results of this consideration will be subject to further discussion at further readings of the Bill and I am aware of positive developments in the past week, not least of which, I am aware of an amendment which may be presented at the clauses stage. Finally, by way of introduction I would like to advise Hon. Members that the Bill was amended by the House of Keys, partly in further response to industry concerns and those of Mr Hooper, MHK.

Eaghtyrane, taking a step back as I have said, the Exchange of Note is the main catalyst for the Bill which we have in front of us for First Reading today. The agreement provides for the sharing of adequate, accurate and timely beneficial ownership information upon request for prevention and detention of serious and organised crime by the agencies mentioned earlier. 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. The Isle of Man Government is committed to having legislation in place by this date so time is not on our side. Jersey and Guernsey have also committed to this timescale, although they are starting at different points than us.

Although the Exchange of Notes was the main catalyst 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 Isle of Man 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 policy area. Although the Isle of Man Government concluded from this consultation that a

public register of beneficial ownership was not appropriate, not least because of the robustness of current arrangements, pressure on international finance centres from a number of sources, including the UK and the EU, to have a central register has now continued to grow.

The Exchange of Notes was a direct result of this pressure which, in order to be put into effect, requires this 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 the close of the consultation all responses have been reviewed and a number of changes to the Bill were made. Where possible, given our commitment 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 those persons able to access the database, both internally and externally. There is also a better alignment with existing obligations under the Anti-Money Laundering and Combating Terrorist Financing Code 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.

We undertook an impact assessment which makes clear the Bill will have resource implications for a number of Government bodies, particularly for the Department of Economic Development and the Government Technology Service. In respect of establishing and maintaining the database the Financial Services Authority, in terms of its oversight, and the Financial Intelligence Unit, in respect of responding to external requests under the terms of the Exchange of Notes and requirements of this Bill. The resource implications are unavoidable but will be kept to a minimum wherever possible.

Progressing to the last part of my speech, Eaghtyrane, although the highlighted atmosphere of improving international standards regarding the access to beneficial ownership information that existed when the Exchange of Notes were signed has subsided outwardly, we should be clear that pressure for the introduction of public registers of beneficial ownership remains a very real and fluid situation. It is only two weeks ago that in the UK House of Commons, at the clauses stage of the UK Criminal Finances Bill a move was made to add a new clause 17 which would have the effect of causing legislation to be in place to legislate specifically to have the Crown Dependencies legislated for to enforce a public register. This move failed but it did attract 180 votes for and 300 against; almost 30% of those voting. This Bill is currently before the House of Lords and expected back from Committee to the Lords for the clauses stage on 28th March. Although we do not yet know which amendments will be selected and voted upon, the debate at Second Reading last week highlighted continued support in some quarters for enforcing a public central register on the Crown Dependencies and Overseas Territories. The External Relations Division is monitoring these important developments closely.

The Island has so far been able to resist these pressures on the basis of having signed the Exchange of Notes in which we gave our commitment to introduce a central register. The commitment has enabled the UK Government to support us in this endeavour and in the Houses of Commons and Lords, but we should be in no doubt that a significant percentage 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 with the current assessment by the OECD's global forum on transparency and exchange of information for tax purposes on the Island's implementation of the relevant international standards.

Eaghtyrane, Hon. Members in progressing this Bill we honour our commitment to the UK and bring the Island in line with similar developments, not just in the EU but also the other Crown Dependencies and Overseas Territories, who are establishing similar requirements and have also signed their own Exchange of Notes.

The tight timescale set out in the Exchange of Notes is challenging and to this end, Eaghtyrane, I wish to propose as I go forward with the stages of this Bill, and with Council agreement if we can,

which I would request, to put the First Reading to the Hon. Council today and then on 28th March to request the suspension of Standing Orders to enable the Second Reading, clauses and Third Reading to be put together at that sitting so that we can meet our timescale obligation. This is because, as mentioned, we have committed to 30th June this year. By doing legislative business in this way it has allowed us to attend to industry concerns. I hope Hon. Members will understand this and be in a position, at that time, to give me the latitude I would be seeking in this very important and serious matter. 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.

Eaghtyrane, I hope very much that Hon. Members will be able to support its passage through this House and I beg to move.

Gura mie eu, Eaghtyrane.

The President: Mr Attorney.

The Attorney General: Mr President, I beg to second the motion and reserve my remarks.
Thank you.

The President: Mr Turner.

Mr Turner: Thank you, Mr President.

Where shall I start? First of all, the mover has indicated he wishes to take numerous readings of the Bill in one stage at a later stage. I am sure I will have something to say when that matter is before us, Mr President.

I would like to know which British Overseas Territories have signed such commitments. He mentioned the Crown Dependencies in his speech but he also very briefly touched on the British Overseas Territories. To me it seems like the Crown Dependencies are being given more of a stick than the Overseas Territories because when you see a lot of what they are doing they do not tolerate some of the demands that the UK make, whereas the Crown Dependencies seem to roll over at the drop of a hat.

I think the other thing that I am concerned about is the commitment was given during a previous administration. That administration has been dissolved, we have had a general election and we have had a new administration brought in. similar in the UK when a Labour government goes out and a Conservative government comes in, or whichever party comes in, they have new policies, new priorities and new timetables. So to me, just to say that the previous administration has given a commitment to meet a deadline of 30th June I do not think is good enough. We should be doing things when we are ready and when we are properly ready, not because we are trying to rush through legislation through the branches to meet a commitment given by a previous administration. Legislation procedures, regulations, should be constructed so that they are correct and that we are happy with them and making legislation in haste and rushing it through because of some previous commitment I do not think is the way we should be running our administration.

I am quite happy, but cautiously happy, that they have decided to look at restricted access because there has to be a balance between the relevant authorities having access to this information but then, of course, in this modern world of the internet and various other people snooping for information, you have a lot of mischief makers who get information just for the sake of it to cause trouble. It is important that business does have an element of confidentiality and certain things are kept – just because certain businesses may want things kept confidential does not necessarily mean that they are up to no good and I think it is important that when we have such databases the access is heavily controlled. I do not think anybody would argue with law enforcement agencies having access but, again, there has to be safeguards to that because even law enforcement agencies are not able to just go and pursue their own agendas. I mean we see in a very simple form

that the police have to, for example, if they want certain things, have to go to a magistrate's court to get permission to do certain things so we cannot just be giving *carte blanche* access to everything we are putting through by saying, 'Oh well it is to detect and prevent crime' there has to be safeguards in place. I think that is very important.

I think that there has been much debate in the run-up to this coming before Council, both from Treasury and from industry, and both sides have strong views about it. Treasury are telling us it is okay, everything is fine; industry are saying well, actually it is not. I do not want to get into the position where, 'It is okay, trust us', which is why, again, these Bills need proper consideration before the Branches. I think that is going to be very important if we are seeking to try and rush this Bill through.

But I do not accept we should be saying we have made a commitment when it is a previous administration. We should be going back and saying we have a new administration, the timetable cannot be met. They are doing it all the time across the water; it is happening with all sorts of things yet we seem to ... they say jump we say how high, and it is not the way we should be doing things. We should be getting things right and making sure it is right for the Isle of Man because I suspect that when this is brought in we will see a level of business leave the Island and go elsewhere where some of these – not just this, but some of the other rules we are bringing in are to the tastes of the European Union, maybe the UK, but they have their own priorities at the moment. And I suspect we will see business go further afield, which is why I have asked the question about where we are up to with the British Overseas Territories, because they are renowned for making their views very forcefully known. The old days of 'empire wielding the stick' I am afraid are long gone and the UK do not like to interfere in some of these territories, they very much like them to do their own thing. So whether this threat is a real one or not I would be interested to know exactly where the other Overseas Territories are up to in comparison to ourselves.

The President: Thank you, Mr Turner.
Mr Henderson.

Mr Henderson: Right and we can see if anybody else wishes to –

The President: Yes, indeed we can.

Mr Henderson: Okay, thank you, Eaghtyrane.

The President: Mr Anderson.

Mr Anderson: Yes, thank you.
A technical thing first, Mr President–

Mr Henderson: Eaghtyrane, could I answer Mr Turner first and then hear Mr Anderson perhaps?

The President: Certainly, I understood you to say the opposite.

Mr Henderson: Sorry, sir, I was just making sure.

The President: Yes, very happy for you to deal with Mr Turner.

Mr Henderson: I have to say, Eaghtyrane, the scrutiny that we are coming under at the minute with regard to progressing this I cannot underestimate.

The very real danger and threat to this Crown Dependency *is* very real and I completely have to go at odds with the Hon. Member, Mr Turner, on that one, Eaghtyrane. I have watched the live

debates in the House of Commons on the progression of their Criminal Finances Bill that is going through, that I mentioned earlier, and the threat to have us legislated for was (**Mr Turner: Failed.**) real and dangerous and it attracted 180 votes. It might have failed, but it shows you the depth of feeling that is there.

I watched the House of Lords debate; same issues were put there, Hon. Member, which is going to clauses and which will come back at the end of this month and we are not sure which amendments may come back. It may be that the theme from the House of Commons passes through into the House of Lords for a new clause. That threat is very real ... I am sorry, Hon. Member, it is, and I have got the *Hansards* here if you want to have a look at them.

However, we signed a commitment last year, EIGHTYRANE, which is a legal and binding treaty as far as I know, and there is no turning back from it. We agreed, our Government, with the UK it was the Government that signed the treaty, not ingoing, outgoing politicians as such, it was taken as the Government's signature which is a little different, and we agreed to honour the timescale and the concepts within that treaty, as I want to call it really, because that is what it is in essence and therefore we have to honour our commitments.

To further labour the point, EIGHTYRANE, the reason the UK Government are currently supporting the Isle of Man in the House of Commons and in the House of Lords is because of our very commitment to the Exchange of Notes and they are actively informing the House of Commons and the House of Lords that we will have our beneficial ownership register in place by June of this year; and they are informing the Hon. Members and Noble Lords there that they are content with that and as such are willing to support us in a consultative endeavour and in the measures that we have agreed with them.

I cannot stress that importantly enough, EIGHTYRANE. We have got their support to defend ourselves because of our commitment to those Exchanges of Notes and they will speak against any such amendments or new clauses that may come along as a result of that. I cannot make it too clear, EIGHTYRANE, and I will not labour that particular point, but it is *very* important for our international reputation that we progress what we are doing, and if we can hit the timetable that I have outlined then we will be meeting our international obligations.

Overseas Territories which are coming under this as well are the Caymans, BVI, Bermuda, Angola, Gibraltar, Turks and Caicos – the Overseas Territories with financial centres. There are parameters within this Bill for access which are defined within the Bill, to answer the Hon. Member's point about security, and it will be through the Financial Intelligence Unit that these requests are made; and there are rules governing that, as will be outlined in the Bill.

I have to say, EIGHTYRANE, although we are running to a tight timescale, I would not say this Bill has been rushed to the point of providing inadequate legislation; far from it. We have got a Bill that has been robustly scrutinised on its consultation period and through the House of Keys whereby we have got something that produces the legal framework for us to have a proper register of centrally held beneficial ownership information, thoroughly scrutinised. It has been amended in the House of Keys, it was amended on its way through following consultation, and I would assure Hon. Members that it has had some firm and robust treatment; and was the subject of further scrutiny and robust treatment which Hon. Members will see in due course as we approach the clauses stage.

Treasury has been very cognisant of concerns raised by industry and has continued to work with industry, even after the passage of the Bill through the House of Keys. So there could be an impression that we are rushing this, but during the construction phases of this Bill, EIGHTYRANE, to the point of it arriving here, I think it has benefited from quite a lot of scrutiny and some change, which I feel confident as we go forward that industry will be supportive of. But we will await the clauses stage, EIGHTYRANE, to go forth with that one.

The Hon. Member laboured the point on who has access and who does not, and I should be able to reassure him with that that it is by external bodies through the Financial Intelligence Unit and named bodies such – as I have said – as the Chief Constable and the Assessor of Income Tax here.

I think that answers the majority of the main concerns of the Hon. Member, Eaghtyrane, and I am happy to field queries from Mr Anderson.

The President: Mr Turner, do you wish to come back?

Mr Turner: Sorry, yes, if I may.

I did specifically ask about the British Overseas Territories, and apart from giving us a list the mover did not actually tell us what they were doing, which is what I was asking –

Mr Henderson: Signing up to the terms of their own Exchange of Notes.

Mr Turner: And that is where they are at? They are at that stage?

Mr Henderson: The same as ourselves, yes.

The President: Mr Anderson.

Mr Anderson: Yes, thank you, Mr President.

Just on a technicality. We had quite a long first introduction to the Bill today and I just wondered in future would it be useful for Council Members to have a written copy of the mover's notes for their understanding? To give you an example, I think the mover made mention of a definition of 'a person' and one definition was 'flesh and blood', which I understand. But I was not quite too sure of the other definition –

Mr Henderson: Natural person.

Mr Anderson: So if we had a written form of the introduction from the Member moving such a long First Reading, it might be useful.

The President: I am sure that point has been noted, but of course *Hansard* will be uploaded very quickly indeed and reference can be made to what was said in that. But I am sure that point will be taken on board.

Mr Henderson: Gura mie eu, Eaghtyrane.

Yes, it is taken on board. I had thought about a Legislative Council briefing prior to this, but we just did not have the time. So I thought my best option ... and it is at my behest that it was more lengthy than normal, so that Hon. Members are briefed fully.

I would rather do a Second Reading now than wait, so that we have all the information there. It is complicated and I want to make sure that we understand the importance of it and the implications, Eaghtyrane.

So I do apologise if it dragged on a bit; however, I think it is sufficiently important for me – and to honour the Legislative Council – with a better explanation than just the usual First Reading notes that you might expect.

The President: Does any other Member wish to speak?

Mr Anderson.

Mr Anderson: Just one other issue.

We are talking about the importance of the passage of this Bill through this Branch. Presumably built into that passage of time is the ability for an amendment to go back to the other place?

Mr Henderson: Eaghtyrane, it is – just.

Mr Anderson: Okay, thank you.

The President: Mr Coleman.

Mr Coleman: Thank you, Mr President.

I would just like to point out that I personally had some concerns with this piece of legislation and there was a meeting with the Treasury Minister in the Millennium Room where some of the Legislative Council attended, where we expressed our concerns. The Treasury Minister accepted the concerns that were surfacing and he went away and he came up with, as far as I am concerned, a solution – which we will see, and which I find acceptable – to the piece of the legislation which may need to be changed.

I have also been made aware that the industry has met with the Treasury Minister, who has, I think, told them what might be happening, and I have an email from the Chairman of the Trust and Company Service Providers who has said that he is happy with the amendment as well. So I think the industry has been mollified; I am mollified, so I am quite content.

The President: Mr Henderson.

Mr Henderson: I am happy to acknowledge Mr Coleman's comments, the Hon. Member of Council, and indeed it shows that considerable work has been going on behind the scenes to get to this point, and there is a little bit more to do when we get to clauses stage, Eaghtyrane. But I think we will see it will be to the benefit of all.

The President: If Members are content, and I thank Mr Coleman for bringing out that latter point which I am aware was of concern to some Members.

In that case, Mr Henderson, do you wish to wind up and take the opportunity to make any further – ?

Mr Henderson: Only to thank Hon. Members for their forbearance in the First Reading; the Second Reading may resultantly be shorter.

But I thank the Hon. Members for the questions because it is important to clarify the facts and expand on certain issues and the importance of this, and with the fact that the Criminal Finances Bill is running parallel with this in the UK Parliament, and we are being cross-referenced as a result of the passage of that Bill through both Houses there. So we are coming under considerable scrutiny at the minute.

With that, Eaghtyrane, I beg to move the First Reading.

The President: Hon. Members, I put the motion that the Beneficial Ownership Bill be read for the first time. Those in favour, please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR

Mr Turner
Mr Coleman
Mr Cretny
Mr Anderson
Mr Corkish
Mr Henderson
Mr Crookall

AGAINST

None

The President: Hon. Members, the motion carries unanimously, 7 votes to none.