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**COMPANIES (BENEFICIAL OWNERSHIP) BILL 2012**

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**Explanatory Memorandum**

1. This Bill, which is promoted by the Treasury, requires certain companies to appoint nominated officers to hold information about beneficial owners of such companies.
2. *Clause 1* states the short title of the Bill.
3. *Clause 2* provides for the Bill to commence by appointed day order made by the Treasury.
4. *Clause 3* defines the term “beneficial owner”.
5. *Clause 4* specifies the companies to which the Bill, when enacted, will apply.
6. *Clause 5* requires such a company to have a nominated officer.
7. *Clause 6* obliges the company to keep a record of the current details of the nominated officer.
8. *Clause 7* requires members of the company who do not own their membership interests beneficially (as well as legally) to give notice to the nominated officer and to provide certain required details. Failure to comply will be a criminal offence.
9. *Clause 8* specifies the required details which must be given.
10. *Clause 9* sets out certain other consequences of failing to comply with *clause 7* or making a false or misleading statement to the nominated officer. The company may restrict the rights attaching to the member’s interest in the company.
11. *Clause 10* requires a nominated officer to disclose information held about the beneficial ownership of the company in accordance with a notice received from a specified authority (principally law enforcement and regulatory). Failure to comply will be a criminal offence.
12. *Clause 11* creates a tipping off offence if a person who knows that a notice has been or is proposed to be issued discloses information to another person which may prejudice a criminal or regulatory investigation.
13. *Clause 12* confirms that the Bill, when enacted, will not compel the production by a legal adviser of items subject to legal professional privilege. However, the Bill’s provisions will override other obligations as to confidentiality.
14. *Clause 13* specifies the range of penalties a court may impose if an offence is committed under the Bill.
15. *Clause 14* confirms that the Bill does not limit or restrict certain other provisions concerning beneficial ownership.

16. The Bill is not expected to have any significant effect on public revenue, expenditure or personnel.
17. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



*Ellan Vannin*

## COMPANIES (BENEFICIAL OWNERSHIP) BILL 2012

### Index

Section	Page
1 Short title.....	5
2 Commencement.....	5
3 Meaning of beneficial owner.....	5
4 Companies to which this Act applies.....	5
5 Requirement to have a nominated officer.....	6
6 Record of nominated officer.....	7
7 Duty of members.....	7
8 Required details.....	8
9 Other consequences of failure to disclose beneficial ownership.....	9
10 Disclosure of beneficial ownership information by nominated officer.....	9
11 Tipping off.....	10
12 Privileged information.....	11
13 Offences.....	11
14 Other provisions concerning beneficial ownership.....	12





*Ellan Vannin*

## COMPANIES (BENEFICIAL OWNERSHIP) BILL 2012

1 **A BILL** to require certain companies to appoint nominated officers to hold  
 2 information about beneficial owners of such companies; to require members of  
 3 such companies to provide information concerning beneficial ownership to  
 4 nominated officers; and for connected purposes.

**BE IT ENACTED** by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### 5 **1 Short title**

6 The short title of this Act is the Companies (Beneficial Ownership) Act 2012.

### 7 **2 Commencement**

- 8 (1) This Act (other than *section 1* and this section) comes into operation on  
 9 the day appointed by the Treasury and different days may be appointed  
 10 for different provisions and different purposes.
- 11 (2) An order under subsection (1) may make transitional and saving  
 12 provisions which the Treasury considers necessary or expedient.

### 13 **3 Meaning of beneficial owner**

- 14 (1) In this Act, “**beneficial owner**”, in relation to a member’s interest in a  
 15 company means the person ultimately beneficially interested in the  
 16 membership interest, and “**beneficial ownership**” is to be construed  
 17 accordingly.
- 18 (2) Beneficial ownership may be traced through any number of persons or  
 19 arrangements of any description.

### 20 **4 Companies to which this Act applies**

- 21 (1) Subject to subsection (2), this Act applies to companies to which the  
 22 Companies Acts 1931 to 2004 apply, including each of the following —  
 23 (a) a company within the meaning of the *Companies Act 1931*<sup>1</sup>;

<sup>1</sup> XIII p.235

- 1 (b) an existing company within the meaning of the *Companies Act*  
2 *1931*;
- 3 (c) a protected cell company within the meaning of the *Protected Cell*  
4 *Companies Act 2004*<sup>2</sup>;
- 5 (d) an incorporated cell company within the meaning of the  
6 *Incorporated Cell Companies Act 2010*<sup>3</sup> to which the Companies Acts  
7 1931 to 2004 apply;
- 8 (e) an incorporated cell within the meaning of the *Incorporated Cell*  
9 *Companies Act 2010* to which the Companies Acts 1931 to 2004  
10 apply; and
- 11 (f) a company continued in the Island under *Part 1 of the Companies*  
12 *(Transfer of Domicile) Act 1998*<sup>4</sup>.
- 13 (2) This Act does not apply to a company which is —
- 14 (a) incorporated outside the Island;
- 15 (b) listed on a stock or investment exchange recognised by the  
16 Treasury for the purposes of this section;
- 17 (c) a collective investment scheme (within the meaning of *section 1 of*  
18 *the Collective Investment Schemes Act 2008*<sup>5</sup>) which is an authorised  
19 scheme, an international scheme or an exempt scheme within the  
20 meaning of that Act; or
- 21 (d) of any other class or description prescribed for the purposes of  
22 this section by an order of the Treasury.
- 23 (3) An order under subsection (2)(d) must be laid before Tynwald.
- 24 (4) In subsection (2)(a), an exchange is “**recognised**” if its name or another  
25 suitable description of it is published by the Treasury in such manner as  
26 the Treasury determines.

## 27 5 Requirement to have a nominated officer

- 28 (1) A company to which this Act applies must have a nominated officer.
- 29 (2) The nominated officer may be —
- 30 (a) an individual who is resident in the Island; or
- 31 (b) the holder of a licence issued under *section 7 of the Financial*  
32 *Services Act 2008*<sup>6</sup> whose licence permits the holder to carry on the  
33 regulated activity (within the meaning of *section 3(1) of that Act*) to  
34 provide corporate services.

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<sup>2</sup> c.1

<sup>3</sup> c.13

<sup>4</sup> c.6

<sup>5</sup> c.7

<sup>6</sup> c.8



- 1 (3) A company may have more than one nominated officer and, if so, their  
2 functions and liabilities under this Act are joint and several.
- 3 (4) The nominated officer of an incorporated cell company is also the  
4 nominated officer of each of its incorporated cells.
- 5 (5) A company which fails to comply with this section commits an offence.

## 6 Record of nominated officer

- 7 (1) A company must keep a record of the following —
- 8 (a) in the case of a nominated officer who is an individual —
- 9 (i) the officer's name;
- 10 (ii) the officer's home address in the Island;
- 11 (b) in the case of a nominated officer which has legal personality but  
12 is not an individual —
- 13 (i) the officer's corporate or firm name; and
- 14 (ii) the officer's business address in the Island.
- 15 (2) The record of a nominated officer of an incorporated cell company is also  
16 the record of a nominated officer of each of its incorporated cells.
- 17 (3) A company must, within one month after the date of the occurrence of —
- 18 (a) an appointment of a nominated officer;
- 19 (b) a change in a nominated officer; or
- 20 (c) a change in the details in its record of a nominated officer,  
21 give notice to the Department of Economic Development of the  
22 appointment or change and of the date on which it occurred.
- 23 (4) A notice under subsection (3) is to be in such form, and must be  
24 accompanied by such documents and information, as the Department of  
25 Economic Development requires.
- 26 (5) A company which fails to comply with this section commits an offence.

## 7 Duty of members

- 28 (1) Subsection (2) applies if a member of a company is not the beneficial  
29 owner of the member's interest in the company.
- 30 (2) The member must give notice to the company's nominated officer of the  
31 required details specified in *section 8* in respect of each beneficial owner  
32 of that interest.
- 33 (3) A notice under subsection (2) must be given —
- 34 (a) in the case of a person who is a member of the company at the  
35 time this section comes into operation but who is not the  
36 beneficial owner of the member's interest in the company at that  
37 time, within 3 months of this section coming into operation;

- 1 (b) in the case of a person who becomes a member of the company  
2 after this section comes into operation in circumstances where the  
3 member is not the beneficial owner of the member's interest in the  
4 company, within 3 months of the person becoming a member of  
5 the company; or
- 6 (c) in the case of a member of the company who —
- 7 (i) ceases to be the beneficial owner of the member's interest  
8 in the company after this section comes into operation; but
- 9 (ii) retains legal ownership of that interest,  
10 within 3 months of the member ceasing to be the beneficial owner  
11 of such interest.
- 12 (4) A member commits an offence if the member, without reasonable  
13 excuse —
- 14 (a) fails to comply with subsection (2) or (3); or
- 15 (b) makes a statement to the nominated officer which is false,  
16 deceptive or misleading in a material particular.

## 17 8 Required details

18 The “required details” are —

- 19 (a) in respect of a beneficial owner who is an individual —
- 20 (i) his or her name;
- 21 (ii) his or her usual residential address;
- 22 (iii) his or her nationality; and
- 23 (iv) his or her date of birth;
- 24 (b) in respect of a beneficial owner which has legal personality but is  
25 not an individual —
- 26 (i) its name;
- 27 (ii) its jurisdiction of formation, incorporation or  
28 establishment;
- 29 (iii) its legal form and the law by which it is governed;
- 30 (iv) its registered office (or, if it has no registered office, its  
31 principal office);
- 32 (v) if applicable, the register in which it is entered and its  
33 registration number in that register; and
- 34 (c) in respect of a class of beneficial owners of such a size that it is not  
35 reasonably practicable to identify each member of the class,  
36 details sufficient to identify and describe the class of persons who  
37 are beneficial owners.



**9 Other consequences of failure to disclose beneficial ownership**

- (1) Subsection (2) applies if a nominated officer of a company is of the opinion that a member, without reasonable excuse —
- (a) has failed to comply with *section 7(2)* or (3); or
  - (b) has made a statement to the nominated officer which is false, deceptive or misleading in a material particular.
- (2) The nominated officer must give notice to the company of the opinion mentioned in subsection (1).
- (3) On receipt of a notice under subsection (2), the company may —
- (a) place such restrictions as it thinks fit on rights attaching to the member's interest in the company, including, without limitation —
    - (i) any right to transfer the interest;
    - (ii) any voting rights;
    - (iii) any right to further shares in respect of shares already held; and
    - (iv) any right to payment due in respect of the member's interest, whether in respect of capital or otherwise; or
  - (b) cancel the member's interest in the company.
- (4) A restriction under subsection (3)(a) is removed —
- (a) if the company is struck off; or
  - (b) upon the commencement of the company's winding up.
- (5) A member may apply to the High Court, in accordance with rules of court, to set aside any restriction or cancellation under subsection (3).
- (6) The Court may make such order on such terms and conditions as it thinks fit.

**10 Disclosure of beneficial ownership information by nominated officer**

- (1) Subsection (2) applies if a nominated officer receives a notice described in subsections (3) and (4).
- (2) The nominated officer must disclose, in accordance with the notice, any information the officer holds in respect of the beneficial ownership of the company specified or referred to in the notice.
- (3) The notice referred to in subsection (1) is a written notice given by —
- (a) the Attorney General;
  - (b) the Chief Constable;
  - (c) a police officer or customs officer serving, in either case, with the Financial Crime Unit of the Isle of Man Constabulary;

- 1 (d) the Financial Supervision Commission;
- 2 (e) the Insurance and Pensions Authority;
- 3 (f) the Assessor of Income Tax;
- 4 (g) the Collector of Customs and Excise; or
- 5 (h) a person appointed by any of the persons specified in this
- 6 subsection for the purpose of giving the notice.
- 7 (4) The notice must state —
- 8 (a) what information is required;
- 9 (b) that the information is required for the purpose of —
- 10 (i) a criminal or regulatory investigation which is being or
- 11 may be carried out, whether in the Island or elsewhere;
- 12 (ii) criminal or regulatory proceedings which have been or
- 13 may be initiated, whether in the Island or elsewhere;
- 14 (iii) the initiation or bringing to an end of any such
- 15 investigation or proceedings; or
- 16 (iv) facilitating a determination of whether any such
- 17 investigation or proceedings should be initiated or brought
- 18 to an end; and
- 19 (c) that the person signing the notice is satisfied that the making of
- 20 the disclosure is proportionate to what is sought to be achieved by
- 21 it.
- 22 (5) Nothing in this section prejudices any power to disclose information
- 23 which exists apart from this section.
- 24 (6) The information that may be disclosed under this section includes
- 25 information obtained before this Act came into operation.
- 26 (7) A nominated officer commits an offence if the officer, without reasonable
- 27 excuse —
- 28 (a) fails to comply with subsection (2); or
- 29 (b) makes a statement, in response to receiving a notice under this
- 30 section, which is false, deceptive or misleading in a material
- 31 particular.

## 32 **11 Tipping off**

- 33 (1) A person commits an offence if the person —
- 34 (a) knows or suspects that a notice has been issued, or is proposed to
- 35 be issued, under *section 10* in respect of a company for which the
- 36 person is a nominated officer; and
- 37 (b) the person discloses to any other person any information or other
- 38 matter which may prejudice —

- 1 (i) a criminal or regulatory investigation which is being or  
 2 may be carried out, whether in the Island or elsewhere,  
 3 which is connected with the issue of the notice; or  
 4 (ii) criminal or regulatory proceedings which have been or  
 5 may be initiated, whether in the Island or elsewhere, which  
 6 are connected with the issue of the notice.
- 7 (2) Nothing in subsection (1) makes it an offence for an advocate or other  
 8 legal adviser to disclose any information or other matter —  
 9 (a) to a client of the advocate or adviser (or to a representative of the  
 10 client) in connection with the giving of legal advice to the client;  
 11 or  
 12 (b) to any person —  
 13 (i) in contemplation of or in connection with legal  
 14 proceedings; and  
 15 (ii) for the purpose of those proceedings.
- 16 (3) Subsection (2) does not apply in relation to any information or other  
 17 matter which is disclosed with a view to furthering any criminal  
 18 purpose.
- 19 (4) In proceedings against a person for an offence under this section, it is a  
 20 defence to prove that the person did not know or suspect that the  
 21 disclosure was likely to be prejudicial in the way mentioned in  
 22 subsection (1)(b).

## 23 12 Privileged information

- 24 (1) Nothing in this Act compels the production or divulgence by an  
 25 advocate or other legal adviser of an item subject to legal professional  
 26 privilege (within the meaning of *section 13 of the Police Powers and*  
 27 *Procedures Act 1998*<sup>7</sup>), but an advocate or other legal adviser may be  
 28 required to give the name and address of any client.
- 29 (2) A requirement imposed by or under this Act has effect despite any  
 30 obligation as to confidentiality or other restriction on the disclosure of  
 31 information imposed by statute, contract or otherwise.
- 32 (3) Accordingly, the obligation or restriction referred to in subsection (2) is  
 33 not contravened if a disclosure is made in accordance with a requirement  
 34 imposed by or under this Act.

## 35 13 Offences

- 36 (1) A person guilty of an offence under this Act is liable —  
 37 (a) on conviction on information to a fine;

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<sup>7</sup> c.9

- 1 (b) on summary conviction, to a fine not exceeding £5,000.
- 2 (2) Subsection (3) applies if an offence under this Act is committed by a  
3 body corporate and it is proved that an officer of the body authorised,  
4 permitted, participated in, or failed to take all reasonable steps to  
5 prevent, the commission of the offence.
- 6 (3) The officer, as well as the body, is guilty of the offence and is liable to the  
7 penalty provided for the offence.
- 8 (4) In this section, “**officer**” includes —
- 9 (a) a director, secretary or other similar officer;
- 10 (b) a person purporting to act as a director, secretary or other similar  
11 officer;
- 12 (c) if the affairs of the body are managed by its members, a member;  
13 and
- 14 (d) if the body has a registered agent (within the meaning of the  
15 *Companies Act 2006*<sup>8</sup>), the registered agent.

#### 16 **14 Other provisions concerning beneficial ownership**

17 The operation of this Act does not limit or otherwise restrict —

- 18 (a) *section 102 of the Companies Act 1931* (trusts not to be entered on  
19 the register) or any other statutory provision;
- 20 (b) any provision in a company’s articles of association that relieves  
21 the company from recognising —
- 22 (i) any interests other than the interests of the members of the  
23 company;
- 24 (ii) any trust, express, implied or constructive, in respect of  
25 shares; or
- 26 (iii) any beneficial owner of shares.

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<sup>8</sup> c.13



IN THE KEYS

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COMPANIES (BENEFICIAL OWNERSHIP) BILL 2012

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A **BILL** to require certain companies to appoint nominated officers to hold information about beneficial owners of such companies; to require members of such companies to provide information concerning beneficial ownership to nominated officers; and for connected purposes.

Approved by the Council of Ministers  
for introduction in the House of Keys.

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MR TEARE

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APRIL 2012

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