

## BENEFICIAL OWNERSHIP BILL 2017

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### Explanatory Memorandum

1. This Bill is promoted by Hon. Alfred Cannan M.H.K.
2. *Clauses 1-3* deal with the short title of the resulting Act (“the Act”), its commencement and the interpretation of certain terms used in it.
3. *Clause 4* sets out the meaning of “beneficial owner” and provides that the Isle of Man Financial Services Authority (“the Authority”) may issue guidance about the meanings of certain terms used in the Act. Any such guidance must be published by the Authority on its website or in a manner it considers will best bring it to the attention of the persons who will be affected by it. The clause also provides that the Treasury may, by order, subject to Tynwald approval, amend the meaning of beneficial owner and the provisions dealing with how joint owners or controllers of an interest are to be treated.
4. *Clause 5* specifies the legal entities to which the Act applies (and those to which it does not apply) and provides the Treasury with power to amend the lists of those entities by order, subject to Tynwald approval.
5. *Clauses 6* provides that a legal entity to which the Act applies must have one or more nominated officers; specifies who is eligible to be appointed as a nominated officer; makes it an offence to fail to comply with the clause and sets out the penalties for such offences.
6. *Clause 7* requires a legal entity to which the Act applies to give notice of the appointment of its nominated officer to the Department of Economic Development (“the Department”) within one month of the appointment and any changes to the details of the nominated officer. The clause makes it an offence to fail to comply with the clause and sets out the penalties for such offences.
7. *Clause 8* requires a legal entity to which the Act applies, to keep certain records in relation to its nominated officer. The clause makes it an offence to fail to comply with the clause and sets out the penalties for such offences.
8. *Clause 9* places an obligation on a legal owner to ascertain the beneficial owner of the interest in the legal entity which the legal owner holds. The clause also requires a legal owner who receives a notice from a nominated officer, to provide the required details (see clause 11) and specified supporting documentation to verify those details, to the nominated officer within one month. The clause makes it an offence to fail to comply with the clause and sets out the penalties for such offences. It is a defence for a person charged with an offence under this clause to show that he or she took reasonable steps to avoid committing the offence.

The clause provides that the Treasury may, by order, subject to Tynwald approval, amend the timeframe within which a legal owner must respond to a notice from the nominated officer.

9. *Clause 10* imposes a duty on a beneficial owner (where that person is not the legal owner) and a person holding an interest between the legal owner and the beneficial owner (intermediate), to assist the legal owner to ascertain the beneficial ownership of the interest in the legal entity. The clause makes it an offence to fail to comply with the clause and sets out the penalties for such offences. It is a defence for a person charged with an offence under this clause to show that he or she took reasonable steps to avoid committing the offence.
10. *Clause 11* specifies the required details which are to be provided in respect of a beneficial owner. The clause provides that the Treasury may, by order, subject to Tynwald approval, amend the required details.
11. *Clause 12* requires a legal owner who is required to provide (i) the required details to the nominated officer and (ii) to notify the nominated officer when the legal owner knows or suspects there have been any changes to those details, in both cases within one month. The clause makes it an offence to fail to comply with the clause and sets out the penalties for such offences.
12. *Clause 13* imposes an obligation on the nominated officer to preserve the required details and the information verifying those details in relation to the legal entity, in the Island, for a specified period. Should the legal entity cease to exist for any reason, the person who was at that time the nominated officer must obtain and comply with directions from the Department with regard to the continued preservation of any such information. The clause makes it an offence to fail to comply with the clause and sets out the penalties for such an offence. The clause also provides that the Department may, by order, subject to Tynwald approval, extend the period for which the documents must be preserved.
13. *Clause 14* obliges a nominated officer who believes that a legal owner has failed to comply with clause 9 or 12 or has made a false or misleading statement, to give notice of that belief to the legal entity. Upon receipt, the legal entity must give notice to the legal owner and the beneficial owner of the legal owner's interest, informing them that it has received a notice from the nominated officer, that it may take certain action under subsection (4) and giving them 14 days in which to make representations. The legal entity must consider any representations duly received and may then take action including restricting or cancelling the legal owner's interest in the legal entity.

A legal owner whose interest has been restricted or cancelled may apply to the High Court to have such restriction or cancellation set aside and the Court may make such order as it thinks fit.

14. *Clause 15* imposes a duty on a nominated officer to disclose any beneficial ownership information he or she holds in respect of the legal entity, within 7 days (in the case of a registrable beneficial owner) and within one month (in other cases), in response to a notice given by a competent authority. Each of the

Financial Intelligence Unit (“FIU”), the Attorney General, the Assessor of Income Tax, the Authority, the Chief Constable and the Collector of Customs and Excise, is defined as a competent authority.

The clause specifies the information such a notice must contain and confirms that the information received by the competent authority may be used as evidence in criminal, civil and regulatory proceedings.

The clause makes it an offence to fail to comply with the clause and sets out the penalties for such an offence.

The Treasury may make regulations regarding the form, content and giving of notices by a competent authority. Such regulations must be laid before Tynwald and are subject to negative resolution. The Treasury may also, by order, subject to Tynwald approval, amend the list of competent authorities and the information to be contained in a notice.

15. *Clause 16* applies to information disclosed under clause 15 and specifies that a competent authority may not further disclose that information except for a permitted purpose (see clause 3). Where the information is further disclosed, it may be used by the recipient as evidence in criminal, civil and regulatory proceedings.

16. *Clause 17* provides that where the FIU has obtained information under clause 15, the FIU may disclose that information to an external intelligence or law enforcement agency.

External intelligence or law enforcement agency is defined in clause 3, as a person or body engaged in a country with which the Isle of Man Government has entered into a beneficial ownership information sharing agreement and which is named, referred to or contemplated in that agreement.

17. *Clause 18* makes it an offence for a person who knows or suspects a notice has been or is to be issued to a nominated officer under clause 15, to disclose to any other person information that may be prejudicial to an investigation or any resulting proceedings. The clause sets out the penalties for such an offence but also specifies that it is a defence for a person to prove that they did not know or suspect that the disclosure would be prejudicial. It is not an offence for a legal adviser to disclose information in specified circumstances.

18. *Clause 19* provides for the establishment and maintenance of the Isle of Man Database of Beneficial Ownership by the Department.

19. *Clause 20* specifies the information which a nominated officer is obliged to submit for inclusion on the Database and the time limits for the submission of that information. The clause introduces the concept of a “registrable beneficial owner”, which is a beneficial owner who owns or controls more than 25% of the beneficial ownership of a legal entity to which this Act applies. The clause makes it an offence to fail to comply with the clause and sets out the penalties for such offences.

As an alternative to prosecution, the Department may accept payment of a fee for late submission of the information, provided that criminal proceedings have not yet commenced. The Treasury may, by order, subject to Tynwald approval, amend the provisions of the clause which specify the information to be submitted to the Database and the time limits within which it is to be provided. The Department may make regulations about the submission of information. Any such regulations must be laid before Tynwald and are subject to negative resolution.

20. *Clause 21* provides that a nominated officer may, with the consent of a beneficial owner, voluntarily submit information to the Department other than information which relates to that beneficial owner.
21. *Clause 22* provides that a nominated officer must submit information for inclusion on the Database by using the website made available by the Department, unless they are exempt under regulations (made under clause 20(16)) or, having made an application to the Department, the Department is satisfied that the nominated officer does not have access to the internet or is otherwise reasonably unable to comply with the requirement to submit online.
22. *Clause 23* specifies that access to the Database and the further disclosure of information obtained from it is only permitted in accordance with Part 3 of the Act.
23. *Clause 24* provides that access to the Database is to be by such means and in such manner as the Department may determine and enables the Department to make regulations to make further provision about access. Any such regulations must be laid before Tynwald and are subject to negative resolution.
24. *Clause 25* states that the Department is not liable for the accuracy of the information submitted to the Database (as that information will have been provided to it by the nominated officers of the legal entities to which the Act applies).
25. *Clause 26* specifies that the Database may be accessed by the competent authorities (see clause 15) but only for a permitted purpose (see clause 3). It may also be accessed by (i) the Department, for purposes in connection with its functions under the Act, (ii) the Isle of Man Gambling Supervision Commission for the purposes of its functions under any enactment, (iii) employees of the Government Technology Services in connection with the maintenance of the Database, (iv) a legal entity to which this Act applies for the purpose of accessing its own beneficial ownership information and (v) any third party to which a legal entity gives permission to access information relating to it.  
Treasury may, by order, subject to Tynwald approval, amend the clause.
26. *Clause 27* specifies the purposes for which information accessed from the Database may be further disclosed and provides that information disclosed by a competent authority may be used by the recipient as evidence in criminal, civil or regulatory proceedings. The clause makes it an offence to fail to comply with the clause and sets out the penalties for such offences.

27. *Clause 28* specifies the circumstances in which the FIU may disclose information accessed from the Database to an external intelligence or law enforcement agency in furtherance of the functions of that agency.
28. *Clause 29* makes it an offence for a person who knows or suspects that information on the Database has been or is to be accessed, to disclose to any other person information that may be prejudicial to an investigation or proceedings. The clause sets out the penalties for such offences but also specifies that it is a defence for a person to prove that they did not know or suspect that the disclosure would be prejudicial. It is not an offence for a legal adviser to disclose information in specified circumstances.
29. *Clause 30* gives the Authority responsibility for assessing compliance with the Act by a relevant person and defines that term. Reference is made to Schedule 1 within which additional powers are conferred on the Authority in connection with its oversight role.
30. *Clause 31* provides that where there is reasonable cause to believe that a legal entity has failed or is failing to comply with its obligations under the Act, it may be struck off the relevant register or its registration cancelled. Reference is made to Schedule 2 within which certain other statutes are amended in order to give effect to this clause.
31. *Clause 32* makes further provision with regard to the regulation-making powers under the Act and empowers Treasury to make regulations in respect of any other matter which it considers necessary to give effect to the Act. The regulation-making powers include the ability to make it an offence to contravene any such regulations and to impose penalties for any such offence. Any regulations made under this clause must be approved by Tynwald.
32. *Clause 33* empowers the Department, by order, subject to Tynwald approval, to prescribe fees in relation to certain matters falling within clauses 7 and 20. Before making an order under clause 33, the Department must consult the Treasury.
33. *Clause 34* provides a right of appeal to the Financial Services Tribunal for a person who is aggrieved by a decision made under clause 22 or by the imposition of a civil penalty by the Authority.
34. *Clause 35* clarifies that where an offence is committed by a legal entity, certain officers of that entity may also be guilty of the offence.
35. *Clause 36* provides that a requirement imposed by this Act has effect despite any other obligation of confidentiality or restriction on disclosure of information, howsoever imposed, and states that a disclosure made in accordance with this Act does not breach any such obligation or restriction. The clause is subject to clause 37.
36. *Clause 37* provides that the provisions of the Data Protection Act 2002 are not affected and nothing in this Act authorises a disclosure of personal data which is not exempt from those provisions.

37. *Clause 38* specifies that a disclosure of information under this Act constitutes absolutely exempt information for the purposes of the Freedom of Information Act 2015.
38. *Clause 39* specifies that nothing in the Act compels a legal adviser to disclose information which is subject to legal privilege but that an adviser may be required to provide the name and address of any client.
39. *Clause 40* clarifies that certain other provisions concerning beneficial ownership information are not affected by this Act.
40. *Clause 41* clarifies that the provisions in this Act relating to the disclosure of information do not affect the operation of other powers, duties or restrictions in relation to the disclosure of information in this Act or any other enactment.
41. *Clause 42* requires a legal entity to which this Act applies to include a statement in its annual return (see clause 3) which confirms that the provisions of this Act have been complied with. Reference is made to Schedule 3 which makes amendments to certain statutes in order to give effect to this clause.
42. *Clause 43* requires a legal entity which is a company to file, make or deliver (as appropriate) its annual return online, unless exempted from that requirement under the relevant companies legislation. Reference is made to Schedule 4 which makes amendments to certain statutes in order to give effect to this clause.
43. *Clause 44* makes consequential amendments to the Financial Services Act 2008 to reflect the additional functions of the Authority under the Act.
44. *Clause 45* makes provision that where a legal entity already has a nominated officer under the Companies (Beneficial Ownership) Act 2012, who has consented to continued appointment, the nominated officer continues to be the nominated officer of the legal entity under the Act. It also provides that a consenting registered agent is to be the nominated officer of the relevant legal entity.
45. *Clause 46* repeals the Companies (Beneficial Ownership) Act 2012 and revokes the Companies (Beneficial Ownership) (Exemptions) Order 2013.
46. If approved, the resulting Act is expected to have the following financial and human resource implications —

Additional costs (which have not been quantified) for the legal entities to which the Act will apply, in complying with the legislation.

The financial implications for Government have been estimated as follows —

The Financial Intelligence Unit:

Year 1 £13,950 (staff plus equipment)

Year 2 £12,903 (staff)

Year 3 £13,161 (staff)

Government Technology Services Division of the Cabinet Office:

£192,000 establishment costs and £10,000 per annum maintenance costs

Department of Economic Development:

£54,000 associated with populating the database and £67,000 in outreach costs to advise entities of their new obligations.

The Authority assumes an oversight role under the Bill to assess compliance with the Act to which the Authority will have to dedicate resources in order to fulfil those obligations. It is anticipated that an initial additional resource of one full time equivalent officer will be required, a requirement that will have to be reassessed as more experience is gained of the Act's operation. Regular reassessment will also be necessary to ensure that the implementation of the regime is given the appropriate level of diligence and oversight.

47. 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*

## BENEFICIAL OWNERSHIP BILL 2017

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*Ellan Vannin*

## BENEFICIAL OWNERSHIP BILL 2017

- 1 **A BILL** to make provision about the beneficial ownership of certain legal  
2 entities; 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:—

### 3 **PART 1 – INTRODUCTORY**

#### 4 **1 Short title**

5 The short title of this Act is the Beneficial Ownership Act 2017.

#### 6 **2 Commencement**

7 (1) This Act (other than section 1 and this section) comes into operation on  
8 such day or days as the Treasury may by order appoint.

9 (2) An order under subsection (1) may include such consequential, incidental,  
10 supplementary, transitional and transitory provision as the Treasury  
11 considers necessary or expedient.

#### 12 **3 Interpretation**

13 (1) In this Act —

14 “**annual return**” means —

15 (a) in relation to a company to which the *Companies Acts 1931 to 2004*  
16 apply, the annual return required by sections 107 to 110 of the  
17 *Companies Act 1931*;

18 (b) in relation to a company to which the *Companies Act 2006* applies,  
19 the annual return required by section 85 of that Act (annual return  
20 to be made by a company);

21 (c) in relation to a limited liability company to which the *Limited*  
22 *Liability Companies Act 1996* applies, the annual return required by  
23 section 10 of that Act (annual returns);

1 (d) in relation to a limited partnership with legal personality, the  
2 annual statement required by section 51(1A) to (1C) of the  
3 *Partnership Act 1909* (registration of changes in partnerships); and

4 (e) in relation to a foundation, the annual return required by section  
5 44 of the *Foundations Act 2011* (foundation to make annual return);

6 “**Authority**” means the Isle of Man Financial Services Authority;

7 “**beneficial owner**” and “**beneficial ownership**” each have the meaning given  
8 by section 4;

9 “**beneficial ownership information sharing agreement**” means an agreement  
10 between the Government of the Island and the government of another  
11 country in respect of the sharing of beneficial ownership information of  
12 legal entities;

13 “**company**” means a company falling within section 5(1)(a) to (c);

14 “**competent authorities**” has the meaning given by section 15(3);

15 “**control**” is to be construed in accordance with section 4;

16 “**country**” includes territory;

17 “**Database**” and “**Isle of Man Database of Beneficial Ownership**” means the  
18 database established in accordance with section 19;

19 “**Department**” means the Department of Economic Development;

20 “**external intelligence or law enforcement agency**” means a person or body –

21 (a) engaged in a country which is a party to a beneficial ownership  
22 information sharing agreement; and

23 (b) named, referred to or contemplated in that agreement as a person  
24 or body to whom beneficial ownership information may be  
25 disclosed;

26 “**FIU**” means the Financial Intelligence Unit established by the *Financial*  
27 *Intelligence Unit Act 2016*;

28 “**foundation**” has the meaning given by section 5(1)(e);

29 “**information**” includes any information, fact, statement or record in any form;

30 “**intermediate owner**” has the meaning given by section 10(1);

31 “**legal entity**” means a body corporate, firm or other body that is a legal person  
32 under the law by which it is governed;

33 “**legal entity to which this Act applies**” is to be construed in accordance with  
34 section 5;

35 “**legal owner**” means, in relation to a legal entity to which this Act applies, a  
36 person who directly owns or controls shares or voting rights or other  
37 ownership interest in that entity or who exercises direct control via other  
38 means whether or not that person is also the beneficial owner of that  
39 interest;

- 1 “**limited partnership with legal personality**” has the meaning given by section  
2 5(1)(d);
- 3 “**nominated officer**” means a person appointed in accordance with section 6;
- 4 “**ownership**” is to be construed in accordance with section 4;
- 5 “**permitted purpose**” —
- 6 (a) means any of the following —
- 7 (i) the prevention, detection, investigation or prosecution of  
8 criminal offences, whether in the Island or elsewhere;
- 9 (ii) the prevention, detection, investigation of or the bringing  
10 of proceedings for conduct for which penalties other than  
11 criminal penalties (including civil and regulatory penalties)  
12 are provided under the law of the Island or of any country  
13 outside the Island;
- 14 (iii) the furtherance or discharge of any function under this Act  
15 or any other enactment of the competent authority seeking  
16 access to beneficial ownership information;
- 17 (iv) the disclosure of information to the Isle of Man Office of  
18 Fair Trading for the purposes of matters relating to  
19 consumer protection and trading standards and in  
20 connection with the licensing and registration of  
21 moneylenders under the *Moneylenders Act 1991*; and
- 22 (v) in the case of the FIU (in addition to the permitted  
23 purposes specified in subparagraphs (i) to (iv)), the  
24 disclosure of beneficial ownership information to an  
25 external intelligence or law enforcement agency in  
26 accordance with a beneficial ownership information  
27 sharing agreement; and
- 28 (b) includes measures taken to —
- 29 (i) determine whether or not to investigate, prosecute or bring  
30 proceedings;
- 31 (ii) initiate or bring to an end such an investigation,  
32 prosecution or proceedings; and
- 33 (iii) trace, freeze, seize, confiscate or recover assets;
- 34 “**registrable beneficial owner**” means a beneficial owner who owns or controls  
35 more than 25% of the beneficial ownership of a legal entity to which this  
36 Act applies and “**registrable beneficial ownership**” is to be construed  
37 accordingly;
- 38 “**relevant change**” means any change to the required details provided to a  
39 nominated officer under section 9(3);
- 40 “**relevant person**” has the meaning given by section 30(2);
- 41 “**required details**” has the meaning given by section 11(1);

1 “**subsidiary**” has the meaning given by section 1 of the *Companies Act 1974* or  
2 section 220 of the *Companies Act 2006* (as the case may be);

3 “**Tribunal**” means the Financial Services Tribunal established under section 32  
4 of the *Financial Services Act 2008*.

5 (2) The Treasury may by order amend subsection (1) so as to amend the  
6 definition of —

7 (a) “beneficial ownership information sharing agreement”;

8 (b) “external intelligence or law enforcement agency”;

9 (c) “permitted purpose”; and

10 (d) “registrable beneficial owner” including the percentage referred  
11 to within that definition.

12 (3) An order under subsection (2) must not come into operation unless it is  
13 approved by Tynwald.

#### 14 4 Meaning of beneficial owner

15 (1) In this Act “**beneficial owner**” means a natural person who ultimately  
16 owns or controls a legal entity to which this Act applies, in whole or in  
17 part, through direct or indirect ownership or control of shares or voting  
18 rights or other ownership interest in that entity, or who exercises control  
19 via other means, and “**beneficial ownership**” is to be construed  
20 accordingly.

21 (2) If two or more natural persons each own or control an interest in a legal  
22 entity to which this Act applies, each of them is treated for the purposes of  
23 this Act as owning or controlling that interest.

24 *Example:*

25 *If two persons jointly own or control a 30% interest in a legal entity,*  
26 *they are each treated as owning the 30% interest and each is a*  
27 *registrable beneficial owner for the purposes of this Act.*

28 (3) Beneficial ownership may be traced through any number of persons or  
29 arrangements of any description.

30 (4) The Authority may issue guidance about the meaning of “**beneficial**  
31 **ownership**”, “**ownership**”, “**control**”, “**legal ownership**” and “**registrable**  
32 **beneficial ownership**”.

33 (5) Regard must be had to guidance issued under subsection (4) in  
34 interpreting references in this Act to those expressions.

35 (6) The Authority may revise guidance issued under subsection (4) and a  
36 reference to guidance includes a reference to revised guidance.

37 (7) Guidance issued under subsection (4) must be published by the Authority  
38 on its website or in a manner the Authority considers will bring it to the  
39 attention of those likely to be affected by it.

- 1 (8) The Treasury may by order amend —  
2 (a) subsection (1) to revise the meaning of “**beneficial owner**”; and  
3 (b) subsection (2).  
4 (9) An order under subsection (8) must not come into operation unless it is  
5 approved by Tynwald.

## 6 5 Legal entities to which this Act applies

- 7 (1) This Act applies to the following legal entities —  
8 (a) a company to which the *Companies Acts 1931 to 2004* apply,  
9 including —  
10 (i) a company within the meaning of the *Companies Act 1931*;  
11 (ii) a protected cell company within the meaning of the  
12 *Protected Cell Companies Act 2004*;  
13 (iii) an incorporated cell company within the meaning of the  
14 *Incorporated Cell Companies Act 2010* to which the *Companies*  
15 *Acts 1931 to 2004* apply;  
16 (iv) an incorporated cell within the meaning of the *Incorporated*  
17 *Cell Companies Act 2010* to which the *Companies Acts 1931 to*  
18 *2004* apply; and  
19 (v) a company continued in the Island under Part I of the  
20 *Companies (Transfer of Domicile) Act 1998*;  
21 (b) a company to which the *Companies Act 2006* applies, including —  
22 (i) a company within the meaning of the *Companies Act 2006*;  
23 (ii) a protected cell company within the meaning of the  
24 *Companies Act 2006*;  
25 (iii) an incorporated cell company within the meaning of the  
26 *Incorporated Cell Companies Act 2010* to which the *Companies*  
27 *Act 2006* applies;  
28 (iv) an incorporated cell within the meaning of the *Incorporated*  
29 *Cell Companies Act 2010* to which the *Companies Act 2006*  
30 applies;  
31 (v) a company continued in the Island under section 162 of the  
32 *Companies Act 2006* (application for consent to be continued  
33 in the Isle of Man); and  
34 (vi) a company re-registered under Part IX of the *Companies Act*  
35 *2006*;  
36 (c) a limited liability company to which the *Limited Liability Companies*  
37 *Act 1996* applies;  
38 (d) a limited partnership to which section 48B of the *Partnership Act*  
39 *1909* (legal personality) applies (“**limited partnership with legal**  
40 **personality**”); and

(e) a foundation within the meaning of the *Foundations Act 2011* (“**foundation**”).

This subsection is subject to subsection (2).

(2) This Act does not apply to —

(a) a legal entity which is formed, incorporated or established outside the Island (whether or not registered under the *Foreign Companies Act 2014*), other than a company which is continued in the Island under Part I of the *Companies (Transfer of Domicile) Act 1998* or section 162 of the *Companies Act 2006*;

(b) a legal entity which is listed on a stock or investment exchange recognised by the Treasury for the purposes of this section;

(c) a company which is a wholly owned subsidiary of a legal entity referred to in paragraph (b), where the disclosure obligations on the legal entity include the beneficial ownership information in respect of the entity and its subsidiaries; or

(d) an unregistered company within the meaning of section 306 of the *Companies Act 1931* (meaning of unregistered company) to which subsection (1) does not apply.

(3) In subsection (2)(b), an exchange is “**recognised**” if its name or another suitable description of it is published by the Treasury in such manner as the Treasury determines.

(4) The Treasury may by order amend subsections (1) and (2) so as to add to, remove from or otherwise revise the lists of legal entities to which this Act applies or does not apply (as the case may be).

(5) An order made under subsection (4) may —

(a) contain any consequential, incidental, supplementary, transitional and transitory provisions which the Treasury considers necessary or expedient; and

(b) modify, adapt or amend any provision of this Act to give effect to a revision to either list.

(6) An order under subsection (4) must not come into operation unless it is approved by Tynwald.

## PART 2 – NOMINATED OFFICER TO MAINTAIN BENEFICIAL OWNERSHIP INFORMATION

### DIVISION 1 – NOMINATED OFFICER

#### 6 Requirement to have a nominated officer

(1) A legal entity to which this Act applies must have a nominated officer.

- 1 (2) The nominated officer must be —
- 2 (a) a natural person who is resident in the Island; or
- 3 (b) the holder of a licence issued under section 7 of the *Financial*
- 4 *Services Act 2008* which permits the holder to carry on the
- 5 regulated activity (within the meaning of section 3(1) of that Act)
- 6 of providing corporate services.
- 7 (3) A legal entity may have more than one nominated officer and, if so, their
- 8 functions and liabilities under this Act are joint and several.
- 9 (4) The nominated officer of an incorporated cell company is also the
- 10 nominated officer of each of its incorporated cells.
- 11 (5) A legal entity which fails to comply with this section commits an offence.
- 12 (6) A person guilty of an offence under subsection (5) is liable —
- 13 (a) on conviction on information, to a fine;
- 14 (b) on summary conviction, to a fine not exceeding £5,000.

15 **7 Notice of appointment of nominated officer**

- 16 (1) Subject to section 45 (savings), a legal entity to which this Act applies
- 17 must appoint its first nominated officer and give notice to the Department
- 18 of such appointment within one month of the coming into operation of
- 19 this section or such later date as is specified in an order made under
- 20 section 2.
- 21 (2) A notice under subsection (1) must specify the date on which the
- 22 appointment was made.
- 23 (3) A legal entity to which this Act applies must, within one month of the
- 24 date of the occurrence of an event specified in subsection (4), give notice to
- 25 the Department of the occurrence of the event.
- 26 (4) The events referred to in subsection (3) are —
- 27 (a) a change in the details in its record of a nominated officer;
- 28 (b) a change of nominated officer; and
- 29 (c) a subsequent appointment of a nominated officer.
- 30 (5) A notice under subsection (3) must specify the event and the date on
- 31 which the change or appointment was made.
- 32 (6) A notice under subsection (1) or (3) is to be in such form, and must be
- 33 accompanied by such documents and information, as the Department
- 34 requires.
- 35 (7) A legal entity which fails to comply with this section commits an offence.
- 36 (8) A person guilty of an offence under subsection (7) is liable —
- 37 (a) on conviction on information, to a fine;
- 38 (b) on summary conviction, to a fine not exceeding £5,000.

- 1 (9) If a legal entity fails to adhere to the time limits stipulated in subsections  
2 (1) and (3), the Department may accept late delivery of a notice upon  
3 payment by the legal entity of the fee prescribed in an order made under  
4 section 33.
- 5 (10) The Department may not require payment of a fee under subsection (9) if  
6 criminal proceedings have been commenced in respect of the  
7 contravention.

## 8 **Record of nominated officer**

- 9 (1) A legal entity to which this Act applies must keep a record of the  
10 following –
- 11 (a) in the case of a nominated officer who is a natural person –
- 12 (i) the officer's name; and
- 13 (ii) the officer's home address in the Island;
- 14 (b) in the case of a nominated officer which has legal personality but  
15 is not a natural person –
- 16 (i) the officer's corporate or firm name; and
- 17 (ii) the officer's registered office or place of business in the  
18 Island; and
- 19 (c) in all cases, written confirmation of the officer's consent to the  
20 appointment.
- 21 (2) The record of a nominated officer of an incorporated cell company is also  
22 the record of a nominated officer of each of its incorporated cells.
- 23 (3) A legal entity which fails to comply with this section commits an offence.
- 24 (4) A person guilty of an offence under subsection (3) is liable –
- 25 (a) on conviction on information, to a fine;
- 26 (b) on summary conviction, to a fine not exceeding £5,000.

## 27 DIVISION 2 – REQUIRED DETAILS

## 28 **9 Duty of legal owners**

- 29 (1) It is the duty of each legal owner of a legal entity to which this Act applies  
30 to ascertain the beneficial owner of the legal owner's interest in the legal  
31 entity.
- 32 (2) Subsection (3) applies if a legal owner of a legal entity receives a notice  
33 described in subsection (5).
- 34 (3) The legal owner must, within one month of the date of the notice received  
35 under subsection (2) give notice to the legal entity's nominated officer of  
36 the required details specified in section 11 in respect of each beneficial  
37 owner of the legal owner's interest.

- 1 (4) To avoid doubt, beneficial ownership is to be traced through any number  
2 of persons or arrangements of any description (see section 4(3)).
- 3 (5) The notice referred to in subsection (2) is a written notice given by the  
4 nominated officer of the legal entity.
- 5 (6) Where notice is given by a legal owner under subsection (3), it must be  
6 accompanied by information from a reliable and independent source  
7 which verifies the required details.
- 8 (7) A legal owner of an interest in a legal entity to which this Act applies  
9 commits an offence if that person, without reasonable excuse —
- 10 (a) fails to comply with this section; or
- 11 (b) knowingly or recklessly makes a statement to the nominated  
12 officer which is false, deceptive or misleading in a material  
13 particular.
- 14 (8) It is a defence for a person charged with an offence under subsection (7)(a)  
15 to show that the person took reasonable steps to avoid the commission of  
16 the offence.
- 17 (9) A person guilty of an offence under subsection (7)(a) is liable —
- 18 (a) on conviction on information, to a fine;
- 19 (b) on summary conviction, to a fine not exceeding £5,000.
- 20 (10) A person guilty of an offence under subsection (7)(b) is liable —
- 21 (a) on conviction on information, to custody for a term not exceeding  
22 2 years, or to a fine, or to both;
- 23 (b) on summary conviction, to custody for a term not exceeding 6  
24 months, or to a fine not exceeding £5,000, or to both.
- 25 (11) The Department may by regulations make further provision about the  
26 giving of notices under this section, including the form and content of  
27 such notices and the manner in which they must be given.
- 28 (12) Regulations under subsection (11) must be laid before Tynwald as soon as  
29 practicable after they are made and if Tynwald at the sitting at which they  
30 are laid or the next subsequent sitting resolves that the regulations are to  
31 be annulled they shall cease to have effect.
- 32 (13) The Treasury may by order amend the period of time specified in  
33 subsection (3).
- 34 (14) An order under subsection (13) must not come into operation unless it is  
35 approved by Tynwald.

## 36 10 Duty of beneficial owners and intermediate owners to assist

- 37 (1) This section applies to a person who has an interest in a legal entity to  
38 which this Act applies, who —
- 39 (a) is the beneficial owner but not the legal owner of that interest; or

- (b) is not the beneficial owner or the legal owner of that interest (“**intermediate owner**”).

*Example:*

*The legal owner holds shares in Company A on behalf of X.*

*X is nominee or bare trustee for Y.*

*Y is nominee or bare trustee for the beneficial owner.*

*The legal owner is obliged under this section to provide beneficial ownership information in relation to the beneficial owner.*

*X and Y are intermediate owners.*

- (2) A beneficial owner and an intermediate owner must assist a legal owner to ascertain the beneficial owner of the legal owner’s interest in the legal entity and to notify the legal owner of any changes to the beneficial ownership of that interest.
- (3) A person who fails to comply with subsection (2) commits an offence.
- (4) It is a defence for a person charged with an offence under subsection (3) to show that the person took reasonable steps to avoid the commission of the offence.
- (5) A person guilty of an offence under subsection (3) is liable —
- (a) on conviction on information, to a fine;
  - (b) on summary conviction, to a fine not exceeding £5,000.

## 11 Required details

- (1) The “**required details**” are —
- (a) in respect of a beneficial owner —
    - (i) his or her name;
    - (ii) his or her usual residential address;
    - (iii) a service address, where it differs from the residential address;
    - (iv) his or her nationality;
    - (v) his or her date of birth;
    - (vi) his or her place of birth;
    - (vii) his or her occupation;
    - (viii) his or her gender;
    - (ix) the date on which he or she acquired an interest in the legal entity;
    - (x) the nature and extent (expressed as a percentage) of his or her interest in the legal entity; and

- 1 (b) in respect of a class of beneficial owners of such a size that it is not  
2 reasonably practicable to identify each beneficial owner, details  
3 sufficient to identify and describe the class of persons who are  
4 beneficial owners.
- 5 (2) The Treasury may by order amend subsection (1) so as to add to, remove  
6 from or otherwise revise the required details.
- 7 (3) An order under subsection (2) must not come into operation unless it is  
8 approved by Tynwald.

## 9 **12 Changes to required details**

- 10 (1) Where a legal owner of a legal entity to which this Act applies is required  
11 to give notice to the nominated officer under section 9(3) (duty of legal  
12 owners), the legal owner must also give notice to the legal entity's  
13 nominated officer if the legal owner knows or has reasonable cause to  
14 believe that a relevant change (see section 3) has occurred.
- 15 (2) The legal owner must give notice to the nominated officer within one  
16 month after the legal owner learns of the change or first has reasonable  
17 cause to believe that the change has occurred.
- 18 (3) A notice under subsection (1) must —
- 19 (a) contain details of the changes to the required details; and
- 20 (b) be accompanied by information from a reliable and independent  
21 source which verifies the changes to the required details.
- 22 (4) A legal owner who fails to comply with this section commits an offence.
- 23 (5) A person guilty of an offence under subsection (4) is liable —
- 24 (a) on conviction on information, to a fine;
- 25 (b) on summary conviction, to a fine not exceeding £5,000.
- 26 (6) The Department may by regulations make further provision about the  
27 giving of notices under this section, including the form and content of  
28 such notices and the manner in which they must be given.
- 29 (7) Regulations under subsection (6) must be laid before Tynwald as soon as  
30 practicable after they are made and if Tynwald at the sitting at which they  
31 are laid or the next subsequent sitting resolves that the regulations are to  
32 be annulled they shall cease to have effect.

## 33 **13 Preservation of required details and verifying information**

- 34 (1) The nominated officer of a legal entity to which this Act applies must  
35 ensure that the required details and the information which verifies those  
36 details and which were provided to the nominated officer in relation to  
37 that entity are maintained and preserved in accordance with this section.

- 1 (2) The required details and information referred to in subsection (1) must be  
2 maintained in the Island by the nominated officer so as to be capable of  
3 disclosing the beneficial ownership of the legal entity at any time.
- 4 (3) The required details and information referred to in subsection (1) must be  
5 preserved —
- 6 (a) for a minimum of 5 years from the end of the period to which the  
7 information relates; or
- 8 (b) where the nominated officer is made aware that an investigation  
9 is being carried out under this Act or any other enactment for the  
10 greater of —
- 11 (i) a minimum of 5 years from the end of the period to which  
12 the information relates; or
- 13 (ii) until completion of that investigation.
- 14 (4) Subsection (6) applies if one of the events specified in subsection (5)  
15 occurs.
- 16 (5) An event occurs for the purposes of subsection (4) if a legal entity to  
17 which this Act applies —
- 18 (a) is wound up, dissolved, struck off or removed from a register; or  
19 (b) otherwise ceases to carry on or exist.
- 20 (6) Subject to subsection (7), the person who was the nominated officer  
21 immediately before the occurrence of the event must comply with the  
22 requirements of this section.
- 23 (7) Where a person to whom subsection (6) applies intends no longer to  
24 reside in the Island, that person must obtain and comply with directions  
25 from the Department with regard to the continued preservation of the  
26 required details and information referred to in subsection (1).
- 27 (8) A person who fails to comply with a provision of this section commits an  
28 offence.
- 29 (9) A person guilty of an offence under subsection (8) is liable —
- 30 (a) on conviction on information, to a fine;
- 31 (b) on summary conviction, to a fine not exceeding £5,000.
- 32 (10) This section does not limit or otherwise restrict a record keeping  
33 requirement or obligation in any other enactment.
- 34 (11) For the purpose of subsection (2), “in the Island” includes on a server  
35 connected to the internet which is permanently accessible from the Island.
- 36 (12) The Department may by order amend subsection (3) so as to extend the  
37 period for which records must be preserved.
- 38 (13) An order under subsection (12) must not come into operation unless it is  
39 approved by Tynwald.

**14 Further consequences of failure to disclose beneficial ownership**

- (1) Subsection (2) applies if a nominated officer of a legal entity to which this Act applies is of the opinion that a person who is a legal owner of an interest in that legal entity, without reasonable excuse —
- (a) has failed to comply with section 9 or 12; 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 legal entity of the opinion mentioned in subsection (1).
- (3) On receipt of a notice under subsection (2), the legal entity must serve notice on the legal owner and the beneficial owner of the legal owner's interest to inform them that —
- (a) the legal entity has received a notice from the nominated officer under subsection (2);
  - (b) it may take action in accordance with subsection (4); and
  - (c) the recipient has 14 days from the date of the notice served under this subsection to make representations to the legal entity.
- (4) The legal entity must consider any representations which it receives in accordance with subsection (3)(c) and may then take such action as it thinks fit with regard to the rights attaching to the legal owner's interest in the legal entity as specified in subsection (6).
- (5) The legal entity must give notice to the Authority specifying any action it has taken within 2 weeks of the taking of the action.
- (6) The actions a legal entity may take include, without limitation —
- (a) the placing of such restrictions as the legal entity thinks fit on rights attaching to the legal owner's interest in the legal entity, including without limitation —
    - (i) any right to transfer or assign shares or other interest;
    - (ii) any voting rights;
    - (iii) any right to further shares in addition to shares already held;
    - (iv) any right to payment due in respect of the legal owner's interest, whether in respect of capital or otherwise;
    - (v) in the case of a limited partnership with legal personality, any right to take part in the management of the partnership;
    - (vi) in the case of a foundation, any benefit to which the legal owner becomes entitled under the foundation in accordance with the foundation instrument or the foundation rules; or

- 1 (b) the cancellation of the legal owner's interest in the legal entity.
- 2 (7) A legal owner may apply to the High Court, in accordance with rules of
- 3 court, to set aside any restriction or cancellation under subsection (6).
- 4 (8) The Court may make such order on such terms and conditions as it thinks
- 5 fit.

6 DIVISION 3 – DISCLOSURE NOTICES

7 **15 Disclosure of beneficial ownership information by nominated officer**

- 8 (1) Subsection (2) applies if a nominated officer receives a notice described in
- 9 subsection (3).
- 10 (2) The nominated officer must disclose, in accordance with the notice, any
- 11 information the officer holds in respect of the beneficial ownership of the
- 12 legal entity specified or referred to in the notice.
- 13 (3) The notice referred to in subsection (1) is a written notice given by —
- 14 (a) the FIU;
- 15 (b) the Attorney General;
- 16 (c) the Assessor of Income Tax;
- 17 (d) the Authority;
- 18 (e) the Chief Constable; or
- 19 (f) the Collector of Customs and Excise,
- 20 (the “**competent authorities**”).
- 21 (4) The notice must state —
- 22 (a) what information is required;
- 23 (b) that the information is required for a permitted purpose (see
- 24 section 3(1); and
- 25 (c) that the information must be provided as soon as possible and in
- 26 any event —
- 27 (i) in the case of information relating to a registrable beneficial
- 28 owner (see section 3), within 7 days;
- 29 (ii) in the case of information relating to a beneficial owner,
- 30 other than a registrable beneficial owner, within one
- 31 month,
- 32 of the date of the notice.
- 33 (5) The information that must be disclosed under this section includes
- 34 information obtained before this Act came into operation.
- 35 (6) Information disclosed in accordance with subsection (2) may be used by
- 36 the recipient as evidence in criminal, civil and regulatory proceedings.
- 37 (7) A nominated officer commits an offence if the officer —

- 1 (a) fails to comply with subsection (2); or
- 2 (b) knowingly or recklessly makes a statement, in response to
- 3 receiving a notice under this section, which is false, deceptive or
- 4 misleading in a material particular.
- 5 (8) A person guilty of an offence under subsection (7)(a) is liable —
- 6 (a) on conviction on information, to a fine;
- 7 (b) on summary conviction, to a fine not exceeding £5,000.
- 8 (9) A person guilty of an offence under subsection (7)(b) is liable —
- 9 (a) on conviction on information, to custody for a term not exceeding
- 10 2 years, or to a fine, or to both;
- 11 (b) on summary conviction, to custody for a term not exceeding 6
- 12 months, or to a fine not exceeding £5,000, or to both.
- 13 (10) The Treasury may by regulations make further provision about the giving
- 14 of notices under this section, including the form and content of such
- 15 notices and the manner in which they must be given.
- 16 (11) Regulations under subsection (10) must be laid before Tynwald as soon as
- 17 practicable after they are made and if Tynwald at the sitting at which they
- 18 are laid or the next subsequent sitting resolves that the regulations are to
- 19 be annulled they shall cease to have effect.
- 20 (12) The Treasury may by order amend subsections (3) and (4).
- 21 (13) An order under subsection (12) must not come into operation unless it is
- 22 approved by Tynwald.

23 **16 Restrictions on further disclosure of information provided by**

24 **nominated officer**

- 25 (1) This section applies in relation to information disclosed under section 15.
- 26 (2) Subject to subsection (3), the information must not be further disclosed by
- 27 a competent authority except for a permitted purpose.
- 28 (3) Information further disclosed in accordance with subsection (2) may be
- 29 used by the recipient as evidence in criminal, civil and regulatory
- 30 proceedings.
- 31 (4) For avoidance of doubt, this section —
- 32 (a) is in addition to section 17; and
- 33 (b) does not apply to the disclosure of information by the FIU to an
- 34 external intelligence or law enforcement agency in accordance
- 35 with section 17 or 28.

**17 Disclosure of information obtained from a nominated officer by the FIU when responding to external requests**

- (1) Information obtained by the FIU from a nominated officer under section 15 may be disclosed by the FIU to an external intelligence or law enforcement agency —
- (a) if the disclosure is made in response to a request made by the external intelligence or law enforcement agency;
  - (b) the request is made in furtherance of the agency's functions; and
  - (c) the request is made using such manner and form as the FIU may require.
- (2) Section 25 of the *Financial Intelligence Unit Act 2016* does not apply to information disclosed by the FIU under this section.
- (3) To avoid doubt, this section is in addition to section 28 (disclosure of information from the Database by the FIU when responding to external requests).

**18 Tipping off resulting from issue of a notice by a competent authority**

- (1) A person commits an offence if —
- (a) the person knows or suspects that a notice has been issued, or is proposed to be issued, under section 15 in respect of a legal entity to which this Act applies; and
  - (b) the person discloses to any other person any information or other matter which may prejudice —
    - (i) a criminal, civil or regulatory investigation which is being or may be carried out, whether in the Island or elsewhere, which is connected with the issue of the notice; or
    - (ii) criminal, civil or regulatory proceedings which have been or may be initiated, whether in the Island or elsewhere, which are connected with the issue of the notice.
- (2) A person guilty of an offence under subsection (1) is liable —
- (a) on conviction on information, to custody for a term not exceeding 2 years, or to a fine, or to both;
  - (b) on summary conviction, to custody for a term not exceeding 6 months, or to a fine not exceeding £5,000, or to both.
- (3) Nothing in subsection (1) makes it an offence for a professional legal adviser to disclose any information or other matter —
- (a) to a client of the adviser (or to a representative of the client) in connection with the giving of legal advice to the client; or
  - (b) to any person —

- 1 (i) in contemplation of or in connection with legal  
2 proceedings; and  
3 (ii) for the purpose of those proceedings.
- 4 (4) Subsection (3) does not apply in relation to any information or other  
5 matter which is disclosed with a view to furthering any criminal purpose.
- 6 (5) In proceedings against a person for an offence under this section, it is a  
7 defence to prove that the person did not know or suspect that the  
8 disclosure was likely to be prejudicial in the way mentioned in subsection  
9 (1)(b).

10 **PART 3 – ISLE OF MAN DATABASE OF BENEFICIAL**  
11 **OWNERSHIP**

12 **DIVISION 1 – THE DATABASE**

13 **19 The Database**

- 14 (1) The Department must establish and maintain a database of the beneficial  
15 ownership of registrable beneficial owners to be known as the “**Isle of**  
16 **Man Database of Beneficial Ownership**”.
- 17 (2) The Database must contain the information specified in section 20(5).

18 **20 Compulsory submission of registrable beneficial ownership**  
19 **information to the Department**

- 20 (1) The nominated officer must take all reasonable steps necessary to  
21 ascertain whether a legal entity to which this Act applies has a registrable  
22 beneficial owner so as to enable compliance with subsection (3).
- 23 (2) The steps referred to in subsection (1) may include, but are not limited to,  
24 obtaining the information specified in subsection (5) by a notice given  
25 under section 9(2) (duty of legal owners).
- 26 (3) The nominated officer must submit the information specified in  
27 subsection (5) to the Department.
- 28 (4) Unless regulations made under subsection (16) otherwise provide,  
29 submission of information under subsection (3) must be in accordance  
30 with section 22 (beneficial ownership information to be submitted online).
- 31 (5) The information referred to in subsections (1) to (3) includes —  
32 (a) where the legal entity has a registrable beneficial owner —  
33 (i) the required details (see section 11) of the registrable  
34 beneficial owner; and  
35 (ii) details of any relevant changes (see section 3); and

- 1 (b) where the legal entity has no registrable beneficial owners, a  
2 statement of confirmation of that fact.
- 3 (6) In relation to a legal entity already in existence when this section comes  
4 into operation, the nominated officer must submit the information to the  
5 Department under subsection (3) —
- 6 (a) on the first occasion after the coming into operation of this  
7 section, by —
- 8 (i) the date on which the legal entity's next annual return  
9 must be filed, delivered or made following receipt by the  
10 nominated officer of the first notice given under section  
11 9(3); or
- 12 (ii) 30 June 2018,  
13 whichever is the earlier, but in any event as soon as reasonably  
14 practicable after the information has been submitted to the nominated  
15 officer; and
- 16 (b) on every subsequent occasion, within one month of the relevant  
17 information being notified to the nominated officer under section  
18 9 or section 12 (as the case may be).
- 19 (7) In relation to a legal entity coming into existence after this section comes  
20 into operation, the nominated officer must submit the information to the  
21 Department under subsection (3) within one month of that information  
22 being notified to the nominated officer under section 9 (duty of legal  
23 owners) or section 12 (changes to required details) (as the case may be).
- 24 (8) A nominated officer commits an offence if the officer —
- 25 (a) fails to comply with subsection (1), (3), (4) (5) (6) or (7); or  
26 (b) knowingly or recklessly makes a statement to the Department  
27 which is false, deceptive or misleading in a material particular.
- 28 (9) A person guilty of an offence under subsection (8)(a) is liable —
- 29 (a) on conviction on information, to a fine;  
30 (b) on summary conviction, to a fine not exceeding £5,000.
- 31 (10) A person guilty of an offence under subsection (8)(b) is liable —
- 32 (a) on conviction on information, to custody for a term not exceeding  
33 2 years, or to a fine, or to both;
- 34 (b) on summary conviction, to custody for a term not exceeding 6  
35 months, or to a fine not exceeding £5,000, or to both.
- 36 (11) If a person is convicted of an offence under subsection (8), the court may  
37 order that person to take such action as is necessary to rectify that failure.
- 38 (12) If a nominated officer fails to adhere to the time limits stipulated in  
39 subsection (6) or (7), the Department may accept late delivery of the notice

- 1 upon payment by the legal entity of the fee prescribed in an order made  
2 under section 33.
- 3 (13) The Department may not require payment of a fee under subsection (12) if  
4 criminal proceedings have been commenced in respect of the  
5 contravention.
- 6 (14) The Treasury may by order amend subsections (5) and (6) so as to amend  
7 the information in respect of a registrable beneficial owner to be submitted  
8 to the Department by the nominated officer and the period within which it  
9 is to be submitted.
- 10 (15) An order under subsection (14) must not come into operation unless it is  
11 approved by Tynwald.
- 12 (16) The Department may by regulations make further provision about the  
13 submission of information under this section, including the form and  
14 content of such submissions and the manner in which they must be given.
- 15 (17) Regulations under subsection (16) must be laid before Tynwald as soon as  
16 practicable after they are made and if Tynwald at the sitting at which they  
17 are laid or the next subsequent sitting resolves that the regulations are to  
18 be annulled they shall cease to have effect.

19 **21 Voluntary submission of non-registrable beneficial ownership**  
20 **information**

- 21 (1) The nominated officer may, with the consent of the beneficial owner to  
22 whom the information relates, submit to the Department any other  
23 beneficial ownership information, including the required details of a  
24 beneficial owner other than a registrable beneficial owner.
- 25 (2) Submission of information under subsection (1) must be in accordance  
26 with section 22 (beneficial ownership information to be submitted online).

27 **22 Beneficial ownership information to be submitted online**

- 28 (1) A nominated officer must comply with subsection (2) unless subsection (3)  
29 applies.
- 30 (2) A nominated officer must use the required website to submit information  
31 to the Department.
- 32 (3) The nominated officer is exempt from complying with subsection (2)  
33 where –
- 34 (a) regulations made under section 20(16) so provide; or
- 35 (b) upon receipt of an application from the nominated officer, the  
36 Department is satisfied that the nominated officer –
- 37 (i) does not have access to the internet; or

1 (ii) is otherwise unable, with reasonable excuse, to comply  
2 with this section,

3 and should be exempt from such compliance.

4 (4) Unless exempted under subsection (3), a nominated officer who fails to  
5 comply with subsection (2) commits an offence.

6 (5) A person guilty of an offence under subsection (4) is liable on summary  
7 conviction, to a fine not exceeding £5,000.

8 (6) An application under subsection (3)(b) must be in the form and manner  
9 required by the Department.

10 (7) A nominated officer may appeal under section 34 (appeals), against a  
11 decision under subsection (3).

12 (8) In this section “required website” means such website address as may be  
13 made available by the Department for use in connection with the  
14 submission of beneficial ownership information.

## 15 **23 Access to the Database**

16 (1) Access to the information on the Database is only permissible in  
17 accordance with this Part.

18 (2) Information obtained through access to the Database may only be further  
19 disclosed in accordance with this Part.

## 20 **24 Mode of access**

21 (1) The Department may allow access to the Database by such means and in  
22 such manner as it determines.

23 (2) The Department may by regulations make further provision about access  
24 to the Database under this Part (but not as regards the persons or bodies  
25 who may access the Database (see section 26)).

26 (3) Regulations under subsection (2) must be laid before Tynwald as soon as  
27 practicable after they are made and if Tynwald at the sitting at which they  
28 are laid or the next subsequent sitting resolves that the regulations are to  
29 be annulled they shall cease to have effect.

## 30 **25 Department not liable for accuracy of information submitted**

31 To avoid doubt, the Department is not liable for the accuracy of any beneficial  
32 ownership information submitted to it for inclusion on the Database.

1

## DIVISION 2 – ACCESS TO THE DATABASE

2

**26 Persons who may access the Database**

3

(1) Each of the competent authorities may access the Database for a permitted purpose (see sections 3(1) and 15(3)).

4

5

(2) The following persons or bodies may access the Database –

6

(a) the Department, for the purpose of its functions under this Act;

7

(b) the Isle of Man Gambling Supervision Commission, for the purpose of the Commission's functions under any other enactment;

8

9

10

(c) employees of the Government Technology Services Division of the Cabinet Office, for the purpose of maintaining the Database and the required website (see section 22(8));

11

12

13

(d) a legal entity to which this Act applies, for the purpose of accessing the beneficial ownership information submitted in relation to that legal entity; and

14

15

16

(e) a third party that is authorised by a legal entity, to access beneficial ownership information in relation to that legal entity to which the authorisation applies.

17

18

19

(3) To avoid doubt, for the purpose of subsection (2)(d), access to the Database by a legal entity includes access for the purpose of –

20

21

(a) viewing the beneficial ownership information in relation to that entity contained on the Database; and

22

23

(b) submitting information in relation to that entity in accordance with section 22 (beneficial ownership information to be submitted online).

24

25

26

(4) The Treasury may by order amend subsections (1) to (3).

27

28

(5) An order under subsection (4) must not come into operation unless it is approved by Tynwald.

29

**27 Restrictions on further disclosure of information accessed from the Database**

30

31

(1) Subject to subsection (2), information accessed by a competent authority under section 26(1) must not be further disclosed except for a permitted purpose (see section 3(1)).

32

33

34

(2) Subject to subsection (1), information accessed under section 26(1) and disclosed under this section may be used by the recipient as evidence in criminal, civil or regulatory proceedings.

35

36

37

(3) Information accessed under section 26(2)(a) to (d) must not be disclosed other than for the purposes specified in those paragraphs.

38

- 1 (4) Information accessed under section 26(2)(e) must not be disclosed other  
2 than with the consent of the nominated officer of the legal entity to which  
3 the information relates.
- 4 (5) A person who fails to comply with subsection (3) or (4) commits an  
5 offence.
- 6 (6) A person guilty of an offence under subsection (5) is liable —  
7 (a) on conviction on information, to custody for a term not exceeding  
8 2 years, or to a fine, or to both;  
9 (b) on summary conviction, to custody for a term not exceeding 6  
10 months, or to a fine not exceeding £5,000, or to both.
- 11 (7) To avoid doubt this section —  
12 (a) is in addition to section 28 (disclosure of information from the  
13 Database by the FIU when responding to external requests); and  
14 (b) does not apply to the disclosure of information by the FIU to an  
15 external intelligence or law enforcement agency in accordance  
16 with section 17 (disclosure of information obtained from a  
17 nominated officer by the FIU when responding to external  
18 requests) or section 28.

19 **28 Disclosure of information from the Database by the FIU when**  
20 **responding to external requests**

- 21 (1) Information obtained by the FIU by accessing the Database may be  
22 disclosed by the FIU to an external intelligence or law enforcement  
23 agency —  
24 (a) if the disclosure is made in response to a request made by the  
25 external intelligence or law enforcement agency;  
26 (b) the request is made in furtherance of the agency's functions; and  
27 (c) the request is made in such manner and form as the FIU may  
28 require.
- 29 (2) Section 25 of the *Financial Intelligence Unit Act 2016* does not apply to  
30 information disclosed by the FIU under this section.

31 **29 Tipping off resulting from access to the Database**

- 32 (1) A person commits an offence if the person —  
33 (a) knows or suspects that information on the Database has been or is  
34 proposed to be accessed in accordance with this Part; and  
35 (b) discloses to any other person any information or other matter  
36 which may prejudice —  
37 (i) a criminal, civil or regulatory investigation which is being  
38 or may be carried out, whether in the Island or elsewhere,

- 1 which is connected with the access to the information on  
 2 the Database; or
- 3 (ii) criminal, civil or regulatory proceedings which have been  
 4 or may be initiated, whether in the Island or elsewhere,  
 5 which are connected with the access to the information on  
 6 the Database.
- 7 (2) A person guilty of an offence under subsection (1) is liable —
- 8 (a) on conviction on information, to custody for a term not exceeding  
 9 2 years, or to a fine, or to both;
- 10 (b) on summary conviction, to custody for a term not exceeding 6  
 11 months, or to a fine not exceeding £5,000, or to both.
- 12 (3) Nothing in subsection (1) makes it an offence for an advocate or other  
 13 legal adviser to disclose any information or other matter —
- 14 (a) to a client of the advocate or adviser (or to a representative of the  
 15 client) in connection with the giving of legal advice to the client;  
 16 or
- 17 (b) to any person —
- 18 (i) in contemplation of or in connection with legal  
 19 proceedings; and
- 20 (ii) for the purpose of those proceedings.
- 21 (4) Subsection (3) does not apply in relation to any information or other  
 22 matter which is disclosed with a view to furthering any criminal purpose.
- 23 (5) In proceedings against a person for an offence under this section, it is a  
 24 defence to prove that the person did not know or suspect that the  
 25 disclosure was likely to be prejudicial in the way mentioned in subsection  
 26 (1)(b).

## 27 PART 4 – GENERAL

### 28 DIVISION 1 – GENERAL

#### 29 30 Oversight functions of the Authority

- 30 (1) Without limiting its functions under any other enactment, the Authority is  
 31 responsible for assessing compliance with this Act by a relevant person.
- 32 (2) For the purpose of this section and Schedule 1 (oversight by the  
 33 Authority), “**relevant person**” means —
- 34 (a) a legal entity to which this Act applies;
- 35 (b) a nominated officer;
- 36 (c) a legal owner;
- 37 (d) a beneficial owner;

- 1 (e) an intermediate owner (see section 10); and  
2 (f) a registrable beneficial owner.
- 3 (3) Schedule 1 confers additional powers on the Authority to give effect to  
4 subsection (1).

### 5 **31 Striking off**

- 6 (1) This section applies where there is reasonable cause to believe that a legal  
7 entity to which this Act applies has failed or is failing to comply with its  
8 obligations under this Act.
- 9 (2) If this section applies, the legal entity may be struck off the relevant  
10 register or its registration may otherwise be cancelled.
- 11 (3) To give effect to subsection (2), the Acts specified in Schedule 2  
12 (amendments – striking off) are amended in accordance with that  
13 Schedule.

### 14 **32 Regulations**

- 15 (1) The Treasury may make regulations –  
16 (a) in accordance with this Act; and  
17 (b) in respect of any other matter for which the Treasury considers  
18 that regulations are necessary or expedient to give effect to this  
19 Act other than matters for which the Department may make  
20 regulations under this Act.
- 21 (2) Before it makes regulations under subsection (1), the Treasury must  
22 consult the Authority and the Department.
- 23 (3) Regulations made by the Treasury under subsection (1) or made by the  
24 Treasury, Authority or Department in accordance with other provisions of  
25 this Act may –  
26 (a) provide for their contravention to be an offence and prescribe a  
27 penalty for commission of the offence of a fine not exceeding  
28 £5,000 on summary conviction;  
29 (b) exempt a person from a provision of this Act to which the  
30 regulations relate;  
31 (c) permit a person to exercise a discretion in respect of any matters  
32 specified in the regulations;  
33 (d) require compliance with standards or the adoption of practices  
34 recommended or specified from time to time (whether before or  
35 after the making of the regulations) by a person or body specified  
36 in the regulations; and  
37 (e) contain consequential, incidental, supplementary and transitional  
38 provisions which the Treasury, Authority or Department (as the  
39 case may be) considers to be necessary or expedient.

- 1 (4) The power conferred by subsection (3)(e) includes the power to modify,  
2 adapt or amend any provision of this Act or any other enactment.
- 3 (5) Regulations made under this section must not come into operation unless  
4 approved by Tynwald.

### 5 **33 Fees**

- 6 (1) The Department may by order prescribe fees for the purposes of section 7  
7 (notice of appointment of nominated officer) and section 20 (compulsory  
8 submission of registrable beneficial ownership information to the  
9 Department).
- 10 (2) Before making an order under this section, the Department must consult  
11 the Treasury.
- 12 (3) A prescribed fee is a debt due to the Department for which the legal entity  
13 may be sued accordingly.
- 14 (4) An order under subsection (1) must not come into operation unless it is  
15 approved by Tynwald.
- 16 (5) Fees paid and received under this section must be paid into and form part  
17 of the General Revenue of the Island.

### 18 **34 Appeals**

- 19 (1) A person aggrieved may appeal, in accordance with rules made under  
20 section 8 (rules of procedure) of the *Tribunals Act 2006*, to the Tribunal on  
21 the grounds that any of the following decisions was unreasonable having  
22 regard to all the circumstances of the case —
- 23 (a) section 22(3)(b) (application for confirmation by the Department  
24 that the nominated officer is exempt from the requirement in  
25 section 22(2), to submit beneficial ownership information online);  
26 and
- 27 (b) the imposition by the Authority of a civil penalty under  
28 paragraph 8 of Schedule 1.
- 29 (2) On the determination of an appeal under this section the Tribunal must  
30 confirm, vary or revoke the decision in question.
- 31 (3) Any variation or revocation of a decision does not affect the previous  
32 operation of that decision or anything duly done or suffered under it.
- 33 (4) Without limiting subsection (3), a decision of the Tribunal on an appeal  
34 under this section is binding on the applicant and the respondent.
- 35 (5) An appeal lies to the High Court, in accordance with rules of court, on a  
36 question of law from any decision of the Tribunal.

1 **35 Offences by legal entities other than natural persons**

- 2 (1) Subsection (2) applies if —
- 3 (a) an offence under this Act is committed by a legal entity; and
- 4 (b) it is proved that an officer of the legal entity authorised,
- 5 permitted, participated in, or failed to take all reasonable steps to
- 6 prevent, the commission of the offence.
- 7 (2) The officer, as well as the legal entity, is guilty of the offence and is liable
- 8 to the penalty provided for the offence.
- 9 (3) In this section, “officer” includes —
- 10 (a) a director, secretary, partner, or other similar officer;
- 11 (b) a person purporting to act as a director, secretary, partner or other
- 12 similar officer;
- 13 (c) if the affairs of the legal entity are managed by its members or
- 14 council members, a member or council member; and
- 15 (d) if the legal entity has a registered agent (within the meaning of the
- 16 *Companies Act 2006*, the *Limited Liability Companies Act 1996* or the
- 17 *Foundations Act 2011*), the registered agent.

18 **36 Confidentiality**

- 19 (1) A requirement imposed by or under this Act has effect despite any
- 20 obligation as to confidentiality or other restriction on the disclosure of
- 21 information imposed by statute, contract or otherwise.
- 22 (2) Accordingly, a disclosure made or the sharing of information in
- 23 accordance with this Act does not breach —
- 24 (a) any obligation of confidence in relation to the information so
- 25 disclosed; or
- 26 (b) any other restriction on the access to or disclosure of the
- 27 information so accessed (however imposed).
- 28 (3) However, this section is subject to section 37.

29 **37 Data Protection Act 2002 not affected**

30 Nothing in this Act authorises a disclosure, in contravention of any provisions

31 of the *Data Protection Act 2002*, of personal data which is not exempt from those

32 provisions.

33 **38 Freedom of Information Act 2015**

34 Where the disclosure of information is prohibited by this Act, that information

35 is absolutely exempt information for the purposes of section 27 of the *Freedom of*

36 *Information Act 2015* (information the disclosure of which is restricted by law).

1 **39 Privileged information**

2 Nothing in this Act compels the production or divulgence by an advocate or  
3 other legal adviser of an item subject to legal privilege (within the meaning of  
4 section 13 of the *Police Powers and Procedures Act 1998*), but an advocate or other  
5 legal adviser may be required to give the name and address of any client.

6 **40 Other provisions concerning beneficial ownership not affected**

7 The operation of this Act does not limit or otherwise restrict any other statutory  
8 provision concerning beneficial ownership including —

- 9 (a) section 102 of the *Companies Act 1931* (trusts not to be entered on  
10 the register) or any other statutory provision;
- 11 (b) section 63 of the *Companies Act 2006* (register of members as  
12 evidence of legal title);
- 13 (c) any provision in a company's articles of association that relieves  
14 the company from recognising —
- 15 (i) any interests other than the interests of the members of the  
16 company;
- 17 (ii) any trust, express, implied or constructive, in respect of  
18 shares; or
- 19 (iii) any beneficial owner of shares.

20 **41 Other disclosure provisions not affected**

21 The operation of a power or duty in this Act to disclose information does not  
22 affect the operation of any other power or duty to disclose information which  
23 exists in this Act or any other enactment or any restriction on such disclosure.

24 DIVISION 2 – COMPLIANCE PROVISIONS

25 **42 Statement of compliance in annual returns**

- 26 (1) A legal entity to which this Act applies must include a statement in its  
27 annual return which —
- 28 (a) confirms that —
- 29 (i) the entity and the nominated officer in relation to the entity  
30 have each complied with their respective obligations under  
31 this Act;
- 32 (ii) the required details in respect of any registrable beneficial  
33 owner have been submitted to the Department; and
- 34 (iii) all information submitted for entry on the Database is up  
35 to date and correct; and
- 36 (b) is countersigned by the nominated officer to evidence the officer's  
37 agreement with the statement.

- 1 (2) The requirements of subsection (1) are additional to any other statutory  
2 obligations concerning annual returns.
- 3 (3) To give effect to subsection (1), the Acts specified in Schedule 3  
4 (amendments – statement of compliance in annual returns) are amended  
5 in accordance with that Schedule.

### 6 **43 Compulsory online submission of annual returns for companies**

- 7 (1) A company must file, deliver or make (as the case may require) its annual  
8 return online unless it is exempted from compliance in accordance with  
9 the provisions of –
- 10 (a) the *Companies Act 1931*;  
11 (b) the *Companies Act 2006*; or  
12 (c) the *Limited Liability Companies Act 1996*.
- 13 (2) To give effect to subsection (1), the Acts specified in Schedule 4  
14 (amendments – compulsory online filing of annual returns for companies)  
15 are amended in accordance with that Schedule.

## 16 DIVISION 3 – CONSEQUENTIAL AMENDMENTS, SAVINGS AND REPEALS

### 17 **44 Consequential amendments**

- 18 (1) The *Financial Services Act 2008* is amended as follows.
- 19 (2) For section 32(1) (appeals to the Financial Services Tribunal), substitute –  
20 “(1) There shall be a tribunal known as the Financial Services Tribunal  
21 (in this Act referred to as “**the Tribunal**”) for the purposes of this  
22 Act and any other enactment in which an appeal lies to the  
23 Tribunal.”
- 24 (3) After paragraph 2(2)(ze) of Schedule 1 (the Isle of Man Financial Services  
25 Authority), insert –  
26 “(zf) the *Beneficial Ownership Act 2017*.”

### 27 **45 Savings**

- 28 (1) A nominated officer of a legal entity referred to in subsection (2) continues  
29 to be the nominated officer of the legal entity for the purposes of this Act  
30 (despite the repeal of the *Companies (Beneficial Ownership) Act 2012*).
- 31 (2) A legal entity referred to in subsection (1) is one which when this section  
32 comes into operation, has –
- 33 (a) a nominated officer under the *Companies (Beneficial Ownership) Act*  
34 *2012*; and  
35 (b) written confirmation of the officer’s consent to the continuation of  
36 the appointment.

- 1 (3) A registered agent of a legal entity referred to in subsection (4) is the  
2 nominated officer of the legal entity for the purposes of this Act.
- 3 (4) A legal entity referred to in subsection (3) is one which when this section  
4 comes into operation, has —
- 5 (a) a registered agent (within the meaning of the *Companies Act 2006*,  
6 the *Limited Liability Companies Act 1996* or the *Foundations Act*  
7 *2011*); and
- 8 (b) written confirmation of the agent's consent to act as a nominated  
9 officer for the purposes of this Act.
- 10 (5) To avoid doubt, where subsection (1) and (3) apply, subsections (6) to (8)  
11 have effect.
- 12 (6) The legal entity is not required to give notice of the appointment of the  
13 nominated officer under section 7(1) (notice of appointment of nominated  
14 officer).
- 15 (7) However, the legal entity is required to give notice of any change of  
16 nominated officer or a change in the nominated officer's details and must  
17 comply with this Act in all other respects.
- 18 (8) The nominated officer must comply with this Act as if appointed under it.

19 **46 Repeals and revocations**

- 20 (1) The *Companies (Beneficial Ownership) Act 2012* is repealed.
- 21 (2) Despite section 16 of the *Interpretation Act 1976* (effect of substituting  
22 provisions), the *Companies (Beneficial Ownership) (Exemptions) Order*  
23 *2013*<sup>1</sup> is revoked.
- 24
- 25

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<sup>1</sup> SD 0235/13



## SCHEDULE 1

## Section 30

## OVERSIGHT BY THE AUTHORITY

**1 Inspections and investigations**

- (1) The powers provided by this paragraph may be exercised at the absolute discretion of the Authority in order to ascertain whether the obligations and requirements imposed by this Act have been and are being complied with and whether the Database is effective and accurate.
- (2) The Authority may inspect the books, accounts and documents of a relevant person in electronic format or otherwise for the purposes of ascertaining whether that person has complied and is complying with any obligations imposed under this Act.
- (3) The Authority has every such power of entry and access as may be necessary for the purposes of sub-paragraph (2), and it may take possession of all such books, accounts and documents as, and for so long as, may be necessary for those purposes.
- (4) The Authority may take copies of all books, accounts and documents in its possession for the purposes of an inspection and investigation under this paragraph.
- (5) The Authority must exercise its right of entry and access under sub-paragraph (3) only during reasonable hours, and any person exercising that right must, when doing so, produce written evidence of his or her appointment if required to do so.
- (6) A relevant person is not under an obligation under this paragraph to disclose any items subject to legal privilege within the meaning of section 13 of the *Police Powers and Procedures Act 1998* (meaning of “items subject to legal privilege”).

**2 Requests for information**

- (1) The powers provided by this paragraph may be exercised if the Authority considers it necessary to assess compliance with the requirements of this Act.
- (2) The Authority may request the relevant person to provide the Authority with any information that it may reasonably require for the performance of its functions under this Act and may require such information to be verified in such manner as the Authority directs in accordance with sub-paragraph (4).

- 1 (3) But the Authority may only exercise the powers under this paragraph if,  
2 on reasonable grounds, it appears to the Authority necessary for the  
3 performance of its functions under this Act.
- 4 (4) The Authority may issue directions to a relevant person to give effect to a  
5 request under sub-paragraph (2) and the directions must include a  
6 statement of reasons for their issue.
- 7 (5) If a relevant person contravenes any direction under sub-paragraph (4),  
8 the Authority may apply to the High Court for an order requiring the  
9 person to comply with it.
- 10 (6) A statement by a relevant person in response to a direction issued under  
11 this paragraph may not be used in evidence against that person in  
12 respect of any criminal proceedings except proceedings alleging  
13 contravention of section 5 of the *Perjury Act 1952* (false statutory  
14 declarations and other false statements without oath).
- 15 (7) A relevant person is not under an obligation under this paragraph to  
16 disclose any information subject to legal privilege within the meaning of  
17 section 13 of the *Police Powers and Procedures Act 1998*.

### 18 3 Power of the Authority to require information

- 19 (1) Where, on an application made by the Authority, a justice of the peace is  
20 satisfied that there is good reason to do so for the purpose of  
21 investigating the affairs, or any aspect of the affairs, of a relevant person  
22 so far as is relevant to the performance of the Authority's functions  
23 under this Act, the justice may by written instrument authorise the  
24 Authority to exercise the powers under this paragraph and such powers  
25 are not otherwise exercisable.
- 26 (2) The Authority may by notice in writing, accompanied by a copy of the  
27 instrument issued under sub-paragraph (1), require —  
28 (a) the relevant person whose affairs are to be investigated; or  
29 (b) any other person who, it has reason to believe, has relevant  
30 information,  
31 to attend before the Authority at a specified time and place to answer  
32 questions or otherwise furnish information with respect to any matter  
33 relevant to the investigation.
- 34 (3) The Authority may by notice in writing, accompanied by a copy of the  
35 instrument issued under sub-paragraph (1), require any person to  
36 produce at a specified time and place any specified documents, copies of  
37 documents, or any documents or copies of documents of a specified  
38 class, which appear to the Authority to relate to any matter relevant to  
39 the investigation.
- 40 (4) If documents or copies of documents are not produced as required under  
41 sub-paragraph (3), the Authority may require the person who was

- 1 required to produce them to state, to the best of that person's knowledge  
2 and belief, where they are.
- 3 (5) Where any documents are produced as required under sub-paragraph  
4 (3), the Authority may –
- 5 (a) take possession of them for so long as may be necessary;
- 6 (b) take copies or extracts from them; or
- 7 (c) require the person producing them to provide an explanation of  
8 any of them.
- 9 (6) A statement by a person in response to a requirement imposed under  
10 this paragraph may not be used in evidence against that person in  
11 respect of any criminal proceedings except proceedings for an offence  
12 under this Act or section 5 of the *Perjury Act 1952* (false statutory  
13 declarations and other false statements without oath).
- 14 (7) A person is not under an obligation under this paragraph to disclose any  
15 items subject to legal privilege within the meaning of section 13 of the  
16 *Police Powers and Procedures Act 1998* (meaning of "items subject to legal  
17 privilege").
- 18 (8) In this Schedule, "**documents**" includes information recorded in any  
19 form and, in relation to information recorded otherwise than in legible  
20 form, references to its production include references to producing a copy  
21 of the information in legible form.
- 22 (9) Where a person claims a lien on a document, its production under this  
23 paragraph does not affect the lien.

#### 24 **4 Search warrants**

- 25 (1) Where, on information on oath laid by the Authority, a judge of the High  
26 Court is satisfied, in relation to any documents, that there are reasonable  
27 grounds for believing –
- 28 (a) that –
- 29 (i) a person has failed to comply with an obligation under  
30 paragraph 3 to produce them or copies of them; or
- 31 (ii) it is not practicable to serve a notice under paragraph 3(3)  
32 in relation to them; or
- 33 (iii) the service of such a notice in relation to them might  
34 seriously prejudice the investigation; and
- 35 (b) that the documents are on premises specified in the information,  
36 the judge may issue a warrant.
- 37 (2) The warrant authorises any person named in it –
- 38 (a) to enter (using such force as is reasonably necessary for the  
39 purpose) and search the premises; and

(b) to take possession of any documents or copies of documents appearing to be documents of the description specified in the information, or to take in relation to any documents so appearing any other steps which may appear to be necessary for preserving them and preventing interference with them.

(3) If, during the course of a search of premises for documents of a description specified in the information, other documents are discovered which appear to contain evidence relating to the discharge of the Authority's functions under this Act or to an offence under this Act, the person named in the warrant may —

(a) take possession of those documents or copies of those documents;  
or

(b) take any other steps in relation to those documents which may appear to be necessary for preserving them and preventing interference with them.

(4) A person executing a warrant issued under sub-paragraph (1) must be accompanied by a constable.

(5) A person is not under an obligation under this paragraph to disclose any items subject to legal privilege within the meaning of section 13 of the *Police Powers and Procedures Act 1998*.

## 5 Authorised persons

(1) The Authority may authorise any person to exercise on its behalf all or any of the powers conferred by or under this Schedule for the purposes of investigating the affairs, or any aspect of the affairs, of a person specified in the authority.

(2) No person is bound to comply with any requirement imposed by a person exercising powers by virtue of any authority granted under sub-paragraph (1) unless the person exercising the powers has, if required to do so, produced evidence of his or her authority.

## 6 Report and action to be taken

(1) The Authority may make a report of its findings resulting from it exercising functions under this Schedule.

(2) The report may specify —

(a) any failure by a relevant person (see section 30) to comply with the provisions of this Act;

(b) any action the relevant person must take to rectify the failure; and

(c) the timescale for the taking of such action.

(3) A report made under this paragraph may be sent to —

(a) the relevant person;

- 1 (b) where the relevant person is not a legal entity to which this Act  
2 applies, the legal entity;
- 3 (c) where the relevant person is a legal owner of an interest in the  
4 legal entity, the nominated officer of that entity;
- 5 (d) the Department; and
- 6 (e) where the report identifies that an offence may have been  
7 committed, the Attorney General.

8 **7 Offences**

- 9 (1) Subject to sub-paragraph (3), a person commits an offence in connection  
10 with oversight if the person —
- 11 (a) knows or suspects that —
- 12 (i) an inspection is being or is likely to be carried out under  
13 paragraph 1 (inspections and investigations);
- 14 (ii) information is being or is likely to be requested under  
15 paragraph 2 (requests for information) or paragraph 3  
16 (power of the Authority to require information); or
- 17 (iii) documents are or are likely to be required under  
18 paragraph 4 (search warrants);
- 19 (b) falsifies, alters, conceals, destroys or otherwise disposes of, or  
20 causes or permits the falsification, alteration, concealment,  
21 destruction or disposal of, information that the person knows or  
22 suspects is or would be relevant to such an inspection or  
23 investigation or is or would be requested;
- 24 (c) furnishes or sends to the Authority for any purpose under this  
25 Act a document which that person knows to be false or  
26 misleading in a material particular;
- 27 (d) recklessly furnishes or sends to the Authority for the purposes of  
28 this Act a document which is false or misleading in a material  
29 particular;
- 30 (e) in furnishing information to the Authority for the purposes of this  
31 Act —
- 32 (i) makes a statement which the person knows to be false or  
33 misleading in a material particular; or
- 34 (ii) recklessly makes a statement which is false or misleading  
35 in a material particular; or
- 36 (f) without reasonable excuse, fails to furnish information which that  
37 person is required to furnish to the Authority under this Act.
- 38 (2) It is a defence for the person charged to prove that the person had no  
39 intention of concealing facts disclosed by the information from persons

1 carrying out such an inspection or investigation or requesting such  
2 information.

- 3 (3) A person commits an offence if the person —
- 4 (a) without reasonable excuse, fails to comply with a requirement  
5 imposed on the person under paragraph 3;
- 6 (b) intentionally obstructs a person exercising powers conferred by  
7 paragraph 1(2), (3) or (4) or paragraph 4(2) or (3); or
- 8 (c) without reasonable excuse, fails to take the action specified in a  
9 report made by the Authority under paragraph 6 within the  
10 timescale specified in that report.
- 11 (4) A person guilty of an offence under subparagraph (3)(a) or (c) is liable —
- 12 (a) on conviction on information, to a fine; or
- 13 (b) on summary conviction, to a fine not exceeding £5,000.
- 14 (5) A person guilty of an offence under subparagraph (1) or (3)(b) is liable —
- 15 (a) on conviction on information, to custody for a term not exceeding  
16 2 years, or to a fine, or to both;
- 17 (b) on summary conviction, to custody for a term not exceeding 6  
18 months, or to a fine not exceeding £5,000, or to both.

## 19 8 Civil Penalties

- 20 (1) If the Authority is satisfied that a relevant person has —
- 21 (a) committed an offence under paragraph 7(3);
- 22 (b) contravened a provision specified in subparagraph (2); or
- 23 (c) furnished the Authority or the Department, as the case may be,  
24 with false, inaccurate or misleading information,
- 25 it may require the person to pay a civil penalty in respect of the  
26 contravention.
- 27 (2) The provisions referred to in subparagraph (1)(b) are —
- 28 (a) section 8(1) (record of nominated officer – record keeping);
- 29 (b) section 9(5) (duty of legal owners – to give required details to the  
30 nominated officer);
- 31 (c) section 10(2) (duty of intermediate owners to assist);
- 32 (d) section 12(1) (changes to required details – notice of changes to be  
33 notified to the nominated officer);
- 34 (e) section 13 (preservation of required details); or
- 35 (f) section 15(2) (disclosure of beneficial ownership information by  
36 nominated officer – to a competent authority).

- 1 (3) The Authority must give written notice to the person concerned of any  
2 decision under subparagraph (1), together with a statement of the  
3 reasons for the decision.
- 4 (4) The Authority may not in respect of any such contravention require a  
5 person to pay a civil penalty under this section if criminal proceedings  
6 have been commenced in respect of the contravention.
- 7 (5) When setting the amount of a civil penalty, the Authority must have  
8 regard to any regulations under subparagraph (6).
- 9 (6) The Authority may make such regulations as are necessary to give effect  
10 to this section with respect to —  
11 (a) the imposition of civil penalties under this paragraph; and  
12 (b) the amount of those penalties.
- 13 (7) A person or body may appeal under section 34 (appeals), against a  
14 decision of the Authority under subparagraph (1).
- 15 (8) Regulations made under subparagraph (6) may make provision for  
16 additional circumstances in which a civil penalty may be imposed in lieu  
17 of criminal proceedings under this Act.
- 18 (9) Any amount received as a penalty must be paid into and form part of the  
19 General Revenue of the Island.  
20

**SCHEDULE 2**

Section 31

**AMENDMENTS — STRIKING OFF**

**1 Companies Act 1931**

After section 273(10) of the *Companies Act 1931* (Department may strike defunct company off register), insert —

“(10A) If the Department has reasonable cause to believe that a company has failed or is failing to comply with its obligations under the *Beneficial Ownership Act 2017*, it may strike the name of that company off the register in the same manner and subject to the same notice and conditions as a company that is not in operation.”.

**2 Companies Act 2006**

After section 183(1)(c) of the *Companies Act 2006* (striking company off register), insert —

“; or

(d) the Registrar has reasonable cause to believe that a company has failed or is failing to comply with its obligations under the *Beneficial Ownership Act 2017*.”.

**3 Limited Liability Companies Act 1996**

After section 11(8) of the *Limited Liability Companies Act 1996* (Department of Economic Development may strike defunct limited liability company off register), insert —

“(8A) For the purposes of this section, a limited liability company which the Department has reasonable cause to believe has failed or is failing to comply with its obligations under the *Beneficial Ownership Act 2017* is deemed not to be in operation.”.

**4 Partnership Act 1909**

After section 51A(7) of the *Partnership Act 1909* (Department may strike off defunct limited partnership), insert —

“(8) If the Department has reasonable cause to believe that a limited partnership has failed or is failing to comply with its obligations under the *Beneficial Ownership Act 2017*, it may strike the name of that limited partnership off the register in the same manner and subject to the same notice and conditions as a limited partnership that is not carrying on business or in operation.”.

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## 5 Foundations Act 2011

After section 61(4) of the *Foundations Act 2011* (regulations), insert —

“(4A) The power conferred by subsection (1)(m) includes the power for the removal of foundations from the register (by striking them off or otherwise) where the Department has reasonable cause to believe that a foundation has failed or is failing to comply with its obligations under the *Beneficial Ownership Act 2017*.”.

## SCHEDULE 3

## Section 42

## AMENDMENTS — STATEMENT OF COMPLIANCE IN ANNUAL RETURNS

**1 Companies Act 1931**

After section 109 of the *Companies Act 1931* (general provisions as to annual returns), insert —

**“109A Annual return: statement concerning beneficial ownership**

The annual return must contain a statement of compliance as required by section 42 of the *Beneficial Ownership Act 2017*.”.

**2 Companies Act 2006**

After section 85(3) of the *Companies Act 2006* (annual return to be made by a company), insert —

“(3A) The annual return must contain a statement of compliance as required by section 42 of the *Beneficial Ownership Act 2017*.”.

**3 Limited Liability Companies Act 1996**

After section 10(2) of the *Limited Liability Companies Act 1996* (annual returns), insert —

“(2A) The annual return must contain a statement of compliance as required by section 42 of the *Beneficial Ownership Act 2017*.”.

**4 Partnership Act 1909**

(1) After section 51(1C) of the *Partnership Act 1909* (registration of changes in partnerships), insert —

“(1D) In the case of a limited partnership to which section 48B (legal personality) applies, the annual statement must contain a statement of compliance as required by section 42 of the *Beneficial Ownership Act 2017*.”.

**5 Foundations Act 2011**

After section 44(3) of the *Foundations Act 2011* (foundation to make annual return), insert —

“(3A) The annual return must contain a statement of compliance as required by section 42 of the *Beneficial Ownership Act 2017*.”.

## SCHEDULE 4

## Section 43

## AMENDMENTS – COMPULSORY ONLINE FILING OF ANNUAL RETURNS FOR COMPANIES

## 1 Companies Act 1931

After section 109A of the *Companies Act 1931* (general provisions as to annual returns), insert –

**“109B Compulsory online filing of annual returns**

- (1) A company must comply with subsection (3) unless subsection (2) applies.
- (2) A company is exempt from complying with subsection (3) where, upon receipt of an application from the company, the Department is satisfied that the company –
  - (a) does not have access to the internet; or
  - (b) is otherwise unable, with reasonable excuse, to comply with this section, and should be exempt from such compliance.
- (3) A company must utilise the required website to make and deliver to the Department an annual return in accordance with –
  - (a) section 107 in the case of a company having a share capital; and
  - (b) section 108 in the case of a company not having a share capital and any company limited by guarantee and having a share capital.
- (4) A company who fails to comply with subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding £5,000.
- (5) An application under subsection (2) must be in the form and manner required by the Department.
- (6) A company may appeal in accordance with rules made under section 8 (rules of procedure) of the *Tribunals Act 2006*, to the Tribunal on the grounds that a decision of the Department not to exempt the company under subsection (2), was unreasonable having regard to all the circumstances of the case.
- (7) On the determination of an appeal under subsection (6) the Tribunal must confirm, vary or revoke the decision in question.

- 1 (8) Any variation or revocation of a decision does not affect the  
2 previous operation of that decision or anything duly done or  
3 suffered under it.
- 4 (9) Without limiting subsection (8), a decision of the Tribunal on an  
5 appeal under subsection (6) is binding on the Department and the  
6 company.
- 7 (10) An appeal lies to the High Court, in accordance with rules of  
8 court, on a question of law from any decision of the Tribunal.
- 9 (11) In this section “**required website**” means such website address as  
10 may be made available by the Department for use in connection  
11 with the submission of annual returns.
- 12 (12) In this section “**Tribunal**” means the Financial Services Tribunal  
13 established under section 32 of the *Financial Services Act 2008*.”.

## 14 2 Companies Act 2006

15 After section 85 of the *Companies Act 2006* (annual return to be made by a  
16 company), insert —

### 17 “85A Compulsory online filing of annual returns

- 18 (1) A company must comply with subsection (3) unless subsection (2)  
19 applies.
- 20 (2) A company is exempt from complying with subsection (3) where,  
21 upon receipt of an application from the company the Department  
22 of Economic Development is satisfied that the company —
- 23 (a) does not have access to the internet; or  
24 (b) is otherwise unable, with reasonable excuse, to comply  
25 with this section, and should be exempt from such  
26 compliance.
- 27 (3) A company must utilise the required website to make and deliver  
28 to the Department an annual return in accordance with section 85.
- 29 (4) A company which fails to comply with subsection (3) commits an  
30 offence and is liable on summary conviction to a fine not  
31 exceeding £5,000.
- 32 (5) An application under subsection (2) must be in the form and  
33 manner required by the Department.
- 34 (6) A company may appeal in accordance with rules made under  
35 section 8 (rules of procedure) of the *Tribunals Act 2006*, to the  
36 Tribunal on the grounds that a decision of the Department not to  
37 exempt the company under subsection (2), was unreasonable  
38 having regard to all the circumstances of the case.

- 1 (7) On the determination of an appeal under subsection (6) the  
2 Tribunal must confirm, vary or revoke the decision in question.
- 3 (8) Any variation or revocation of a decision does not affect the  
4 previous operation of that decision or anything duly done or  
5 suffered under it.
- 6 (9) Without limiting subsection (8), a decision of the Tribunal on an  
7 appeal under subsection (6) is binding on the Department and the  
8 company.
- 9 (10) An appeal lies to the High Court, in accordance with rules of  
10 court, on a question of law from any decision of the Tribunal.
- 11 (11) In this section “**required website**” means such website address as  
12 may be made available by the Department for use in connection  
13 with the submission of annual returns.
- 14 (12) In this section “**Tribunal**” means the Financial Services Tribunal  
15 established under section 32 of the *Financial Services Act 2008*.”.

### 16 3 Limited Liability Companies Act 1996

17 After section 10 of the *Limited Liability Companies Act 1996* (annual returns),  
18 insert —

#### 19 “10A Compulsory online filing of annual returns

- 20 (1) A company must comply with subsection (3) unless subsection (2)  
21 applies.
- 22 (2) A company is exempt from complying with subsection (3) where,  
23 upon receipt of an application from the company the Department  
24 is satisfied that the company —
- 25 (a) does not have access to the internet; or  
26 (b) is otherwise unable, with reasonable excuse, to comply  
27 with this section, and should be exempt from such  
28 compliance.
- 29 (3) A company must utilise the required website to make and deliver  
30 to the Department an annual return in accordance with section 10.
- 31 (4) A company which fails to comply with subsection (3) commits an  
32 offence and is liable on summary conviction to a fine not  
33 exceeding £5,000.
- 34 (5) An application under subsection (2) must be in the form and  
35 manner required by the Department.
- 36 (6) A company may appeal in accordance with rules made under  
37 section 8 (rules of procedure) of the *Tribunals Act 2006*, to the  
38 Tribunal on the grounds that a decision of the Department not to

- 1 exempt the company under subsection (2), was unreasonable  
2 having regard to all the circumstances of the case.
- 3 (7) On the determination of an appeal under subsection (6) the  
4 Tribunal must confirm, vary or revoke the decision in question.
- 5 (8) Any variation or revocation of a decision does not affect the  
6 previous operation of that decision or anything duly done or  
7 suffered under it.
- 8 (9) Without limiting subsection (8), a decision of the Tribunal on an  
9 appeal under subsection (6) is binding on the Department and the  
10 company.
- 11 (10) An appeal lies to the High Court, in accordance with rules of  
12 court, on a question of law from any decision of the Tribunal.
- 13 (11) In this section “**required website**” means such website address as  
14 may be made available by the Department for use in connection  
15 with the submission of annual returns.
- 16 (12) In this section “**Tribunal**” means the Financial Services Tribunal  
17 established under section 32 of the *Financial Services Act 2008*.”.



IN THE KEYS

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**BENEFICIAL OWNERSHIP BILL 2017**

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A **BILL** to make provision  
about the beneficial ownership  
of certain legal entities; and for  
connected purposes.

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

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MR CANNAN M.H.K.

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FEBRUARY 2017