



**Isle of Man**

*Ellan Vannin*

**AT 3 of 2017**

**BENEFICIAL OWNERSHIP ACT 2017**





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## BENEFICIAL OWNERSHIP ACT 2017

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**Isle of Man***Ellan Vannin*

## **BENEFICIAL OWNERSHIP ACT 2017**

*Signed in Tynwald:* 25 April 2017  
*Received Royal Assent:* 25 April 2017  
*Announced to Tynwald:* 25 April 2017

**AN ACT** to make provision about the beneficial ownership of certain legal 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:—

### **PART 1 – INTRODUCTORY**

#### **1 Short title**

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

#### **2 Commencement**

- (1) This Act (other than section 1 and this section) comes into operation on such day or days as the Treasury may by order appoint.<sup>1</sup>
- (2) An order under subsection (1) may include such consequential, incidental, supplementary, transitional and transitory provision as the Treasury considers necessary or expedient.

#### **3 Interpretation**

- (1) In this Act —

“**annual return**” means —

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

- (b) in relation to a company to which the *Companies Act 2006* applies, the annual return required by section 85 of that Act (annual return to be made by a company);
- (c) in relation to a limited liability company to which the *Limited Liability Companies Act 1996* applies, the annual return required by section 10 of that Act (annual returns);
- (d) in relation to a limited partnership with legal personality, the annual statement required by section 51(1A) to (1C) of the *Partnership Act 1909* (registration of changes in partnerships); and
- (e) in relation to a foundation, the annual return required by section 44 of the *Foundations Act 2011* (foundation to make annual return);

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

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

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

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

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

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

“**country**” includes territory;

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

“**Department**” means the Department for Enterprise;<sup>2</sup>

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

- (a) engaged in a country which is a party to a beneficial ownership information sharing agreement; and
- (b) named, referred to or contemplated in that agreement as a person or body to whom beneficial ownership information may be disclosed;

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

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

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

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

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



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

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

“**limited partnership with legal personality**” has the meaning given by section 5(1)(d);

“**nominated officer**” means a person appointed in accordance with section 6;

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

“**permitted purpose**” —

- (a) means any of the following —
  - (i) the prevention, detection, investigation or prosecution of criminal offences, whether in the Island or elsewhere;
  - (ii) the prevention, detection, investigation of or the bringing of proceedings for conduct for which penalties other than criminal penalties (including civil and regulatory penalties) are provided under the law of the Island or of any country outside the Island;
  - (iii) the furtherance or discharge of any function under this Act or any other enactment of the competent authority seeking access to beneficial ownership information;
  - (iv) the disclosure of information to the Isle of Man Office of Fair Trading for the purposes of matters relating to consumer protection and trading standards and in connection with the licensing and registration of moneylenders under the *Moneylenders Act 1991*; and
  - (v) in the case of the FIU (in addition to the permitted purposes specified in subparagraphs (i) to (iv)), the disclosure of beneficial ownership information to an external intelligence or law enforcement agency in accordance with a beneficial ownership information sharing agreement; and
- (b) includes measures taken to —
  - (i) determine whether or not to investigate, prosecute or bring proceedings;
  - (ii) initiate or bring to an end such an investigation, prosecution or proceedings; and
  - (iii) trace, freeze, seize, confiscate or recover assets;

“**registrable beneficial owner**” means a beneficial owner who owns or controls more than 25% of the beneficial ownership of a legal entity to which this Act applies and “**registrable beneficial ownership**” is to be construed accordingly;

“**relevant change**” means any change to the required details provided to a nominated officer under section 9(3);

“**relevant person**” has the meaning given by section 30(2);

“**required details**” has the meaning given by section 11(1);

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

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

- (2) The Treasury may by order amend subsection (1) so as to amend the definition of —
  - (a) “beneficial ownership information sharing agreement”;
  - (b) “external intelligence or law enforcement agency”;
  - (c) “permitted purpose”; and
  - (d) “registrable beneficial owner” including the percentage referred to within that definition.
- (3) An order under subsection (2) must not come into operation unless it is approved by Tynwald.

#### 4 Meaning of beneficial owner

- (1) In this Act “**beneficial owner**” means a natural person who ultimately owns or controls a legal entity to which this Act applies, in whole or in part, through direct or indirect ownership or control of shares or voting rights or other ownership interest in that entity, or who exercises control via other means, and “**beneficial ownership**” is to be construed accordingly.
- (2) If two or more natural persons each own or control an interest in a legal entity to which this Act applies, each of them is treated for the purposes of this Act as owning or controlling that interest.

*Example:*

*If two persons jointly own or control a 30% interest in a legal entity, they are each treated as owning the 30% interest and each is a registrable beneficial owner for the purposes of this Act.*
- (3) Beneficial ownership may be traced through any number of persons or arrangements of any description.

- (4) The Authority may issue guidance about the meaning of “**beneficial ownership**”, “**ownership**”, “**control**”, “**legal ownership**” and “**registrable beneficial ownership**”.
- (5) Regard must be had to guidance issued under subsection (4) in interpreting references in this Act to those expressions.
- (6) The Authority may revise guidance issued under subsection (4) and a reference to guidance includes a reference to revised guidance.
- (7) Guidance or revised guidance issued under subsections (4) or (6) must be laid before Tynwald.
- (8) Guidance issued under subsection (4) must be published by the Authority on its website or in a manner the Authority considers will bring it to the attention of those likely to be affected by it.
- (9) The Treasury may by order amend —
  - (a) subsection (1) to revise the meaning of “**beneficial owner**”; and
  - (b) subsection (2).
- (10) An order under subsection (9) must not come into operation unless it is approved by Tynwald.

## 5 Legal entities to which this Act applies

- (1) This Act applies to the following legal entities —
  - (a) a company to which the Companies Acts 1931 to 2004 apply, including —
    - (i) a company within the meaning of the *Companies Act 1931*;
    - (ii) a protected cell company within the meaning of the *Protected Cell Companies Act 2004*;
    - (iii) an incorporated cell company within the meaning of the *Incorporated Cell Companies Act 2010* to which the Companies Acts 1931 to 2004 apply;
    - (iv) an incorporated cell within the meaning of the *Incorporated Cell Companies Act 2010* to which the Companies Acts 1931 to 2004 apply; and
    - (v) a company continued in the Island under Part I of the *Companies (Transfer of Domicile) Act 1998*;
  - (b) a company to which the *Companies Act 2006* applies, including —
    - (i) a company within the meaning of the *Companies Act 2006*;
    - (ii) a protected cell company within the meaning of the *Companies Act 2006*;
    - (iii) an incorporated cell company within the meaning of the *Incorporated Cell Companies Act 2010* to which the *Companies Act 2006* applies;

- (iv) an incorporated cell within the meaning of the *Incorporated Cell Companies Act 2010* to which the *Companies Act 2006* applies;
  - (v) a company continued in the Island under section 162 of the *Companies Act 2006* (application for consent to be continued in the Isle of Man); and
  - (vi) a company re-registered under Part IX of the *Companies Act 2006*;
- (c) a limited liability company to which the *Limited Liability Companies Act 1996* applies;
  - (d) a limited partnership to which section 48B of the *Partnership Act 1909* (legal personality) applies (“**limited partnership with legal 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;
  - (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; or
  - (e) a legal entity which is a collective investment scheme within the meaning of section 1 of the *Collective Investment Scheme Act 2008* which is —
    - (i) an authorised scheme;
    - (ii) an international scheme; or
    - (iii) an exempt scheme,within the meaning of that Act.<sup>3</sup>
- (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 unless exempt under subsection (5).
- (2) The nominated officer must be –
  - (a) a natural person who is resident in the Island; or
  - (b) the holder of a licence issued under section 7 of the *Financial Services Act 2008* which permits the holder to carry on the regulated activity (within the meaning of section 3(1) of that Act) of providing corporate services.
- (3) A legal entity may have more than one nominated officer and, if so, their functions and liabilities under this Act are joint and several.
- (4) The nominated officer of an incorporated cell company is also the nominated officer of each of its incorporated cells.
- (5) The Treasury may by order exempt a legal entity or a class of legal entities from the requirement under subsection (1).
- (6) An order under subsection (5) may amend or modify the application of this Act and may include such consequential, incidental, supplementary, transitional or transitory provision as the Treasury considers necessary or expedient.
- (7) Without limiting subsection (6), an order under subsection (5) may disapply a provision of this Part in relation to a legal entity to which this Act applies or to a nominated officer.

- (8) An order under subsection (5) must not come into operation unless it is approved by Tynwald.
- (9) A legal entity which fails to comply with this section commits an offence.
- (10) A person guilty of an offence under subsection (9) is liable —
  - (a) on conviction on information, to a fine;
  - (b) on summary conviction, to a fine not exceeding £5,000.

## **7 Notice of appointment of nominated officer**

- (1) Subject to section 45 (savings), a legal entity to which this Act applies must appoint its first nominated officer and give notice to the Department of such appointment within one month of the coming into operation of this section or such later date as is specified in an order made under section 2.
- (2) A notice under subsection (1) must specify the date on which the appointment was made.
- (3) A legal entity to which this Act applies must, within one month of the date of the occurrence of an event specified in subsection (4), give notice to the Department of the occurrence of the event.
- (4) The events referred to in subsection (3) are —
  - (a) a change in the details in its record of a nominated officer;
  - (b) a change of nominated officer; and
  - (c) a subsequent appointment of a nominated officer.
- (5) A notice under subsection (3) must specify the event and the date on which the change or appointment was made.
- (6) A notice under subsection (1) or (3) is to be in such form, and must be accompanied by such documents and information, as the Department requires.
- (7) A legal entity which fails to comply with this section commits an offence.
- (8) A person guilty of an offence under subsection (7) is liable —
  - (a) on conviction on information, to a fine;
  - (b) on summary conviction, to a fine not exceeding £5,000.
- (9) If a legal entity fails to adhere to the time limits stipulated in subsections (1) and (3), the Department may accept late delivery of a notice upon payment by the legal entity of the fee prescribed in an order made under section 33.
- (10) The Department may not require payment of a fee under subsection (9) if criminal proceedings have been commenced in respect of the contravention.

## 8 Record of nominated officer

- (1) A legal entity to which this Act applies must keep a record of the following —
  - (a) in the case of a nominated officer who is a natural person —
    - (i) the officer's name; and
    - (ii) the officer's home address in the Island;
  - (b) in the case of a nominated officer which has legal personality but is not a natural person —
    - (i) the officer's corporate or firm name; and
    - (ii) the officer's registered office or place of business in the Island; and
  - (c) in all cases, written confirmation of the officer's consent to the appointment.
- (2) The record of a nominated officer of an incorporated cell company is also the record of a nominated officer of each of its incorporated cells.
- (3) A legal entity which fails to comply with this section commits an offence.
- (4) 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.

### DIVISION 2 – REQUIRED DETAILS

## 9 Duty of legal owners

- (1) It is the duty of each legal owner of a legal entity to which this Act applies to ascertain the beneficial owner of the legal owner's interest in the legal entity.
- (2) Subsection (3) applies if a legal owner of a legal entity receives a notice described in subsection (5).
- (3) The legal owner must, within one month of the date of the notice received under subsection (2) give notice to the legal entity's nominated officer of the required details specified in section 11 in respect of each beneficial owner of the legal owner's interest.
- (4) To avoid doubt, beneficial ownership is to be traced through any number of persons or arrangements of any description (see section 4(3)).
- (5) The notice referred to in subsection (2) is a written notice given by the nominated officer of the legal entity.
- (6) Where notice is given by a legal owner under subsection (3), it must be accompanied by information from a reliable and independent source which verifies the required details.

- (7) A legal owner of an interest in a legal entity to which this Act applies commits an offence if that person, without reasonable excuse —
- (a) fails to comply with this section; or
  - (b) knowingly or recklessly makes a statement to the nominated officer which is false, deceptive or misleading in a material particular.
- (8) It is a defence for a person charged with an offence under subsection (7)(a) to show that the person took reasonable steps to avoid the commission of the offence.
- (9) A person guilty of an offence under subsection (7)(a) is liable —
- (a) on conviction on information, to a fine;
  - (b) on summary conviction, to a fine not exceeding £5,000.
- (10) A person guilty of an offence under subsection (7)(b) 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.
- (11) The Department may by regulations make further provision about the giving of notices under this section, including the form and content of such notices and the manner in which they must be given.
- (12) Regulations under subsection (11) must be laid before Tynwald as soon as practicable after they are made and if Tynwald at the sitting at which they are laid or the next subsequent sitting resolves that the regulations are to be annulled they shall cease to have effect.
- (13) The Treasury may by order amend the period of time specified in subsection (3).
- (14) An order under subsection (13) must not come into operation unless it is approved by Tynwald.

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

- (1) This section applies to a person who has an interest in a legal entity to which this Act applies, who —
- (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) the date on which he or she acquired an interest in the legal entity;
    - (vii) the nature and extent (expressed as a percentage) of his or her interest in the legal entity; and
  - (b) in respect of a class of beneficial owners of such a size that it is not reasonably practicable to identify each beneficial owner, details sufficient to identify and describe the class of persons who are beneficial owners.
- (2) The Treasury may by order amend subsection (1) so as to add to, remove from or otherwise revise the required details.
- (3) An order under subsection (2) must not come into operation unless it is approved by Tynwald.

## 12 Changes to required details

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

## 13 Preservation of required details and verifying information

- (1) The nominated officer of a legal entity to which this Act applies must ensure that the required details and the information which verifies those details and which were provided to the nominated officer in relation to that entity are maintained and preserved in accordance with this section.
- (2) The required details and information referred to in subsection (1) must be maintained in the Island by the nominated officer so as to be capable of disclosing the beneficial ownership of the legal entity at any time.
- (3) The required details and information referred to in subsection (1) must be preserved —
  - (a) for a minimum of 5 years from the end of the period to which the information relates; or
  - (b) where the nominated officer is made aware that an investigation is being carried out under this Act or any other enactment for the greater of —

- (i) a minimum of 5 years from the end of the period to which the information relates; or
  - (ii) until completion of that investigation.
- (4) Subsection (6) applies if one of the events specified in subsection (5) occurs.
- (5) An event occurs for the purposes of subsection (4) if a legal entity to which this Act applies –
  - (a) is wound up, dissolved, struck off or removed from a register; or
  - (b) otherwise ceases to carry on or exist.
- (6) Subject to subsection (7), the person who was the nominated officer immediately before the occurrence of the event must comply with the requirements of this section.
- (7) Where a person to whom subsection (6) applies intends no longer to reside in the Island, that person must obtain and comply with directions from the Department with regard to the continued preservation of the required details and information referred to in subsection (1).
- (8) A person who fails to comply with a provision of this section commits an offence.
- (9) A person guilty of an offence under subsection (8) is liable –
  - (a) on conviction on information, to a fine;
  - (b) on summary conviction, to a fine not exceeding £5,000.
- (10) This section does not limit or otherwise restrict a record keeping requirement or obligation in any other enactment.
- (11) For the purpose of subsection (2), “in the Island” includes on a server connected to the internet which is permanently accessible from the Island.
- (12) The Department may by order amend subsection (3) so as to extend the period for which records must be preserved.
- (13) An order under subsection (12) must not come into operation unless it is 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
  - (b) the cancellation of the legal owner's interest in the legal entity.
- (7) A legal owner may apply to the High Court, in accordance with rules of court, to set aside any restriction or cancellation under subsection (6).
- (8) The Court may make such order on such terms and conditions as it thinks fit.

## DIVISION 3 – DISCLOSURE NOTICES

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

- (1) Subsection (2) applies if a nominated officer receives a notice described in subsection (3).
- (2) The nominated officer must disclose, in accordance with the notice, any information the officer holds in respect of the beneficial ownership of the legal entity specified or referred to in the notice.
- (3) The notice referred to in subsection (1) is a written notice given by —
  - (a) the FIU;
  - (b) the Attorney General;
  - (c) the Assessor of Income Tax;
  - (d) the Authority;
  - (e) the Chief Constable; or
  - (f) the Collector of Customs and Excise,  
(the “**competent authorities**”).
- (4) The notice must state —
  - (a) what information is required;
  - (b) that the information is required for a permitted purpose (see section 3(1)); and
  - (c) that the information must be provided as soon as possible and in any event —
    - (i) in the case of information relating to a registrable beneficial owner (see section 3), within 7 days;
    - (ii) in the case of information relating to a beneficial owner, other than a registrable beneficial owner, within one month,  
of the date of the notice.
- (5) The information that must be disclosed under this section includes information obtained before this Act came into operation.
- (6) Information disclosed in accordance with subsection (2) may be used by the recipient as evidence in criminal, civil and regulatory proceedings.
- (7) A nominated officer commits an offence if the officer —
  - (a) fails to comply with subsection (2); or
  - (b) knowingly or recklessly makes a statement, in response to receiving a notice under this section, which is false, deceptive or misleading in a material particular.
- (8) A person guilty of an offence under subsection (7)(a) is liable —

- (a) on conviction on information, to a fine;
  - (b) on summary conviction, to a fine not exceeding £5,000.
- (9) A person guilty of an offence under subsection (7)(b) 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.
- (10) The Treasury may by regulations make further provision about the giving of notices under this section, including the form and content of such notices and the manner in which they must be given.
- (11) Regulations under subsection (10) must be laid before Tynwald as soon as practicable after they are made and if Tynwald at the sitting at which they are laid or the next subsequent sitting resolves that the regulations are to be annulled they shall cease to have effect.
- (12) The Treasury may by order amend subsections (3) and (4).
- (13) An order under subsection (12) must not come into operation unless it is approved by Tynwald.

## **16 Restrictions on further disclosure of information provided by nominated officer**

- (1) This section applies in relation to information disclosed under section 15.
- (2) Subject to subsection (3), the information must not be further disclosed by a competent authority except for a permitted purpose.
- (3) Information further disclosed in accordance with subsection (2) may be used by the recipient as evidence in criminal, civil and regulatory proceedings.
- (4) For avoidance of doubt, this section —
  - (a) is in addition to section 17; and
  - (b) does not apply to the disclosure of information by the FIU to an external intelligence or law enforcement agency in accordance 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 indictment, 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 —
    - (i) in contemplation of or in connection with legal proceedings; and
    - (ii) for the purpose of those proceedings.
- (4) Subsection (3) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.
- (5) In proceedings against a person for an offence under this section, it is a defence to prove that the person did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in subsection (1)(b).

## **PART 3 – ISLE OF MAN DATABASE OF BENEFICIAL OWNERSHIP**

### **DIVISION 1 – THE DATABASE**

#### **19 The Database**

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

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

- (1) The nominated officer must take all reasonable steps necessary to ascertain whether a legal entity to which this Act applies has a registrable beneficial owner so as to enable compliance with subsection (3).
- (2) The steps referred to in subsection (1) may include, but are not limited to, obtaining the information specified in subsection (5) by a notice given under section 9(2) (duty of legal owners).
- (3) The nominated officer must submit the information specified in subsection (5) to the Department.
- (4) Unless regulations made under subsection (16) otherwise provide, submission of information under subsection (3) must be in accordance with section 22 (beneficial ownership information to be submitted online).
- (5) The information referred to in subsections (1) to (3) includes –
  - (a) where the legal entity has a registrable beneficial owner –
    - (i) the required details (see section 11) of the registrable beneficial owner; and
    - (ii) details of any relevant changes (see section 3); and
  - (b) where the legal entity has no registrable beneficial owners, a statement of confirmation of that fact.
- (6) In relation to a legal entity already in existence when this section comes into operation, the nominated officer must submit the information to the Department under subsection (3) –
  - (a) on the first occasion after the coming into operation of this section, by –
    - (i) the date on which the legal entity’s next annual return must be filed, delivered or made following receipt by the nominated officer of the first notice given under section 9(3); or



- (ii) 30 June 2018,
- whichever is the earlier, but in any event as soon as reasonably practicable after the information has been submitted to the nominated officer; and
- (b) on every subsequent occasion, within one month of the relevant information being notified to the nominated officer under section 9 or section 12 (as the case may be).
- (7) In relation to a legal entity coming into existence after this section comes into operation, the nominated officer must submit the information to the Department under subsection (3) within one month of that information being notified to the nominated officer under section 9 (duty of legal owners) or section 12 (changes to required details) (as the case may be).
- (8) A nominated officer commits an offence if the officer —
- (a) fails to comply with subsection (1), (3), (4) (5) (6) or (7); or
- (b) knowingly or recklessly makes a statement to the Department which is false, deceptive or misleading in a material particular.
- (9) A person guilty of an offence under subsection (8)(a) is liable —
- (a) on conviction on information, to a fine;
- (b) on summary conviction, to a fine not exceeding £5,000.
- (10) A person guilty of an offence under subsection (8)(b) 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.
- (11) If a person is convicted of an offence under subsection (8), the court may order that person to take such action as is necessary to rectify that failure.
- (12) If a nominated officer fails to adhere to the time limits stipulated in subsection (6) or (7), the Department may accept late delivery of the notice upon payment by the legal entity of the fee prescribed in an order made under section 33.
- (13) The Department may not require payment of a fee under subsection (12) if criminal proceedings have been commenced in respect of the contravention.
- (14) The Treasury may by order amend subsections (5) and (6) so as to amend the information in respect of a registrable beneficial owner to be submitted to the Department by the nominated officer and the period within which it is to be submitted.
- (15) An order under subsection (14) must not come into operation unless it is approved by Tynwald.

- (16) The Department may by regulations make further provision about the submission of information under this section, including the form and content of such submissions and the manner in which they must be given.
- (17) Regulations under subsection (16) must be laid before Tynwald as soon as practicable after they are made and if Tynwald at the sitting at which they are laid or the next subsequent sitting resolves that the regulations are to be annulled they shall cease to have effect.

## **21 Voluntary submission of non-registrable beneficial ownership information**

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

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

- (1) A nominated officer must comply with subsection (2) unless subsection (3) applies.
- (2) A nominated officer must use the required website to submit information to the Department.
- (3) The nominated officer is exempt from complying with subsection (2) where —
  - (a) regulations made under section 20(16) so provide; or
  - (b) upon receipt of an application from the nominated officer, the Department is satisfied that the nominated officer —
    - (i) does not have access to the internet; or
    - (ii) is otherwise unable, with reasonable excuse, to comply with this section,and should be exempt from such compliance.
- (4) Unless exempted under subsection (3), a nominated officer who fails to comply with subsection (2) commits an offence.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction, to a fine not exceeding £5,000.
- (6) An application under subsection (3)(b) must be in the form and manner required by the Department.
- (7) A nominated officer may appeal under section 34 (appeals), against a decision under subsection (3).

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

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

- (1) Access to the information on the Database is only permissible in accordance with this Part.
- (2) Information obtained through access to the Database may only be further disclosed in accordance with this Part.

### **24 Mode of access**

- (1) The Department may allow access to the Database by such means and in such manner as it determines.
- (2) The Department may by regulations make further provision about access to the Database under this Part (but not as regards the persons or bodies who may access the Database (see section 26)).
- (3) Regulations under subsection (2) must be laid before Tynwald as soon as practicable after they are made and if Tynwald at the sitting at which they are laid or the next subsequent sitting resolves that the regulations are to be annulled they shall cease to have effect.

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

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

## **DIVISION 2 – ACCESS TO THE DATABASE**

### **26 Persons who may access the Database**

- (1) Each of the competent authorities may access the Database for a permitted purpose (see sections 3(1) and 15(3)).
- (2) The following persons or bodies may access the Database –
- (a) the Department, for the purpose of its functions under this Act;
  - (b) the Isle of Man Gambling Supervision Commission, for the purpose of the Commission’s functions under any other enactment;
  - (c) for the purpose of maintaining the Database and the required website (see section 22(8)) –
    - (i) employees of the Cabinet Office; and
    - (ii) any other person authorised in writing for that purpose by the Minister for the Cabinet Office;<sup>4</sup>

- (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
  - (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.
- (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 –
- (a) viewing the beneficial ownership information in relation to that entity contained on the Database; and
  - (b) submitting information in relation to that entity in accordance with section 22 (beneficial ownership information to be submitted online).
- (4) The Treasury may by order amend subsections (1) to (3).
- (5) An order under subsection (4) must not come into operation unless it is approved by Tynwald.

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

- (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)).
- (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.
- (3) Information accessed under section 26(2)(a) to (d) must not be disclosed other than for the purposes specified in those paragraphs.
- (4) Information accessed under section 26(2)(e) must not be disclosed other than with the consent of the nominated officer of the legal entity to which the information relates.
- (5) A person who fails to comply with subsection (3) or (4) commits an offence.
- (6) A person guilty of an offence under subsection (5) 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.
- (7) To avoid doubt this section –
- (a) is in addition to section 28 (disclosure of information from the Database by the FIU when responding to external requests); and

- (b) does not apply to the disclosure of information by the FIU to an external intelligence or law enforcement agency in accordance with section 17 (disclosure of information obtained from a nominated officer by the FIU when responding to external requests) or section 28.

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

- (1) Information obtained by the FIU by accessing the Database 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 in 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.

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

- (1) A person commits an offence if the person —
  - (a) knows or suspects that information on the Database has been or is proposed to be accessed in accordance with this Part; and
  - (b) 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 access to the information on the Database; 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 access to the information on the Database.
- (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 an advocate or other legal adviser to disclose any information or other matter —

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

## PART 4 – GENERAL

### DIVISION 1 – GENERAL

#### 30 Oversight functions of the Authority

- (1) Without limiting its functions under any other enactment, the Authority is responsible for assessing compliance with this Act by a relevant person.
- (2) For the purpose of this section and Schedule 1 (oversight by the Authority), “**relevant person**” means —
  - (a) a legal entity to which this Act applies;
  - (b) a nominated officer;
  - (c) a legal owner;
  - (d) a beneficial owner;
  - (e) an intermediate owner (see section 10); and
  - (f) a registrable beneficial owner.
- (3) Schedule 1 confers additional powers on the Authority to give effect to subsection (1).

#### 31 Striking off

- (1) This section applies where there is reasonable cause to believe that a legal entity to which this Act applies has failed or is failing to comply with its obligations under this Act.
- (2) If this section applies, the legal entity may be struck off the relevant register or its registration may otherwise be cancelled.

- (3) To give effect to subsection (2), the Acts specified in Schedule 2 (amendments – striking off) are amended in accordance with that Schedule.

## 32 Regulations

- (1) The Treasury may make regulations –
  - (a) in accordance with this Act; and
  - (b) in respect of any other matter for which the Treasury considers that regulations are necessary or expedient to give effect to this Act other than matters for which the Department may make regulations under this Act.
- (2) Before it makes regulations under subsection (1), the Treasury must consult the Authority and the Department.
- (3) Regulations made by the Treasury under subsection (1) or made by the Treasury, Authority or Department in accordance with other provisions of this Act may –
  - (a) provide for their contravention to be an offence and prescribe a penalty for commission of the offence of a fine not exceeding £5,000 on summary conviction;
  - (b) exempt a person from a provision of this Act to which the regulations relate;
  - (c) permit a person to exercise a discretion in respect of any matters specified in the regulations;
  - (d) require compliance with standards or the adoption of practices recommended or specified from time to time (whether before or after the making of the regulations) by a person or body specified in the regulations; and
  - (e) contain consequential, incidental, supplementary and transitional provisions which the Treasury, Authority or Department (as the case may be) considers to be necessary or expedient.
- (4) The power conferred by subsection (3)(e) includes the power to modify, adapt or amend any provision of this Act or any other enactment.
- (5) Regulations made under this section must not come into operation unless approved by Tynwald.

## 33 Fees

- (1) The Department may by order prescribe fees for the purposes of section 7 (notice of appointment of nominated officer) and section 20 (compulsory submission of registrable beneficial ownership information to the Department).

- (2) Before making an order under this section, the Department must consult the Treasury.
- (3) A prescribed fee is a debt due to the Department for which the legal entity may be sued accordingly.
- (4) An order under subsection (1) must not come into operation unless it is approved by Tynwald.
- (5) Fees paid and received under this section must be paid into and form part of the General Revenue of the Island.

### 34 Appeals

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

### 35 Offences by legal entities other than natural persons

- (1) Subsection (2) applies if —
  - (a) an offence under this Act is committed by a legal entity; and
  - (b) it is proved that an officer of the legal entity authorised, permitted, participated in, or failed to take all reasonable steps to prevent, the commission of the offence.
- (2) The officer, as well as the legal entity, is guilty of the offence and is liable to the penalty provided for the offence.
- (3) In this section, “officer” includes —
  - (a) a director, secretary, partner, or other similar officer;



- (b) a person purporting to act as a director, secretary, partner or other similar officer;
- (c) if the affairs of the legal entity are managed by its members or council members, a member or council member; and
- (d) if the legal entity has a registered agent (within the meaning of the *Companies Act 2006*, the *Limited Liability Companies Act 1996* or the *Foundations Act 2011*), the registered agent.

### **36 Confidentiality**

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

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

Nothing in this Act authorises a disclosure, in contravention of any provisions of the *Data Protection Act 2002*, of personal data which is not exempt from those provisions.

### **38 Freedom of Information Act 2015**

Where the disclosure of information is prohibited by this Act, that information is absolutely exempt information for the purposes of section 27 of the *Freedom of Information Act 2015* (information the disclosure of which is restricted by law).

### **39 Privileged information**

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

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

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

- (a) section 102 of the *Companies Act 1931* (trusts not to be entered on the register) or any other statutory provision;

- (b) section 63 of the *Companies Act 2006* (register of members as evidence of legal title);
- (c) any provision in a company's articles of association that relieves the company from recognising —
  - (i) any interests other than the interests of the members of the company;
  - (ii) any trust, express, implied or constructive, in respect of shares; or
  - (iii) any beneficial owner of shares.

#### **41 Other disclosure provisions not affected**

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

### DIVISION 2 – COMPLIANCE PROVISIONS

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

- (1) A legal entity to which this Act applies must include a statement in its annual return which —
  - (a) confirms that —
    - (i) the entity and the nominated officer in relation to the entity have each complied with their respective obligations under this Act;
    - (ii) the required details in respect of any registrable beneficial owner have been submitted to the Department; and
    - (iii) all information submitted for entry on the Database is up to date and correct; and
  - (b) is countersigned by the nominated officer to evidence the officer's agreement with the statement.
- (2) The requirements of subsection (1) are additional to any other statutory obligations concerning annual returns.
- (3) To give effect to subsection (1), the Acts specified in Schedule 3 (amendments – statement of compliance in annual returns) are amended in accordance with that Schedule.

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

- (1) A company must file, deliver or make (as the case may require) its annual return online unless it is exempted from compliance in accordance with the provisions of —

- (a) the *Companies Act 1931*;
  - (b) the *Companies Act 2006*; or
  - (c) the *Limited Liability Companies Act 1996*.
- (2) To give effect to subsection (1), the Acts specified in Schedule 4 (amendments – compulsory online filing of annual returns for companies) are amended in accordance with that Schedule.

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

#### 44 Consequential amendments

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

#### 45 Savings

- (1) A nominated officer of a legal entity referred to in subsection (2) continues to be the nominated officer of the legal entity for the purposes of this Act (despite the repeal of the *Companies (Beneficial Ownership) Act 2012*).
- (2) A legal entity referred to in subsection (1) is one which when this section comes into operation, has —
  - (a) a nominated officer under the *Companies (Beneficial Ownership) Act 2012*; and
  - (b) written confirmation of the officer’s consent to the continuation of the appointment.
- (3) A registered agent of a legal entity referred to in subsection (4) is the nominated officer of the legal entity for the purposes of this Act.
- (4) A legal entity referred to in subsection (3) is one which when this section comes into operation, has —
  - (a) a registered agent (within the meaning of the *Companies Act 2006*, the *Limited Liability Companies Act 1996* or the *Foundations Act 2011*); and
  - (b) written confirmation of the agent’s consent to act as a nominated officer for the purposes of this Act.

- (5) To avoid doubt, where subsection (1) and (3) apply, subsections (6) to (8) have effect.
- (6) The legal entity is not required to give notice of the appointment of the nominated officer under section 7(1) (notice of appointment of nominated officer).
- (7) However, the legal entity is required to give notice of any change of nominated officer or a change in the nominated officer's details and must comply with this Act in all other respects.
- (8) The nominated officer must comply with this Act as if appointed under it.

#### **46 Repeals and revocations**

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

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<sup>1</sup> SD 0253/13

**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).

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

### 3 Power of the Authority to require information

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

required to produce them to state, to the best of that person's knowledge and belief, where they are.

- (5) Where any documents are produced as required under sub-paragraph (3), the Authority may —
  - (a) take possession of them for so long as may be necessary;
  - (b) take copies or extracts from them; or
  - (c) require the person producing them to provide an explanation of any of them.
- (6) A statement by a person in response to a requirement imposed under this paragraph may not be used in evidence against that person in respect of any criminal proceedings except proceedings for an offence under this Act or section 5 of the *Perjury Act 1952* (false statutory declarations and other false statements without oath).
- (7) 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* (meaning of "items subject to legal privilege").
- (8) In this Schedule, "**documents**" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form.
- (9) Where a person claims a lien on a document, its production under this paragraph does not affect the lien.

#### 4 Search warrants

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



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

## 7 Offences

- (1) Subject to sub-paragraph (3), a person commits an offence in connection with oversight if the person —
  - (a) knows or suspects that —
    - (i) an inspection is being or is likely to be carried out under paragraph 1 (inspections and investigations);
    - (ii) information is being or is likely to be requested under paragraph 2 (requests for information) or paragraph 3 (power of the Authority to require information); or
    - (iii) documents are or are likely to be required under paragraph 4 (search warrants);
  - (b) falsifies, alters, conceals, destroys or otherwise disposes of, or causes or permits the falsification, alteration, concealment, destruction or disposal of, information that the person knows or suspects is or would be relevant to such an inspection or investigation or is or would be requested;
  - (c) furnishes or sends to the Authority for any purpose under this Act a document which that person knows to be false or misleading in a material particular;
  - (d) recklessly furnishes or sends to the Authority for the purposes of this Act a document which is false or misleading in a material particular;
  - (e) in furnishing information to the Authority for the purposes of this Act —
    - (i) makes a statement which the person knows to be false or misleading in a material particular; or
    - (ii) recklessly makes a statement which is false or misleading in a material particular; or
  - (f) without reasonable excuse, fails to furnish information which that person is required to furnish to the Authority under this Act.
- (2) It is a defence for the person charged to prove that the person had no intention of concealing facts disclosed by the information from persons

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

- (3) A person commits an offence if the person —
  - (a) without reasonable excuse, fails to comply with a requirement imposed on the person under paragraph 3;
  - (b) intentionally obstructs a person exercising powers conferred by paragraph 1(2), (3) or (4) or paragraph 4(2) or (3); or
  - (c) without reasonable excuse, fails to take the action specified in a report made by the Authority under paragraph 6 within the timescale specified in that report.
- (4) A person guilty of an offence under subparagraph (3)(a) or (c) is liable —
  - (a) on conviction on information, to a fine; or
  - (b) on summary conviction, to a fine not exceeding £5,000.
- (5) A person guilty of an offence under subparagraph (1) or (3)(b) 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.

## 8 Civil Penalties

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

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

## 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 —

- 66 (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. 62.

**2 Companies Act 2006**

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

- 64; 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*. 62.

**3 Limited Liability Companies Act 1996**

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

- 63 (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. 62.<sup>5</sup>

**4 Partnership Act 1909**

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

- 66 (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. 62.

**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*. **22**.

**2 Companies Act 2006**

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

**33** (3A) The annual return must contain a statement of compliance as required by section 42 of the *Beneficial Ownership Act 2017*. **22**.

**3 Limited Liability Companies Act 1996**

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

**33** (2A) The annual return must contain a statement of compliance as required by section 42 of the *Beneficial Ownership Act 2017*. **22**.

**4 Partnership Act 1909**

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

**33** (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*. **22**.

**5 Foundations Act 2011**

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

**33** (3A) The annual return must contain a statement of compliance as required by section 42 of the *Beneficial Ownership Act 2017*. **22**.

## 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.

- (8) Any variation or revocation of a decision does not affect the previous operation of that decision or anything duly done or suffered under it.
- (9) Without limiting subsection (8), a decision of the Tribunal on an appeal under subsection (6) is binding on the Department and the company.
- (10) An appeal lies to the High Court, in accordance with rules of court, on a question of law from any decision of the Tribunal.
- (11) In this section “**required website**” means such website address as may be made available by the Department for use in connection with the submission of annual returns.
- (12) In this section “**Tribunal**” means the Financial Services Tribunal established under section 32 of the *Financial Services Act 2008*.<sup>22</sup>


## 2 Companies Act 2006

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

### **85A 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 for Enterprise 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.<sup>6</sup>
- (3) A company must utilise the required website to make and deliver to the Department an annual return in accordance with section 85.
- (4) A company which 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.
- (8) Any variation or revocation of a decision does not affect the previous operation of that decision or anything duly done or suffered under it.
- (9) Without limiting subsection (8), a decision of the Tribunal on an appeal under subsection (6) is binding on the Department and the company.
- (10) An appeal lies to the High Court, in accordance with rules of court, on a question of law from any decision of the Tribunal.
- (11) In this section “**required website**” means such website address as may be made available by the Department for use in connection with the submission of annual returns.
- (12) In this section “**Tribunal**” means the Financial Services Tribunal established under section 32 of the *Financial Services Act 2008*. .

### 3 Limited Liability Companies Act 1996

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

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

## ENDNOTES

### Table of Endnote References

<sup>1</sup> ADO –

|                              |             |  |
|------------------------------|-------------|--|
| s.5(3)                       | SD2017/0177 | 16/05/2017 to enable Treasury to publish those exchanges which are recognised for the purposes of s.5(2)(b); 21/06/2017 for all other purposes |
| s.5(4) & s. 6(5)             | SD2017/0177 | 16/05/2017 for purposes of making subordinate legislation; 21/06/2017 for all other purposes   |
| s.4(4), (7) & (8)            | SD2017/0194 | 30/05/2017   |
| Remainder of Act except s.43 | SD2017/0177 | 21/06/2017   |

<sup>2</sup> Definition of “Department” amended by SD2017/0325.

<sup>3</sup> Para (e) inserted by SD2017/0181.

<sup>4</sup> Para (c) substituted by SD2017/0385.

<sup>5</sup> Para 3 amended by SD2017/0325.

<sup>6</sup> Inserted subs (2) amended by SD2017/0325.