

# REVIEW



## Isle of Man Developments On Beneficial Ownership Disclosure Requirements



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November 2017

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In May of this year the Isle of Man Government published its progress report on Anti-Money Laundering and Combatting the Financing of Terrorism matters. The report follows on from the completion of the Isle of Man's national strategy for AML/CFT arising out of the Island's 2015 National Risk Assessment and the independent examination and assessment of the Island's regime by Moneyval. The findings of the Moneyval evaluation process were made public in January 2017 in the form of the Moneyval Evaluation Report ("MER"). A key conclusion of the MER was that whilst the Island's legislative and regulatory framework (the "technical component") were found to be sufficiently fit for purpose, more work was needed in order to demonstrate the effectiveness of the laws, regulations and procedures (the "effectiveness component").

In reaction to the various recommended actions contained in the MER, the Isle of Man authorities have taken steps to implement review and restructuring, completing a process that had already been embarked upon following the 2015 National Risk Assessment. The structural changes include the creation of a separate Financial Intelligence Unit ("FIU") and the reinstatement of the Island's Financial Crime Unit ("FCU") within the Isle of Man Constabulary. Formerly, the responsibility for gathering, analysing and disseminating financial intelligence had been within the remit of the FCU. However, the FCU will henceforth focus entirely on the investigation of financial crime whereas the FIU's strategic objectives are stated to be as follows:-

- The identification and addressing of cases of high level financial crime and corruption;
- Providing high quality international cooperation;
- Providing intelligence to enable partner agencies to detect AMUCTF activity, investigate financial crimes (including tax evasion), disrupt criminal activity and to secure prosecutions and confiscation of the Proceeds of Crime.

The Isle of Man Government's progress report further noted that although not a requirement of the FATF 40 recommendations, the creation of a register of beneficial ownership for legal entities would further enhance the effectiveness of the Isle of Man's AML/CFT regime as well as helping to address some of the issues identified in the MER. This would further achieve alignment with UK Government initiatives whereby it is now a common requirement for all Crown Dependencies and UK offshore territories that there be appropriate means in place to identify beneficial ownership.

As a consequence the Isle of Man has now enacted further legislation in the form of the Beneficial Ownership Act 2017 ("the 2017 Act").

The 2017 Act repeals the Companies (Beneficial Ownership) Act 2012 and places all Isle of Man corporate and legal entities under the legislative requirements in relation to

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beneficial ownership. Having received Royal Assent in April 2017 the central database prescribed by the 2017 Act went live on 1 July 2017.

The provisions of the 2017 Act apply to all types of companies incorporated in the Isle of Man, limited partnerships established under the Partnership Act 1909 which have elected to adopt separate legal personality and to foundations established under the Foundations Act 2011.

The statutory concept of beneficial ownership is essentially centred on the “natural person who ultimately owns or controls the legal entity...”.

A “registerable beneficial owner” is a person who owns or controls more than 25% of the beneficial ownership of the legal entity. Note that for the purposes of the 2017 Act a legal entity will not include a trust, since a trust does not have its own separate legal personality.

Access to the beneficial ownership database is limited to competent authorities, being:-

- The Isle of Man Government Department of Economic Development, the Government Department charged with managing the database, for the purposes of its functions under the 2017 Act;
- The Isle of Man Gambling Supervision Commission for the purpose of the Commission’s functions;

- Employees of the Government Technology Services Division of the Cabinet Office for the purpose of maintaining the database and the required website;
- The legal entity for the purpose of accessing the beneficial ownership information submitted in relation to that legal entity;
- A third party that is authorised by a legal entity to access beneficial ownership information in relation to that entity.

Information which is accessed on that database by a competent authority must not be further disclosed, except for a permitted purpose which is defined as any of the following:-

- The prevention, detection, investigation or prosecution of criminal offences, whether in the Island or elsewhere;
- 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;
- The furtherance or discharge of any function under this Act or any other enactment of the competent authority seeking access to beneficial ownership information;
- 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

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- In the case of the FIU (in addition to the permitted purposes specified in subparagraphs (i) to (iv) above), the disclosure of beneficial ownership information to an external intelligence or law enforcement agency in accordance with a beneficial ownership information sharing agreement and includes measures taken to:
  - (a) determine whether or not to investigate, prosecute or bring proceedings;
  - (b) initiate or bring to an end such an investigation, prosecution or proceedings; and
  - (c) trace, freeze, seize, confiscate or recover assets.

Information which is obtained by the FIU in accessing the beneficial ownership database may also be shared with external intelligence or law enforcement agencies.

The new legislation is unlikely to have significant practical implications for those engaged in the business of providing

corporate and fiduciary services. To the extent, for example, that legal ownership of shares in a corporate entity may reside in professional nominees, there is a statutory duty now placed upon such legal owners to ascertain beneficial ownership. Overall, the new law should not create significant additional burdens in an environment where the ascertainment of beneficial ownership has been a long standing and fundamental part of client due diligence for many years.

Clearly the new laws are intended to activate disclosures only in limited circumstances, for limited purposes and to limited persons in order to facilitate the lawful investigation and prosecution of illegal activity. They do not create a means of public access to what may otherwise be information that is held confidentially. Those involved in legitimate business activity should have no cause for any concern regarding the new arrangements.

*Advocate Christopher Murphy is Joint Managing Director and head of the Commercial Department at M&P Legal.*

M&P Legal is an established Manx law firm with highly experienced Advocates and Solicitors who regularly feature as recommended in the Legal 500 and Chambers & Partners legal directories. The practice deals with Isle of Man litigation such as debt recovery, personal injury, employment, contract, injunctions, enforcement of UK judgments, professional negligence; private client matters such as probate and wills, conveyancing; and corporate/commercial, banking, trusts and insolvency.

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