



Isle of Man

Ellan Vannin

COMPANIES (AMENDMENT) BILL 2020

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Explanatory Memorandum

1. This Bill is promoted by Mr Shimmins M.H.K.
2. *Clauses 1 and 2* provide for the short title of the resulting Act and the commencement of the Bill.
3. *Clause 3* amends the Companies Act 1931 (“the 1931 Act”).
 - 3.1 Subsection (2) amends section 16A of the 1931 Act (by which a company incorporated under that Act can re-register under the Companies Act 2006 (“the 2006 Act”)), so as to remove the requirement for a company to provide a certificate of re-registration under the 2006 Act before de-registration under the 1931 Act takes effect.
 - 3.2 Subsection (3) inserts new sections 16B to 16E into the 1931 Act. The new sections provide for the re-registration of a 2006 Act company (as defined in new section 16B) to re-register under the 1931 Act. The new sections, are similar to sections 148 to 151 of the 2006 Act. New section 16B creates the process by which a 2006 Act company may apply to the Department for Enterprise to re-register under the 1931 Act. The ability to do so is subject to compliance with specified requirements. New section 16C specifies the application process formalities including the documents to accompany an application. New section 16D specifies the action the Department will take when it re-registers a 2006 Act company under the 1931 Act. New section 16E specifies the consequences of re-registration of a 2006 Act company under the 1931 Act.
4. *Clause 4* amends the 2006 Act by inserting a new section 151A which makes references to the new procedure for re-registration of a 2006 Act company under the 1931 Act. The new section 151A is similar to section 16A of the 1931 Act.
5. *Clause 5* amends the 1931 Act by inserting a new section 11A into the 1931 Act, so as to create a right to inspect the memorandum and articles of a company to which that Act applies. The clause also substitutes section 12 of the 1931 Act so as to add a requirement for a company to maintain a copy of the memorandum and articles at its registered office.
6. *Clause 6* amends the 2006 Act by amending section 82 of that Act to expand the persons who may inspect specified records relating to a 2006 Act company and providing that failure to allow inspection is an offence, in line with the inspection provisions in the 1931 Act. Subsection (3) substitutes section 204 of the 2006 Act so as to add a requirement for a company to file a copy of its register of directors and any changes thereto.

7. *Clause 7* amends the Limited Liability Companies Act 1996 by substituting section 4 of that Act, to impose the requirement to keep specified documents at its registered office. The clause also inserts a new section 4A which provides for a similar regime for inspection as in the 1931 Act and the 2006 Act.
8. *Clause 8* makes transitional arrangements in relation to certain of the new provisions by which offences are created, and by which a company to which the provisions apply has a period of 3 months to comply.
9. *Clause 9* makes a consequential amendment to the Company and Business Names etc Act 2012.
10. The resulting Act is not expected to have any financial or human resource implications.
11. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



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Index

Section	Page
<i>Introductory</i>	<i>7</i>
1 Short title	7
2 Commencement	7
<i>Re-registration of a company incorporated under the Companies Act 2006</i>	<i>7</i>
3 Companies Act 1931 amended.....	7
4 Companies Act 2006 amended.....	12
<i>Document retention and inspection</i>	<i>13</i>
5 Companies Act 1931 amended.....	13
6 Companies Act 2006 amended.....	14
<i>Limited Liability Companies</i>	<i>15</i>
7 Limited Liability Companies Act 1996 amended.....	15
<i>General</i>	<i>16</i>
8 Transitional arrangements.....	16
9 Consequential amendments.....	16



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COMPANIES (AMENDMENT) BILL 2020

1 **A BILL** to amend certain companies legislation so as to enable a company
 2 incorporated under the Companies Act 2006 to re-register under the Companies
 3 Act 1931; to amend the Companies Act 1931, Companies Act 2006 and the
 4 Limited Liability Companies Act 1996 in accordance with recommendations
 5 specified in the Fifth Round Mutual Evaluation Report of the Committee of
 6 Experts on the Evaluation of Anti-Money Laundering Measures and the
 7 Financing of Terrorism; 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:—

8 *Introductory*

9 **1 Short title**

10 The short title of this Act is the Companies (Amendment) Act 2020.

11 **2 Commencement**

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

14 (2) An order under subsection (1) may include such consequential,
 15 incidental, supplemental, transitional, transitory and saving provisions
 16 as the Treasury considers necessary or expedient.

17 Tynwald procedure – laying only.

18 *Re-registration of a company incorporated under the Companies Act 2006*

19 **3 Companies Act 1931 amended**

20 (1) The *Companies Act 1931* is amended as follows.

21 (2) For section 16A(2) to (4) (re-registration under *Companies Act 2006*),
 22 substitute —

23 | “(2) Upon a re-registration referred to in subsection (1) —

- 1 (a) the Department shall issue a certificate of de-registration
 2 stating that the company ceased to be registered under this
 3 Act on the date of the certificate; and
- 4 (b) the company shall, with effect from the date of the
 5 certificate of de-registration referred to in paragraph (a) –
- 6 (i) cease to be a company registered under this Act;
 7 and
- 8 (ii) the Companies Acts 1931 to 2004 shall cease to
 9 apply to it from that date.

- 10 (3) Subsection (2)(b)(ii) does not apply to a provision of the
 11 Companies Acts 1931 to 2004 which applies to a company
 12 incorporated under the *Companies Act 2006*.”.

- 13 (3) After section 16A of the *Companies Act 1931*, insert –

14 **“16B Power of 2006 Act company to re-register**

15 2006/13/148 and drafting

- 16 (1) Subject to subsection (2) and sections 16C to 16E, a 2006 Act
 17 company may make application to the Department in the
 18 prescribed form to re-register as a company incorporated under
 19 this Act of such type specified in section 1 as corresponds to its
 20 type under the *Companies Act 2006*, provided that a company used
 21 to raise public funds must re-register as a public company and
 22 must meet the conditions specified in section 16C(4).
- 23 (2) An application referred to in subsection (1) may not be made
 24 unless the 2006 Act company has given not less than 28 days’
 25 notice of its intention to re-register, to its registered agent.
- 26 (3) In this section and sections 16C to 16E, “a 2006 Act company”
 27 means a company incorporated under the *Companies Act 2006*.

28 **16C Application to re-register a 2006 Act company**

29 2006/13/149 and drafting

- 30 (1) An application made under section 16B shall be accompanied
 31 by –
- 32 (a) details of the company’s proposed name after re-
 33 registration provided that –
- 34 (i) the name shall comply with the *Company and*
 35 *Business Names etc Act 2012*; and
- 36 (ii) where the Registrar of Companies has approved a
 37 foreign character name for the 2006 Act company,
 38 under section 13 of the *Companies Act 2006*, that
 39 approval terminates upon the re-registration of the
 40 company under section 16D;

- 1 (b) certified copies of —
- 2 (i) a resolution passed by a member or members
- 3 holding at least 75 per cent of the voting rights
- 4 exercised in relation thereto; and
- 5 (ii) a resolution of each class of members (if any) passed
- 6 by a member or members holding at least 75 per
- 7 cent of the voting rights exercised in relation
- 8 thereto,
- 9 in each case authorising the re-registration of the 2006 Act
- 10 company as a company incorporated under this Act,
- 11 adopting a new memorandum of association complying
- 12 with subsection (2) and (if applicable) adopting new
- 13 articles;
- 14 (c) a new memorandum complying with subsection (2);
- 15 (d) if the articles of the company upon re-registration are to
- 16 differ from the articles of whichever of Tables A to E is
- 17 appropriate, or if the company is to be re-registered as a
- 18 protected cell company, new articles, in either case,
- 19 complying with subsection (3);
- 20 (e) details, as at the date of application, of —
- 21 (i) the officers and members of the company and the
- 22 dates upon which those persons became officers
- 23 and members; and
- 24 (ii) the registered office;
- 25 (f) any outstanding filings and fees due under the *Companies*
- 26 *Act 2006* at the date of the application.
- 27 This subsection is subject to subsection (4) which applies to a
- 28 public company.
- 29 (2) The memorandum of a company referred to in subsection (1)(c)
- 30 shall comply with sections 2, 3 and 11 of this Act.
- 31 (3) The articles of a company referred to in subsection (1)(d) shall
- 32 comply with sections 6 to 11 of this Act.
- 33 (4) In the case of a 2006 Act company to be re-registered under this
- 34 Act as a public company —
- 35 (a) the company must make such changes to —
- 36 (i) its name; and
- 37 (ii) its articles,
- 38 as are necessary under this Act and any other enactment, in
- 39 connection with its becoming a public company; and
- 40 (b) an application made under section 16B shall comply with
- 41 subsections (5) to (9) and be accompanied by —

- 1 (i) a copy of the resolution approving the re-
2 registration of the company as a public company;
- 3 (ii) a new memorandum complying with section
4 16C(2);
- 5 (iii) if the articles of the company upon re-registration
6 are to differ from the articles of whichever of Tables
7 A to E is appropriate, new articles complying with
8 section 16C(3);
- 9 (iv) a copy of the balance sheet;
- 10 (v) a statement of compliance;
- 11 (vi) details of the company's proposed secretary; and
- 12 (vii) any other document required by the Department.

13 (5) The statement of compliance referred to in subsection (4)(b)(v)
14 shall confirm that conditions A to C are satisfied.

15 (6) Condition A is that at the time the resolution referred to in
16 subsection (4)(b)(i) was passed —

- 17 (a) the nominal value of the company's allotted share capital
18 was not less than the minimum subscription; and
- 19 (b) each of the company's allotted shares was paid up in full in
20 cash.

21 (7) Condition B is that —

- 22 (a) the company's balance sheet was prepared as at a date not
23 more than 6 months ("the balance sheet date") before the
24 date on which the application is made under section 16B;
25 and
- 26 (b) the application includes the following documents prepared
27 by the company's auditor —

- 28 (i) an unqualified report on the company's balance
29 sheet which complies with subsection (9);
- 30 (ii) a written statement confirming that in the auditor's
31 opinion as at the balance sheet date, the amount of
32 the company's net assets is not less than the
33 aggregate of its called-up share capital and
34 undistributable reserves; and
- 35 (iii) confirmation that between the balance sheet date
36 and the date the application was made under
37 section 16B, there has been no change in the
38 company's financial position that results in the
39 amount of its net assets becoming less than the
40 aggregate of its called-up share capital and
41 undistributable reserves.

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- (8) Condition C is that the application includes particulars of the secretary or joint secretaries of the company, which comply with section 19 of the *Companies Act 1982*.
- (9) For the purposes of subsection (7) —
- (a) an “unqualified report” means —
- (i) if the balance sheet was prepared for a financial year of the company, a report stating without material qualification that it is the auditor’s opinion that the balance sheet has been properly prepared in accordance with the Companies Acts 1931 to 2004;
- (ii) if the balance sheet was not prepared for a financial year of the company, a report stating without material qualification that it is the auditor’s opinion that the balance sheet has been properly prepared in accordance with the Companies Acts 1931 to 2004 which would have applied had the balance sheet been prepared for a financial year of the company; and
- (b) in the case of a balance sheet that was not prepared for a financial year of the company, the Companies Acts 1931 to 2004 apply with such modifications as are necessary by reason of that fact.
- (10) For the purposes of subsection (9)(a), a “material qualification” is any qualification other than a qualification in respect of which the auditor states that the matter giving rise to it is not material for the purpose of determining (by reference to the company’s balance sheet) whether at the balance sheet date the amount of the company’s net assets was not less than the aggregate of its called-up share capital and undistributable reserves.
- (11) In this section, “net assets” means the aggregate of the called-up share capital and undistributed reserves of a company.
- (12) The Department may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a public company.

16D Re-registration of a 2006 Act company

2006/13/150 and drafting

- (1) Upon receipt of the documents specified in section 16C, and in the case of a 2006 Act company applying to be re-registered as a public company, where the Department is satisfied that the company is entitled to be re-registered as a public company, the Department shall —

- 1 (a) register the new memorandum and articles delivered
 2 pursuant to section 16C;
 3 (b) allot a unique number to the company; and
 4 (c) issue a certificate of re-registration in the prescribed form.

- 5 (2) A certificate of re-registration issued by the Department is
 6 conclusive evidence of compliance with all requirements of this
 7 Act in respect of re-registration.

8 **16E Consequences of re-registration of a 2006 Act company**

9 2006/13/151 and drafting

- 10 (1) The re-registration of a 2006 Act company under section 16D,
 11 shall not be deemed to operate —

- 12 (a) to create a new legal entity; or
 13 (b) to prejudice or affect the continuity of the company.

- 14 (2) Upon re-registration of a 2006 Act company under section 16D —

- 15 (a) the new memorandum filed pursuant to section 16C shall
 16 be the memorandum of the company to the exclusion of
 17 the memorandum in force immediately prior to its re-
 18 registration; and
 19 (b) the articles of the company in force immediately prior to its
 20 re-registration shall cease to be the articles of the company
 21 and the proposed articles or (if no proposed articles have
 22 been delivered pursuant to section 16C) the articles of
 23 whichever of Tables A to E is appropriate, so far as
 24 applicable, shall be the articles of the company.

- 25 (3) On the date of the certificate of re-registration of a 2006 Act
 26 company under section 16D —

- 27 (a) the company shall cease to be a company incorporated
 28 under the *Companies Act 2006*; and
 29 (b) the *Companies Act 2006* shall cease to apply to the
 30 company.”.

31 **4 Companies Act 2006 amended**

32 After section 151 of the *Companies Act 2006* (consequences of re-registration of a
 33 1931 Act company), insert —

34 **“151A Re-registration under Companies Act 1931**

35 1931/2/16A and drafting

- 36 (1) A company incorporated under this Act may, re-register as a
 37 company incorporated under the *Companies Act 1931*, subject to
 38 compliance with the provisions of that Act.

- 1 (2) Upon a re-registration referred to in subsection (1) —
- 2 (a) The Registrar shall issue a certificate of de-registration
- 3 stating that the company ceased to be registered under this
- 4 Act on the date of the certificate; and
- 5 (b) the company shall, with effect from the date of the
- 6 certificate of de-registration referred to in paragraph (a),
- 7 cease to be a company registered under this Act and the
- 8 Companies Acts 1931 to 2004 shall apply to it from that
- 9 date.”.

10 *Document retention and inspection*

11 **5 Companies Act 1931 amended**

- 12 (1) The *Companies Act 1931* is amended as follows.
- 13 (2) For the cross heading before section 11 (statutory forms of memorandum
- 14 and articles), substitute —

15 *“Provisions as to statutory forms and copies of memorandum and articles”.*

- 16 (3) After section 11, insert —

17 **“11A Right to inspect memorandum and articles**

- 18 (1) Subject to subsection (2), the copies of the memorandum and
- 19 articles registered under this Part of this Act with the Department
- 20 shall be open to the inspection of a member of the company
- 21 without fee, and to the inspection of any other person on payment
- 22 of such reasonable fee (if any) as the company may require.
- 23 (2) Inspection shall be during business hours, but subject to such
- 24 reasonable restrictions as the company in general meeting may
- 25 impose, so that not less than two hours in each day shall be
- 26 allowed for inspection.
- 27 (3) If inspection of the said copies of memorandum and articles is
- 28 refused, any officer of the company refusing inspection, and every
- 29 director and manager of the company authorising or knowingly
- 30 and wilfully permitting the refusal, shall be liable to a fine not
- 31 exceeding level 5 on the standard scale.
- 32 (4) If any such refusal occurs in relation to a company, the court may
- 33 by order compel an immediate inspection of the copies of the
- 34 memorandum and articles.”.
- 35 (4) section 12 (registration of memorandum and articles), substitute —

1 **“12 Registration of memorandum and articles**

- 2 (1) The memorandum and the articles shall be delivered to the
3 Department, and the Department shall retain and register them.
- 4 (2) The company shall cause a copy of the memorandum and the
5 articles to be kept at the registered office of the company.”.

6 **6 Companies Act 2006 amended**

- 7 (1) The *Companies Act 2006* is amended as follows.
- 8 (2) In section 82 (inspection of records) —
- 9 (a) for subsection (2), substitute —
- 10 “(2) A member, without charge and any other person on payment of
11 such reasonable fee (if any) as the company may require, is
12 entitled, on giving written notice to the company and, in the case
13 of a person other than a member upon payment to inspect —
- 14 (a) copies of the memorandum and articles;
- 15 (b) the register of members or a copy thereof;
- 16 (c) the register of directors or a copy thereof;
- 17 (d) the register of charges maintained under section 137 or a
18 copy thereof,
- 19 and to make copies of or take extracts from the documents and
20 records.”; and
- 21 (b) after subsection (3), insert —
- 22 “(4) If inspection of the documents and records referred to in
23 subsection (2) is refused, any officer of the company refusing
24 inspection, and every director and manager of the company
25 authorising or knowingly and wilfully permitting the refusal,
26 shall be liable on summary conviction to a fine not exceeding level
27 5 on the standard scale.
- 28 (5) If any such refusal occurs in relation to a company, the court may
29 by order compel an immediate inspection of the documents and
30 records.”.
- 31 (3) For section 204 (optional registration of register of directors),
32 substitute —

33 **“204 Registration of register of directors**

- 34 (1) A company must file a copy of its register of directors for registration
35 by the Registrar.
- 36 (2) A company must register any changes to its register of directors with
37 the Registrar within one month of such changes being made.”.

*Limited Liability Companies***7 Limited Liability Companies Act 1996 amended**

For section 4 of the *Limited Liability Companies Act 1996* (registered office), substitute —

“4 Registered office and documents to be kept at registered office

- (1) A limited liability company shall at all times maintain a registered office in the Island.
- (2) A limited liability company shall keep the following documents at its registered office —
 - (a) copies of the articles of organisation;
 - (b) copies of any consent issued by a person named as the registered agent of the limited liability company;
 - (c) copies of all notices and other documents filed by the limited liability company pursuant to this Act in the previous 6 years; and
 - (d) copies of any certificate or other document issued by the Department and received by the limited liability company.
- (3) If a limited liability company —
 - (a) fails for 1 month to maintain a registered office in contravention of subsection (1) —
 - (i) it shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
 - (ii) it shall be deemed to be defunct until a registered office is established and a statement in the prescribed form is delivered to the Department; or
 - (b) contravenes subsection (2), it shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

4A Inspection of documents and records

- (1) The copies of the documents and records referred to in section 4(2) shall be open during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection, to the inspection of a member of the company without fee, and to the inspection of any other person on payment of such reasonable fee (if any) as the company may prescribe.

- 1 (2) If inspection of the said documents and records is refused, any
2 officer of the company refusing inspection, and every director and
3 manager of the company authorising or knowingly and wilfully
4 permitting the refusal, shall be liable on summary conviction to a
5 fine not exceeding level 5 on the standard scale.
- 6 (3) If any such refusal occurs in relation to a company, the court may
7 by order compel an immediate inspection of the documents and
8 records.”.

9 *General*

10 **8 Transitional arrangements**

11 A person does not contravene section 204(2) of the *Companies Act 2006* as
12 substituted by section 6 of this Act, until 3 months after section 6 comes into
13 operation.

14 **9 Consequential amendments**

15 In section 5(2)(a) of the *Company and Business Names etc Act 2012* (when name
16 approval is required), for sub-paragraph (ii), substitute —

17 “(ii) re-registration under section 16, 16A or 16D of the
18 *Companies Act 1931*.”.

IN THE KEYS

COMPANIES (AMENDMENT) BILL 2020

A **BILL** to amend certain companies legislation so as to enable a company incorporated under the Companies Act 2006 to re-register under the Companies Act 1931; to amend the Companies Act 1931, Companies Act 2006 and the Limited Liability Companies Act 1996 in accordance with recommendations specified in the Fifth Round Mutual Evaluation Report of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism; and for connected purposes.

Leave to introduce given by the Council on 28 May 2020.

MR SHIMMINS

JUNE 2020