



Isle of Man

Ellan Vannin

AT 9 of 2021

COMPANIES (AMENDMENT) ACT 2021



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Index

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

**Isle of Man***Ellan Vannin*

COMPANIES (AMENDMENT) ACT 2021

<i>Signed in Tynwald:</i>	<i>15 June 2021</i>
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AN ACT 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.

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:—

Introductory

1 Short title

The short title of this Act is the Companies (Amendment) Act 2021.

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.
 - (2) An order under subsection (1) may include such consequential, incidental, supplemental, transitional, transitory and saving provisions as the Treasury considers necessary or expedient.
- Tynwald procedure – laying only.

*Re-registration of a company incorporated under the Companies Act 2006***3 Companies Act 1931 amended (re-registration)**

- (1) The *Companies Act 1931* is amended as follows.
- (2) For section 16A(2) to (4) (re-registration under *Companies Act 2006*), substitute —
- (2) Upon a re-registration referred to in subsection (1) —
- (a) the Department shall issue a certificate of de-registration stating that the company ceased to be registered under this Act on the date of the certificate; and
- (b) with effect from the date of the certificate of de-registration referred to in paragraph (a) —
- (i) the company shall cease to be a company registered under this Act; and
- (ii) the Companies Acts 1931 to 2004 shall cease to apply to it.
- (3) Subsection (2)(b)(ii) does not apply to a provision of the Companies Acts 1931 to 2004 which applies to a company incorporated under the *Companies Act 2006*.
- (3) After section 16A of the *Companies Act 1931*, insert —

16B Power of 2006 Act company to re-register

2006/13/148 and drafting

- (1) Subject to subsection (2) and sections 16C to 16E, a 2006 Act company may make an application to the Department in the prescribed form to re-register as a company incorporated under this Act of such type specified in section 1(2) as corresponds to its type under the *Companies Act 2006*, provided that a company that will not be a private company upon re-registration can only re-register as a public company and only if it meets the conditions specified in section 16C(4).
- (2) An application referred to in subsection (1) may not be made unless the 2006 Act company has given notice of its intention to re-register, to its registered agent of 28 days or such shorter period as the agent agrees in writing to accept.
- (3) In this section and sections 16C to 16E, “a 2006 Act company” means a company incorporated under the *Companies Act 2006*.

16C Application to re-register a 2006 Act company

2006/13/149 and drafting

- (1) An application made under section 16B shall be accompanied by —

- (a) details of the company's proposed name after re-registration provided that —
 - (i) the name shall comply with section 2(1)(a) (requirements with respect to memorandum), the *Company and Business Names etc Act 2012* and in the case of a protected cell company, section 3 of the *Protected Cell Companies Act 2004*, in the case of an incorporated cell company, section 5 of the *Incorporated Cell Companies Act 2010* or, in the case of an incorporated cell, section 10 of the *Incorporated Cell Companies Act 2010*; and
 - (ii) where the Registrar of Companies has approved a foreign character name for the 2006 Act company, under section 13 of the *Companies Act 2006*, that approval terminates upon the re-registration of the company under section 16D;
- (b) certified copies of —
 - (i) a resolution passed by a member or members holding at least 75 per cent of the voting rights exercised in relation thereto; and
 - (ii) a resolution of each class of members (if any) passed by a member or members holding at least 75 per cent of the voting rights exercised in relation thereto,

in each case authorising the re-registration of the 2006 Act company as a company incorporated under this Act, adopting a new memorandum of association complying with subsection (2) and (if applicable) adopting new articles;
- (c) a new memorandum complying with subsection (2);
- (d) if the articles of the company upon re-registration are to differ from the articles of whichever of Tables A to E is appropriate, or if the company is to be re-registered as a protected cell company or an incorporated cell company, new articles, in either case, complying with subsection (3);
- (e) details, as at the date of application, of —
 - (i) the officers and members of the company and the dates upon which those persons became officers and members; and
 - (ii) the registered office;
- (f) any outstanding filings and fees due under the *Companies Act 2006* at the date of the application; and
- (g) in the case of a 2006 Act company to be re-registered under this Act as a public company —

- (i) a statement of compliance that complies with subsection (4)
 - (ii) a copy of the resolution that complies with subsection (5) approving the re-registration of the company as a public company;
 - (iii) a copy of the balance sheet that complies with subsection (6); and
 - (iv) any other document required by the Department.
- (2) The memorandum of a company referred to in subsection (1)(c) —
- (a) shall, subject to section 29 of the *Companies Act 1992*, state —
 - (i) the name of the company, with “Limited” as the last word of the name in the case of a company limited by shares or by guarantee;
 - (ii) the registered office of the company which shall be situate in the Isle of Man; and
 - (iii) in the case of a company to which Part I of the *Companies Act 1986* applies, that the company is a private company;
 - (b) shall, in the case of a company limited by shares or guarantee, state that the liability of its members is limited;
 - (c) shall, in the case of a company limited by guarantee, state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he or she is a member or within one year after he or she ceases to be a member, for payment of the debts and liabilities of the company contracted before he or she ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount;
 - (d) shall, in the case of a company having a share capital, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;
 - (e) shall, in the case of a company to be re-registered as a protected cell company under the provisions of the *Protected Cell Companies Act 2004*, comply with section 4 of that Act;
 - (f) shall, in the case of a company to be re-registered as an incorporated cell company under the provisions of the *Incorporated Cell Companies Act 2010*, comply with section 6 of that Act;

- (g) shall, in the case of a company to be re-registered as an incorporated cell under the provisions of the *Incorporated Cell Companies Act 2010*, comply with section 11 of that Act; and
 - (h) shall be in a form prescribed by the Department, in the case of —
 - (i) a company limited by shares;
 - (ii) a company limited by guarantee and not having a share capital;
 - (iii) a company limited by guarantee and having a share capital; and
 - (iv) an unlimited company having a share capital.
- (3) The articles of a company referred to in subsection (1)(d) shall comply with sections 6 to 11 of this Act provided that for the purposes of sections 6 and 9, the signatures of subscribers are not required.
- (4) The statement of compliance referred to in subsection (1)(g)(i) shall confirm that conditions A to C are satisfied.
- (5) Condition A is that at the time the resolution referred to in subsection (1)(g)(ii) was passed —
- (a) the nominal value of the company’s allotted share capital was not less than the minimum subscription; and
 - (b) each of the company’s allotted shares was paid up in full in cash.
- (6) Condition B is that —
- (a) the company has prepared a balance sheet (“the company’s balance sheet”) as at a date not more than 6 months (“the balance sheet date”) before the date on which the application is made under section 16B; and
 - (b) the application includes the following documents prepared by the company’s auditor —
 - (i) an unqualified report on the company’s balance sheet which complies with subsection (8);
 - (ii) a written statement confirming that in the auditor’s opinion as at the balance sheet date, the amount of the company’s net assets is not less than the aggregate of its called-up share capital and undistributable reserves; and
 - (iii) confirmation that between the balance sheet date and the date the application was made under section 16B, there has been no change in the company’s financial

position that results in the amount of its net assets becoming less than the aggregate of its called-up share capital and undistributable reserves.

- (7) Condition C is that the application includes particulars of the secretary or joint secretaries of the company, who must be appropriately qualified in accordance with section 19(4) of the *Companies Act 1982*.
- (8) For the purposes of subsection (6) —
- (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.
- (9) For the purposes of subsection (8)(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.
- (10) In this section, “net assets” has the meaning given in section 6(2) of the *Companies Act 1992* (meaning of financial assistance).
- (11) 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 —

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

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

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

2006/13/151 and drafting


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

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

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

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

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

- (a) the company shall cease to be a company incorporated under the *Companies Act 2006*;
- (b) the *Companies Act 2006* shall cease to apply to the company; and
- (c) as specified in section 151A(2)(b) of *Companies Act 2006* the company shall, cease to be a company registered under that Act and the Companies Acts 1931 to 2004 shall apply to it from that date. .

- (4) At the end of the Tenth Schedule (provisions referred to in section 326 of the Act), insert “Statement of compliance to accompany application for re-registration of a 2006 Act company as a public company”.

4 Companies Act 2006 amended (re-registration)

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

151A Re-registration under Companies Act 1931

1931/2/16A and drafting

- (1) A company incorporated under this Act may re-register as a company incorporated under the *Companies Act 1931*, subject to compliance with the provisions of that Act.
- (2) Upon a re-registration referred to in subsection (1) —
 - (a) the Registrar shall issue a certificate of de-registration stating that the company ceased to be registered under this Act on the date of the certificate; and
 - (b) the company shall, with effect from the date of the certificate of de-registration referred to in paragraph (a), cease to be a company registered under this Act and the Companies Acts 1931 to 2004 shall apply to it from that date. **22**.

Document retention and inspection

5 Companies Act 1931 amended (inspection and registration of documents)

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

11 *Provisions as to statutory forms and copies of memorandum and articles* **22**.

- (3) After section 11, insert —

11A Right to inspect memorandum and articles

- (1) Subject to subsection (2), the copies of the memorandum and articles registered under this Part of this Act with the Department shall be open 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 require.
- (2) Inspection shall be during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day shall be allowed for inspection.

- (3) The requirement to make copies of the memorandum and articles registered under this Part of this Act available for inspection is satisfied if the document is made available electronically.
- (4) If inspection of copies of the said memorandum and articles is refused, any officer of the company refusing inspection, and every director and manager of the company authorising or knowingly and wilfully permitting the refusal, shall be liable to a fine not exceeding level 5 on the standard scale.
- (5) If any such refusal occurs in relation to a company, the court may by order compel an immediate inspection of the copies of the memorandum and articles. **22**.

(4) section 12 (registration of memorandum and articles), substitute —

12 Registration of memorandum and articles

- (1) The memorandum and the articles, if any, shall be delivered to the Department, and the Department shall retain and register them.
- (2) The company shall cause a copy of the memorandum and the articles to be kept at the registered office of the company. **22**.

6 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 one 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 2 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.
- (2) The requirement to make copies of the said documents and records available for inspection is satisfied if the documents and records are made available electronically.
- (3) If inspection of copies of the said documents and records is refused, any officer of the company refusing inspection, and every director and manager of the company authorising or knowingly and wilfully permitting the refusal, shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) If any such refusal occurs in relation to a company, the court may by order compel an immediate inspection of the documents and records. **22**.

Companies Act 2006 amended

7 Companies Act 2006 amended (register of directors)

- (1) The *Companies Act 2006* is amended as follows.
- (2) After section 95(1) (appointment of directors), insert —
 - 95**(1A) The company must notify the Registrar in the prescribed form —
 - (a) where the first directors are appointed under subsection (1) after the date on which this subsection comes into operation, within one month of the appointment;

- (b) in all other cases, unless the Registrar has already been notified, within one month of the date on which this subsection comes into operation. **22**.

(3) For section 204 (optional registration of register of directors), substitute —

22 204 Notification of changes of directors

A company must notify the Registrar in the prescribed form of any changes to its register of directors —

- (a) where the change to its directors occurs after the date on which this subsection comes into operation, within one month of the change;
- (b) in all other cases, unless the Registrar has already been notified, within one month of the date on which this subsection comes into operation. **22**.

8 Consequential amendments

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

- 23** (ii) re-registration under section 16, 16A or 16D of the *Companies Act 1931*; **22**.

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