

Company and Business Names etc Bill 2012

Clauses considered

4.2. Mr Henderson to move.

The Speaker: The next Item is the Company and Business Names etc Bill and I call on the mover, Mr Henderson, please.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

This Bill seeks to address a recommendation of the IMF arising from the 2009 Report on the Isle of Man. The comment concerned the lack of regulation surrounding the use of certain words or phrases, such as 'bank' or 'banking' that are ordinarily associated with a specific regulated activity. The IMF wanted to have greater clarity and procedure protection in place.

While the Companies Registry does have guidance on what particular words can be used in a name, it is just that – guidance. This Bill seeks to replace the existing guidance in respect of the words and phrases that can ordinarily be used in the names of bodies corporate and unincorporated that are registered in the Isle of Man.

This is presented the Isle of Man with the opportunity to review the existing regime in respect of name approvals across the various Acts that are subject to the name approvals process. The various Acts to which the existing regime applies span a period of over 100 years. This has created a situation where the person with authority in respect of name approvals under the various Acts is referred to by different names under different Acts.

At its most basic level, the Bill seeks to consolidate the existing regime across the various Acts into a single central piece of legislation. The Bill will also redefine the various names given to the person with authority in respect of name approvals. The Bill creates the single role of the 'appropriate name approval authority'. This term will apply across all relevant Acts. Conventions that have arisen over time, such as the ability to reserve a name will be clarified and put into legislation to provide certainty.

The Bill contains 14 clauses and one schedule. The schedule sets out the consequential amendments that will be required to be made to other Acts. Should the branches of Tynwald support this Bill, the Bill will come into operation by Order made by the Treasury.

Vainstyr Loayreyder, turning to the Bill itself, clause 1 presents the short title.

I beg to move that clause 1 stand part of the Bill.

The Speaker: Mr Teare.

Mr Teare: I beg to second, sir.

The Speaker: I put the motion that clause 1 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 2 please.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Clause 2 provides for the Bill to come into operation on one or more days appointed by the Treasury. Provision is made to allow the Treasury to make saving and transitional provisions by order.

I beg to move that clause 2 stand part of the Bill.

The Speaker: Mr Teare.

Mr Teare: I beg to second sir.

The Speaker: I put the motion that clause 2 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Clause 3 defines certain words and expressions used in the Bill. This clause provides a single term for the person with power to approve the use of words and phrases in respect of the names of bodies corporate and unincorporate. The various terms applied to this person under the various Acts are replaced by the appropriate name approval authority.

I beg to move that clause 3 stand part of the Bill.

The Speaker: Mr Teare.

Mr Teare: I beg to second and to reserve my remarks, sir.

The Speaker: I put the motion that clause 3 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 4.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Clause 4 lists all persons, bodies corporate and unincorporate to which the Bill applies. This includes bodies corporate or unincorporate that are incorporated, established, or registered under the following Acts: Companies Act 1931, Companies Act 2006, Business Names Acts, Limited Partnerships and Foundation Act.

Sir, I beg to move that clause 4 stand part of the Bill.

The Speaker: Mr Teare.

Mr Teare: I beg to second and reserve my remarks, sir.

The Speaker: I put the motion that clause 4 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 5 please.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Clause 5 sets out the circumstances in which it is necessary to obtain approval to use a name. There are various circumstances in which a body corporate or unincorporate might need to seek consent to use a name. The most common circumstances for which name approval must be obtained are either on: establishment, registration, incorporation, or changing an existing name.

I beg to move that clause 5 stand part of the Bill.

The Speaker: Mr Teare.

Mr Teare: I beg to second and reserve my remarks, sir.

The Speaker: I put the motion that clause 5 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 6.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Clause 6 clarifies that where an approval is required to use a name and circumstances considered under clause 5 as previous, this must be made to the appropriate name approval authority. The application must be in the required form, as determined by the appropriate name approval authority.

This clause also introduces a power, which is not an obligation, to charge a fee when application is made. This power is a new enabling power. It has been included to ensure that if at some future point it is considered either necessary or desirable to introduce a fee, this can be done without further changes to the legislation.

I beg to move that clause 6 stand part of the Bill.

The Speaker: Mr Teare.

Mr Teare: I beg to second and to reserve my remarks, sir.

The Speaker: I put the question that clause 6 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 7.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Clause 7 replicates the existing powers for the appropriate name approval authority to either approve the use of a name unconditionally; approve the use of a name, subject to the fulfilment of certain conditions; or refuse to consent to use of a name. The conditions under which a name can be refused under clauses 7(3) and 7(4) replicate current provisions within the various Acts.

Reasons for refusal include: it contravenes provisions contained within other legislation; the name is too

similar to another already registered or reserved; it contains a word or phrase, the use of which is ordinarily restricted to a specific context; or it may simply appear to be undesirable to permitted use.

The existing convention whereby the appropriate name approval authority consults with other interested parties, such as Statutory Boards and Government Departments, is replaced with a statutory duty to consult these stakeholders. The Treasury has the power to determine by regulation who these stakeholders are.

A new power is given to the appropriate name approval authority under clause 7(7). This power gives the appropriate name authority ultimate discretion to approve the use of a name, despite any objections raised during consultation with stakeholders. Circumstances in which this might occur could consider the following scenario. A company providing tailoring services with premises in Bank Road may wish to register the name of 'Bank Road Tailors Limited'. Ordinarily, 'Bank' would be a word that is only to be used by those businesses conducting banking business. Since there is little chance that the public would be misled by this name, the appropriate name approval authority will have the power to approve the name.

As a further safeguard against the public being misled in these circumstances, clause 7(7) requires a publicly available register of such cases to be set up.

Sir, I beg to move that clause 7 stand part of the Bill.

The Speaker: Mr Teare

Mr Teare: I beg to second and to reserve my remarks, sir.

The Speaker: Hon. Member, Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

The Member mentioned a publicly available register. Is that by a book or will it be electronic? I am just wondering what...

Mr Henderson: My understanding, sir, is that it will be in hard copy format as an additional register to what we already have, so that we have some clarity on the situation, should this kind of scenario turn up in the future. It is actually additional to what we have got already.

A Member: A best seller.

The Speaker: I put the question that clause 7 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 8, please.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Clause 8 replicates the existing powers in respect of name approvals. A name that has already been approved may have conditions or additional conditions attached to the approval, or conditions may be varied or revoked. In all circumstances the appropriate name approval authority must inform the person in writing, giving reasons for the attachment, variation or revocation of any conditions.

I beg to move, sir.

The Speaker: Mr Teare.

Mr Teare: I beg to second and reserve my remarks, sir.

The Speaker: I put the question that clause 8 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 9.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Clause 9 again reproduces existing powers that currently appear in the various Acts. In circumstances where it appears to be necessary to direct that a person change its name, the appropriate name authority has the power to make a direction to this effect. As is the case now, reasons must be given for making the direction. Similarly, where a direction to change the name is ignored, the appropriate name approval authority retains the existing power to impose a change of name.

I beg to move.

The Speaker: Mr Teare.

Mr Teare: I beg to second and reserve my remarks, sir.

The Speaker: I put the question that clause 9 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 10.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Clause 10 over time and in response to the request of the financial services industry, the practice of permitting names to be reserved for a period of three months has been adopted. Clause 10 replaces this practice on a statutory footing under clause 10(9). Approval of the reservation of a name is subject to the same conditions and requirements as in clauses 6 and 7.

Clause 10 again considers the charging of a fee in order to reserve a name. Again, this is an enabling power and does not oblige the appropriate name authority to introduce a fee. A name can be reserved for additional periods of three months under clause 10(10) in a departure from the current position. The formal approval and application process must be followed. Abuse of the current practice which sometimes sees name reservations rolled over from one period to another will no longer be permitted. Formal application must be made for re-reservation of a name. This must be in the required form and subject to the conditions required by the appropriate name authority.

I beg to move that clause 10 stand part of the Bill.

The Speaker: Mr Teare.

Mr Teare: I beg to second and reserve my remarks, sir.

The Speaker: I put the question that clause 10 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 11.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Clause 11 considers appeals against decisions of the appropriate name approval authority. The persons who may appeal a decision of the appropriate name approval authority and the circumstances in which this may be done are set out in clauses 11(2) and 11(3).

Clause 11(7) gives the Treasury the power to extend the persons and circumstances in clauses 11(2) and 11(3). Appeals must be made to the court and any ruling of the court is binding on both the appellant and the appropriate name approval authority.

I beg to move that clause 11 stand part of the Bill.

The Speaker: Mr Teare.

Mr Teare: I beg to second and to reserve my remarks, sir.

The Speaker: The question is that clause 11 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 12.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Clause 12 gives the Treasury wide-ranging powers to make regulations on various matters included in the Bill. Most of the regulations considered must be approved by Tynwald in order to come into operation. However, there are two circumstances in which regulations must simply be laid before Tynwald. The most important of these are those that will replace the existing guidance on restrictive words and phrases, along with those parties who must be consulted under clause 7(3)(f). It is vital that the current flexibility and speed with which the existing guidance can be updated is not lost as a consequence of seeking to comply with the IMF recommendation.

Sir, I beg to move that clause 12 stand part of the Bill.

The Speaker: Mr Teare.

Mr Teare: I beg to second and to reserve my remarks, sir.

The Speaker: I put the motion that clause 12 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 13 with the schedule.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.
Clause 13 considers the amendments that will need to be made to the various enactments as a result of this Bill. The various name provisions that will be amended by this Bill are set out in the schedule to the Bill. This clause provides for the automatic repeal of the schedule to the Bill and this clause on the latter of the day after promulgation, or the day after the last revision was brought into operation.
The automatic repeal provision will not affect the operation of any of the amendments under this section. This is a housekeeping exercise that aims to declutter the statute books.
I beg to move.

The Speaker: Mr Teare.

Mr Teare: I beg to second and reserve my remarks, sir.

The Speaker: I put the motion that clause 13 and the schedule be approved. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 14 sir.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.
Clause 14 contains certain saving provisions, in particular, any specific provisions in respect of names under other enactments apply in addition to the provisions of this Act.
Clause 14(3) confirms that the power of the appropriate name approval authority under clauses 8 and 9 applies to circumstances that predate the coming into operation of this Bill.
Just a footnote to that, I will obviously answer the Hon. Member for Onchan's query with regard to the register when we get to the Third Reading in respect of electronic or hard copy availability. I understand the register is... there will be an additional register but I have got to clarify on the format it will be presented in.
Sir, I beg to move that clause 14 stand part of the Bill.

The Speaker: Mr Teare.

Mr Teare: I beg to second and reserve my remarks, sir.

The Speaker: I put the motion that clause 14 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
That concludes consideration of the clauses stage of the Company and Business Names etc Bill.