

Company and Business Names etc Bill 2012
First Reading approved

2. Mr Braidwood to move:

That the Company and Business Names etc Bill 2012 be now read a first time.

The President: We move on then to Item 2, Companies and Business Names etc Bill 2012.
Mr Braidwood to take the First Reading.

Mr Braidwood: Thank you, Madam President.

This Bill is the Companies and Business Names etc Bill 2012. The Bill will apply to every body corporate or unincorporate seeking approval to use and register a particular name in the Isle of Man. Some clauses will apply in respect of names that have already been registered.

This Bill was drafted in response to a recommendation of the IMF. This considered that steps should be taken to address the lack of regulation and legislation surrounding the use of certain words or phrases. The report commented particularly on the words 'bank' and 'banking'. The IMF considered that use of these words should, as far as possible, be limited to circumstances in which the activities of banking were undertaken.

This Bill will replace the existing guidance on sensitive words and expressions published by the Companies Registry with legislation. The need to take action to address the IMF's recommendation gave rise to an opportunity. It was considered proven to review, consolidate and update the existing regime in respect of name approvals across all Acts to which this is relevant.

The various Acts to which the existing regime applies spans a period of over 100 years. Some of the Acts that will be amended are: the Companies Act 1931; the Companies Act 2006; and the Partnership Act 1909. At its most basic level, the Bill consolidates 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. This is achieved through the creation of the role of the appropriate name approval authority. This term will apply across all the relevant Acts. The power is currently delegated to the Registrar of Companies through the Department of Economic Development. This will not change, but the name assigned to the role will change to a single term. Conventions that have arisen over time, such as the ability to reserve a name, will be clarified and put into legislation to provide certainty.

Two new powers are given to the appropriate name approval authority under this Bill. The first of these is the absolute discretion to permit the use of a word or expression in a company name in circumstances where it might otherwise be refused. This is facilitative and could, for example, allow for a corporate branding of a group of companies across various jurisdictions, including the Isle of Man. There is a safeguard against the public being misled under these circumstances. The appropriate main approval authority must enter such a name on an additional public register of all similar name approvals.

The second of the new powers relates to fees. The appropriate name approval authority is given the power to charge a fee on application for the use or reservation of a name. This power does not commit the name approval authority to charging a fee and could, for example, in future be applied selectively to disclose abuses of the name reservation provisions.

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. This Bill, if enacted, will come into operation on one or more days appointed by the Treasury.

Madam President, I beg to move the Companies and Business Names etc Bill 2012.

The President: The Hon. Member, Mr Lowey.

Mr Lowey: I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Yes, as a Member of Economic Development with delegated responsibility for the Companies Registry, I am happy to support this Bill. It is interesting how the use of the words 'bank' or 'banking' raises issues that need some reasonableness put into this. Things like, 'Elm Bank Guest House' has the word 'bank' in it, but it is obviously a guest house, and things like an energy bank, which might be used for the sale of carbon credits or something like that, or units of power, the word 'bank' is in there. So this will put into legislation some

discretion in the Registrar of Companies to allow the use of 'bank' where it is obviously not a bank just for money transactions. So again, the whole Bill is a reasonable way of going forward.

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

Just to give the First Reading my support, in terms of the fact I think it is a practical piece of legislation that consolidates existing legislation.

I just have one question, out of interest, whether not there will be a retrospective examination across the Companies Registry to see, where there is the word 'Bank' in a company name, as mentioned by my hon. colleague, Mr Crowe, and a review within the appropriate name approval authority just to make sure that it has been tested for suitability. Thank you.

The President: The Hon. Member, Mr Lowey.

Mr Lowey: I think the IMF are more interested in the misuse of the word 'bank', rather than as described by my good friend. I do not know who it was that quoted, 'a rose smells just as sweet by any other name.' I think this Bill makes sure – (**A Member:** Shakespeare.) It must be Shakespeare, and I am not a Shakespearean scholar as Hon. Members know... However, I think this Bill makes quite clear a rose, however much you smell it, it must be a rose. It cannot be called any other thing.

I think we do have to comply internationally and as this has been highlighted as a perceived weakness, the Bill actually deals with it in sensible way and I am sure it will be interpreted by the officer concerned in a sensible way.

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I fully support the Bill. I think it will remove any ambiguity. There have been a lot of scams in recent years, where companies appertaining to be banks have not been banks and so on, and I think this has led to a great deal of confusion, particularly internationally.

As my hon. colleague, Mr Crowe, said, we have to wait and see what is going to happen with some of the other companies involved. For example, one famous shipping company is called 'Bank Line' and I am sure there are hundreds of thousands of examples where the word 'bank' is being used for another purpose other than somewhere to deposit money and to carry out financial services.

I think the principles enshrined in the Bill are very good and it will clarify things and, as Mr Lowey said, a rose is a rose is a rose. So I am happy to support it.

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you, Madam President.

We are concentrating on the words 'bank' or 'banks', 'banking' and so on. I presume there are other words as well. None of them appear in the Bill itself, so I wonder if the hon. mover has any other words to suggest to us at this stage and if he could also tell us who the appropriate name approving authority is and where they are based.

Mr Crowe: Companies Registry.

A Member: The Registrar.

The President: Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

More comment really to add to the debate. It is always difficult, when legislation comes in, if you are appointing a level of discretion to somebody in a post. I am pleased to see that there is an appeal procedure built into this, which I think there is at the moment, in the event of the registrar of business names refusing, there is a process, so I think it is important we have that.

What is quite interesting in the wider issue of global trading now is the link between company business names and trademarks, which I think, there was a case – maybe Mr Callister might remember it – where there was a small entity owned by a family called McDonald, where there were all sorts of claims of trademark

infringement by the worldwide corporate McDonald's. So it is a very interesting area when you get into names, because it is not solely about the registration of business names, there are a lot of other factors.

I just wonder whether the mover could indicate possibly, how it would operate with us not having a, for example, Sainsbury's on the Island, if somebody was to register that name, would they take into account...? If there was nothing registered as that, would they take that into account when deciding whether the name and the type of business associated would actually cause confusion locally, even though that business is not resident on the Island? Business names, trademarks and indeed, brand awareness is all wrapped up in the same thing, when it comes to consumer protection.

The President: Mr Braidwood – oh, I am sorry, Mr Butt, please.

Mr Butt: Thank you, Madam President, and I also support this Bill.

I would just make a comment. The registration of a company name is often quite a complicated business and you have to wait some time to get approval etc. It is a simpler process for registering a business name, which is not a company, which is a very old Act, I think, and that used to be quite a simple thing to do.

A Member: It used to be, but not now.

Mr Butt: I see now that is in the schedule to be... I presume the mover can say, will the business names be treated in the same way now as company names being registered? It seems to be in the schedule to be included as part of that. So what was a simple process to register a business name is now going to become slightly more complex. Is that correct?

The President: Mr Braidwood.

Mr Braidwood: Thank you, Madam President, a nice, simple Bill! *(Laughter)*

It always seems to get a lot of attention in the Legislative Council. Right, I will try to answer some of the queries, but can I thank all Hon. Members who have spoken, because I think they have all given their support to this Bill.

Mr Wild was in support, but would this be retrospective? I think if we look at clause 8, it says:

'Alteration of conditions. 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.'

So retrospectively, I think they will look at the names of companies, which are already registered.

I thank Mr Downie for his support and also Mr Crowe.

The Hon. Member of Council, Mr Callister, mentioned who this approval body is. In actual fact it is the Registry. It is only a change of name for the Registrar of Companies.

Mr Turner mentioned about a company which is not registered in the Isle of Man, such as Sainsbury's, for example. If somebody tried to register the name 'Sainsbury's' over here, it would be taken into account, because the Isle of Man does not need really the potentially damaging reputational issues under a lawsuit. I would have thought, as has been in the cases in the UK, there have been cases going to court when somebody has tried to register and the other people have objected, so that would be taken into account.

In regard to the question raised by Mr Butt on business names registered, the information I have just received is that any names are currently subject to the same procedures. This includes business names. Equal checks are done for all names that are registered at the Companies Registry.

Madam President, I beg to move the First Reading of the Companies and Business Names etc Bill 2012.

The President: The motion is that the Bill be read a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.