

Company and Business Names etc Bill 2012
Second Reading approved

2. Mr Braidwood to move:

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

The President: We move on to Item 2, the Company and Business Names etc Bill 2012.
Back to Mr Braidwood, please, to take the Second Reading and clauses.

Mr Braidwood: Thank you, Madam President.

Madam President, this Bill seeks to address a recommendation of the International Monetary Fund 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. While the Companies Registry does have guidance on when 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 unincorporate that are registered in the Isle of Man. This has 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 approval 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 a single role of the appropriate name approval authority. This term will apply across all the 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.

Madam President, I beg to move the Second Reading of the Bill.

The President: Mr Lowey.

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

The President: If no Hon. Member wishes to speak, the motion is that the Bill be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Company and Business Names etc Bill 2012
Clauses considered

The President: Perhaps you would like to take clauses 1 and 2, Mr Braidwood.

Mr Braidwood: Clause 1 and 2 –

The President: Clauses 1, 2 and 3.

Mr Braidwood: Clauses 1, 2 and 3. Thank you, Madam President.

Madam President, clause 1 provides the short title of the Bill.

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.

Clause 3 defines certain words and expressions using 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 apply to this person and the various Acts are replaced by the appropriate name approval authority.

Madam President, I beg to move that clauses 1, 2 and 3 stand part of the Bill.

Mr Lowey: I beg to second, Madam President.
May I just draw attention to subclause (2) of clause 3, where:

‘The Treasury may by order amend the definition of “appropriate name approval authority”...’

That is subject to Tynwald approval before it comes into operation, so we have not got a blank cheque. We have to have it then approved by Tynwald if that change is to be made. I just want to draw the attention that somehow Treasury does not have *carte blanche* to... it has to have the approval of Tynwald.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Again, supporting clauses 1, 2 and 3. I am pleased that there will be one single central name approval authority, which will cover all these across all Acts, and so it is a move forward.

The President: The motion, Hon. Members, is that clauses 1, 2 and 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 4.

Mr Braidwood: Thank you, Madam President.

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; Registration of Business Acts 1918 and 1954; Limited Partnerships and Foundations Act; Industrial and Building Societies (Amendment) Act 1892; Industrial and Building Societies (Amendment) Act 1955. Those include some of the Acts which will be covered, Madam President, and therefore I beg to move that clause 4 stand part of the Bill.

The President: Mr Lowey.

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

The President: The motion is that clause 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 5 and 6.

Mr Braidwood: Thank you, Madam President.

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.

Clause 6 clarifies that where approval is required to use a name, in circumstances considered under clause 5, 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, 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.

Madam President, I beg to move that clauses 5 and 6 stand part of the Bill.

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

The President: Mr Downie.

Mr Downie: I have a query for the hon. mover of the Bill. My understanding is that part of this Bill is to make sure there is clear definition of banks and people engaged in financial services, and my question is: what happens to existing companies, who have, say, the word ‘bank’ as part of their incorporation, their business name incorporation? For example, there is a very well-known shipping company in the UK called ‘Bank Line’. We would have companies in existence already who have the word ‘bank’ in with their company and business

names. Are they to stay or will the legislation that is being introduced now force those to be renamed to comply with the spirit of the legislation?

Mr Braidwood: Madam President, this will be covered in a further clause further on in the legislation because that 'Bank Line', there should not be any problem with that shipping company because you might get a company which lives in 'Bank Road', and therefore because it is 'Bank Road', it does not actually infer that the company is trading as a bank.

To add, there is no effect on names currently approved and discretion to approve use of words in a non-regulated context is new in-built from me... My adviser sitting to my left...! It is now in-built – sorry, it is bad writing. *(Laughter)* But it will be further on in the legislation, Madam President, which clarifies this situation, and therefore I beg to move.

The President: The motion is, Hon. Members, that clauses 5 and 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

Mr Braidwood: Thank you, Madam President.

Clause 7 replicates the existing powers for the appropriate name approval authority to either (a) approve the use of the name unconditionally; (b) approve the use of a name subject to the fulfilment of certain conditions; or (c) refuse to consent to use of a name. The conditions under which a name can be refused under clause 7, subsections (3) and (4) replicate the current provisions within the various Acts. The reasons for refusal include that it contravenes provisions contained within other legislation; this 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 permit its 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 the 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. For circumstances in which this might occur, consider the following their scenario. A company providing tailoring services with premises in Bank Road – and this is the point I am going to bring in now with Mr Downie's query – 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 could 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.

Madam President, I hope this again clarifies the situation of Bank Line Shipping, which Mr Downie mentioned, and therefore I beg to move that clause 7 stand part of the Bill.

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

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Yes, I think, as Mr Braidwood says, this covers the point of the use of the word 'bank' and I think it will be looked up by the Registrar of Companies on a reasonableness basis and commonsense approach. I think again it is bringing into a practical basis the use of the name so that people cannot be misled into thinking there is a bank there when there is not a bank there, shall we say.

I think I remember some time ago there used to be a restriction on use of the word 'Manx' or 'Isle of Man' in the titles, or 'IoM', and I think that probably still is in place.

Mr Lowey: I think, if I may, Madam President, Mr Downie is right to illustrate by using an existing company, but that company has historically operated what I would call a meaningful, legitimate business, without incurring undesirable, which means misleading, offensive and inappropriate way. That is why the naming authority would have no difficulty in saying that has been so historic, and therefore it would be permissible. I do not think they have got anything to fear from this particular Bill.

The President: Mover to reply.

Mr Braidwood: I just thank Mr Crowe and Mr Lowey, my seconder, for the clarification and I beg to move.

The President: The motion is, Hon. Members, that clause 7 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 8.

Mr Braidwood: Thank you, Madam President.

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.

Madam President, I beg to move that clause 8 stand part of the Bill.

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

The President: The motion is that clause 8 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.
Clause 9.

Mr Braidwood: Thank you, Madam President.

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 a name is ignored, the appropriate name approval authority retains the existing power to impose a change of name.

Madam President, I beg to move that clause 9 stand part of the Bill.

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

The President: The motion is that clause 9 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 10.

Mr Braidwood: Thank you, Madam President.

Madam President, clause 10 places the practice... because what has happened 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 puts this 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 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 processes must be followed. The abuse of the current practice, which sometimes sees names reservations rolled over from one period to another, will no longer be permitted. Formal application must be made for a reservation of a name. This must be in the required form and subject to the conditions required by the appropriate name approval authority.

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

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

The President: The motion is that clause 10 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 11.

Mr Braidwood: Thank you, Madam President.

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 clause 11(2) and (3).

Clause 11(7) gives the Treasury the power to extend the persons and circumstances in subsections (2) and (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.

Madam President, I beg to move that clause 8 stand part of the Bill.

The President: Clause 11, I think.

Mr Braidwood: Sorry. *(Laughter)*

I beg to move that clause 11 – I cannot even read that! – stand part of the Bill.

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

The President: Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I just wondered why the appeal procedure is straight to the court, because this traditionally is a very expensive procedure. Why is there no appeal mechanism which can be dealt with at a lower level, with a final option being to proceed to the High Court?

The President: Mover to reply, please.

Mr Braidwood: I think when the legislation was being drafted, it was felt that it would be more appropriate to go straight to the court and then dragging it out through proceedings of going to appeals.

Mr Turner: Put people off appealing.

Mr Braidwood: It would also have needed a new tribunal. So a new tribunal would have had to have been set up. Therefore, it was appropriate to go straight to the courts.

Mr Turner: Just to put people off then.

The President: The motion is that clause 11 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 12, 13 and the schedule, please.

Mr Braidwood: Thank you, Madam President.

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 existing guidance on restricted words and phrases, along with those parties who must be consulted under clause 7(3)(f). It is vital that currently flexibility and speed with which existing guidance can be updated is not lost as a consequence of seeking to comply with the IMF recommendation.

Clause 13 and the schedule considers the amendments that will need to be made to the various enactments as a result of this Bill. The various main provisions that will be amended by the 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 later of the day after promulgation or the day after the last provision is 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.

Madam President, I beg to move clause 12, clause 13 and the schedule stand part of the Bill.

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

The President: The motion is that clauses 12, 13 and the schedule do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

The President: We move on to Item 3, the Heavily Indebted Poor Countries (Limitation on Debt Recovery) Bill 2012.

Mr Braidwood: Madam President, I have just got one clause 14.

The President: Oh, I am sorry.

Clause 14.

Mr Braidwood: Thank you, Madam President.

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.

Madam President, I beg to move that clause 14 stand part of this Bill.

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

The President: The motion is that clause 14 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.