

Company and Business Names etc Bill 2012

Third Reading approved

1. Mr Braidwood to move:

That the Company and Business Names etc Bill 2012 be read a third time and do pass.

The President: I call upon the Hon. Member, Mr Braidwood, to take the Third Reading of the Company and Business Names etc Bill.

Mr Braidwood: Thank you, Madam President.

This Bill is the Company and Business Names etc Bill 2012. The Bill will apply to every case on which approval must be sought for the use of a name by a body corporate or unincorporate.

The Bill seeks to address a recommendation of the International Monetary Fund arising from the 2009 Report on the Isle of Man. The recommendation 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.

This Bill seeks to replace the existing guidance issued by the Companies Registry with legislation. 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 would be put into legislation. This created an opportunity to review and update the existing regime in respect of name approvals across the various Acts. The various Acts to which the existing regime applies spans a period of over 100 years.

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. 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.

Clauses 1 and 2 contain the opening provisions of the Bill and allow for commencement by Appointed Day Order.

Clause 3 defines certain words and expressions used in the Bill, notably the term 'appropriate name approval authority' is defined.

Clause 4 lists all persons, bodies corporate and unincorporate to which the Bill applies. This includes bodies corporate or unincorporate, incorporated, established or registered under various Acts, including Companies Act 1931, Companies Act 2006, Business Name Acts, Limited Partnerships and Foundations Act.

Clause 5 sets out when it is necessary to obtain approval to use a name. The most common circumstances are either on establishment, registration, incorporation or changing an existing name.

Clause 6 confirms that application must be in the required form to the appropriate name approval authority. This clause also introduces a new power, not an obligation, that will permit a fee to be charged on application.

Clause 7 replicates existing powers that commit outright approval of use of a name, approval subject to conditions being met or through refusal of permission. This clause also replaces the existing practice of consulting with interested parties, such as Statutory Boards and Government Departments, with a statutory duty to consult these stakeholders.

A new power under clause 7(7) gives the appropriate name approval authority ultimate discretion to consent to the use of a name. In circumstances where consent has been given, but would ordinarily have been withheld, the name must be placed on a public register of such clauses.

Clause 8 replicates the existing powers which consider that an approved name may be made subject to certain conditions or additional conditions, or conditions may be varied or revoked.

Clause 9 again reproduces existing powers that currently appear in the various Acts. The power to direct that a person changes its name is retained, as is the case now. Reasons must be given for making the direction. The existing power to impose a change of name is also retained.

Clause 10 places on a statutory footing a convention that has arisen over time. The reservation of names for a period of three months has been permitted, despite there being no statutory basis for doing so.

Clause 11 considers appeals against decisions of the appropriate name approval authority. The person who and circumstance in which appeal can be made are set out. Appeals must be made to the court, whose ruling is binding on both the appellant and the appropriate name approval authority.

Clause 12 gives the Treasury wide-ranging powers to make regulations on various matters included in the Bill. The most important of these is the power to replace the existing guidance on restricted words and phrases with legislation.

Clause 13 sets out the consequential amendments that will be needed as a result of this Bill. These are set out in the schedule to the Bill. This clause also contains an automatic repeal provision. This 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.

Clause 14 contains certain saving provisions.

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

The President: Hon. Member, Mr Lowey.

Mr Lowey: Thank you, Madam President.

I beg to second and reserve my remarks.

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