

2. Foreign Companies Bill 2013 – First Reading approved

Mr Braidwood to move:

That the Foreign Companies Bill 2013 be read a first time.

The President: We turn now to the Foreign Companies Bill 2013.
I call on Mr Braidwood to take the First Reading.

Mr Braidwood: Thank you, Madam President.

This Bill is the Foreign Companies Bill 2013 and will replace Part XI of the Companies Act 1931 with separate and stand-alone legislation.

While the Bill refers to foreign companies, the scope of application is wider than just companies; the Bill applies to other types of legal persons, such as foundations and limited partnerships with separate legal personality. The Isle of Man is unique, and has been for many years, in having legislation applying to foreign companies operating out of the jurisdiction. The register of foreign companies has, over the years, become known as the 'F Register'.

The Bill proposes to simplify the current regime. It will continue to apply to all foreign companies that have established a place of business in the Island or own land in the Island. The Bill now makes provision for companies that meet neither of these criteria to simply make an election for the legislation to apply to them. In some cases the requirement for foreign companies to register under this legislation is simply good common sense; it is a matter of public protection. One example of this would be where a foreign company has established a real trading presence in the Island; another would be where a foreign company owns land in the Island, but has no other presence on the Island – a bit like an absentee landlord.

Accidents can and do happen. It is important for the Manx public to be able to identify who it is that they need to contact in the event of some problem connected with a foreign company. Some companies may make the election to apply the legislation to themselves to demonstrate a nexus with the Island. This might include circumstances where a company required a VAT registration. It could also be where a company seeks to import into the European Union, via the Isle of Man, and qualifies for end use relief on import taxes and duties.

The Bill is evidence of the Island's continued commitment to transparency. The opportunity has been taken to significantly reduce the level of bureaucracy and red tape that currently surrounds the F Register. Under Part XI of the 1931 Act, companies must notify the Companies Registry of all changes within the company. While this may have been appropriate when first drafted, it now often results in the Island's Registry holding far more information than the jurisdiction of incorporation. In some cases, the level of disclosure is in conflict with what is required and allowable in the home jurisdiction.

It is for this reason that the bulk of the information that will need to be filed going forward relates to those matters that allow for the company to be properly identified in the home jurisdiction. The rationale for this is simple: if the home jurisdiction does not require the information, it is not for the Island to enforce transparency on others. We can and will, however, continue to ensure that business in the Island is conducted in an open and transparent manner. Essentially, we will be providing a portal, while ensuring that information relevant and important to the Island's residents is collected.

After lengthy consultation, the scope of application of the Bill has been agreed and now encompasses only what it needs to. In addition to this, for the first time, there is clarity about when a foreign company must or may register. Placing the Foreign Companies Bill 2013 outside the companies legislation now also brings certainty to what provisions of Manx law apply to foreign companies. Essentially, if it does not appear in the Bill, it does not apply.

Madam President, in keeping with the intention to reduce the bureaucracy and red tape involved in the F Register, the Bill contains 27 clauses, which are divided into three parts.

Madam President, I beg to move the First Reading of the Foreign Companies Bill 2013.

Mr Downie: Madam President, I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I just have a couple of queries and I may be on the wrong track. Could the mover confirm that 'foreign' does mean United Kingdom companies as well? I think it says outside the Isle of Man and so that would include United Kingdom companies.

And secondly, the issue that has been discussed many times about foreign companies, such as Tesco and Marks & Spencer trading in the Isle of Man, is this a means to actually finding a way to regulate them, in terms of their VAT and their tax payments? I presume it is not from reading the Bill, but is this a first step towards that?

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

Just some questions really for the mover. Is this similar, in effect, to them actually registering as a Manx company and would the rules governing Manx companies, in terms of costs and returns and all of these sorts of things, also apply, because presumably they will have to make annual returns and things and incur costs?

Would there be any additional benefit to them actually incorporating a Manx company or would that just mean they would have to, effectively, set up an additional trading operation, whereas registering as a foreign company they would still be trading under their original body that they would be in wherever they are based? I think the Hon. Member, Mr Butt, mentioned, for example, some of the large supermarkets and things that are here – the likes of Tesco – where the trading goes into their overall pot, rather than just a simple Isle of Man company which it would be if it was a separate entity.

In terms of foreign companies that may be registered in other jurisdictions... I do not know... Gibraltar, Overseas Territories and other such places, does this mean that this additional way of people finding information, would that put any businesses... Is there likely to be an effect on any businesses that are currently here actually leaving this jurisdiction and going somewhere else? Those are the questions that I have for the mover at this stage.

The President: The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.

What provisions are there for foreign companies that elect to be regarded as almost domestic in the Isle of Man using this legislation to avoid taxation where they are resident, as opposed to paying Manx tax, which could be less? Is there any provision in the Bill which basically says that they do not have to pay tax in the Isle of Man as long as they are paying more than the maximum rate that is payable in the Isle of Man in their *situ*?

That is all, Madam President.

The President: The hon. mover to reply.

Mr Braidwood: Thank you, Madam President.

In regard to the first point put by the Hon. Member of Council, Mr Butt, yes, it does include companies in the United Kingdom, such as the Hon. Member, Mr Turner said, Gibraltar or BVI. They could be incorporated in those jurisdictions.

In regard to the VAT and tax, the VAT was different when we had our own codes. VAT now goes completely into just the one pool in the UK and we are apportioned a slice of that amount.

In regard to the tax, I think it was mentioned by the Treasury Minister in the Budget that trading companies, such as Tesco's or Marks & Spencer's, who have a profit over... I believe it was £½ million, would be paying a tax to the Isle of Man, and of course because of the double tax arrangements with the United Kingdom, the tax they pay over here would be able to put against their tax in the UK.

Tesco are already registered on the register as an F Register because they have got a place of business here. If they have established a place of business in the Island or they own land and then if they had been incorporated in another jurisdiction, they have to be on the F Register.

With regard to Mr Turner, I think I have mentioned a majority of the points already because I think it was a continuation of what Mr Butt had said, but I cannot see them leaving the jurisdiction because they have been incorporated in another jurisdiction. They are only on the F Register if they have got a place of business or they have got land here. So, yes, they will have to pay fees. It will not have put people off, in that they would leave here, because they have been incorporated in another jurisdiction.

Mr Coleman, Madam President, I think where he was coming from was really in the Income Tax (Amendment) Bill, for which we have just had a our Third Reading, where it was mentioned particularly. It was more for retail estate investment trusts where they were able to incorporate over here and the tax they paid as long as they were paying the minimum of 20% in the Isle of Man. But I think that in actual fact the query is in the Income Tax (Amendment) Bill and not in the Foreign Companies Bill, Madam President.

I beg to move the First Reading.

The President: The motion is that the Foreign Companies Bill 2013 be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.