

1. Foreign Companies Bill 2013 – Second Reading approved

Mr Braidwood to move:

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

The President: We turn now to the Foreign Companies Bill 2013 for Second Reading. I call on the Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

Madam President, this Bill, the Foreign Companies Bill 2013, will replace Part XI of the Companies Act of 1931 with separate and stand-alone legislation. This legislation will apply only to those companies or other legal persons that meet the criteria for being foreign companies.

The Isle of Man is unique in having legislation that applies to foreign companies that operate out of the jurisdiction. Whilst this is called the Foreign Companies Bill, the definition of 'company' under this Bill is wider than this. The Bill makes provisions for other types of legal persons to be included within the definition of 'foreign company'. These include foundations and partnerships with separate legal personality.

Madam President, I will elaborate further at clause 4.

The Bill applies to all Foreign Companies whose activities fall within the definition of carrying out business from the Island, or holding land in the Island. This is consistent with the current scope of application of Part XI of the Companies Act 1931. The Bill now also makes provisions to permit companies incorporated outside the Island that wish to demonstrate a nexus with the Island to elect to register under the legislation.

This Bill contains 27 clauses.

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

The President: The Hon. Member, Mr Downie.

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

The President: The motion before Council 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.

Foreign Companies Bill 2013 – Clauses considered

The President: We now proceed to clauses. Would you care to take clauses 1 to 3 together?

Mr Braidwood: Certainly, 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, sorry, appointed, by the Treasury – sorry, I beg your pardon Madam President, it was with the Bishop coming through! (*Laughter*) Provision is made to allow the Treasury to make saving and transitional provisions by order.

Clause 3 gives definitions for certain words and expressions used in the Bill.

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

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

The President: The motion 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 defines a foreign company as a legal person, incorporated outside the Island. This definition of foreign company includes other types of legal persons such as foundations and limited partnerships with separate legal personality. Clause 4(2) lists the types of legal persons that can apply for inclusion on the F Register. It does this by providing examples of Manx legal persons that would, if incorporated outside the Island, be eligible for entry on the F Register. These include 1931 and 2006 Act-style companies and limited liability companies.

The Treasury has the power to amend this list by order. Before making an order under this clause, the Treasury must undertake a consultation. An order made under this clause must be approved by Tynwald before it takes effect.

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

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

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

We did raise this at the First Reading. Can I confirm that companies such as Marks & Spencer's, Tesco and Curry's would, under this definition, become a foreign company, who can elect then to become registered on the Isle of Man?

The President: The mover to reply.

Mr Braidwood: Madam President, I can confirm that such as Tesco's and M&S will be classified as a foreign company: all UK companies who have been incorporated in the UK will go on the F Register.

Mr Butt: Thank you.

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.

Clause 5.

Mr Braidwood: Thank you, Madam President.

Clause 5 sets out those circumstances in which a company must apply for inclusion on the F Register. For the most part this replicates the existing requirement to register. This includes the carrying on of business from an established place of business in the Island, or where a foreign company is the beneficial owner of land in the Island.

In a departure from the old Part XI of the Companies Act 1931, legal persons that wish to demonstrate a nexus with the Island may now make an election to be entered on the F Register. This is permissible even where there is no place of business and no land held in the Island.

Clause 5(3) brings clarity to an area that has caused confusion for many years: what the definition of a 'place of business' is. This is achieved by expressly confirming the activities that, when undertaken from the Island, do not necessarily count as carrying on business from an established place of business in the Island. The Treasury can, after consultation, amend the circumstances and activities listed to make further additions to, or exclusions from, the

requirement to register. An amendment to this clause by way of order is subject to the express approval of Tynwald.

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

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

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Yes, this is a very useful clause, and I think the key to this is subclause (3) where there are certain exemptions to what is deemed as carrying on business, because I think there are many Corporate Service Providers who manage from this Island overseas companies, BVI, Panama, US companies, Delaware – wherever they are. A lot of them are managed but do not carry on business here, so they do not have a place of business here. So I think according to the FSC's latest Annual Report there are over 14,000 overseas companies not registered under Part XI of the Companies Act. And those that are registered under the F Register are 695.

So this, obviously, is important to note that CSPs can manage businesses, and can manage companies in the Isle of Man, which are not incorporated here, and it is under subclause (4), this question about the company may elect. So again this is a very useful subclause, that people can elect to be deemed to go on the F Register.

So I think the Bill, as drafted, is very useful, as it is enabling provisions and allows an 'in' or 'out' regime which would be very useful for going forward and to help CSPs.

Thank you.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

It is mainly an observation really, with regard to the fact that Treasury under subclauses (6) and (7) can actually amend the provisions in subclause (3) of clause 5. It is slightly of concern really that as these are listed here in the primary Act, they can actually amend them by an order simply going to Tynwald – and of course, that does bypass the various stages through the two branches.

It is more of an observation really that I think when it comes to *possibly* materially altering the content, I do not particularly think it is the best way to go – although I can understand why they would want to do it, because they possibly would need to move quickly.

But I would just set down that I hope that they properly consult, which they are required to do, there is provision that they must consult before they do the order. But it is mainly an observation that through putting an order to Tynwald, it is just the one process, which we are unable to amend... obviously in Tynwald Court, we would have to vote it out. Whereas in the parliamentary process, of course if it was coming through that way, we would have the opportunity to more deeply scrutinise it and possibly amend it, which the Tynwald order procedure does not give us to do.

So it is more of an observation, at this point in the debate.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

Just a follow on from Mr Crowe's comments, which I think he has been helpful with. Is it correct, if the mover can answer me: if a company does not have the clauses of subsection 3 applying to it, they *have* to register, it is compulsory, and they only need to elect if they are under

subsection (3). So if they are not in subsection (3) they have to elect, it is compulsory. Is that the case?

The President: The mover to reply please.

Mr Braidwood: Thank you, Madam President, and I do thank Mr Crowe for his support. This is something that the industry, such as Corporate Service Providers, have been wanting for a number of years, and this Bill has been quite a long time in coming, actually. I know that a lot of the Corporate Service Providers are looking forward to the introduction of this simplified regime.

In answer to Mr Turner, in actual fact, this is something which has been introduced over the last few years. Instead of having to go through all the primary legislation – First, Second, clauses, Third Reading (Mr Turner: Scrutiny.) in both sections of the branches – that orders are being brought in to allow more flexibility and for legislation to be brought in more quickly (Mr Turner: Too much scrutiny.) when it is required. However, as Mr Turner said, and I will repeat, is that this is after extensive consultation with industry and again the order has to be approved by Tynwald.

In answer to Mr Butt, if I am picking this up right: if the company is on the F Register, but does not want a registered address in the Isle of Man, then it has to be registered where their place of business and a person is in the jurisdiction in which the company was incorporated. I do not know if that is the answer Mr Butt is seeking?

The President: We can clarify that. Mr Butt?

Mr Butt: Yes, subsection (1) basically says that if a company:

'carries on, or is held out as carrying on, business from an established place of business in the Island; holds land in the Island;

etc, then subsection (3) says *but* if these other clauses apply to it, they elect. I just wondered if subclause (3) does not apply to them, do they *have* to, under subsection (1), register: is it compulsory or do they still have the option to elect or *not* elect?

Mr Braidwood: If they are carrying on business actually *in* the Island, (Mr Butt: Yes, subsection (1)) then they would have to have a place of business, then they would have to be registered.

Mr Butt: Thank you.

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

Mr Braidwood: Thank you, Madam President.

Clause 6 requires the Department of Economic Development to maintain a register of foreign companies. This mirrors the current requirement under Part XI of the 1931 Act. This is the public register that has become known as the 'F Register.'

The Department must, on payment of a fee, produce a certificate stating whether or not a foreign company is registered under the legislation. This certificate will be admissible in legal proceedings.

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

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

The President: The motion is that clause 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.

Under clause 7, a foreign company that meets the requirement for registration, must do so within one month of meeting the requirement. Again, this mirrors the existing provision under Part XI of the 1931 Act. A foreign company that elects to apply for entry to the Register must do so within one month of making the election. Failure to register when required to do so will be an offence.

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

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

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Yes this is just a reasonable request to give a company time, a month, to file for registration. A month seems reasonably practical and as we say it mirrors the existing legislation.

The President: Mover, do you want to comment, if it is a statement?

Mr Braidwood: I just thank once again Mr Crowe for his support, Madam President, and I beg to move.

The President: The motion is that clause 7 do 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 requires an application for registration to be made to the Department of Economic Development. The application must be in the approved form, include all the required details which are set out in clause 9, and be accompanied by the appropriate fee.

A company that fails to include all the required details in its application for registration, will commit an offence.

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

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

Mr Crowe: Thank you, Madam President.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Yes, it is interesting that there is power under clause 9(1)(b) where it can be registered under a different name from that it is incorporated in its area of jurisdiction, because if for instance ABC Ltd is registered in the Isle of Man as a company and ABC Ltd is, say, in BVI, it would have to register under a different name in the Isle of Man. So that is covered in the Bill, which is very sensible as well.

The President: I think we are on clause 8 at the moment, Mr Crowe.

Mr Crowe: Oh sorry. (*Interjections*)

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.
Subclause (4):

'A foreign company commits an offence if it fails to specify the required details in the application.'

Obviously we have not got what the required details are. Is it likely that companies registered – obviously these are companies that are registered in other jurisdictions – are they likely to have all the required details, or will some jurisdictions maybe require different details, and how is that going to work? And just a comment, really, it says the fee is non-refundable even if they are not successful, which I think is a bit harsh. But it is mainly subclause (4) which I have got the question over.

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

Just for clarification, could the mover please just elaborate on 'offence' in terms of a definition, and link it into the penalties within the Bill, please.

Thank you.

The President: The mover to reply.

Mr Braidwood: Thank you, Madam President.

With Mr Turner's, where the legislation... the home jurisdiction... One of the reasons this Bill is coming forward is to be more flexible. At times it is more onerous for a foreign company to be registered in the Island because our legislation probably requires more than the home jurisdiction requires.

What we are doing for the benefit of industry – and I think it has already been touched by the Hon. Member of Council, Mr Crowe – that this is beneficial to our industry. So what we trying to say is that it will not be more onerous on the Isle of Man for a foreign company which has been incorporated in another jurisdiction to go onto the F Register.

Is that what Mr Turner is requiring?

The President: We will clarify...

Mr Turner: I think, to clarify, Madam President, the point I was making is it says here to specify 'the required details.' I was just suggesting that is it at all possible or likely that they may not have all the required details, given that we actually do not know what they are for the purposes of this this morning?

Madam President: We do.

Mr Braidwood: Madam President, (*Interjections*) clause 9 in actual fact puts the full details down which are required before a company can register. However –

Mr Turner: We do not know the –

Mr Braidwood: – if the details are not there then it will not be registered.

Mr Crowe: Can I intercede?

The President: Yes, for clarification. *(Interjection by Mr Turner)*

Mr Crowe: In any jurisdiction anywhere in the world, there are basic precepts that have to be... First of all, it has to have a name, **(Mr Braidwood: Yes.)** its jurisdiction of incorporation, its date of incorporation, and the number of incorporation. So that is standard throughout the world.

Mr Braidwood: And that is in clause 9.

Mr Crowe: So those are your required details. The rest of it then is... established place of business on the Island – it goes on to what is needed in the Isle of Man to make it legitimate in the Isle of Man. But every company... The Act under clause 9 –

The President: You can refer to it, Hon. Member!

Mr Crowe: – makes it clear that what the Isle of Man are asking for is what every company in the world has already.

Mr Turner: That is what I was asking...

Mr Braidwood: Which is the same as the jurisdiction...

Mr Turner: Sorry, Madam President, just to...

Madam President: No that is fine, are you clear now?

Mr Turner: It was not what we have got required; it was whether the other jurisdictions also require the same the same information.

Mr Crowe: Yes they would all have that.

Mr Braidwood: In answer to Mr Wild, Madam President, on 'offences' in clauses: in actual fact to date there has never been a prosecution under company legislation. Generally, late filing penalties are adequate enough to ensure compliance with the legislation.

I hope that will answer Mr Wild's query? **(Mr Wild: Thank you.)** We are not going to actively pursue prosecutions and generally the late filing fees is enough to make the company compliant.

The President: But offences are dealt with later in the Bill.

The motion, Hon. Members, 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, Required details.

Mr Braidwood: Thank you, Madam President.

I think this will benefit the Hon. Member of Council, Mr Turner, with the list which is required for a company.

Clause 9 lists the details that must be provided on application for registration. These include: the name under which it is registered in the foreign jurisdiction; the jurisdiction of incorporation; the date of incorporation; its registration number in the jurisdiction of incorporation; its business

address in the Island; the address, if any, of land held in the Island; and the names and addresses of persons who are authorised to accept service of process and notices on the company.

Madam President, a new provision has been included in the Bill: this takes account of those circumstances in which a company does not maintain an address as a place of business in the Island, but may own land in the Island. Where this is the case, a foreign company may elect to register the address of its registered office or principal place of business in its home jurisdiction. This address is a deficiency of Part XI of the Companies Act 1931. It was included to ensure that the Manx public is protected by being able to identify and, where necessary, contact the non-resident owners of land or buildings in the Island.

The Treasury may, by order, amend the details required to be disclosed on registration. As before, there is a requirement for the Treasury to consult before making any order under this clause, and again, any order will only come into operation if it is approved by Tynwald.

Madam President, I must draw your attention to the fact that the information to be included in the application for registration, has been considerably pared back in a measure designed to cut red tape and the administrative burden. The bulk of the information that must now be disclosed, is that which permits identification within the home jurisdiction. This is in sharp contrast to the current position, which often sees far more information about a company held on the F Register than on the register in the home jurisdiction.

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

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

A couple of queries on this: and one is the details of the beneficial owner. Is there anything...? I could not see anything in here of that.

I also note with regard to the land: it says 'other than way of security'. If that security was to be called on and the land was to be acquired, would that then put the onus on that company to then have to register, even if their main purpose may be that they then looked purely to hold the land for disposal?

The President: The mover to reply.

Mr Braidwood: Thank you, Madam President.

Madam President, I think I have mentioned on a couple of previous clauses, and particularly in this clause: the company may not have an address on the Island. However, if it says something had to be served on the company in its home jurisdiction, what has to be held with Companies Registry is the address of the person who the service will be put to, and also the address in the home jurisdiction – that has to be included. And of course, as anything on the Island with a beneficial owner, we would have to know the beneficial owner of the company.

The Acting Attorney General is looking at me, Madam President: if I could just ask him if what I am saying is correct? Sorry.

The Acting Attorney General: Madam President, to assist Hon. Members there is no duty in the Isle of Man to place on any public register, details of beneficial ownership. However, any company which is administering companies – the CSPs that have been referred to – have got to obtain details of beneficial owner to actually act for that company, be it foreign, local or whatever. But certainly as far as registration is concerned, there is no requirement to disclose beneficial ownership.

Would that assist?

Mr Braidwood: And, Madam President, most companies on the F Register of course, will be administered with a regulated fiduciary, who will carry out all anti-money laundering checks.

The President: Mr Turner, did you – ?

Mr Turner: Yes, my second question was with regard to land security (**The President:** The land.) and that being called upon.

Mr Braidwood: I will have to come back on that one for clarification at the Third Reading, if possible, if that is alright, Madam President?

The President: The motion before the Council 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.

Clause 10 extends the scope of the Company and Business Names etc Act 2012, to foreign companies registered in the Isle of Man. However, clause 10(2) requires a company to apply for registration under its original name of incorporation in the first instance. All efforts will be made to accommodate the name under which it is registered in its own jurisdiction, this will apply even where there is a Manx company or other entity of the same name.

It is the intention that the Island's F Register will act primarily as a gateway to the home jurisdiction. The maintenance of the F Register is demonstrable evidence of the Island's commitment to openness and transparency. A foreign company that changes its name in its home jurisdiction must register that change in the Island.

The Department is given the discretion to refuse to register a company under its name in its home jurisdiction if the name contravenes section 7(3) of the Company and Business Names etc Act 2012. Under clause 10(6) a foreign company may only carry on business from the Island under the name which appears in the F Register. The exception to this is where a foreign company has a business name registered under the Registration of Business Names Act 1918. It is an offence to fail to comply with the requirements of this clause.

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

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

The President: The Hon. Member, Mr Crowe.

Mr Crowe: I think I mentioned this earlier, Madam President, about the ability that the Company Registrar, Mr Wilkinson, who is with us today in the gallery, that he has discretion to register a company under a different name, if the original name in the country of incorporation is unacceptable in the Isle of Man. There are certain words that are not acceptable, like bank, etc. that you cannot register without having proper regulatory authority.

So again, this is a good addition to the Bill, and makes it more flexible.

The President: The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.

Can I make the assumption that a company registered under this Act, would be precluded from perhaps, by definition, using the word 'Manx' in its title, as it being a foreign company. Will it be entitled to use Manx in its title? A question.

The President: The mover to reply.

Mr Braidwood: Thank you Madam President.

In answer... and I thank again Mr Crowe, because the appropriate name approval authority, again it comes under the Companies, with Mr Wilkinson. This is to stop any misleading, or confusion, if names are very similar, Madam President.

And in answer to Mr Coleman, that would all completely depend on the appropriate name approval authority of 'Manx' is permitted.

I have just had this little message sent to me, Madam President, that we have no control over the name that might be approved in the home jurisdiction. However, when it comes to be registered on the F Register if it is very similar it would not be allowed to have that name, as it could be misleading or confusing, as I have said previously, to a name which is already on the F Register.

The President: I am sorry, I thought you said it *could* be the same? (**A Member:** So did I.) You are confusing me now.

Mr Braidwood: If there is the name of a company already on the F Register –

The President: On the *F Register*, not on any other register?

Mr Braidwood: On the F Register. Then, in actual fact, if that name comes forward from the home jurisdiction with a very similar name, *that* would be confusing and misleading. So therefore they would not be given that name it has in the home jurisdiction on our F Register, because there was already another company there, and it would have to go through then on the Business Names.

If Mr Attorney would like to... ?

The Acting Attorney General: Madam President, if I could help Hon. Members with the process. This Bill makes the requirement for the foreign company to apply for registration. But it makes that application for registration, it has got to show the name it has in its company incorporation. If that name does not comply with our Company and Business Names etc Act 2012, such as using the name 'Manx', it would not be allowed to go forward for registration, and I am sure the Company Registrar would require it to change its name, to take away the word 'Manx' in those circumstances. So it is the process which will catch that out.

I hope that helps, Madam President.

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

The President: We have had a wind-up.

Mr Wild: Sorry just for clarification, does this mean that a company registered in a foreign jurisdiction that becomes registered on the Isle of Man F Register, could have two different names?

Mr Braidwood: Yes.

Mr Wild: Right.

The President: If there are no further questions? 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.

Under clause 11, a foreign company must have an address at which it can accept service of process and notice. In most cases this will be the address in the Island at which the foreign company has an established place of business. Where a foreign company owns land in the Island the address for service of process and notice should be either at an address in the Island, or if the foreign company has no address in the Island, at an address outside the Island.

The latter is a new provision included to ensure that there will be in all cases of Manx land owned by a foreign company, an address for service of process and notice. This is again for purposes of transparency and protection of the public. In all cases a foreign company must ensure that there is a person appointed to accept service of process and notices.

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

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

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.

Clause 12, Registration of the foreign company.

Mr Braidwood: Thank you, Madam President.

On receipt of an application for registration of a foreign company, the Department of Economic Development must, under clause 12, either approve the application or refuse the application. In the case of refusal to register an application the Department must give reasons for its decision. The reasons for which the Department can refuse to accept an application include non-payment of the application fee and illegible documents.

On approval of an application the Department must assign the company a unique reference number and issue it with a certificate of registration.

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

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

The President: The Hon. Member, Mr Coleman.

Mr Coleman: Thank you.

In this one I am going to refer back to clause 8 where there will be an offence if the required details are not in its application, or it fails to specify. I must confess I read that as to be if it is subsequently *found* that perhaps the details on the application were not correct, it would actually be an offence.

That to make the offence based upon the filling in of a form, which goes further back into section, I think it is clause 25, (**A Member:** It is.) yes, the 'Power to refuse to register documents'. I would hope *that* would not be a punishable offence.

So, under the previous clause, which is clause 8(4) I would have hoped that that meant after subsequently having found out that what *had* been accepted for registration was incorrect, rather than committing an offence for filling in a form improperly or illegibly. Maybe the mover can pass some comment on that.

The President: The Lord Bishop.

The Lord Bishop: Thank you, Madam President.

Can I ask that the legislative drafters should understand a little more about the word 'only.' The word preceding a verb makes that verb conditional, and therefore 'may only' is 'only refuse'. If it is after the word 'application', it is the sense of the... that is what the clause is intending.

The same is true – and the one which I decided I would ignore under 10(5) – which is 'only hold land'. We really ought to get these words right.

The President: The mover to reply.

Mr Braidwood: Thank you, Madam President.

I am sure that Mr Wilkinson has taken on board the comments (*Laughter*) of the Lord Bishop, and I am sure he will forward them to the legislative draftsman.

With regard to Mr Coleman's comments, Madam President, I think I mentioned that normally any compliance would be through... such as late filing penalties, whatever. This is not legislation which is going to be heavy-handed... Yes, it might be saying they commit an offence, but the Companies Registry is not going to come down with a heavy hand and prosecute them.

Can I just say that it is there, Madam President, because it is generally accepted by other bodies such as the International Monetary Fund, or the OECD etc., that if there is non-compliance with the provisions of legislation they are committing an offence. This is part of what supranational bodies expect, however, I know that the Companies Registry will not go to a company that has committed a minor offence and say: 'you are going to be prosecuted.' They will take a light touch with the offence, Madam President.

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

Clause 13, Notifications of certain events.

Mr Braidwood: Thank you, Madam President.

Under clause 13(1), a foreign company must notify the Department on the occurrence of certain events. These include a change of the address for service of process and notices, or the person authorised to accept these; the appointment of a liquidator or a receiver under the law of a foreign jurisdiction; the foreign company ceasing to exist or have legal personality; or ceasing to need to be registered as a foreign company. In all cases notification must be in the approved form and accompanied by any fee payable.

The Department must be notified of any of these events within one month of their occurrence. Failure to do so will be, as it is now, an offence.

Madam President, I beg to move that clause 13 stand part of the Bill.

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

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you.

Again, a very practical measure in the Bill. The Companies Registry is available for the public to inspect company documents, or to search company documents. So anybody who has dealings with a foreign company who is registered on the Isle of Man would need to track their movements if, for instance, they change their address or change their CSP, then it would be recorded on the Companies Registry and they could follow that. So again it is a very eminent and practical move.

The President: The mover to reply.

Mr Braidwood: Thank you, Madam President.
I just thank, again, Mr Crowe for his remarks of support.

The President: The motion is that clause 13 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 14, annual return.

Mr Braidwood: Thank you, Madam President.

Under clause 14, a foreign company must, as now, make an annual return to the Department of Economic Development. Again, as now, the return must be in the approved form and accompanied by the appropriate fee. The annual return must be made up to the company's return date which will, ordinarily, be the anniversary of incorporation. It will be an offence for the foreign company to fail to file its annual return.

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

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

The President: The motion is that clause 14 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 15.

Mr Braidwood: Thank you, Madam President.

In clause 15 the Treasury is given the power to make regulations in respect of certain trading disclosures. Regulations made under this clause could include the following: the inclusion of certain information in a foreign company's communications; and the provision and disclosure of certain information to parties doing business with the company.

This clause makes provisions for the detail of what must be included in trading disclosures to be set out in regulations. This is a new flexible approach. The Island will be able to respond quickly to increased or decreased expectations of the information that must be disclosed. The current disclosure requirements under the Companies Act 1931 are onerous, and in excess of comparable provisions in the home jurisdiction. This can mean that the Island's legislation is in direct conflict with the legislation of the home jurisdiction.

Madam President, again, this is more flexibility and hopefully a reduction in red tape.

Madam President, I beg to move that clause 15 stand part of the Bill.

The President: The Hon. Member –

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

The President: The motion is that clause 15 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 16.

Mr Braidwood: Thank you, Madam President.

Clause 16 gives the Treasury the power to require a foreign company to comply with another enactment of the Island by regulation, as if the foreign company was a company incorporated in the Islands. This clause also considers the modification of an enactment in order to secure compliance by the foreign company.

Madam President, I beg to move that clause 16 stand part of the Bill.

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

The President: The motion is that clause 16 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 17.

Mr Braidwood: Thank you, Madam President.

Under clause 17, the Department of Economic Development may remove a registered foreign company from the register, either if the company ceases to meet the requirements for registration, or the company fails to submit an annual return within four months after the company's return date. The Department of Economic Development must publish notice of the removal of a company from the register.

A foreign company that has been removed from the register may make a further application for registration under clause 8. The reapplication must be accompanied by all outstanding annual returns and fees. A foreign company seeking re-entry to the register must do so under clause 8 and submit the appropriate fee.

Madam President, I beg to move that clause 17 stand part of the Bill.

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

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

Just, again for clarification: if the foreign company that is being removed from the register holds land and buildings in the Isle of Man, how does that impact on the removal?

The President: The mover to reply.

Mr Braidwood: Thank you, Madam President.

I think this is similar in actual fact to the question raised by Mr Turner, where I am going to clarify at the Third Reading.

If a company is being removed from the register, and has land, but actually owes fees to the Department for non-compliance by not returning the annual fee, and this is why the company is being removed, then I would have thought that there could be some sort of holding on the building or the land.

But I will just clarify that now... if I could just read the writing, Madam President, on this note that has just been sent over.

The President: If it helps, Hon. Member, we can use the facility to take comment from Mr Wilkinson. Would you like to do that, Hon. Member?

Mr Braidwood: I think it might be better if Mr Wilkinson just clarifies the point which has been raised by Mr Wild, that if the company is being removed by the Department for non-compliance, but owns property on the Island, I think what Mr Wild is saying is can that land or business be – not arrested – but have a caveat before it could be removed?

The President: Mr Wilkinson, could I ask you first of all to give your name and your office for the purposes of *Hansard* please?

Mr Wilkinson: John Wilkinson, I work for the Department of Economic Development and I am the Companies Registrar.

If I understand the question I think this may be a circumstance where the Department may actually consider offence action, not submitting the annual return, which initiates the... essentially the cancellation of the registration would be an offence. This may be circumstances when we would cancel the registration because they have not done it, but we would also pursue action to prosecute them for not submitting the annual return.

Their ownership of the land would be inviolate, they would still retain the land. Potentially, I missed the question before but you may be able to take legal action essentially if you have a debt outstanding (**A Member:** That is right.) the land would be an asset of the company irrespective of where it resides.

So essentially, your action would be to petition the court to essentially, maybe through the coroner, to seize and sell... The worst possible case I would imagine, to seize and sell the asset to pay off the cost. But I think that would be a really – (Mr Wild: Extreme case.) Yes.

Certainly, most of the time the money that we talk about here is relatively minor, and normally speaking, if we had a foreign company like with a 1931 Act company where they forget, or maybe the agent, or maybe the actual company forgets to send the bill in, or there is an element of negotiation, us sending them a threatening letter would generally initiate a positive response.

The President: I hope that clarifies the point, Hon. Members.

The Acting Attorney General: Madam President, if I could just make one brief point, of clarification. You do not *have* to be a registered foreign company to own land in the Isle of Man, and I think that is where we are losing sight of this. Any company can own land, so the title is safe.

What this Act is doing is that if you do own or hold land in the Isle of Man, you have then got to register, so then if you lose your registration, as the Chief Registrar said, it does not actually affect the ownership issue, it is still held by the company.

The President: That clarification is helpful.

Mr Braidwood: Yes, that is what I was trying to say, Madam President. (*Laughter and interjection*)

The President: Do you want to add anything further, Mr Braidwood?

Mr Braidwood: No, thank you.

The President: The motion is that clause 17 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We come to Part 3, clause 18.

Mr Braidwood: Thank you, Madam President.

Under clause 18 a person dissatisfied with the decision of the Department may appeal that decision to the High Court. The court has the power to confirm, vary or revoke the Department's decision. The court's decision will be binding on the Department and the appellant.

Madam President, I beg to move that clause 18 stand part of the Bill.

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

Could I ask the mover why there is not an internal appeal process prior to this, why it is only through the High Court, which obviously is (Mr Braidwood: Costly.) not the most – well it is costly, yes, that is exactly what I am getting. And if, for example, it could be an issue of name registration, if the court then determines they are going to agree with the decision of the Department, would the person appealing then be hit with costs?

The whole idea of a first stage appeal is that it should be dealt with in a very streamlined manner, where going to the High Court is a costly process.

The President: The mover to reply.

Mr Braidwood: Thank you, Madam President.

All I can say is, that if there is this appeal by the appellant against the decision by the Department, the way the legislation is written is that there is no appeal, in actual fact, to the Department to reconsider their decision, and it has to go to the High Court.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

Does the mover not think that really is a provision that would be more useful in resolving matters, obviously more complicated matters than, 'yes that would need to go to the High Court'. But there may be some matters that could be easily resolved without the extreme cost, bureaucracy, and extensive procedure which going to the High Court entails. Is it not a limitation of this Bill?

Mr Braidwood: Madam President.

Mr Turner thinks this is a Draconian situation, and I think what he is looking at is mediation.

The legislation sets out a number of processes that are official, Madam President. In reality the Department will regularly meet and discuss default actions and will be reasonable, and this is only a last resort before we went to the High Court, or the appellant had to go to the High Court, because we would go through a matter of processes, where he would go back to the Department and say, 'I think your decision is unfair' – the Department would look at that. However, if a process goes along where the appellants still insist it is a wrong decision, or the Department will not change, then the only course of action would be to the High Court.

So, in actual fact, there is a mediation process and the finality is the High Court.

Mr Turner: It does not say that though.

The President: No.

Mr Braidwood: Madam President, I think there is a lot of things in legislation, such as Mr Wild has mentioned by 'offences', and it is only through late filing fees, as I said. I think it was explained by the Chief Registrar, Mr Wilkinson, that there are processes... It would only be a final straw where there would be a prosecution taken, and this way, again, by the Department... it is only to make the Department take notice.

I think Mr Wilkinson actually said this when he was giving his presentation to this Council, Madam President, filing fees... they take notice, because with F companies if it is being looked after by an authorised fiduciary they might forget about it, and there will be a notice sent by the Companies Registry. So, it is just to remind them – we are not being a burden on the companies, and I think Mr Turner is looking more in this, than there actually is.

The President: We are winding up, Hon. Members, and we have come to a winding-up twice. I think any further points here would have to come at another Reading.

The motion is that clause 18 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We are being fairly flexible today in terms of allowing people to come back in, so try and make your comments before the mover replies, Hon. Members.

Clause 19.

Mr Braidwood: Thank you, Madam President.

Clause 19 provides that a person who makes a statement to the Department which is known to be false or is made recklessly, commits an offence.

Madam President, I beg to move that clause 19 stand part of the Bill.

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

The President: The motion is that clause 19 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 20.

Mr Braidwood: Thank you, Madam President.

Clause 20 sets out the penalties in respect of offences committed under the Bill. Express provision is made to consider and include circumstances in which offences may be committed by legal persons, in addition to individuals.

Where an offence has been committed by a body corporate or other legal person, the officers of that body corporate will also be held liable for the offence. This clause provides a defence for any person who took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Madam President, I beg to move that clause 20 stand part of the Bill.

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

The President: The motion is that clause 20 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 21, Regulations.

Mr Braidwood: Thank you, Madam President.

Clause 21 gives power to the Treasury to make regulations about a wide range of matters concerned with the detailed operation of the Bill.

Clause 21(2) lists examples of the regulations which may be made under this clause. These include such matters as: prescribing circumstances in which a company or other legal person meets the definition of a foreign company under the legislation; provision of information and documents in electronic form; and the exception of persons or a class of persons from any of the provisions of the legislation.

Before making any regulations under this clause the Treasury must consult with appropriate persons. Regulations under this clause will only come into operation if they are expressly approved by Tynwald.

Madam President, I beg to move that clause 21 stand part of the Bill.

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

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Can I just draw Members' attention to subclause (3), and I think it was interesting in reading the explanatory notes, which states:

'An express requirement to consult with interested parties was inserted at the request of industry.'

So it is very good to see that industry is consulted all the time, either up to the drafting of this Bill, (**A Member:** Hear, hear.) and when regulations are brought in, they will not be brought in without the proper consultation of the industry. The Corporate Service Providers on the Island are a very valuable part of the finance sector of the Isle of Man, so it is very useful to consult at all times with the industry, so that we move forward in the right direction.

The President: The Hon. Member, Mr Turner.

Mr Turner: Yes, thank you, Madam President.

I would agree with the comments of my colleague Mr Crowe: it is important. Consultation is vitally important, because whilst Governments have their own desires on how industry should run, industry quite often has a different view. It is important that the consultation is there otherwise we, and other neighbouring jurisdictions – mainly referring to the United Kingdom – are always in danger of regulating themselves out of existence. And certainly in the competitive world we have to watch that regulation is appropriate, and we do not overregulate industry, otherwise they will just go elsewhere.

The President: The mover to reply.

Mr Braidwood: Thank you, Madam President, and I thank Mr Turner and Mr Crowe for their comments.

I think I have already mentioned it previously on one of the other clauses, Madam President, that we are introducing this legislation to be more flexible and to cut red tape. I would like to add this is the norm for Treasury, to be proactive for business. The Members of Treasury, Madam President, went out before, in November and December, and consulted with businesses and to see how things were progressing. So again, Treasury being at the forefront for business for the Island.

Madam President, I beg to move.

The President: The motion is that clause 21 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 22.

Mr Braidwood: Thank you, Madam President.

Under clause 22, the Department of Economic Development may publish forms that must be used when submitting information that is required under the legislation. Any form that is required to be in the approved form must contain the required information. Any other documents required by the Department must be attached to the form.

Madam President, I beg to move that clause 22 stand part of the Bill.

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

The President: The motion is that clause 22 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 23.

Mr Braidwood: Thank you, Madam President.

Clause 23 gives the Department the power to prescribe fees by order. Before making such an order, the Department must consult with the Treasury. An order made under this clause only comes into operation if expressly approved by Tynwald.

Madam President, I beg to move that clause 23 stand part of the Bill.

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

The President: The motion is that clause 23 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 24.

Mr Braidwood: Thank you, Madam President.

Under clause 24(1), the Department may keep information and documents submitted to it in any form that it approves, including electronic storage. This is subject to the requirement for the Department being able to reproduce the information and documentation in a legible form.

Hard copies of information and documents submitted to the Department may be destroyed, if they are being kept in a form that will allow for them to be reproduced in a legible form, or they relate to a foreign company removed from the register more than 10 years previously.

Madam President, I beg to move that clause 24 stand part of the Bill.

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

The President: The motion is that clause 24 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 25.

Mr Braidwood: Thank you, Madam President.

Under clause 25, the Department may in certain circumstances refuse to accept a document for registration. This includes circumstances where a document does not comply with the legislation, is not completed correctly, or contains a material error, is not legible, or is not accompanied by the prescribed fee. If the Department refuses to accept a document it must return the document to the person who submitted it and provide reasons for its rejection. A rejected document will be treated as having not been submitted.

Madam President, I beg to move that clause 25 stand part of the Bill.

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

The President: The motion before Council is that clause 25 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 26 –

A Member: And the schedule.

The President: Amendments *and* the schedule.

Mr Braidwood: Thank you Madam President.

Clause 26 gives effect to this amendment specified in the schedule. The effect of this is to make consequential amendments to other legislation as required. It also provides for this clause

and this schedule of amendments to be repealed on the day after the last provision is brought into operation.

The automatic repeal will not affect the continuing operation of any of the amendments to enactments made by this clause.

Madam President, I beg to move that clause 26 and the amendment stand part of the Bill.

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

The President: The motion is that clause 26 along with the schedule do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 27.

Mr Braidwood: Thank you, Madam President.

Clause 27 makes provisions for a company that is already registered under Part XI of the Companies Act of 1931, to be treated as a company that has been registered under this legislation.

Madam President, I beg to move that clause 27 stand part of the Bill.

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

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you Madam President.

Again a very practical step, which is to allow a smooth transition of all those companies registered under the 1931 Act, to now be registered under this Act. So, again, very good drafting.

The President: Mover?

Mr Braidwood: I just thank once again, Mr Crowe, for his support and very supportive comments during the process of the clauses stage, Madam President, this morning.

I beg to move.

The President: The motion is that clause 27 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes Second Reading and clauses, Hon. Members. It concludes our Order Paper business for today.

The Council will now adjourn and the adjournment will be until Tuesday 4th February.

The Council adjourned at 11.41 a.m.