

FOREIGN COMPANIES BILL 2013

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, the Hon W E Teare MHK.

1. Introduction

These explanatory notes relate to the Foreign Companies Bill 2013. They have been prepared by the Treasury in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.

The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

2. Background

The Bill is the first phase of the wider company and insolvency law review project and will replace Part XI of the Companies Act 1931 with separate, standalone legislation.

The new legislation will continue to apply to non-Manx (foreign) companies that have either established a place of business on the Isle of Man or that own land in the Island (other than by way of security). Express provision is made to allow those companies not meeting either of these requirements, but wishing to demonstrate a connection to the Island, to apply to be registered under the legislation.

3. Summary of Parts of the Bill

PART 1 sets out the opening provisions of the Bill.

It includes provisions for its short title, commencement date and for the interpretation of words and expressions contained in the Bill. It specifies the companies to which the Bill, if enacted, will apply.

PART 2 contains provisions relating to the registration of foreign companies in the Island and includes a requirement for the Department of Economic Development to maintain a public register of foreign companies.

This Part also clarifies when a company must register under the legislation. It makes provision for how a company must apply for registration and what details must be included in the application form.

Provision is now made for a foreign company to apply for registration in the Island under the name of registration in the home jurisdiction, whether or not this name appears on another register in respect of a Manx company or other entity. This is a new provision that has been included to ensure that the link between a foreign company and its home jurisdiction is maintained. However, the name must not contravene section 7(3) of the Company and Business Names etc Act 2012.

A foreign company that registers under this Bill must ensure that it makes provision to accept service of process and notice. This is a matter of public protection.

The Department is required to register a foreign company if an application is correctly completed and submitted to it. The Department may refuse to register a company but must give reasons for doing so. A foreign company that is registered must be allocated a unique number by which it can be identified.

A foreign company that is registered under the legislation must notify the Department on the occurrence of certain events such as a change in the address for service of notice or on the event of the company being wound up in its home jurisdiction. The list of notifiable events has been reduced to include only what is considered to be absolutely relevant and necessary.

Under this Part a foreign company must submit an annual return to the Department.

The Treasury is given the power to determine what trading disclosures, if any, must be made by a foreign company.

The Treasury is also given the power to make regulations requiring a foreign company to comply with Manx legislation as if the company were incorporated in the Island.

The Department is given the power to remove a foreign company from the register if this legislation ceases to apply to that company. The Department may also remove a company from the register if the company fails to submit its annual return. Provision is made enabling a company to re-apply for registration subject to meeting certain conditions.

PART 3 makes provision for the appeal of a decision of the Department. This appeal must be made to the High Court.

It is an offence to make false or misleading statements to the Department. The penalties for offences are set out, together with those persons who will be guilty of the offence. A defence is included to take account of those circumstances where the information was given in good faith and in the belief that it was correct.

The Treasury is given the power to make regulations in respect of a number of specified matters. This ensures that additional matters can be dealt with relatively swiftly should this become necessary.

An express requirement to consult with interested parties was inserted at the request of industry. Any regulations under the Bill must be approved by Tynwald before they are brought into operation.

The Department is given the power to determine what information the forms made under this Bill must contain.

The Department also has the power to prescribe fees in respect of the Bill by order approved by Tynwald.

In the event that a document submitted to the Department is illegible or does not comply with some provision of the legislation, the Department may refuse to accept the document. Documents that are accepted by the Department must be kept in the form that it considers to be most appropriate. This includes electronic storage of documents.

4. Overview of Clauses

PART 1 – OPENING PROVISIONS

- 4.1 Clause 1 sets out the short title of the Bill.
- 4.2 Clause 2 sets out provisions for the commencement of the Bill.
- 4.3 Clause 3 provides for the interpretation of certain words and phrases used in the Bill.
- 4.4 Clause 4 defines what is meant by the term “foreign company”.
- 4.5 Clause 5 sets out the circumstances in which the Bill applies to foreign companies. These include carrying on business from an established place of business in the Island or owning land in the Island. A foreign company with a nexus to the Island that does not meet either of these conditions may now elect for the terms of the Bill to apply to it.

PART 2 – REGISTRATION OF FOREIGN COMPANIES

- 4.6 Clause 6 requires the Department of Economic Development to maintain a register of foreign companies. This will replace the existing register of foreign companies.
- 4.7 Clause 7 requires a foreign company to register under the Bill within one month of legislation applying to it or within one month of a company making the election to apply the legislation.
- 4.8 Clause 8 contains provisions in respect of the process of application for registration.
- 4.9 Clause 9 sets out the information that must be included in an application for registration in order for an application to contain the “required details”. The provisions represent a simplification of the existing requirements under Part XI of the Companies Act 1931.
- 4.10 Clause 10 makes provision in respect of the name under which a foreign company may register. Under the new provisions, every effort will be made to facilitate registration under the name of registration in the home jurisdiction, unless it is deemed undesirable to do so. The Company and Business Names etc Act 2012 has effect.
- 4.11 Clause 11 requires a foreign company to ensure that it can accept service of process and other notices. This includes a new provision to permit a foreign company that owns land in the Island to use an address in its home jurisdiction.
- 4.12 Clause 12 sets out how the Department must determine an application.
- 4.13 Clause 13 places an obligation on a foreign company to inform the Department on the occurrence of certain events.

- 4.14 Clause 14 requires a foreign company to make an annual return to the Department. This will ordinarily be within one month of the anniversary of the date of incorporation.
- 4.15 Clause 15 gives the Treasury the power to make regulations about the trading disclosures that must be made by foreign companies.
- 4.16 Clause 16 enables the Treasury, by regulation, to require foreign companies to comply with legislative provisions that apply to Manx companies and other similar domestic entities.
- 4.17 Clause 17 makes provision for the circumstances in which the Department may remove a foreign company from the register.

PART 3 – MISCELLANEOUS PROVISIONS

- 4.18 Clause 18 makes provision for a person aggrieved by a decision of the Department to appeal the decision to the High Court.
- 4.19 Clause 19 makes it an offence for any person to knowingly give the Department information about a foreign company that is known to be false or misleading.
- 4.20 Clause 20 sets out the penalties for offences committed under the Bill. Express provision is made to consider and include circumstances in which an offence is committed by a legal person other than an individual. This clause also provides a defence for any person who took all reasonable steps and precautions and exercised all due diligence to avoid committing the offence.
- 4.21 Clause 21 gives the Treasury the power to make regulations on a wide range of matters concerned with the detailed operation of the Bill. Any regulations made under this clause must be expressly approved by Tynwald.
- 4.22 Clause 22 gives the Department the power to require that information that must be submitted to it is in the form determined and published by it.
- 4.23 Clause 23 makes provision for the Department to set the fees payable under the Bill. Any order made under this clause must be expressly approved by Tynwald.
- 4.24 Clause 24 allows the Department to determine the form and manner in which it may keep information submitted to it under this Bill.
- 4.25 Clause 25 specifies the circumstances under which the Department may refuse to accept and register documents submitted to it under the Bill.
- 4.26 Clause 26, together with the Schedule, provides for the consequential amendment of enactments.
- 4.27 Clause 27 confirms that a company that is already registered under Part XI of the Companies Act 1931 will be treated as a company duly registered under the Bill.

OTHER POINTS

The Bill —

- (a) will come into operation by Appointed Day Order;
- (b) is not expected to give rise to any additional public expenditure or public revenue;
and
- (c) is considered to be compatible with the Convention rights within the meaning of the Human Rights Act 2001.