

COMPANY AND BUSINESS NAMES ETC BILL 2012

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Mr R W Henderson MHK.

1. Introduction

- 1.1 These explanatory notes relate to the Company and Business Names etc Bill 2012. 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.
- 1.2 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

- 2.1 The purpose of the Bill is to address the recommendation of the IMF that the Isle of Man restricts the circumstances in which certain words or phrases can ordinarily be used in the names of bodies incorporate or unincorporate registered in the Island. The Bill will replace the existing guidance issued by the Companies Registry with legislation.
- 2.2 The Bill seeks to consolidate the current position in respect of the requirement to obtain the consent of the appropriate name approval authority prior to registering or changing a name under the various Acts to which it will apply. It also makes provision for generally accepted practices and conventions that have arisen over the years, to be put into legislation to provide certainty.
- 2.3 In certain circumstances, where it is determined that there is little risk that the public could be misled or confused, the name approval authority will be empowered to permit the use of names containing otherwise restricted words or phrases. The Bill introduces measures to put safeguards in place.
- 2.4 The draft Bill, while affecting every application for the use of a name in respect of a body corporate or unincorporate, does not introduce many new concepts.

3. Overview of clauses

- 3.1 Clause 1 gives the Act resulting from the Bill its short title.
- 3.2 Clause 2 provides for the Bill to come into operation on one or more days appointed by the Treasury and caters for the making of transitional and saving provisions.
- 3.3 Clause 3 provides for the interpretation of certain words and phrases used in the Bill.
- 3.4 Clause 4 lists the various Acts in respect of bodies corporate and unincorporate to which the Bill, if enacted, will apply.

- 3.5 Clause 5 clarifies and lists those circumstances and events in respect of which a body corporate or unincorporate must seek consent of the name approval authority to use and register a name. In most instances this would be on either initial incorporation (or establishment) or on application to change a change.
- 3.6 Clause 6 confirms, in respect of an application for name approval that application must be:
- made to the name approval authority;
 - made in the required form;
 - accompanied by the prescribed fee; and
 - made by the appropriate person.

Subsections (5) and (6) consider oversea companies seeking to register in the Isle of Man under Part XI of the Companies Act 1931. The name approval authority will seek to register an oversea company under the name of registration in the jurisdiction of incorporation in the first instance.

- 3.7 Clause 7 deals with an application submitted to the name approval authority. The name approval authority is given powers to approve the use of a name or to withhold consent.

Where application is made in respect of a name that contains a restricted word or phrase, the name approval authority must consult with the relevant bodies or persons identified in regulations made under clause 12(2)(e).

The appropriate name approval authority is given the power to exercise absolute discretion to permit the use of a name with words or phrases that would otherwise be restricted. Names authorised under this provision must be entered on a separate public register.

- 3.8 Clause 8 provides for name approval to be given subject to certain conditions. This clause also makes provision for conditions to be varied or revoked.
- 3.9 Clause 9 makes provision for the name approval authority to direct that a name is changed in circumstances where the name either contravenes provisions of this Bill or other legislation.
- 3.10 Clause 10 formalises the existing convention that has arisen to permit application to be made to the name approval authority to reserve a name. This clause confirms the process for reservation of a name and the length of time for which a name can be reserved.

The provisions and conditions under which the name authority will approve an application to reserve a name are the same as those under clause 7.

- 3.11 Clause 11 makes provision for an appeal against a decision of the name approval authority. The clause sets out those persons who can make the appeal and the circumstances in which an appeal can be made.

The Treasury is given the power to amend, by regulation, the list of persons and circumstances in which an appeal can be made.

3.12 Clause 12 gives the Treasury the power to make regulations in respect of various provisions under the Bill. Regulations made under the Bill require Tynwald approval before coming into operation.

3.13 Clause 13 provides for consequential amendments to be made to other enactments. The Schedule sets out the details of the consequential amendments that are to be made to other enactments.

Provision is also made under this clause for this clause and the Schedule to be automatically repealed on the day after this Bill is promulgated or, on the day after the last provision under this Bill is brought into operation.

At the time of repeal, the amendments to other enactments will have taken effect. This automatic repeal does not affect the continuing operation of any amendments to enactments made by this legislation.

3.14 Clause 14 makes savings provisions and confirms that the provisions under the Bill are additional to those pertaining to names in other statutes. It also confirms that it applies to applications for name approval occurring after clause 5 comes into operation. However, the power to impose conditions (clause 8), and to direct that a name be changed (clause 9), apply in respect of names approved prior to the commencement of those provisions.

4. Other points

The Bill —

- (a) is not expected to increase Government expenditure or to reduce the income of Government; and
- (b) is considered, in the view of the member moving it, to be compatible with the Convention rights within the meaning of the Human Rights Act 2001.