



**Isle of Man**

*Ellan Vannin*

# COMPANIES (AMENDMENT) BILL 2020



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# COMPANIES (AMENDMENT) BILL 2020

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## Explanatory Memorandum

1. This Bill is promoted by Mr Shimmins M.H.K.
2. *Clauses 1 and 2* provide for the short title of the resulting Act and the commencement of the Bill.
3. *Clause 3* amends the Companies Act 1931 (“the 1931 Act”).
  - 3.1 Subsection (2) amends section 16A of the 1931 Act (by which a company incorporated under that Act can re-register under the Companies Act 2006 (“the 2006 Act”)), so as to remove the requirement for a company to provide a certificate of re-registration under the 2006 Act before de-registration under the 1931 Act takes effect.
  - 3.2 Subsection (3) inserts new sections 16B to 16E into the 1931 Act. The new sections provide for the re-registration of a 2006 Act company (as defined in new section 16B) to re-register under the 1931 Act. The new sections are similar to sections 148 to 151 of the 2006 Act. New section 16B creates the process by which a 2006 Act company may apply to the Department for Enterprise to re-register under the 1931 Act. The ability to do so is subject to compliance with specified requirements. New section 16C specifies the application process formalities including the documents to accompany an application. New section 16D specifies the action the Department will take when it re-registers a 2006 Act company under the 1931 Act. New section 16E specifies the consequences of the re-registration of a 2006 Act company under the 1931 Act.
4. *Clause 4* amends the 2006 Act by inserting a new section 151A which makes reference to the new procedure for re-registration of a 2006 Act company under the 1931 Act. The new section 151A is similar to section 16A of the 1931 Act and specifies that from the date of re-registration the company becomes subject to the provisions of the Companies Acts 1931 to 2004 including, for example, section 18 of the *Companies Act 1982* and the need to have 2 directors.
5. *Clause 5* amends the 1931 Act by inserting a new section 11A into the 1931 Act, so as to create a right to inspect the memorandum and articles of a company to which that Act applies. The clause also substitutes section 12 of the 1931 Act so as to add a requirement for a company to maintain a copy of the memorandum and articles at its registered office.
6. *Clause 6* amends the Limited Liability Companies Act 1996 by substituting section 4 of that Act, to impose the requirement to keep specified documents at its registered office. The clause also inserts a new section 4A which provides for a similar inspection regime as in the 1931 Act and the 2006 Act.

7. *Clause 7* amends the 2006 Act by amending section 95(1) so as to require notification to the Registrar of the appointment of the first directors and by substituting section 204 of the 2006 Act so as to add a requirement for a company to notify the Registrar of any subsequent changes within 1 month.
8. *Clause 8* makes a consequential amendment to the Company and Business Names etc Act 2012.
9. The resulting Act is not expected to have any financial or human resource implications.
10. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



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### Index

Section	Page
<i>Introductory</i>	<i>7</i>
1 Short title .....	7
2 Commencement .....	7
<i>Re-registration of a company incorporated under the Companies Act 2006</i>	<i>7</i>
3 Companies Act 1931 amended (re-registration).....	7
4 Companies Act 2006 amended (re-registration).....	14
<i>Document retention and inspection</i>	<i>14</i>
5 Companies Act 1931 amended (inspection and registration of documents).....	14
6 Limited Liability Companies Act 1996 amended.....	15
<i>Companies Act 2006 amended</i>	<i>16</i>
7 Companies Act 2006 amended (register of directors) .....	16
8 Consequential amendments.....	17





*Ellan Vannin*

## COMPANIES (AMENDMENT) BILL 2020

1 **A BILL** to amend certain companies legislation so as to enable a company  
 2 incorporated under the Companies Act 2006 to re-register under the Companies  
 3 Act 1931; to amend the Companies Act 1931, Companies Act 2006 and the  
 4 Limited Liability Companies Act 1996 in accordance with recommendations  
 5 specified in the Fifth Round Mutual Evaluation Report of the Committee of  
 6 Experts on the Evaluation of Anti-Money Laundering Measures and the  
 7 Financing of Terrorism; and for connected purposes.

**BE IT ENACTED** by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### 8 *Introductory*

#### 9 **1 Short title**

10 The short title of this Act is the Companies (Amendment) Act 2020.

#### 11 **2 Commencement**

12 (1) This Act (other than section 1 and this section) comes into operation on  
 13 such day or days as the Treasury may by order appoint.

14 (2) An order under subsection (1) may include such consequential,  
 15 incidental, supplemental, transitional, transitory and saving provisions  
 16 as the Treasury considers necessary or expedient.

17 Tynwald procedure – laying only.

#### 18 *Re-registration of a company incorporated under the Companies Act 2006*

#### 19 **3 Companies Act 1931 amended (re-registration)**

20 (1) The *Companies Act 1931* is amended as follows.

21 (2) For section 16A(2) to (4) (re-registration under *Companies Act 2006*),  
 22 substitute —

23 | “(2) Upon a re-registration referred to in subsection (1) —

- 1 (a) the Department shall issue a certificate of de-registration  
 2 stating that the company ceased to be registered under this  
 3 Act on the date of the certificate; and  
 4 (b) with effect from the date of the certificate of de-registration  
 5 referred to in paragraph (a) —  
 6 (i) the company shall cease to be a company registered  
 7 under this Act; and  
 8 (ii) the Companies Acts 1931 to 2004 shall cease to  
 9 apply to it.

- 10 (3) Subsection (2)(b)(ii) does not apply to a provision of the  
 11 Companies Acts 1931 to 2004 which applies to a company  
 12 incorporated under the *Companies Act 2006*.”

- 13 (3) After section 16A of the *Companies Act 1931*, insert —

14 **“16B Power of 2006 Act company to re-register**

15 2006/13/148 and drafting

- 16 (1) Subject to subsection (2) and sections 16C to 16E, a 2006 Act  
 17 company may make an application to the Department in the  
 18 prescribed form to re-register as a company incorporated under  
 19 this Act of such type specified in section 1(2) as corresponds to its  
 20 type under the *Companies Act 2006*, provided that a company that  
 21 will not be a private company upon re-registration can only re-  
 22 register as a public company and only if it meets the conditions  
 23 specified in section 16C(4).  
 24 (2) An application referred to in subsection (1) may not be made  
 25 unless the 2006 Act company has given notice of its intention to  
 26 re-register, to its registered agent of 28 days or such shorter period  
 27 as the agent agrees in writing to accept.  
 28 (3) In this section and sections 16C to 16E, “a 2006 Act company”  
 29 means a company incorporated under the *Companies Act 2006*.

30 **16C Application to re-register a 2006 Act company**

31 2006/13/149 and drafting

- 32 (1) An application made under section 16B shall be accompanied  
 33 by —  
 34 (a) details of the company’s proposed name after re-  
 35 registration provided that —  
 36 (i) the name shall comply with section 2(1)(a)  
 37 (requirements with respect to memorandum) of the  
 38 *Company and Business Names etc Act 2012* and in the  
 39 case of a protected cell company, section 3 of the  
 40 *Protected Cell Companies Act 2004*, in the case of an



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- incorporated cell company, section 5 of the *Incorporated Cell Companies Act 2010* or, in the case of an incorporated cell, section 10 of the *Incorporated Cell Companies Act 2010*; and
- (ii) where the Registrar of Companies has approved a foreign character name for the 2006 Act company, under section 13 of the *Companies Act 2006*, that approval terminates upon the re-registration of the company under section 16D;
- (b) certified copies of —
- (i) a resolution passed by a member or members holding at least 75 per cent of the voting rights exercised in relation thereto; and
- (ii) a resolution of each class of members (if any) passed by a member or members holding at least 75 per cent of the voting rights exercised in relation thereto,
- in each case authorising the re-registration of the 2006 Act company as a company incorporated under this Act, adopting a new memorandum of association complying with subsection (2) and (if applicable) adopting new articles;
- (c) a new memorandum complying with subsection (2);
- (d) if the articles of the company upon re-registration are to differ from the articles of whichever of Tables A to E is appropriate, or if the company is to be re-registered as a protected cell company or an incorporated cell company, new articles, in either case, complying with subsection (3);
- (e) details, as at the date of application, of —
- (i) the officers and members of the company and the dates upon which those persons became officers and members; and
- (ii) the registered office;
- (f) any outstanding filings and fees due under the *Companies Act 2006* at the date of the application; and
- (g) in the case of a 2006 Act company to be re-registered under this Act as a public company —
- (i) a statement of compliance that complies with subsection (4)
- (ii) a copy of the resolution that complies with subsection (5) approving the re-registration of the company as a public company;

(iii) a copy of the balance sheet that complies with subsection (6); and

(iv) any other document required by the Department.

(2) The memorandum of a company referred to in subsection (1)(c) —

(a) shall, subject to section 29 of the *Companies Act 1992*, state —

(i) the name of the company, with “Limited” as the last word of the name in the case of a company limited by shares or by guarantee;

(ii) the registered office of the company which shall be situate in the Isle of Man; and

(iii) in the case of a company to which Part I of the *Companies Act 1986* applies, that the company is a private company;

(b) shall, in the case of a company limited by shares or guarantee, state that the liability of its members is limited;

(c) shall, in the case of a company limited by guarantee, state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he or she is a member or within one year after he or she ceases to be a member, for payment of the debts and liabilities of the company contracted before he or she ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount;

(d) shall, in the case of a company having a share capital, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(e) shall, in the case of a company to be re-registered as a protected cell company under the provisions of the *Protected Cell Companies Act 2004*, comply with section 3 of that Act;

(f) shall, in the case of a company to be re-registered as an incorporated cell company under the provisions of the *Incorporated Cell Companies Act 2010*, comply with section 6 of that Act;

(g) shall, in the case of a company to be re-registered as an incorporated cell under the provisions of the *Incorporated Cell Companies Act 2010*, comply with section 11 of that Act; and

- 1 (h) shall be in a form prescribed by the Department, in the case  
2 of —  
3 (i) a company limited by shares;  
4 (ii) a company limited by guarantee and not having a  
5 share capital;  
6 (iii) a company limited by guarantee and having a share  
7 capital; and  
8 (iv) an unlimited company having a share capital.
- 9 (3) The articles of a company referred to in subsection (1)(d) shall  
10 comply with sections 6 to 11 of this Act provided that for the  
11 purposes of sections 6 and 9, the signatures of subscribers are not  
12 required.
- 13 (4) The statement of compliance referred to in subsection (1)(g)(i)  
14 shall confirm that conditions A to C are satisfied.
- 15 (5) Condition A is that at the time the resolution referred to in  
16 subsection (1)(g)(ii) was passed —  
17 (a) the nominal value of the company's allotted share capital  
18 was not less than the minimum subscription; and  
19 (b) each of the company's allotted shares was paid up in full in  
20 cash.
- 21 (6) Condition B is that —  
22 (a) the company has prepared a balance sheet ("the company's  
23 balance sheet") as at a date not more than 6 months ("the  
24 balance sheet date") before the date on which the  
25 application is made under section 16B; and  
26 (b) the application includes the following documents prepared  
27 by the company's auditor —  
28 (i) an unqualified report on the company's balance  
29 sheet which complies with subsection (8);  
30 (ii) a written statement confirming that in the auditor's  
31 opinion as at the balance sheet date, the amount of  
32 the company's net assets is not less than the  
33 aggregate of its called-up share capital and  
34 undistributable reserves; and  
35 (iii) confirmation that between the balance sheet date  
36 and the date the application was made under  
37 section 16B, there has been no change in the  
38 company's financial position that results in the  
39 amount of its net assets becoming less than the  
40 aggregate of its called-up share capital and  
41 undistributable reserves.

- 1 (7) Condition C is that the application includes particulars of the  
2 secretary or joint secretaries of the company, who must be  
3 appropriately qualified in accordance with section 19(4) of the  
4 *Companies Act 1982*.
- 5 (8) For the purposes of subsection (6) —
- 6 (a) an “unqualified report” means —
- 7 (i) if the balance sheet was prepared for a financial  
8 year of the company, a report stating without  
9 material qualification that it is the auditor’s opinion  
10 that the balance sheet has been properly prepared in  
11 accordance with the Companies Acts 1931 to 2004;
- 12 (ii) if the balance sheet was not prepared for a financial  
13 year of the company, a report stating without  
14 material qualification that it is the auditor’s opinion  
15 that the balance sheet has been properly prepared in  
16 accordance with the Companies Acts 1931 to 2004  
17 which would have applied had the balance sheet  
18 been prepared for a financial year of the company;  
19 and
- 20 (b) in the case of a balance sheet that was not prepared for a  
21 financial year of the company, the Companies Acts 1931 to  
22 2004 apply with such modifications as are necessary by  
23 reason of that fact.
- 24 (9) For the purposes of subsection (8)(a), a “material qualification” is  
25 any qualification other than a qualification in respect of which the  
26 auditor states that the matter giving rise to it is not material for  
27 the purpose of determining (by reference to the company’s  
28 balance sheet) whether at the balance sheet date the amount of the  
29 company’s net assets was not less than the aggregate of its called-  
30 up share capital and undistributable reserves.
- 31 (10) In this section, “net assets” has the meaning given in section 6(2)  
32 of the *Companies Act 1992* (meaning of financial assistance).
- 33 (11) The Department may accept the statement of compliance as  
34 sufficient evidence that the company is entitled to be re-registered  
35 as a public company.

## 36 **16D Re-registration of a 2006 Act company**

37 2006/13/150 and drafting

- 38 (1) Upon receipt of the documents specified in section 16C, and in the  
39 case of a 2006 Act company applying to be re-registered as a  
40 public company, where the Department is satisfied that the  
41 company is entitled to be re-registered as a public company, the  
42 Department shall —

- 1 (a) register the new memorandum and articles delivered  
 2 pursuant to section 16C;  
 3 (b) allot a unique number to the company; and  
 4 (c) issue a certificate of re-registration in the prescribed form.
- 5 (2) A certificate of re-registration issued by the Department is  
 6 conclusive evidence of compliance with all requirements of this  
 7 Act in respect of re-registration.

## 8 **16E Consequences of re-registration of a 2006 Act company**

9 2006/13/151 and drafting

- 10 (1) The re-registration of a 2006 Act company under section 16D,  
 11 shall not be deemed to operate —  
 12 (a) to create a new legal entity; or  
 13 (b) to prejudice or affect the continuity of the company.
- 14 (2) Upon re-registration of a 2006 Act company under section 16D —  
 15 (a) the new memorandum filed pursuant to section 16C shall  
 16 be the memorandum of the company to the exclusion of  
 17 the memorandum in force immediately prior to its re-  
 18 registration; and  
 19 (b) the articles of the company in force immediately prior to its  
 20 re-registration shall cease to be the articles of the company  
 21 and the proposed articles or (if no proposed articles have  
 22 been delivered pursuant to section 16C) the articles of  
 23 whichever of Tables A to E is appropriate, so far as  
 24 applicable, shall be the articles of the company.
- 25 (3) On the date of the certificate of re-registration of a 2006 Act  
 26 company under section 16D —  
 27 (a) the company shall cease to be a company incorporated  
 28 under the *Companies Act 2006*;  
 29 (b) the *Companies Act 2006* shall cease to apply to the company;  
 30 and  
 31 (c) as specified in section 151A(2)(b) of *Companies Act 2006* the  
 32 company shall, cease to be a company registered under  
 33 that Act and the Companies Acts 1931 to 2004 shall apply  
 34 to it from that date.”
- 35 (4) At the end of the Tenth Schedule (provisions referred to in section 326 of  
 36 the Act), insert **23** Statement of compliance to accompany application for  
 37 re-registration of a 2006 Act company as a public company **22**.

1 **4 Companies Act 2006 amended (re-registration)**

2 After section 151 of the *Companies Act 2006* (consequences of re-registration of a  
3 1931 Act company), insert —

4 **“151A Re-registration under Companies Act 1931**

5 1931/2/16A and drafting

- 6 (1) A company incorporated under this Act may re-register as a  
7 company incorporated under the *Companies Act 1931*, subject to  
8 compliance with the provisions of that Act.
- 9 (2) Upon a re-registration referred to in subsection (1) —
- 10 (a) the Registrar shall issue a certificate of de-registration  
11 stating that the company ceased to be registered under this  
12 Act on the date of the certificate; and
- 13 (b) the company shall, with effect from the date of the  
14 certificate of de-registration referred to in paragraph (a),  
15 cease to be a company registered under this Act and the  
16 Companies Acts 1931 to 2004 shall apply to it from that  
17 date.”

18 *Document retention and inspection*

19 **5 Companies Act 1931 amended (inspection and registration of**  
20 **documents)**

- 21 (1) The *Companies Act 1931* is amended as follows.
- 22 (2) For the cross heading before section 11 (statutory forms of memorandum  
23 and articles), substitute —

24 *“Provisions as to statutory forms and copies of memorandum and articles”.*

- 25 (3) After section 11, insert —

26 **“11A Right to inspect memorandum and articles**

- 27 (1) Subject to subsection (2), the copies of the memorandum and  
28 articles registered under this Part of this Act with the Department  
29 shall be open to the inspection of a member of the company  
30 without fee, and to the inspection of any other person on payment  
31 of such reasonable fee (if any) as the company may require.
- 32 (2) Inspection shall be during business hours, but subject to such  
33 reasonable restrictions as the company in general meeting may  
34 impose, so that not less than 2 hours in each day shall be allowed  
35 for inspection.

- 1 (3) The requirement to make copies of the memorandum and articles  
 2 registered under this Part of this Act available for inspection is  
 3 satisfied if the document is made available electronically.
- 4 (4) If inspection of copies of the said memorandum and articles is  
 5 refused, any officer of the company refusing inspection, and every  
 6 director and manager of the company authorising or knowingly  
 7 and wilfully permitting the refusal, shall be liable to a fine not  
 8 exceeding level 5 on the standard scale.
- 9 (5) If any such refusal occurs in relation to a company, the court may  
 10 by order compel an immediate inspection of the copies of the  
 11 memorandum and articles.”.

12 (4) section 12 (registration of memorandum and articles), substitute —

13 **“12 Registration of memorandum and articles**

- 14 (1) The memorandum and the articles, if any, shall be delivered to the  
 15 Department, and the Department shall retain and register them.
- 16 (2) The company shall cause a copy of the memorandum and the  
 17 articles to be kept at the registered office of the company.”.

18 **6 Limited Liability Companies Act 1996 amended**

19 For section 4 of the *Limited Liability Companies Act 1996* (registered office),  
 20 substitute —

21 **“4 Registered office and documents to be kept at registered office**

- 22 (1) A limited liability company shall at all times maintain a registered  
 23 office in the Island.
- 24 (2) A limited liability company shall keep the following documents at  
 25 its registered office —
- 26 (a) copies of the articles of organisation;
- 27 (b) copies of any consent issued by a person named as the  
 28 registered agent of the limited liability company;
- 29 (c) copies of all notices and other documents filed by the  
 30 limited liability company pursuant to this Act in the  
 31 previous 6 years; and
- 32 (d) copies of any certificate or other document issued by the  
 33 Department and received by the limited liability company.
- 34 (3) If a limited liability company —
- 35 (a) fails for one month to maintain a registered office in  
 36 contravention of subsection (1) —

- 1 (i) it shall be guilty of an offence and shall be liable on  
 2 summary conviction to a fine not exceeding level 5  
 3 on the standard scale; and  
 4 (ii) it shall be deemed to be defunct until a registered  
 5 office is established and a statement in the  
 6 prescribed form is delivered to the Department; or  
 7 (b) contravenes subsection (2), it shall be guilty of an offence  
 8 and shall be liable on summary conviction to a fine not  
 9 exceeding level 5 on the standard scale.

#### 10 4A Inspection of documents and records

- 11 (1) The copies of the documents and records referred to in section  
 12 4(2) shall be open during business hours, but subject to such  
 13 reasonable restrictions as the company in general meeting may  
 14 impose, so that not less than 2 hours in each day shall be allowed  
 15 for inspection, to the inspection of a member of the company  
 16 without fee, and to the inspection of any other person on payment  
 17 of such reasonable fee (if any) as the company may prescribe.  
 18 (2) The requirement to make copies of the said documents and  
 19 records available for inspection is satisfied if the documents and  
 20 records are made available electronically.  
 21 (3) If inspection of copies of the said documents and records is  
 22 refused, any officer of the company refusing inspection, and every  
 23 director and manager of the company authorising or knowingly  
 24 and wilfully permitting the refusal, shall be liable on summary  
 25 conviction to a fine not exceeding level 5 on the standard scale.  
 26 (4) If any such refusal occurs in relation to a company, the court may  
 27 by order compel an immediate inspection of the documents and  
 28 records.”.

#### 29 *Companies Act 2006 amended*

#### 30 7 Companies Act 2006 amended (register of directors)

- 31 (1) The *Companies Act 2006* is amended as follows.  
 32 (2) After section 95(1) (appointment of directors), substitute —  
 33 **95(1A)** The company must notify the Registrar in the prescribed form —  
 34 (a) where the first directors are appointed under subsection (1)  
 35 after the date on which this subsection comes into  
 36 operation, within one month of the appointment;



1 (b) in all other cases, unless the Registrar has already been  
2 notified, within one month of the date on which this  
3 subsection comes into operation. ~~22~~.

4 (3) For section 204 (optional registration of register of directors),  
5 substitute —

6 **“204 Notification of changes of directors**

7 A company must notify the Registrar in the prescribed form of any  
8 changes to its register of directors —

9 (a) where the change to its directors occurs after the date on  
10 which this subsection comes into operation, within one  
11 month of the change;

12 (b) in all other cases, unless the Registrar has already been  
13 notified, within one month of the date on which this  
14 subsection comes into operation.”.

15 **8 Consequential amendments**

16 In section 5(2)(a) of the *Company and Business Names etc Act 2012* (when name  
17 approval is required), for sub-paragraph (ii), substitute —

18 “(ii) re-registration under section 16, 16A or 16D of the  
19 *Companies Act 1931*”.

IN THE KEYS

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## COMPANIES (AMENDMENT) BILL 2020

A **BILL** to amend certain companies legislation so as to enable a company incorporated under the Companies Act 2006 to re-register under the Companies Act 1931; to amend the Companies Act 1931, Companies Act 2006 and the Limited Liability Companies Act 1996 in accordance with recommendations specified in the Fifth Round Mutual Evaluation Report of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism; and for connected purposes.

Leave to introduce given by the Council on 26 November 2020.

MR SHIMMINS

DECEMBER 2020