

## **COMPANIES (AMENDMENT) BILL 2020 EXPLANATORY NOTES**

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

### **1. INTRODUCTION**

These explanatory notes relate to the *Companies (Amendment) Bill 2020* (the "Bill"). They have been prepared by the Department for Enterprise in partnership with 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 intended to be, a comprehensive description of the Bill.

In the opinion of the Member moving the Bill, the provisions of the Bill are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

If approved, it is not anticipated that the resulting Act will significantly increase the administrative burden on the Central Registry; nor will it involve any, or any significant, change to Government income or expenditure.

### **2. BACKGROUND**

The Department for Enterprise is aware some businesses have sought a mechanism for the re-registration of 2006 Act companies as 1931 Act companies. The decision to re-register a 2006 Act company under the provisions of the Companies Act 1931 would be entirely optional. The option for a 1931 Act company to re-register as a 2006 Act company already exists.

The reason most often cited for a company wishing to switch from the 2006 Act to the 1931 Act is that a company has expanded, and consequently no longer needs the services of a Corporate Service Provider as they have the necessary knowledge and experience in house to fully comply with their legal and other obligations without retaining the services and cost of an external agent.

The Companies (Amendment) Bill 2020 has been prepared to amend the Companies Act 2006, the Companies Act 1931, and the Limited Liability Companies Act 1996 in order to:

- i) allow a company incorporated under the Companies Act 2006 to re-register as a company operating under the Companies Act 1931;
- ii) introduce a requirement for companies incorporated under the Companies Act 1931 and the Limited Liability Companies Act 1996 to maintain their memorandum and articles (which confirm the company name, legal form and status, registered office address, and basic regulating powers) or proof of incorporation at the registered office on the Isle of Man, and be made available for inspection at the said office; and
- iii) address a number of issues identified by MONEYVAL in its Mutual Evaluation Report concerning companies incorporated under the Companies Act 1931, Companies Act 2006 and the Limited Liability Companies Act 1996.

### **3. COMMENTARY ON CLAUSES**

**Clauses 1 and 2** provide respectively for the short title and for the commencement of the resulting Act.

#### **Clause 3**

Subsections (1) and (2) include amendments to the Companies Act 1931 to simplify the process for 1931 companies to de-register in order to re-register as 2006 companies. The clause also includes provisions to enable 2006 companies to re-register under the 1931 legislation.

Subsection (3) inserts new sections (Section 16B to 16E) which set out the steps required for a company operating under the provisions of the Companies Act 2006 to re-register as a company operating under the provisions of the Companies Act 1931-2004.

New Section 16B sets out the manner in which a company operating under the provisions of the 2006 Act may apply to re-register as a 1931 Act company, including a requirement to give notice to its current registered agent.

New Section 16C sets out the application process, which requires all companies to provide;

- i) details of proposed name after registration;
- ii) certified copies of resolutions passed by at least 75% of members (of all classes) authorising the re-registration and adopting a new memorandum of association and articles which comply with the 1931 Act;
- iii) details of officers and members of the company;
- iv) the registered office; and
- v) any outstanding filings and fees due.

New Section 16C(g) set out additional conditions for public companies requiring:

- i) the nominal value of the share capital not to be less than the minimum subscription;
- ii) each of the companies allotted shares to be paid up in full;
- iii) submission of an unqualified audited balance sheet; and
- iv) submission of the particulars of the company secretary or joint secretaries.

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, and adds 'Statement of compliance to accompany application of public company for re-registration' to the Tenth Schedule of the Act. This has the effect of making it an offence to wilfully make a false statement in such a declaration.

**Clause 4** - Updates the Companies Act 2006 to permit companies incorporated under that Act to re-register as a company operating under the provisions of the Companies Act 1931 – 2004.

It clarified that once a company is re-registered it must comply with the provisions of the 1931 to 2004 Acts. Any company re-registering must ensure it is structured in such a manner that it can operated under these provisions.

**Clause 5 and 6** respectively update the Companies Act 1931 and Limited Liability Companies Act 1996 creating a new obligation for companies to maintain certain documents at their registered office and for such documents to be available for inspection.

**Clause 7** inserts a new subsection (1A), after section 95(1) of the 2006 Act so as to require notification to the Registrar of the appointment of the first directors within 1 month 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 one month.

It is envisaged this provision will not be brought in until administrative procedures within the Companies Registry have been further refined to enable notifications to be made in the most smooth and efficient manner possible.

**Clause 8** makes consequential changes to the Companies and Business Names etc Act 2012 to allow for company name changes arising from re-registrations.