



# LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL  
Y CHOONCEIL SLATTYSSAGH

# PROCEEDINGS

DAALTYN

HANSARD

**Douglas, Tuesday, 4th February 2014**

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**Present:**

**The President of Tynwald (Hon. C M Christian)**

The Lord Bishop of Sodor and Man (The Rt Rev. R M E Paterson),  
The Acting Attorney General (Mr J L M Quinn),  
Mr R P Braidwood, Mr D M W Butt, Mr M R Coleman, Mr C G Corkish MBE,  
Mr E A Crowe, Mr A F Downie OBE, Mr J R Turner and Mr T P Wild  
with Mr J D C King, Clerk of the Council.

**Business transacted**

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## Legislative Council

*The Council met at 10.30 a.m.*

[MADAM PRESIDENT *in the Chair*]

**The President:** Moghrey mie, Hon. Members.

**Members:** Moghrey mie, Madam President.

5 **The President:** The Lord Bishop will lead us in prayers.

### PRAYERS

*The Lord Bishop*

## Order of the Day

### 1. Foreign Companies Bill 2013 – Third Reading approved

Mr Braidwood to move:

*That the Foreign Companies Bill 2013 be read a third time and do pass.*

**The President:** We have a short Order Paper, Hon. Members.

I call on the Hon. Member, Mr Braidwood, to take the Third Reading of the Foreign Companies Bill 2013.

10 **Mr Braidwood:** Thank you, Madam President.

Madam President, before I commence the Third Reading I would like to take the opportunity to reinforce a number of points raised by Hon. Members, many of which were satisfactorily dealt with last week. However, it will do no harm to ensure that there is a complete clarity of understanding on these matters.

15 The first point was raised by my hon. colleague in Council, Mr Butt. Mr Butt sought clarification on whether trading companies, such as Tesco and Marks & Spencer's, would need to be registered under the new Foreign Companies Bill. I can confirm that there will be no change to the current position for companies such as these. They are currently required to be registered under Part XI of the Companies Act 1931. Going forward they will still be required to register under the Foreign  
20 Companies Bill 2013.

**Mr Butt:** Good.

25 **Mr Braidwood:** Mr Butt also sought clarification on whether a foreign company having neither a place of business on the Island, nor holding land in the Island, would be compelled to make the election to register under clause 5(1)(c). I can confirm that a company that does not meet the criteria for being registered may, if it wishes, make the election to be registered under the Bill. It will certainly be under no compulsion to do so.

30 My hon. colleague, Mr Turner, queried whether Foreign Companies seeking admission to the F Register would have the required details available. I am pleased to be able to confirm and reiterate what Mr Crowe said at the last reading, that all companies, wherever they are incorporated, have certain basic characteristics: company name; company number; registered office address; and jurisdiction of incorporation.

35 Mr Turner also observed that a non-refundable registration fee was perhaps a little harsh. I can assure the Hon. Member that the Companies Registry are extremely reasonable, and only take one registration fee, even if the documents need to be revised and amended several times. A non-refundable fee will ensure that there is no possibility of a vexatious time-waster tying up the Registry's time.

40 Mr Wild raised the question of offences under the Bill. I can confirm that there is no change in policy here: it has always been an offence to fail to comply with the requirements of the legislation. What *has* changed is the presentation of the offences. These have always been lumped together in the past. However, the IMF, OECD and others prefer to see offences set out at the relevant points in the legislation. Peppering legislation with offences clauses does have the effect of making the legislation look more onerous; however, this is not the case. The offences for the existing Part XI of the Companies Act 1931 are found in section 320. This is below:

45 '320 Penalties  
If any company to which this Part of this Act applies fails to comply with any of the foregoing provisions of this Part of this Act the company, and every officer or agent of the company, shall be liable to -  
(a) on information, a fine;  
(b) on summary trial, a fine not exceeding £5,000.'

The insertion of offence clauses throughout the legislation certainly does have the effect of highlighting the existing offences, as this question has demonstrated.

50 Mr Turner also wondered about the disclosure of beneficial ownership details for foreign companies. As previously stated, the Isle of Man does not have a public register of beneficial ownership. For business undertaken by or through a CSP, full KYC must be held. Isle of Man companies that are not with CSPs are subject to the Companies Beneficial Ownership Act 2012. Foreign companies are the responsibility of foreign jurisdictions: what the Isle of Man can do however, is to make it clear where the foreign jurisdiction is, so that this information can be sought  
55 in the home jurisdiction.

Mr Wild raised the matter of what happens to land, real estate, on the Island owned by a foreign company should this company be struck off. As previously confirmed the ownership of the land is absolute: the title will be held by the company. If this land is beneficially owned by the foreign company, the company commits an offence if it is not registered under the Bill. Again, this does not  
60 reflect a change in policy, and is simply restating the current position.

The name provisions for foreign companies, Madam President, appear to be a matter that would benefit from clarification. In a move away from current practice, every effort will be made to allow a company to register under its name in the home jurisdiction. This is so that the link can be made between the home jurisdiction and the foreign company. If, however, there would be two  
65 companies with identical names on the F Register, this would be confusing. Under these circumstances, the appropriate name approval authority would require that the new F company must use another name. The name under which the company is registered in the home jurisdiction must, however, be disclosed at the time of registration.

70 Mr Coleman wondered about the interaction of clauses 8, 12 and 20. It is an offence under clause 8 not to supply the details required for registration. Clause 12 permits the Department to reject a

document that is incomplete: it does not, however, follow that this would necessarily be an offence. It is quite conceivable that this might be an innocent error. The Department must under clause 25 – and, as is current practice, does – return documents for amendment citing reasons for the rejection. It is, however, important to have the offence of failing to provide the information required. This is because it is not inconceivable that false information may be deliberately provided. It must be possible to take action in certain instances.

Mr Turner also asked why an appeal must be made to the High Court under clause 18. This was simply an extension of the current convention in which the court is defined as follows, in an extract from section 341 of the Companies Act 1931:

‘ “The court” used in relation to a company means the Civil Division of the High Court of Justice.’

As was confirmed at the last Reading, Madam President, most matters are dealt with through the process of negotiation by both parties: in most cases an accommodation is reached. Instances which reach the courts are few and far between.

Madam President, I think I covered all the points which were raised during the Second Reading and clauses, so I hope that will be of benefit to Hon. Members of Council.

So if I may, Madam President, I will continue with the Third Reading of the Foreign Companies Bill 2013.

Madam President, the Foreign Companies Bill 2013 will replace Part XI of the Companies Act 1931, with separate and stand-alone legislation. The Treasury consulted extensively with industry over a protracted period. The resultant Bill updates and simplifies the existing provisions of Part XI. This Bill exemplifies the Treasury's commitment to reducing the burden of unnecessary red tape and bureaucracy, wherever possible.

Madam President, I wish to remind Hon. Members that while the Bill refers to foreign companies, the scope of application is wider than just companies. It applies equally to other types of legal persons, such as foundations and limited partnerships with separate legal personality, which are incorporated outside of the Isle of Man.

The register of foreign companies has become known as the ‘F Register’. The Bill will simplify the current regime under Part XI. Hon. Members will recall that the scope of application will continue to apply to all foreign companies that have established a place of business in the Island, or own land in the Island. The Bill now makes provisions for companies that meet neither of these criteria to simply make an election for the legislation to apply to them.

Madam President, the Bill contains three parts with 27 clauses. I will now briefly remind Members what is set out in the provisions of the Bill.

Part 1 sets out the opening provisions of the Bill. This part includes provisions for the short title of the Bill and for its commencement, as well as the interpretation of certain words and phrases. Clause 4 defines what is meant by the term ‘foreign company’, while clause 5 brings certainty to circumstances in which the Bill applies to foreign companies.

Part 2 sets out the practical matters in respect of the registration and operation of foreign companies. This includes the following matters: placing an obligation on the Department of Economic Development to maintain a register of foreign companies; giving the Department the power to accept or refuse an application for registration; requiring an applicant for entry to the Register to submit documents that comply with the legislation; requiring a foreign company to make a return to the Department annually; giving the Department the power to remove a company from the register for failure to make this return; and requiring a foreign company to notify the Department of the occurrence of certain specified events.

Madam President, crucially, this part requires foreign companies to inform the Department of the address and person to whom service of process and notices can be made. The information that must be disclosed to the Department represents a significant reduction in the information currently required by Part XI of the Companies Act 1931. Information that is not absolutely necessary is no longer required.

Madam President, I remind Hon. Members that this is consistent with the Treasury's commitment to cutting unnecessary red tape and bureaucracy.

Part 3 of the Bill sets out various matters under the heading of Miscellaneous Provisions. There is the right to appeal a decision of the Department under this part. Both the appellant and Department will be bound by any decision of the High Court.

Clause 19 creates the offence of giving information to the Department when this is known to be false.

Clause 20 sets out the penalties for an offence under the Bill. Provision is made to apply offences to both individuals and legal persons. This clause also provides a defence for any person who took steps and precautions to avoid the commission of the offence.

This part also gives the Treasury the power to make regulations on a wide range of matters relating to the detail of operation of the Bill. An express requirement to consult is included. Any regulations made by the Treasury under this part require the express approval of Tynwald.

The Department is given the power to determine the form in which information must be submitted to it. It also has the power to set fees by order. Such an order must be approved by Tynwald before it comes into operation.

Madam President, Part 3 also gives the Department the discretion to determine how it stores and records any information submitted to it. The Department may do so in any manner that it determines, provided any data stored by the Department can be reproduced in legible form.

Various consequential amendments are made to other legislation in the schedule to this Bill. Clause 26 provides for the automatic repeal of this clause, and the schedule to which it refers, on the day after the last amendment takes effect. This is simply a matter of good housekeeping to avoid unnecessary provisions remaining on the statute books.

Madam President, may I remind Hon. Members that the Treasury has engaged with industry for a protracted period to agree the scope of the application of the Bill. This Bill now encompasses only what is absolutely necessary for inclusion on the register of foreign companies. The opportunity has been taken to significantly reduce the level of bureaucracy and red tape that currently surrounds the F Register.

Madam President, I apologise for the protracted Third Reading. However, I beg to move.

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

**The President:** The Hon. Member, Mr Wild.

**Mr Wild:** Thank you, Madam President, and my apologies for trying to speak outside of procedures in my enthusiasm at last week's sitting of Legislative Council.

I just wanted to make the comment that when we debated the potential harshness of some of the clauses within the Bill, in my view the Bill provides a robust legislative framework that has the powers to cover all potential situations, including the extreme, that in reality implementation of the legislation will be in a common sense, practical and professional way by the officers of the Companies Registry.

The Third Reading has my support.

**The President:** The Hon. Member, Mr Crowe.

**Mr Crowe:** Thank you, Madam President.

Yes, I too support the Bill. Clause 10 last week caused some debate about the Registrar of Companies having the discretion to sort out any lack of clarity on the name of the company, where an Isle of Man company has the same name as the foreign company being registered on the F Register. I think perhaps the mover can just elaborate on the discretion that Mr Wilkinson will have, if for instance, 'ABC Ltd' in the Isle of Man, an Isle of Man company, and 'ABC Ltd' a BVI company:

would Mr Wilkinson be able to add, say, BVI in brackets after the name, or how would that work, Mr Braidwood?

Thank you, Madam President.

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**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Thank you, Madam President.

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I thank the hon. mover for the explanation to some of the points I raised in the debate last week on the clauses.

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I think in his speech there, he mentioned that this is going to enable the bureaucracy to be reduced and I think that is vitally important: certainly one of the pet hates I have is over-bureaucratic processes. Clearly there are a lot of provisions in this which do seem to simplify the system compared to previous systems that have been in. I think what happens is, as procedures evolve over a number of years, they get added to and amended, and there comes a point when you have to actually go back in and start again. I do think this is effectively what they have done with this to make a clear Bill. It certainly is clear.

190

I think we have to look at reducing bureaucracy in all these areas now, because we are seeing, as countries are fighting for business, the competitiveness of each jurisdiction is going to become the key as to where businesses locate. Obviously there are a great deal of businesses under this Bill which have a *place* of business here, so it is a little bit different, where I think the example was used, some of the retailers like Marks & Spencer's and Tesco have got a store here. So obviously they have to.

195

But there will be a number of companies that maybe do not have to locate here, so it is important that we have procedures that make doing business on the Isle of Man easy for them, but at the same time having the stringent rules in place.

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So I do welcome the comments that this will reduce the bureaucracy to business, which I think is vitally important in this day and age. I hope it is a sign of things to come, and we will have more Bills coming through that will simplify. I think the Chief Minister even said that his aim is not to over-legislate, there will be certainly a one-in, one-out type of arrangement, and if there are Bills we can clear off the statute books altogether, then that is even better.

So I will be supporting the Third Reading of this Bill.

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**The President:** The mover to reply.

**Mr Braidwood:** Thank you, Madam President.

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I thank Mr Wild for his support, and also Mr Turner's support for the Third Reading. I am glad I managed to clarify a lot of the points which were raised at the last Reading and clauses, Madam President.

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With regard to the question posed by the Hon. Member of Council, Mr Crowe: yes, there was quite a lot of debate last week on this, Madam President, and we know that if there are similar names, under the Companies and Business Names Act 2012 it can be changed. However, in actual fact, if we had a company such as '12345' in the BVI, and it wanted to register as '12345' in the Isle of Man, under the Companies Act 1931, we could have '12345C', and for the new F Company Register we could have '12345F'. So, in actual fact, both names would be able to be on the registers, but there is a distinction between, you could say, the 1931 Act and this new one.

220

Again, the appropriate name approval authority considers everything, and it might be in some instances that the name is undesirable, but in actual fact probably in the majority of cases they will be able to have the same name, but just that differential showing F or C, under what it is registered.

I hope that point clarifies what Mr Crowe (**Mr Crowe:** Yes, thank you.) was seeking, Madam President.

I beg to move.

**The President:** The motion is the Foreign Companies Bill 2013 be read a third time and do pass.  
225 Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes consideration of our Order Paper this morning. Council will now adjourn and the adjournment will be until 11th February, in this Chamber.

*The Council adjourned at 10.51 a.m.*