

**4. Companies (Amendment) Bill 2020 –
First Reading approved**

Mr Henderson to move:

That the Beneficial Ownership Bill 2020 be read for the first time.

The President: We turn now to the Companies (Amendment) Bill.
Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane, Olteynyn Onnoroil.

I am pleased to present to Council the Companies (Amendment) Bill 2020 for its First Reading. This is a relatively short Bill which addresses two important issues. Firstly, it allows 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.

Secondly, it addresses a small 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 Liabilities Companies Act 1996, here in the Isle of Man. We are committed to responding positively to recommendations from international bodies, such as Moneyval, and this Bill plays its part in helping the Island maintain its international standing.

In regard to the first point, the Department for Enterprise is aware of a number of companies wishing to scale up operations but increasingly feeling confined by the structures of the Companies Act 2006 and in particular, the obligation under that Act to have a registered agent in the Isle of Man at all times. A registered agent must hold a licence granted under the Financial Services Act 2008 which permits them to undertake the regulated activity of acting as a registered agent. The role of the registered agent is fulfilled by licensed corporate service providers. Failure to maintain a registered agent under the 2006 Act is an offence and can lead to the company being struck off the register.

Being able to convert a 2006 Act company to a 1931 Act company is seen as a sensible and flexible measure. It is important to emphasise that the Bill gives companies the option of converting from a 2006 Act company to a 1931 Act company, if they feel it is in their interests to do so. This negates the company having to externally appoint a registered agent. After all a 1931 Act company may already convert to a 2006 Act company, so this Bill will enable the reverse to happen. It boils down to flexibility and choice for a company which wishes to expand or adapt its business to use a legal structure which it feels best suits its needs.

The Bill introduces a straightforward administrative process that requires the agreement of members holding at least 75% of the voting rights of each class of share in issue to approve the re-registration. There is no requirement for debtors or creditors to agree to the change as it does not create a new legal entity, i.e. another company, or prejudice the continuity of the existing company wishing to re-register.

A company which will be a public company upon re-registration to the 1931 Act must meet additional requirements in relation to its balance sheet, share capital, and details of its company secretary or secretaries.

A private company is one that by its articles, prohibits any invitation to the public to subscribe to any shares or debentures of the company, or in the case of company to which Part 1 of the Companies Act 1986 applies, includes a statement in its memorandum of association that a company is a private company. A private company in most cases is owned by its founders and will very often have the same shareholders and company officers. Most small to medium-sized enterprises will be private companies.

A public company will be a larger-scale entity, which will raise capital from investors, trade shares more easily, and which may also be listed on a public stock exchange. There are extra requirements for public companies, including an obligation to file accounts with the Registry and

to have a professionally-qualified company secretary. This is why extra information is required for public companies applying for re-registration.

Companies incorporated under the Companies Act 2006 have a number of options for capital structures and governance which are not available under the Companies Act 1931. Any 2006 Act company considering switching to a 1931 Act company will need to ensure that it can be structured appropriately. A company structure, following re-registration, must comply with the provisions of the Companies Act 1931. There will be no exceptions for re-registered companies. For clarification, a 1931 company is a slightly different animal to a 2006 company and therefore has a slightly different registration and governance structure to it in regard to its memorandum and articles of association.

In regard to the second aspect of the Bill, this requires companies operating under the Companies Act 1931 and the Limited Liability Companies Act 1996 to maintain and make available a copy of the company's memorandum and articles of association or articles of organisation and other documents relating to the establishment and governance of the company at their registered office in the event any person who wishes to do so may inspect them, which is the whole point of the Moneyval requirements so that the process is completely transparent.

The international community, and specifically Moneyval in this case, feels this is important from the point of view, as I say, of transparency.

It also introduces a requirement for companies incorporated under the Companies Act 2006 to notify the Companies Registrar within one month of a change of directorship of the company. Currently, such changes are only required to be notified as part of the annual return. I mentioned the issues between one month in this Bill and 21 days in the Beneficial Ownership Bill we debated a short while ago, and so I do not propose to repeat what I said then.

In relation to the new requirement to notify the Registrar of a change of director, regard was had to the concerns of one or two in the industry about the perceived administrative burden and costs involved. Therefore it is not intended to commence clause 7 in the Bill by an Appointed Day Order until measures are in place with the Companies Registry, which will assist companies with the filing process, which as indicated was some way in response to the consultation responses we had. So in other words, Hon. Members, the enabling process is in place and we are able to demonstrate that to international organisations, and we can bring in by regulation the additional measures when we are ready.

Whilst the measures are proposed to involve digital means, it is not possible, at this time, to say precisely when these measures will be operational. Naturally, the Companies Registry will engage with the industry through a series of workshops as part of its modernisation project prior to the simplified filing system becoming operational and, indeed, prior to bringing clause 7 into operation. This represents a compromise between the concerns of industry and the need to demonstrate we are addressing the timeliness and accuracy of information relating to company directors.

Eaghtyrane, I beg to move that the Companies (Amendment) Bill 2020 be read for the first time.

The President: Mr Greenhill.

Mr Greenhill: Thank you, Mr President.
I beg to second and reserve my remarks.

The President: I put to Council the motion that the Companies (Amendment) Bill be read for the first time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.