

**3. Companies (Amendment) Bill 2020 –
Second Reading approved**

Mr Henderson to move:

That the Companies (Amendment) Bill 2020 be read a second time.

435 **The President:** I think for the sake of good order, if we could take Item 3 at this stage, the Companies (Amendment) Bill for Second Reading.

Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

440 Eaghtyrane, Olteynyn Onnoroil, I am pleased to present to Council the Companies (Amendment) Bill 2020 for Second Reading. I gave a very full speech at the First Reading of the Bill, which may be summarised for the purposes of this Second Reading as amending company law to enable companies registered under the Companies Act 2006 to convert to companies registered under the Companies Act 1931 and making a few other amendments to respond to
445 recommendations from the Moneyval Mutual Evaluation Report on the Island from 2016.

I am grateful to Mrs Poole-Wilson for her observations on this Bill, as she has found three areas that require amendments, which I am happy to accept, hopefully, to be proposed later on during the clauses stage; these being on points of accuracy and clarity which she has discerned and since worked with the AGCs to address and remedy at clauses 3 and 7.

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

The President: Lord Bishop.

The Lord Bishop: Thank you, Mr President. I beg to second and reserve my remarks.

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Mr Henderson: Eaghtyrane, I propose with your permission and that of Council –

The President: I will put the question first.

460 **Mr Henderson:** Sorry, Eaghtyrane – getting ahead of myself!

The President: I put the question that the Companies (Amendment) Bill 2020 be read for the second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

**Companies (Amendment) Bill 2020 –
Clauses considered**

Mr Henderson to move.

The President: Now, Mr Henderson.

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Mr Henderson: Thank you, Mr President, Eaghtyrane.
I propose with your permission and that of Council to move clauses 1 and 2 together.

The President: Is that agreed? (**Members:** Agreed.) Thank you.

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Mr Henderson: Clause 1 gives the Act its short title and clause 2 provides for the Act to be brought into operation by appointed day order.

Eaghtyrane, I beg to move that clauses 1 and 2 stand part of the Bill.

475 **The President:** Lord Bishop.

The Lord Bishop: Thank you, Mr President. I beg to second.

480 **The President:** I put the question that clauses 1 and 2 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 3.

Mr Henderson: Gura mie eu, Eaghtyrane.

485 Clause 3 amends the Companies Act 1931, the 1931 Act, as regards the registration process as follows. Subsection (2) substitutes subsections (2) to (4) of section 16A of the Companies Act 1931 to simplify the existing process for a 1931 Act company to deregister in order to re-register as a company operating under the Companies Act 2006, the 2006 Act. They remove the requirement for the company to provide a certificate of re-registration under the 2006 Act before deregistration under the 1931 Act, as the registrar will already know this information.

490 Subsection (3) makes provision for a company operating under the provisions of the 2006 Act to re-register under the 1931 Act by inserting new sections 16B to 16E into the 1931 Act. This is the opposite of what companies can do already, i.e. a 1931 company can register as a 2006 company, so we are going to allow 2006 Act companies, if they wish, to re-register to a 1931 Act company for commercial reasons.

495 New section 16B establishes the powers to re-register. A company is required to re-register as the same type of company it was registered as under the 2006 Act. Conditions are set for companies which will be public upon re-registration. These include an obligation to file accounts with the Registry and to have a professionally qualified company secretary. This is an agreement with the requirements that exist for a company that is already a 1931 Act company.

500 An application to re-register as a 1931 company may not be made unless notice has been given to the company's registered agent, whose role, we noted at First Reading, is fulfilled by a licensed corporate service provider. Notice to the registered agent is a means to ensure that, firstly, the registered agent is aware of the proposed action by the company and, secondly, to ensure that any outstanding matters between the company and the registered agent are completed prior to the ending of the relationship.

505 New section 16C sets out the application process, including the information and documents to accompany an application. These include: the proposed company name after registration; certified copies of a resolution passed by at least 75% of all voting Members; details of officers and members of the company on the date of the application; any outstanding filings and fees due under the 2006 Act.

510 The 2006 Act does not differentiate between public and private companies. Where a company will be a public one upon re-registration, the section requires a statement confirming that at the time of the resolution the nominal value of the company's allotted share capital was not less than the minimum subscription; in other words, the amount received per share was equal to or above the value of the share. For example, shares with a nominal value of £1 cannot be issued for an amount of less than £1. Shares can however be issued for more than their nominal value, i.e. on terms where a shareholder pays a premium and each of the company's allotted shares was paid up in full in cash. The company has prepared an audited and qualified – i.e. no issues – balance sheet, confirming the balance sheet has been fairly and appropriately prepared and in all material respects shows the financial position, results of operations and cash flows of the company in conformity with accepted accounting principles, as at a date not more than six months before the date on which the application is made, and there has been no change in the company's financial

525 position that results in the amount of its net assets becoming less than the aggregate of its called-up share capital and distributable reserves. So in other words, it is liquid and solvent upon re-registration. The company secretary or joint secretaries are appropriately qualified in accordance with the Companies Act 1982, holding recognised professional qualifications.

New section 16D specifies the action the Department will take when it re-registers a company under the 1931 Act.

530 New section 16E specifies the consequences of the re-registration and states that a re-registered company does not create a new legal entity, i.e. an individual company or organisation that has legal rights and obligations and does not prejudice or affect the continuation of the existing company. Following re-registration, there can be no claims of a new company being created and accordingly debts written off or contracts ended. The provision is common with the existing 1931 to 2006 Act re-registration event and also common where a company transfers its
535 domicile to or from the Isle of Man.

The new section also adds 'Statement of compliance to accompany application of public company for re-registration', this to the 10th Schedule of the Act. This refers to section 326 of the Companies Act 1931 where it is an offence to wilfully make a false statement in a statement of compliance.

540 Eaghtryane, I beg to move that clause 3 stand part of the Bill.

The President: Lord Bishop.

The Lord Bishop: Thank you, Mr President. I beg to second.

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The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

550 I would like to move the two amendments to clause 3 that are in my name. The first amendment is simply designed to clarify the fact that the list of provisions with which a company name should comply. So as originally drafted, the word 'of' wrongly suggested that the reference to section 2(1)(a) was to section 2(1)(a) of the Company and Business Names Act 2012, whereas in fact, it should be a reference to the Companies Act 1931. So the amendment corrects that and makes it clear.

555 The second amendment in my name to clause 3 simply corrects an incorrect cross-reference.

Amendment to clause 3

1. Page 8, line 37, for 'memorandum) of the', substitute «memorandum), the».

2. Page 10, line 34 for 'section 3', substitute «section 4».

The President: Thank you.

Mr Mercer.

Mr Mercer: Thank you, Mr President. I beg to second.

560 **The President:** Mr Henderson to reply.

Mr Henderson: Gura mie eu, Eaghtryane.

I thank Mrs Poole-Wilson for her contribution and for her assessment of this clause and for her observations. As I have indicated, myself and Treasury are happy to accept these in going forward.

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The President: Thank you.

I put first the two amendments in the name of Mrs Poole-Wilson. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

570 I put clause 3, as amended. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

Mr Henderson: Gura mie eu, Eaghtyrane.

575 Clause 4 inserts new section 151A into the Companies Act 2006 to permit a company incorporated under that Act to re-register as a company operating under the 1931 Act. It clarifies that once a company is re-registered, it must comply with the provisions of the 1931 to 2004 Acts as with all other 1931 Act companies. Any company re-registering must ensure it is structured in such a manner that it can operate under these provisions.

580 Eaghtyrane, I beg to move that clause 4 stand part of the Bill.

The President: Lord Bishop.

The Lord Bishop: Thank you, Mr President. I beg to second.

585 **The President:** I put clause 4. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

Mr Henderson: Gura mie eu, Eaghtyrane.

590 With your permission and that of Council I would propose that, if I could, move clauses 5 and 6 together.

The President: Is that agreed? (**Members:** Agreed.) Thank you.

595 **Mr Henderson:** Gura mie eu.

600 Clause 5 inserts a new section 11A into the Companies Act 1931, which imposes a requirement for companies operating under the provisions of that Act to maintain and make available for inspection by any person, whether that person is a lawyer acting on behalf of another business or an interested member of the public, at their registered office, a copy of the memorandum and articles. Subsection (2) substitutes section 12 of the 1931 Act to like effect.

Clause 6 amends the Limited Liability Companies Act 1996 by substituting section 4 and adding a new section 4A to require a limited liability company to maintain and make available for inspection at its registered office a copy of its articles of organisation and other documents.

605 Eaghtyrane, I beg to move that clauses 5 and 6 stand part of the Bill.

The President: Lord Bishop.

The Lord Bishop: Thank you, Mr President. I beg to second.

610 **The President:** I put clauses 5 and 6. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

Mr Henderson: Gura mie eu, Eaghtyrane.

615 Clause 7 amends the Companies Act 2006 and creates a new requirement through section 95(1A) and substituting section 204 for the appointment or change of directors to be notified to the Companies Registrar within one month of that appointment or change. This improves greatly upon the current requirements where such appointments or changes are only required to be notified as part of the annual return for 2006 Act companies. Consequently, as identified by

620 Moneyval, the director details held on the Companies Register for those companies could be up to one year out of date.

625 Clause 7 brings the requirements for 2006 companies in line with those required for 1931 Act companies. This clause will be brought into operation as soon as the procedure for making a notification within that timescale has been revised under the ongoing project to digitalise the Companies Registry to make it as simple, swift and smooth as possible. This will be undertaken following consultation with industry on timings for bringing this part in. The aim is not to create too much of an administrative burden for industry by having them manually complete and submit details on what may be a number of appointments and changes of directors made in the previous 12 months. It also avoids a similar administrative burden in the Companies Registry, as they will not have to process the details and forms manually.

630 Eaghtyrane, I beg to move that clause 7 stand part of the Bill.

The President: Lord Bishop.

635 **The Lord Bishop:** Thank you, Mr President. I beg to second.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

640 I would like to move the amendment to clause 7 in my name, which is simply to replace the word 'substitute' with 'insert', and this is to make clear that the new wording should appear in addition to the existing wording rather than replace any wording.

Thank you, Mr President.

Amendment to clause 7

3. Page 16, line 32, for 'substitute', substitute «insert».

The President: Mr Mercer.

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Mr Mercer: Thank you, Mr President. I beg to second.

The President: Mr Henderson.

650 **Mr Henderson:** Gura mie eu, Eaghtyrane.

Again, I thank Mrs Poole-Wilson for her examination of this and this particular section. Happy to accept the amendments, Eaghtyrane, and likewise, the Department and the AGCs.

655 **The President:** I put the amendment in the name of Mrs Poole-Wilson. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

I put clause 7, as amended. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Finally, clause 8, Mr Henderson.

660 **Mr Henderson:** Gura mie eu, Eaghtyrane.

Clause 8 makes consequential changes to the Companies and Business Names etc Act 2012 to allow for company name changes arising from re-registrations but not for companies to form a new and different company as outlined in the above clauses.

Eaghtyrane, I beg to move that clause 8 do stand part of the Bill.

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The President: Lord Bishop.

The Lord Bishop: Thank you, Mr President. I beg to second.

670 **The President:** I put clause 8. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Thank you very much. That concludes consideration of the Companies (Amendment) Bill.