

An update on the Companies (Amendment) Bill 2020.

On 15 June 2021 the Companies (Amendment) Act 2021 (the “**Act**”) received Royal Assent. The purpose of the Act is to address two primary issues:

1. First, whilst it is presently possible to re-register a company subject to the Companies Acts 1931-2004 (the “**1931-2004 Acts**”) as a company subject to the Companies Act 2006 (the “**2006 Act**”), there are currently no reciprocal provisions allowing a company subject to the 2006 Act (“**2006 Act Companies**”) to re-register as a company subject to the 1931-2004 Acts. It was noted in both the explanatory notes to the Act and by the member in charge of the Act, Mr Bill Shimmins MHK, in his presentation to the House of Keys that a number of 2006 Act Companies were feeling confined by the provisions of the 2006 Act, in particular the requirement to engage the services of an Isle of Man Registered Agent required to ensure a company complies with all relevant legal and other obligations, as they believe they have the relevant knowledge and experience in-house to comply with those requirements.
2. Secondly, the Act serves to address certain issues identified by MONEYVAL in its Fifth Round Mutual Evaluation Report, including, amongst other things, the present non-requirement for 2006 Act Companies to notify the Companies Registrar of changes to directors (which is in contrast to the requirements of the Companies Act 1931 which contains such a requirement).

Summary of the provisions of the Act

As indicated by its title, the Act itself is an amending statute which serves to amend the provisions of other primary legislation. Section 2 of the Act provides that, save for section 1 of the Act (being the short title), the Act comes into operation on such day or days as the Treasury may by order appoint. At the time of writing, the Treasury has not issued any appointed day orders under Section 2 of the Act.

When effected:

- **Section 3 of the Act** will serve to amend the Companies Act 1931 (the “**1931 Act**”), amongst other things, to insert provisions into the 1931 Act in order to enable companies subject to the 2006 Act to re-register as companies subject to the 1931-2004 Acts. Section 3(3) of the Act will insert new sections (16B to 16E) into the 1931 Act which will set out the steps required for a 2006 Act Company to re-register as a company subject to the 1931-2004 Acts. New Section 16B of the 1931 Act will set out the manner in which a 2006 Act Company may apply to re-register and new Section 16C will set out the application process which will require that all applicants provide the following:
 - a) details of the proposed name of the applicant after re-registration;
 - b) certified copies of the resolutions passed by at least 75% of members (of all classes) authorising the re-registration and adopting a new memorandum and articles of association which comply with the 1931-2004 Acts;
 - c) details of all of the officers and members of the applicant;
 - d) the registered office of the applicant; and
 - e) any outstanding filings and fees due.

- Section 16C(g) of the 1931 Act will set out additional conditions for 2006 Act Companies looking to re-register as public companies under the 1931 Act requiring:
 - a) the nominal value of the share capital of the applicant to be not less than the minimum subscription;
 - b) each of the applicant's allotted shares to be paid up in full;
 - c) the submission of an unqualified balance sheet; and
 - d) the submission of particulars of the company secretary or joint secretaries of the applicant when the applicant re-registers.
 - Section 16D of the 1931 Act will provide for the actions that the Companies Registry will take when re-registering a company and new Section 16E will specify the consequences of re-registration. Section 16E will, importantly, confirm that re-registration will not be deemed to operate:
 - a) to create a new legal entity; or
 - b) to prejudice or affect the continuity of the company.
 - **Section 4 of the Act** will insert various provisions into the 2006 Act to facilitate the re-registration of a 2006 Act Company as a company subject to the 1931-2004 Acts.
 - **Sections 5 and 6** of the Act will amend the 1931 Act and the Limited Liability Companies Act 1996 so as to require companies to maintain certain documents (including constitutional documents) at their registered office and for such documents to be available for inspection.
 - **Section 7 of the Act** will insert a new sub-section 1A after Section 95(1) of the 2006 Act so as to require notification to the Registrar of Companies of the appointment of the first directors of a company within one month of appointment and to substitute Section 204 of the 2006 Act so as to add a requirement for a company to notify the Registrar of Companies of any subsequent changes to its directors within one month of appointment. It is understood that it is not intended to bring Section 7 of the Act into force until the administrative procedures within the Companies Registry are refined so that notifications can be made in as smooth and efficient a manner as possible.
 - **Section 8 of the Act** will make certain consequential changes to the Companies and Business Names etc Act 2012 to allow for company name changes arising from re-registrations of 2006 Act Companies as companies subject to the 1931-2004 Acts.
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