



Isle of Man

Ellan Vannin

AT 10 of 2012

**COMPANY AND BUSINESS NAMES ETC
ACT 2012**



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**Isle of Man***Ellan Vannin*

COMPANY AND BUSINESS NAMES ETC ACT 2012

Signed in Tynwald: 11 December 2012
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AN ACT to make provision about the names of certain bodies and businesses; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1 – INTRODUCTORY

1 Short title

The short title of this Act is the Company and Business Names etc Act 2012.

2 Commencement

- (1) This Act (other than section 1 and this section) comes into operation on the day appointed by the Treasury and different days may be appointed for different provisions and different purposes.¹
- (2) An order under subsection (1) may make transitional and saving provisions which the Treasury considers necessary or expedient.

3 Interpretation

- (1) In this Act —

“**appropriate name approval authority**” means —

- (a) in the case of a person in respect of which this Act applies specified in section 4(1)(a), (c), (e), (f) and (g), the Department of Economic Development;

- (b) in the case of a person in respect of which this Act applies specified in section 4(1)(b), the Registrar of Companies appointed under section 205 of the *Companies Act 2006*¹;
- (c) in the case of a person in respect of which this Act applies specified in section 4(1)(d), the Registrar of Foundations appointed under section 46 of the *Foundations Act 2011*²;

“**person in respect of which this Act applies**” has the meaning given by section 4(1);

“**prescribed**” means prescribed by regulations made under section 12.

- (2) The Treasury may by order amend the definition of “appropriate name approval authority” in subsection (1).
- (3) An order under subsection (2) may not come into operation unless it is approved by Tynwald.

4 Persons in respect of which this Act applies

- (1) This Act applies to the following (each a “**person in respect of which this Act applies**”) —
 - (a) a company to which the Companies Acts 1931 to 2004 apply, including —
 - (i) a company within the meaning of the *Companies Act 1931*³;
 - (ii) an existing company within the meaning of the *Companies Act 1931*;
 - (iii) [Repealed];²
 - (iv) a protected cell company within the meaning of the *Protected Cell Companies Act 2004*⁴;
 - (v) an incorporated cell company within the meaning of the *Incorporated Cell Companies Act 2010*⁵ to which the Companies Acts 1931 to 2004 apply;
 - (vi) an incorporated cell within the meaning of the *Incorporated Cell Companies Act 2010* to which the Companies Acts 1931 to 2004 apply; and
 - (vii) a company continued in the Island under Part 1 of the *Companies (Transfer of Domicile) Act 1998*⁶;
 - (b) a company to which the *Companies Act 2006* applies, including —

¹ c.13

² c.17

³ XIII p.235

⁴ c.1

⁵ c.13

⁶ c.6

- (i) a company within the meaning of the *Companies Act 2006*;
 - (ii) a protected cell company within the meaning of the *Companies Act 2006*;
 - (iii) an incorporated cell company within the meaning of the *Incorporated Cell Companies Act 2010* to which the *Companies Act 2006* applies;
 - (iv) an incorporated cell within the meaning of the *Incorporated Cell Companies Act 2010* to which the *Companies Act 2006* applies;
- (c) a limited liability company to which the *Limited Liability Companies Act 1996*⁷ applies;
 - (d) a foundation to which the *Foundations Act 2011* applies;
 - (e) a limited partnership to which Part II of the *Partnership Act 1909*⁸ applies;
 - (f) a society to which the Industrial and Building Societies Acts 1892 to 1955 apply;
 - (g) a firm or person required to be registered under the Registration of Business Names Acts 1918⁹ and 1954¹⁰;
 - (h) a foreign company to which the *Foreign Companies Act 2014* applies.³
- (2) The Treasury may by order amend subsection (1) to add persons to or remove persons from the list of persons in respect of which this Act applies.
 - (3) An order under subsection (2) may not come into operation unless it is approved by Tynwald.

5 When name approval is required

- (1) Subsection (3) applies if an application specified in subsection (2) is made concerning a person in respect of which this Act applies (or who will be or become a person in respect of which this Act applies, if the application specified in subsection (2) is successful).
- (2) The applications referred to in subsection (1) are —
 - (a) an application to register a company to which the Companies Acts 1931 to 2004 apply by a name on —
 - (i) formation as an incorporated company under those Acts;
 - (ii) re-registration under section 16 of the *Companies Act 1931*;

⁷ c.19

⁸ VIII p.327

⁹ X p.279

¹⁰ XVIII p.373

- (iii) reconstruction or amalgamation under section 153 of the *Companies Act 1931*;
 - (iv) takeover or merger under section 154A of the *Companies Act 1931*;
 - (v) [Repealed];⁴
 - (vi) change of name under the *Companies Act 1931*;
 - (vii) continuation under Part 1 of the *Companies (Transfer of Domicile) Act 1998*;
 - (viii) incorporation as a protected cell company in accordance with the *Protected Cell Companies Act 2004*;
 - (ix) incorporation as an incorporated cell company in accordance with the *Incorporated Cell Companies Act 2010*;
 - (x) incorporation as an incorporated cell in accordance with the *Incorporated Cell Companies Act 2010*;
- (b) an application to register a company to which the *Companies Act 2006* applies under a name on —
- (i) incorporation as a company under that Act;
 - (ii) incorporation as a protected cell company under Part VII of that Act;
 - (iii) re-registration under Part IX of that Act;
 - (iv) merger under Part X of that Act;
 - (v) consolidation under Part X of that Act;
 - (vi) continuation under Part XI of that Act;
 - (vii) change of name under that Act;
 - (viii) incorporation as an incorporated cell company in accordance with the *Incorporated Cell Companies Act 2010*;
 - (ix) incorporation as an incorporated cell in accordance with the *Incorporated Cell Companies Act 2010*;
- (c) an application to register a limited liability company to which the *Limited Liability Companies Act 1996* applies by a name on —
- (i) formation under that Act;
 - (ii) change of name under that Act;
- (d) an application to register a foundation to which the *Foundations Act 2011* applies with a name on —
- (i) establishment under that Act;
 - (ii) change of name under that Act;
- (e) an application to register a limited partnership to which Part II of the *Partnership Act 1909* applies by a name on —
- (i) registration under that Act;

- (ii) change of name under that Act;
 - (f) an application to register a society to which the Industrial and Building Societies Acts 1892 to 1955 apply under a name on —
 - (i) registration under those Acts;
 - (ii) change of name under those Acts;
 - (g) an application to register the business name of a firm or person to which the Registration of Business Names Acts 1918 and 1954 apply on —
 - (i) registration under those Acts;
 - (ii) change of name under those Acts;
 - (h) an application —
 - (i) to register a foreign company under the Foreign Companies Act 2014; or
 - (ii) to change the name under a which a foreign company is registered under that Act.⁵
- (3) In connection with an application referred to in subsection (1), a person in respect of which this Act applies may not be registered by, under or with a name which has not been approved under this Act.
- (4) Accordingly, an application referred to in subsection (1) must include, or be accompanied by, an application for name approval under section 6.

6 Application for name approval

- (1) When an application for name approval is required to be made, it must be made to the appropriate name approval authority.
- (2) An application under subsection (1) —
- (a) is to be made by the person required by the appropriate name approval authority;
 - (b) is to be in such form as is required by the appropriate name approval authority; and
 - (c) must be accompanied by —
 - (i) such documents and information as the appropriate name approval authority requires; and
 - (ii) the prescribed fee.
- (3) A fee paid under subsection (2) is non-refundable, regardless as to whether or not the name is approved.
- (4) Subsections (5) and (6) apply only in respect of companies which are required to be registered in the Island under the *Foreign Companies Act 2014*.⁶

- (5) The first application under subsection (1) in respect of the company must be for approval of the name under which the company is registered in its jurisdiction of incorporation.
- (6) However, if the application is refused under section 7, further application may be made for approval of a name which is different to the name under which the company is registered in its jurisdiction of incorporation.

7 Name approval

- (1) In relation to an application under section 6, the appropriate name approval authority must —
 - (a) approve the name, without conditions;
 - (b) approve the name, subject to conditions; or
 - (c) refuse the application.
- (2) The appropriate name approval authority must refuse to approve a name which contravenes this section.
- (3) A name contravenes this section if —
 - (a) its use would contravene an enactment;
 - (b) it is identical to the name under which another person in respect of which this Act applies is registered;
 - (c) it is so similar to the name under which another person in respect of which this Act applies is registered that its use would, in the opinion of the appropriate name approval authority, be likely to confuse or mislead;
 - (d) it is identical to name that has been reserved under section 10;
 - (e) it is so similar to the name that has been reserved under section 10 that the use of both names would, in the opinion of the appropriate name approval authority, be likely to confuse or mislead;
 - (f) it contains a restricted word or phrase, unless the appropriate name approval authority has given prior written consent to the use of the word or phrase following consultation with each person specified in regulations made under section 12(2)(e) as being a consultee in respect of the word or phrase; or
 - (g) the appropriate name approval authority considers that the name is undesirable.
- (4) Despite subsection (3)(f), the appropriate name approval authority may not give consent if, following the consultation, it considers that in all the circumstances the name is undesirable.
- (5) The appropriate name approval authority must —

- (a) give written notice to the applicant of any decision under subsection (1) to —
 - (i) attach conditions to its approval of the name; or
 - (ii) refuse the application; and
 - (b) provide the applicant with a statement of the reasons for the decision.
- (6) Subsection (7) applies if, during a consultation in accordance with subsection (3)(f), a consultee is of the view that the name gives or may give a misleading indication of the nature of the activities, or proposed or expected activities, of the person in respect of which this Act applies.
- (7) If an appropriate name approval authority approves a name which contains a restricted word or phrase in the circumstances described in subsection (6), the authority must —
- (a) enter the name on a list, maintained by the authority, of persons in respect of which this Act applies whose names contain restricted words or phrases which give or may give a misleading indication of the nature of their activities;
 - (b) make the list available for inspection by the public free of charge in such manner as the authority determines; and
 - (c) supply a copy of the list (or an entry on it) to a person requesting it, upon receiving payment of the prescribed fee.
- (8) In subsection (3)(f), “restricted word or phrase” means a word or phrase specified as such in regulations made under section 12(2)(b).
- (9) In subsection (3)(g), “undesirable” means misleading, offensive, inappropriate or in any way likely to be harmful to the public.

8 Alteration of conditions

- (1) The appropriate name approval authority may at any time —
- (a) attach conditions or, as the case requires, further conditions to its approval of a name under section 7; or
 - (b) vary or revoke any such condition.
- (2) The appropriate name approval authority must —
- (a) give written notice to the person in respect of which this Act applies of any decision to vary or revoke a condition under subsection (1); and
 - (b) provide the person with a statement of the reasons for the decision.

9 Change of name by direction

- (1) An appropriate name approval authority may at any time make a direction under subsection (2) if the authority considers, on reasonable grounds, that the name of a person in respect of which this Act applies contravenes —
 - (a) section 7(3); or
 - (b) another statutory provision.
- (2) The appropriate name approval authority may by written notice direct that application be made to change its name to a name acceptable to the appropriate name approval authority on or before a date specified in the notice, which must be not less than 21 days after the date of the notice.
- (3) A direction under subsection (2) must state the reasons for the direction.
- (4) An application to change the name on or before the date specified in the notice must include, or be accompanied by, an application for name approval under section 6.
- (5) If no such application is made, the appropriate name approval authority may revoke the name and assign a new name acceptable to the appropriate name approval authority.
- (6) If the appropriate name approval authority assigns a new name under subsection (5), the appropriate name approval authority must —
 - (a) register the change of name; and
 - (b) issue a certificate of change of name to the person in respect of which this Act applies.
- (7) A change of the name under this section —
 - (a) takes effect from the date of the certificate of change of name;
 - (b) does not affect any rights or obligations of the person in respect of which this Act applies, or any legal proceedings by or against the person, and any legal proceedings that have been commenced against the person under a former name may be continued under the new name;
 - (c) unless a statutory provision elsewhere provides otherwise, is not to be regarded as an amendment to the constitutional documents of the person; and
 - (d) has effect whether or not the name of the person could otherwise be changed but for this section.
- (8) In subsection (7)(c), “constitutional documents” includes —
 - (a) a company’s memorandum and articles of association;
 - (b) a limited liability company’s articles of organisation;
 - (c) a limited partnership’s partnership deed;
 - (d) a foundation’s foundation instrument or foundation rules;

- (e) documents and records analogous to those mentioned in paragraphs (a) to (d).
- (9) The Treasury may by order amend subsection (8) to add documents to or remove documents from the list of constitutional documents.
- (10) An order under subsection (9) may not come into operation unless it is approved by Tynwald.

10 Application to reserve name

- (1) This section applies if —
 - (a) a person is considering incorporating, forming or otherwise establishing (or intends to incorporate, form or otherwise establish) a person who, upon such incorporation, formation or establishment, would be a person in respect of which this Act applies; or
 - (b) a person in respect of which this Act applies is considering or intends to change the person's name.
- (2) An application may be made to the appropriate name approval authority to reserve a name for future adoption by the person in respect of which this Act applies.
- (3) An application under subsection (2) —
 - (a) is to be made by the person required by the appropriate name approval authority;
 - (b) is to be in such form as is required by the appropriate name approval authority; and
 - (c) must be accompanied by —
 - (i) such documents and information as the appropriate name approval authority requires; and
 - (ii) the prescribed fee.
- (4) A fee paid under subsection (3)(c)(ii) is non-refundable, regardless as to whether or not the name is reserved.
- (5) The appropriate name approval authority must either reserve the name or refuse to reserve it.
- (6) The appropriate name approval authority must refuse to reserve a name if the appropriate name approval authority considers that the name would contravene section 7(3) in the event that an application under section 6 were made.
- (7) If the name contains a restricted word or phrase (see section 7(8)), the appropriate name approval authority must consult in the manner required by section 7(3)(f).
- (8) The appropriate name approval authority must —

- (a) give written notice to the applicant of any decision under subsection (5) to refuse the application; and
 - (b) provide the applicant with a statement of the reasons for the decision.
- (9) Reservation under this section is for a period of 3 months.
- (10) However, further applications under subsection (2) may be made to reserve the name for further periods of 3 months.
- (11) Reservation under this section does not affect the powers of the appropriate name approval authority under sections 6 to 8.
- (12) In particular, the appropriate name approval authority may attach conditions to its approval of a name at the time application is made under section 6 or at any time after that.

11 Appeals

- (1) A person specified in subsection (2) may appeal to the High Court, in accordance with rules of court, in the circumstances specified in subsection (3).
- (2) The persons are —
- (a) a person who has made an application under section 6;
 - (b) a person who has made an application under section 10;
 - (c) a person in respect of which this Act applies.
- (3) The circumstances are that the person is aggrieved by a decision of the appropriate name approval authority to —
- (a) approve the name subject to conditions (see section 7(1)(b));
 - (b) refuse to approve the name (see section 7(1)(c));
 - (c) make a name approval subject to conditions or further conditions (see section 8(1)(a)); or
 - (d) vary or revoke a condition (see section 8(1)(b));
 - (e) make a direction to change name (see section 9(2));
 - (f) assign a new name (see section 9(5)); or
 - (g) refuse to reserve a name (see section 10(5)).
- (4) On the determination of the appeal the Court must confirm, vary or revoke the decision in question.
- (5) The variation or revocation of a decision does not affect the previous operation of that decision or anything duly done or suffered under it.
- (6) A decision of the Court on an appeal under this section is binding on the appropriate name approval authority and the appellant.
- (7) The Treasury may by order amend subsections (2) and (3) to —

- (a) add persons to or remove persons from the list of persons in subsection (2); or
 - (b) add circumstances to or remove circumstances from the list of circumstances in subsection (3).
- (8) An order under subsection (7) may not come into operation unless it is approved by Tynwald.

12 Regulations

- (1) The Treasury may make regulations about the operation of any provision of this Act.
- (2) Without limiting subsection (1), the regulations may —
- (a) specify persons who may make applications under sections 6 and 10;
 - (b) specify restricted words and phrases for the purposes of section 7(3)(f);
 - (c) prescribe fees for the purposes of sections 6, 7 and 10;
 - (d) specify times when applications under sections 6 and 10 are to be made and determined;
 - (e) specify persons as consultees for the purposes of section 7(3)(f);
 - (f) modify a provision of an enactment which is inconsistent with a provision of this Act, or which is unnecessary or requires modification as a consequence of a provision of this Act;
 - (g) permit a person to exercise a discretion in dealing with any matter;
 - (h) exempt a person (or class or persons) from any of the provisions of this Act;
 - (i) modify the application of this Act in respect of a person (or class or persons);
 - (j) make incidental, supplemental, consequential, transitional or saving provisions.
- (3) Regulations must be laid before Tynwald as soon as practicable after they are made if the regulations do no more than —
- (a) specify restricted words and phrases for the purposes of section 7(3)(f); or
 - (b) prescribe fees for the purposes of sections 6, 7 and 10.
- (4) Other regulations under this section may not come into operation unless they are approved by Tynwald.

- (5) Nothing in this section limits the application of section 26 of the *Interpretation Act 1976*¹¹.

13 Amendments

- (1) The amendments to the enactments specified in the Schedule have effect.
- (2) This section and the Schedule are automatically repealed —
- (a) on the day after the promulgation of this Act; or⁷
 - (b) if all the provisions of this Act are not in operation on its promulgation, on the day after the last provision is brought into operation.
- (3) However, the repeal does not affect the continuing operation of any amendments to enactments made by this section and the Schedule.

14 Savings

- (1) This Act is additional to and its provisions do not derogate from provisions contained in other enactments pertaining to the names of persons in respect of which this Act applies.
- (2) This Act applies in relation to applications referred to in section 5(1) occurring after section 5 comes into operation.
- (3) However, sections 8 and 9 also have effect in respect of the names of persons in respect of which this Act applies which were approved prior to the commencement of those sections.

¹¹ c.20

SCHEDULE

[Section 13]

AMENDMENT OF ENACTMENTS

[Schedule amended the following Acts —

Industrial and Building Societies Act 1892

Partnership Act 1909

Registration of Business Names Act 1918

Companies Act 1931

Industrial and Building Societies (Amendment) Act 1955

Limited Liability Companies Act 1996

Companies Act 2006

Foundations Act 2011.]

ENDNOTES

Table of Endnote References

- ¹ ADO remaining provisions 01/09/13 [SD175/13].
- ² Subpara (iii) repealed by Foreign Companies Act 2014 Sch.
- ³ Para (h) inserted by Foreign Companies Act 2014 Sch.
- ⁴ Para (v) repealed by Foreign Companies Act 2014 Sch.
- ⁵ Para (h) inserted by Foreign Companies Act 2014 Sch.
- ⁶ Subs (4) amended by Foreign Companies Act 2014 Sch.
- ⁷ Act promulgated 5 July 2013.