

**Article on the Companies etc (Amendment) Bill for Global Assets
(January 2003)**

The Isle of Man proposes to introduce changes to its company law and related legislation in the Companies, etc (Amendment) Bill, which is likely to be introduced for consideration by Tynwald (the Island's parliament) in the first half of 2003.

One significant change to be made to the Companies Acts 1931 to 1993 arises from heightened international awareness of the threats of terrorism as well as concerted international efforts to prevent criminal activity. Bearer shares have been a focus of concern insofar as the identity of their holders is not publicly disclosed and therefore, to increase transparency, an Isle of Man company's power to issue share warrants to bearer will be removed. However, warrants already in issue will remain valid but must be converted into registered shares in order to exercise any attached rights.

Issues of good corporate governance are very much to the fore in the wake of the Enron scandal. The recent publication in the UK of the Higgs' report continues the review of the management of listed companies and the role of non-executive directors. The Bill, developed by the Island's Financial Supervision Commission in consultation with the private sector, addresses issues of good corporate governance, an area of prime importance to a well-regulated jurisdiction. The Bill goes hand in hand with the Island's successful introduction in 2000 of a licensing regime for corporate service providers (''CSPs''), who are responsible for the majority of the companies incorporated in the Isle of Man. The provision extending the list of prescribed qualifications in respect of acting as the secretary of an exempt company or of an international company to include licensed CSPs, acknowledges the important contribution regulation makes to promoting high standards of good corporate governance.

When the Companies Registry moved to its new, modern premises in 2002, the public area was equipped with computers to enable users to search company records on-line in the Registry. This facility, which is both popular and successful, will be extended in early 2003 to allow users access to company records from their own off-site terminals. In due course, users will also be able to file documents remotely and a full company incorporation service will be available on-line. To facilitate this future development of the Companies Registry's services, the Bill widens the power to prescribe forms with particular reference to the form of electronic submissions.

The Companies Registry's remit is to provide an efficient service to the public, which includes ensuring that the quality of the information held on public record meet the statutory disclosure requirements. The Bill addresses concerns that such information might be out-of-date by, for example, introducing an obligation for a foreign company registered to carry on business in the Island to file an annual declaration, the purpose of which is to confirm the currency of the information held.

To encourage CSPs to follow the appropriate statutory procedure for dissolving solvent companies (rather than simply to allow the companies for which they are responsible to default on their statutory obligations as such bad practice would make the

information held on public record out-of-date), the Bill amends the statutory procedure so that most of the cost burden in respect of advertising the intention to dissolve a company will in future fall to the Financial Supervision Commission rather than, as currently, on the company, or the CSP itself.

In summary the more significant changes to be made by the Bill are

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Companies Act 1931

- Prohibition on future issue of share warrants to bearer as described above.
- The Financial Supervision Commission may attach conditions to the use of certain company names and issue guidance in respect of the criteria it will apply in determining whether a name is undesirable.
- Instead of having to have on display and keep up to date a complete list of all companies using that address as their registered office, CSPs may display a notice stating that the names are available for inspection on request .
- All companies limited by guarantee (with or without a share capital) will be required to state in their annual returns, the number of guarantee members and the total amount guaranteed.
- The particulars to be included on the register of a company's directors and secretaries will no longer require their nationality (if not British) and business occupation, however, —their date of birth must be included. These changes also apply to the company's annual return.
- Clarification that, for the purposes of disclosure of information, "official documents" include communications sent electronically.
- The procedure for the dissolution of a solvent company is amended so that the company, having first notified each of its directors, secretary and members of its intention to apply, need only confirm before making the application for dissolution that the particulars held on the public record are up-to-date. The Financial Supervision Commission will then be responsible for advertising the proposed dissolution by notice on its website and in one local newspaper. The Commission will also be responsible for checking if the Assessor of Income Tax, the Collector of Customs and Excise or the Attorney General has any objection.
- Power for Treasury to prescribe the activities of a foreign company that shall be deemed to have established a place of business in the Isle of Man for the purpose of registration.
- A foreign company registered in the Island will be required to submit an annual declaration confirming that the particulars contained on its public record are correct and up to date.

Companies Act 1974

- The definition of "substantial interest" in the shares of a public company has been reduced from 10 to 3 per cent.

Companies Act 1992

- The Financial Supervision Commission will be required to keep a public register of persons who are disqualified in the Isle of Man courts from acting as directors of companies.

In addition, subordinate legislation will amend the annual returns of Isle of Man companies to show whether the company has complied with its obligations to prepare and audit its accounts as required by Isle of Man law.

The full text of the Bill can be viewed on the Financial Supervision Commission's website <http://www.fsc.gov.im> (Publications, Forms and Documents /Consultative Documents).

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