



CONSULTATION

Companies and Business Names (Restricted Words and Phrases) Regulations 2013

1 May 2013

Issued by:
The Treasury
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The 2008 IMF visit confirmed that there were no express problems with the Isle of Man's regime surrounding company names. One comment was however made in respect of the lack of regulation surrounding the use of the words "bank" and "banking". The IMF made the recommendation that terms, such as bank and banking, should be set out in legislation.

The detailed commentary by the IMF, and the rationale for making the changes is set out in **Section 1** below.

Proposed solutions to recommendations of organisations such as the IMF are always pursued with the dual objectives of addressing recommendations, while minimising the effects felt by the Isle of Man, its business community and its residents.

The recommendation of the IMF provided the opportunity to review the existing regime and update the existing "Guidance Notes - Choosing Your Company or Business Name" ("the Guidance Notes").

The Treasury is inviting comments on the draft Companies and Business Names (Restricted Words and Phrases) Regulations 2013. The Companies and Business Names etc Act 2012 is intended only as a supporting document only and is included for ease of reference.

The Guidance Notes will be revised in due course and it is intended that they will sit alongside the proposed new Regulations. It is not intended that the revisions made to the Guidance Notes will significantly change the substance of the guidance itself. The most fundamental change will see the lists of restricted words and phrases moved into the proposed draft Regulations.

This document aims to provide stakeholders with background information on the reasons for the re-statement of the current position.

The draft Regulations and supporting documents (for information purposes only) can be found at the following link:

Please note that submission of a response will not automatically result in a change being made to the draft Regulations.

A summary of the responses received will be posted on the Companies Registry website at <http://www.gov.im/ded/companies/allnews.gov> and on the Treasury website at <http://www.gov.im/treasury/consultations.gov>.

Respondents must please provide contact details with their submissions. Please note that the summary document will not contain sufficient information to permit identification of respondents. However, anonymous submissions will be disregarded.

Responses should be sent in writing or by email to:

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Please ensure that comments are received by no later than Friday 31 May 2013.

SECTION 1

1. Background

1.1 The Report issued by the IMF in 2009 did not comment generally on the Isle of Man's regime that is currently in place in respect of names of bodies corporate and unincorporate. One comment was however made in respect of the lack of regulation surrounding the use of the word "bank" or "banking". The IMF's recommendation was that terms, such as "bank" and "banking", should be set out in legislation.

1.2 The IMF's full comment (on the IOM's compliance with Basel Core Principle 2) follows:

"To be strictly compliant with the essential criteria, use of the term "bank" should be expressly limited to licensed and supervised entities, and banking activities should be defined clearly in legislation or regulation. The protection of the term "bank" is a matter of consumer protection..... Use of any terms which indicate – or which may be reasonably understood to indicate- that a person is a "bank" or "banker" or is "carrying on banking business" should be restricted to appropriately licensed entities, unless expressly authorised by the FSC¹. It may be sufficient to set out in regulation that only licensed deposit takers may use the term "bank" and derivations in a name connected to financial services".

1.3 The recommendation of the IMF presented the IOM with the opportunity to review the existing regime in respect of "name approvals" set out across the various Acts that are subject to the name approvals process.

1.4 The relevant Acts are:

- Companies Act 1931
- Companies Act 2006
- Registration of Business Names Acts 1918 & 1954
- Partnership Act 1909
- LLC Act 1996
- Industrial and Building Societies (Amendment) Act 1892
- Industrial and Building Societies (Amendment) Act 1955
- Section 313A/Part XI of 1931 Act Regulation of Oversea Companies In Respect Of Their Names
- Foundations Act 2011

1.5 The general provisions that govern the use of names and phrases under these Acts have been consolidated and appear in the Companies and Business Names etc Act 2012.

1.6 It is acknowledged that replacing the lists contained within the Guidance Notes is likely to decrease flexibility currently afforded to the IOM.

¹ The IMF report was issued prior to the Transfer of Functions (No. 2) Order 2010 which transferred the Companies Registry from the FSC to the Department of Economic Development and direct responsibility for the companies legislation to the Treasury.

1.7 Secondary legislation (such as Regulations and Orders) is far quicker to implement than primary legislation (Acts). It is for this reason that it was felt to be appropriate to set out the lists of restricted words and phrases in the Companies and Business Names (Restricted Words and Phrases) Regulations 2013 ("the Regulations") rather than in the Act itself.

2. Overview of the changes

2.1 A change to the primary legislation was required in order to ensure that the IOM was able to implement the recommendation of the IMF. This was achieved in the Companies, Bodies and Business (Names) Act 2012, which received Royal Assent in December 2012.

2.2 At its most basic level, the changes that have occurred see the list of restricted words and phrases, that are currently set out in the Guidance Notes, now set out in the draft Regulations.

2.3 For the most part, this is little more than a separation of one document into two documents.

2.4 The new Act and Regulations will have little practical impact on those seeking to use a particular name for a company (or similar). There is also little room for negotiation if the recommendation of the IMF is to be met.

2.4 Two entries have been removed from the list contained within the Regulations:

- Management
- Management services.

2.5 There are five additions to the list of restricted words and phrases. These have been included to consider the relatively new regulated activity of money transmission services (under Class 8, Schedule 1 of the Regulated Activities Order 2011). The additions are:

- Bureau(x) de change
- Payment services
- Cheque clearing
- E-money
- Electronic money

2.6 No other words or phrases have been added to the list of restricted words and phrases that appear in the Regulations.