



Isle of Man

Ellan Vannin

AT 3 of 2014

FOREIGN COMPANIES ACT 2014



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**Isle of Man***Ellan Vannin*

FOREIGN COMPANIES ACT 2014

Signed in Tynwald: 18 March 2014
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AN ACT to require certain foreign companies and other bodies with legal personality to register in the Island; 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 – OPENING PROVISIONS

1 Short title

The short title of this Act is the Foreign Companies Act 2014.

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

In this Act —

“**approved form**” has the meaning given by section 22;

“**Department**” means the Department for Enterprise;²

“**foreign company**” has the meaning given by section 4;

“**incorporated**”, in respect of a foreign company, includes formed, registered or otherwise established (and “**incorporation**” is to be construed accordingly);

“**prescribed fee**” means the fee prescribed by order made under section 23;

“**publish**” means to publish in a manner likely to bring it to the attention of those affected by or interested in the publication;

“**register**”, as a noun, means the register of foreign companies maintained by the Department in accordance with section 6;

“**register**”, as a verb in relation to an act done by the Department, means to retain (where appropriate) and register in the register of foreign companies;

“**regulations**” means regulations made under section 21.

4 Meaning of foreign company

- (1) In this Act, “**foreign company**” means a person (by whatever name called) which —
 - (a) has legal personality but is not an individual; and
 - (b) is incorporated under the laws of a jurisdiction outside the Island.
- (2) Without limiting subsection (1), each of the following persons would be a foreign company if the person were incorporated under the laws of a jurisdiction outside the Island —
 - (a) a company within the meaning of the *Companies Act 1931*;
 - (b) a company to which the *Companies Act 2006* applies;
 - (c) a protected cell company within the meaning of the *Protected Cell Companies Act 2004* or the *Companies Act 2006*;
 - (d) an incorporated cell company within the meaning of the *Incorporated Cell Companies Act 2010*;
 - (e) an incorporated cell within the meaning of the *Incorporated Cell Companies Act 2010*;
 - (f) a company continued in the Island under Part 1 of the *Companies (Transfer of Domicile) Act 1998*;
 - (g) a limited liability company to which the *Limited Liability Companies Act 1996* applies;
 - (h) a foundation to which the *Foundations Act 2011* applies; and
 - (i) a limited partnership to which Part II of the *Partnership Act 1909* applies which has legal personality by virtue of section 48B of that Act.
- (3) The Treasury may —

- (a) by order amend subsection (2) to add persons to or remove persons from the list of persons that would be foreign companies were they not incorporated under the laws of the Island; or
 - (b) by regulations, prescribe other persons, or classes or descriptions of person, which are foreign companies for the purposes of this Act.
- (4) Before making an order under subsection (3)(a), the Treasury must consult such persons as it considers appropriate.
- (5) An order under subsection (3)(a) must not come into operation unless it is approved by Tynwald.

5 Foreign companies to which this Act applies

- (1) This Act applies to a foreign company which —
- (a) carries on, or is held out as carrying on, business from an established place of business in the Island;
 - (b) holds land in the Island (other than by way of security); or
 - (c) elects under subsection (4) that this Act is to apply to it.
- (2) For the purposes of subsection (1)(a), holding out includes any express or implicit indication that the company is carrying on business from an established place of business in the Island.
- (3) A foreign company is not to be treated as carrying on business from an established place of business in the Island (or being held out as such) by reason only of the company —
- (a) being a party to, or settling, legal proceedings;
 - (b) holding meetings or carrying on activities which relate only to its internal affairs;
 - (c) maintaining a bank account;
 - (d) purchasing or investing in assets (except in land in the Island);
 - (e) selling its assets;
 - (f) holding property (except land in the Island);
 - (g) charging its property;
 - (h) incurring debt;
 - (i) collecting monies owing to it;
 - (j) enforcing its legal rights; or
 - (k) receiving services which —
 - (i) are provided by the holder of a licence issued under section 7 of the *Financial Services Act 2008* whose licence permits the holder to carry on the regulated activity

(within the meaning of section 3(1) of that Act) of providing corporate services¹; and

- (ii) are corporate services for the purposes of that Act.
- (4) However, a company to which subsection (3) applies may elect to be treated as a company to which this Act applies and may accordingly make an application under section 8.
 - (5) The Treasury may by order amend subsection (1) or (3) to add to or remove from the list of circumstances –
 - (a) which apply this Act to a foreign company; or
 - (b) which result in a foreign company not being treated as having an established place of business in the Island.
 - (6) Before making an order under subsection (5), the Treasury must consult such persons as it considers appropriate.
 - (7) An order under subsection (5) must not come into operation unless it is approved by Tynwald.

PART 2 – REGISTRATION OF FOREIGN COMPANIES

6 Register of foreign companies

- (1) The Department must maintain a register of foreign companies registered under this Act.
- (2) The Department must make the register available for public inspection at any reasonable time.
- (3) On payment of the prescribed fee, the Department must supply a person with a certificate stating whether or not a named foreign company is registered under this Act.
- (4) A certificate described in subsection (3) is admissible in legal proceedings.

7 When registration is required

- (1) A foreign company to which this Act applies must make an application for registration under section 8 within one month of this Act applying to it.
- (2) For the purposes of subsection (1), a company which elects under section 5(4) to be treated as a company to which this Act applies must make an application under subsection (1) within one month of the election.

¹ See the provisions in Schedule 1 to the Regulated Activities Order 2011 [SD 884/11] concerning class 4 (corporate services).

- (3) A foreign company which fails to comply with subsection (1) commits an offence.

8 Application for registration

- (1) When an application for registration under this section is required to be made, it must be made to the Department.
- (2) An application under subsection (1) must —
 - (a) be in the approved form;
 - (b) contain the required details specified in section 9 in respect of the foreign company; and
 - (c) be accompanied by the prescribed fee.
- (3) A fee paid under subsection (2)(c) is non-refundable, regardless as to whether or not the application is successful.
- (4) A foreign company commits an offence if it fails to specify the required details in its application.

9 Required details

- (1) The “**required details**” are —
 - (a) the name under which the foreign company is incorporated in its jurisdiction of incorporation;
 - (b) the name under which it is proposed to be registered under this Act, if different from the name specified in paragraph (a) (see section 10(2) to (4));
 - (c) its jurisdiction of incorporation;
 - (d) its date of incorporation;
 - (e) the number under which it is incorporated in its jurisdiction of incorporation;
 - (f) if the foreign company does not have an established place of business in the Island, the address of its registered office or principal place of business in its jurisdiction of incorporation;
 - (g) if the foreign company has an established place of business in the Island, the business address;
 - (h) if the foreign company holds land in the Island (other than by way of security), the address of the land; and
 - (i) the name of and address of each person who is authorised to accept service of process and any notices required to be served on the company (see section 11)—
 - (i) in the Island; or
 - (ii) in respect of its activities or presence in the Island.

- (2) The Treasury may by order amend subsection (1) to add matters to or remove matters from the list of required details.
- (3) Before making an order under subsection (2), the Treasury must consult such persons as it considers appropriate.
- (4) An order under subsection (2) may not come into operation unless it is approved by Tynwald.

10 Registered name of foreign company

- (1) The *Company and Business Names etc Act 2012* has effect in respect of the names of foreign companies to which this Act applies.
- (2) A foreign company to which this Act applies must be registered under this Act under the name under which the foreign company is incorporated in its jurisdiction of incorporation unless —
 - (a) the name contravenes section 7(3) of the *Company and Business Names etc Act 2012*; or
 - (b) an application under section 6 of that Act for name approval is otherwise refused.
- (3) If the name under which the foreign company is incorporated in its jurisdiction of incorporation is changed, an application must be made under the *Company and Business Names etc Act 2012* to change the name under which the company is registered under that Act.
- (4) If subsection (2) precludes the foreign company from being registered under the name under which it is incorporated in its jurisdiction of incorporation, the company may be registered under this Act under a different name (subject to complying with the requirements of the *Company and Business Names etc Act 2012*).
- (5) A foreign company may only hold land in the Island (see section 5) under the name by which it is registered under this Act.
- (6) A foreign company may only carry on business from the Island (see section 5) under —
 - (a) the name by which it is registered under this Act; or
 - (b) a business name under which it is registered under the *Registration of Business Names Act 1918*.
- (7) A foreign company which contravenes subsection (3), (5) or (6) commits an offence.

11 Accepting service of process

- (1) A foreign company to which this Act applies must make provision to ensure that it is able to accept service of process and any notices required to be served on the company in accordance with this section.

- (2) If the foreign company has an established place of business in the Island, it must make provision for the company to accept service at the place of business in the Island.
- (3) If the foreign company holds land in the Island (other than by way of security), it must make provision for the company to accept service —
 - (a) at an address in the Island; or
 - (b) if there is no address in the Island, at an address outside the Island.
- (4) The foreign company must appoint a person or persons to accept service of process and any notices required to be served on the company in accordance with this section (see section 9(1)(i)).

12 Registration of foreign company

- (1) In relation to an application under section 8, the Department must —
 - (a) approve the application; or
 - (b) refuse the application.
- (2) The Department may only refuse the application if it contains a document which the Department may refuse to accept for a reason specified in section 25.
- (3) If the application is refused, the Department must provide the foreign company with a statement of reasons for the decision.
- (4) If the application is approved, the Department must —
 - (a) register the information and documents submitted with the application in the register (see section 6);
 - (b) allot a unique number to the company;
 - (c) issue a certificate of registration to the foreign company in the form determined by the Department; and
 - (d) retain a copy of the certificate issued.
- (5) A certificate issued under subsection (4)(c) is conclusive evidence that the foreign company is registered under this Act on the date specified in the certificate.

13 Notification of certain events

- (1) A foreign company which is registered under this Act must notify the Department within one month of the occurrence of an event described in subsection (2).
- (2) The events to be notified under subsection (1) are —
 - (a) a change to the address or place at which the company accepts service of process and any notices required to be served on the company (see section 11);

- (b) a change to a person, or to the details of a person, authorised to accept service of process and notices on behalf of the company (see section 9(1)(i));
 - (c) the appointment of a liquidator or receiver of the company or its assets (or analogous appointment) under the laws of a jurisdiction outside the Island;
 - (d) the company ceases to exist, or ceases to have legal personality, under the laws of its jurisdiction of incorporation; or
 - (e) the company ceases to be a foreign company to which this Act applies (see section 5).
- (3) For the purposes of subsection (2)(e), a company to which this Act applies only by reason of an election under section 5(4) ceases to be a company to which this Act applies if it so elects.
- (4) A notification under subsection (1) must be —
- (a) in the approved form; and
 - (b) accompanied by the prescribed fee.
- (5) A foreign company which fails to comply with subsection (1) or (4) commits an offence.

14 Annual return

- (1) A foreign company which is registered under this Act must make an annual return to the Department.
- (2) The return must be —
- (a) in the approved form; and
 - (b) accompanied by the prescribed fee.
- (3) The annual return must be made up to the company's return date.
- (4) The foreign company must forward the return to the Department within one month after the company's return date.
- (5) The "**company's return date**" means the anniversary of the company's incorporation in its jurisdiction of incorporation or such other date as is agreed between the Department and the company.
- (6) A foreign company which fails to comply with this section commits an offence.

15 Trading disclosures

The Treasury may by regulations require a foreign company which is registered under this Act —

- (a) to display specified information in specified locations;

- (b) to state specified information in specified descriptions of document or communication; and
- (c) to provide specified information on request to those the company deals with in the course of the company's business.

16 Power to require compliance with Manx law

- (1) The Treasury may by regulations require a foreign company which is registered under this Act to comply with a provision of an enactment mentioned in section 4(2) which the foreign company would be required to comply with if the foreign company were incorporated under the laws of the Island.
- (2) The regulations may modify the provision of the enactment which the foreign company is to comply with so as to secure compliance with the provision.

17 Removal from the register

- (1) The Department may remove a foreign company which is registered under this Act from the register in the circumstances described in subsection (2).
- (2) The circumstances are —
 - (a) the company ceases to be a foreign company to which this Act applies (see section 5) and demonstrates to the reasonable satisfaction of the Department that the company should be removed from the register; or
 - (b) the company fails to submit an annual return under section 14 to the Department within 4 months after the company's return date.
- (3) If a foreign company is removed from the register, the Department must publish notice of the removal in such manner as it determines.
- (4) A foreign company which has been removed from the register may make a further application for registration under section 8.
- (5) However, the application referred to in subsection (4) must be accompanied by —
 - (a) each outstanding annual return (see section 14);
 - (b) the prescribed fee in respect of each outstanding annual return; and
 - (c) an additional prescribed fee in respect of the application for registration (see section 8).
- (6) Subsection (5) is additional to the requirements of section 8.

PART 3 – MISCELLANEOUS PROVISIONS

18 Appeals

- (1) A person who is aggrieved by a decision of the Department under this Act may appeal to the High Court, in accordance with rules of court, within one month after the date of the decision or such further time as the Court allows.
- (2) On the determination of the appeal the Court must confirm, vary or revoke the decision in question.
- (3) The variation or revocation of a decision does not affect the previous operation of that decision or anything duly done or suffered under it.
- (4) A decision of the Court on an appeal under this section is binding on the Department and the appellant.

19 False and misleading statements

A person commits an offence if, when giving information to the Department, the person –

- (a) makes a statement which the person knows is false in a material particular; or
- (b) recklessly makes a statement which is false in a material particular.

20 Offences: penalties and defences

- (1) A person guilty of an offence under this Act is liable –
 - (a) on conviction on information, to a fine;
 - (b) on summary conviction, to a fine not exceeding £5,000.
- (2) Subsection (3) applies if an offence under this Act is committed by a person (by whatever name called) which has legal personality but is not an individual and it is proved that an officer of the person authorised, permitted, participated in, or failed to take all reasonable steps to prevent, the commission of the offence.
- (3) The officer, as well as the person, is guilty of the offence and is liable to the penalty provided for the offence.
- (4) In this section, “**officer**” includes –
 - (a) in the case of a person which is a body corporate, a director, secretary or other similar officer;
 - (b) in the case of a person which is a body corporate whose affairs are managed by its members, a member;

- (c) in the case of a person which is a foundation, a member of the foundation council (by whatever name called) or analogous officer;
 - (d) in the case of a person which is a limited partnership which has legal personality, the general partner (by whatever name called) of the partnership or analogous officer; and
 - (e) a person purporting to act as an officer described in paragraphs (a) to (d).
- (5) In any proceedings for an offence under this Act or under regulations made under section 21, it is a defence to prove that the person charged took all reasonable precautions and exercised all due diligence to avoid committing the offence.

21 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) prescribe persons, or classes or descriptions of person, which are foreign companies for the purposes of this Act;
 - (b) prescribe circumstances which indicate or demonstrate that a foreign company —
 - (i) has an established place of business in the Island;
 - (ii) holds land in the Island (other than by way of security); or
 - (iii) is in receipt of corporate services (as described in section 5(1)(k));
 - (c) make provision for the electronic submission of information and documents under this Act;
 - (d) permit a person to publish forms and other material in respect of any matter specified in the regulations;
 - (e) provide for contravention of the regulations to be an offence and prescribe a penalty for commission of the offence of a fine not exceeding £5,000 on summary conviction;
 - (f) require compliance with standards of or the adoption of practices recommended or specified from time to time (whether before or after the making of the regulations) by a person or body specified in the regulations;
 - (g) permit a person to exercise a discretion in dealing with a matter specified in the regulations;
 - (h) exempt a person (or class or description of persons) from any of the provisions of this Act;

- (i) modify the application of this Act in respect of a person (or class or description of persons);
 - (j) make incidental, supplemental, consequential, transitional or saving provisions.
- (3) Before making regulations under this section, the Treasury must consult such persons as it considers appropriate.
- (4) Regulations under this section must not come into operation unless they are approved by Tynwald.

22 Approved forms

- (1) The Department may publish forms or templates in any form which are to be used when submitting information required to be submitted under this Act.
- (2) Where a form or template is required to be in an “**approved form**”, it must —
- (a) contain the information required to be specified in it; and
 - (b) have attached to it such documents as may be required by it.

23 Fees

- (1) The Department may by order prescribe fees for the purposes of sections 6, 8, 13 and 14.
- (2) Before making an order under this section, the Department must consult the Treasury.
- (3) A prescribed fee is a debt due to the Department from the foreign company and may be sued for accordingly.
- (4) Fees payable under this Act form part of the general revenue of the Island.
- (5) An order under this section must not come into operation unless it is approved by Tynwald.

24 Keeping of records by the Department

- (1) Information and documents submitted to the Department under this Act or under regulations made under section 21 may be kept in any form that —
- (a) is approved by the Department; and
 - (b) is capable of being reproduced in legible form.
- (2) The Department is to be taken as having complied with an obligation to maintain information or documents if the Department complies with subsection (1).

- (3) The Department may destroy information and documents maintained by it if –
 - (a) the information or documents are original records which the Department is keeping in a form described in subsection (1); or
 - (b) the information or documents relate to a foreign company which was removed from the register more than 10 years previously.

25 Power to refuse to register documents

- (1) The Department may refuse to accept for registration a document submitted to it under this Act or under regulations made under section 21 if the document –
 - (a) does not comply with this Act or the regulations;
 - (b) has not been duly completed;
 - (c) contains a material error;
 - (d) is not legible; or
 - (e) is not accompanied by the prescribed fee.
- (2) If the Department refuses to accept a document under subsection (1), it must –
 - (a) return the document to the person who submitted it; and
 - (b) provide a statement of reasons for its rejection.
- (3) A rejected document is treated as having not been submitted.

26 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; or³
 - (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.

27 Savings

A foreign company which is already registered under Part XI of the *Companies Act 1931* when this section comes into operation is to be treated for all purposes as registered under this Act (despite the repeal of Part XI of that Act).

SCHEDULE

[Section 26]

AMENDMENT OF ENACTMENTS

[The Schedule amended the following Acts —

Registration of Business Names Act 1918

Companies Act 1931

Companies Act 1968

Income Tax Act 1970

Companies Act 1982

Companies Act 1986

Charities Registration Act 1989

Timeshare Act 1996

Limited Liability Companies Act 1996

Education Act 2001

Companies, etc. (Amendment) Act 2003

Financial Services Act 2008

Insurance Act 2008

Company Officers (Disqualification) Act 2009

Company and Business Names etc Act 2012.]

[The Schedule also amended the Rules of the High Court of Justice 2009².]

² SD 352/09

ENDNOTES

Table of Endnote References

¹ ADO remaining provisions in operation 1 August 2014 [SD2014/0214].

² Definition of “Department” amended by SD2017/0325.

³ Act promulgated 7 July 2014.