

COMPANIES, ETC. (AMENDMENT) ACT 2003

(Chapter 16)

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Received Royal Assent: 9 December 2003

Passed: 9 December 2003

AN ACT

to amend the law relating to companies, etc; and for connected purposes.

PART 1

SUBSTITUTION AND INSERTION OF SECTIONS IN THE COMPANIES ACT 1931

1 to 4 [Substitute sections 17, 36, 71 and 72 respectively of the Companies Act 1931.]

5 [Inserts section 85A in the Companies Act 1931.]

6 [Substitutes section 94 of the Companies Act 1931.]

7 Substitution of new section for section 108

For section 108 (annual return to be made by company not having share capital and company limited by guarantee and having a share capital), substitute-

'108 Annual return to be made by company not having share capital and company limited by guarantee

(1) Every company not having a share capital and every company limited by guarantee but which is not a company limited by guarantee and having a share capital shall make a return stating-

- (a) the address of the registered office of the company;
- (b) all such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is the secretary of the company as are required by this Act to be contained with respect to the directors and the secretary respectively in the register of the directors and the secretary of the company;
- (c) the number of members and in the case of a company limited by guarantee, the aggregate of the amount guaranteed;
- (d) the company's principal business or activity by reference to such classification as may by regulations be prescribed by the Financial Supervision Commission;
- (e) such other particulars as may be prescribed.

(2) There shall be included in the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Financial Supervision Commission under this Act or which would have been required so to be registered if created after the first day of January, nineteen hundred and nine.

(3) The return shall be in the prescribed form.'

[S 7 not yet in force.]

8 Insertion of new section 108A

After section 108 insert-

'108A. Annual return to be made by company limited by guarantee and having a share capital

(1) The annual return of a company limited by guarantee and having a share capital shall contain a list of all persons who, at the date of the return, are shareholding members of the company, and of all persons who have ceased to be shareholding members since the date of the last return or, in the case of the first return, of the incorporation of the company.

(2) The list must state the names and addresses of all the past and present shareholding members therein mentioned, and the number of shares held by each of the existing shareholding members at the date of the return, specifying shares transferred since the date of the last return, or, in the case of the first return, of the incorporation of the company by persons who are still shareholding members and have ceased to be shareholding members respectively and the dates of registration of the transfers, and, if the names therein are not arranged in alphabetical order, must have annexed to it an index sufficient to enable the name of any person in the list to be readily found:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Financial Supervision Commission, the list must state the amount of stock held by each of the existing shareholding members instead of the amount of shares and the particulars relating to shares hereinbefore required.

(3) The return must also state-

- (a) the address of the registered office of the company;
- (b) all such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is the secretary of the company as are required by this Act to be contained with respect to the directors and the secretary respectively in the register of the directors and the secretary of the company;
- (c) the number of guarantee members and the aggregate of the amount guaranteed;
- (d) the company's principal business or activity by reference to such classification as may by regulation be prescribed by the Financial Supervision Commission;
- (e) the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Financial Supervision Commission under this Act, or which would have been required to be registered if created after the 18th January 1909; and
- (f) such other particulars as may be prescribed.

(4) The return shall be in the prescribed form.'

[S 8 not yet in force.]

9 to 11 [Substitute sections 144, 273A and 312 respectively of the Companies Act 1931.]

12 Substitution of new section for section 315

For section 315 (return to be delivered to Financial Supervision Commission where documents, etc. altered), substitute-

'315 Return to be delivered to Financial Supervision Commission where documents, etc. altered

(1) If, in the case of any company to which this Part applies any alteration is made in the particulars required to be delivered to the Financial Supervision Commission under section 313(1)(a) to (f), the company shall, within two months of the date of alteration, deliver to the Financial Supervision Commission for registration a return containing particulars of the alteration.

(2) The return shall be in the prescribed form.'

[S 12 not yet in force.]

13 Insertion of new section 315A

After section 315, insert-

'315A Annual declaration

(1) The designated officer authorised by the company under section 313(1)(d) shall make an annual declaration on the anniversary of the registration of the company under this Part that the company continues to maintain a place of business in the Isle of Man and that the company has complied with its obligations in respect of the Act.

(2) If the annual declaration specified in subsection (1) is not filed within six months after the anniversary of the registration of the company under this Part the Financial Supervision Commission shall cause a notice to appear on the public file of the company that the company does not comply with the provisions of the Act, together with such further information as may by regulation be prescribed.'

[S 13 not yet in force.]

14 Insertion of new section 317A

After section 317, insert-

'317A Particulars with respect to directors in official documents

Every company to which this Part applies shall, in all official documents, including communications sent electronically, on or in which the company's name appears and which are issued or sent by the company from the Isle of Man to any person in the Isle of Man or elsewhere, identify and state in legible characters with respect to every director, being a corporation, the corporate name, and with respect to every director being an individual, the following particulars-

- (a) his present first names, or the initials thereof, and present surname;
- (b) any former first names and surnames:

Provided that, if special circumstances exist which render it in the opinion of the Financial Supervision Commission expedient that such an exemption should be granted, the Financial Supervision Commission may by notice grant, subject to such conditions as may be specified in the notice, exemption from the obligations imposed by this subsection.'

[S 14 not yet in force.]

15 [Substitutes section 340A of the Companies Act 1931.]

16 [Inserts section 340B in the Companies Act 1931.]

PART 2

**SUBSTITUTION AND INSERTION OF SECTIONS IN THE
LIMITED LIABILITY COMPANIES ACT 1996**

17 [Substitutes section 11 of the Limited Liability Companies Act 1996.]

18 Inserts sections 11A, 11B, 11C and 11D in the Limited Liability Companies Act 1996.]

19 [Substitutes section 50 of the Companies Act 1931.]

20 [Inserts section 52A in the Companies Act 1931.]

PART 3

SUBSTITUTION AND INSERTION OF SECTIONS IN THE REGISTRATION OF BUSINESS NAMES ACT 1918

21 Substitution of new section for section 8

For section 8 (registration of changes in firm) substitute-
'8 Annual declaration and registration of changes

(1) The firm or person shall make an annual declaration on the anniversary of the registration of its business name that the firm or person continues to carry on business and that there has been no change to the particulars required to be delivered to the Financial Supervision Commission under this Act.

(2) If the annual declaration specified in subsection (1) is not filed within six months after the anniversary of the registration of the business name the Financial Supervision Commission shall cause a notice to be filed that the firm or person does not comply with the provisions of the Act together with such further information as may by regulations be prescribed.

(3) Whenever a change is made or occurs in any of the particulars registered in respect of any firm or person such firm or person shall, within one month after such change, or such longer period as the Financial Supervision Commission may, on application being made in any particular case, whether before or after the expiration of such period of one month, allow, furnish by sending by post or delivery to the Financial Supervision Commission a statement in writing in the prescribed form specifying the nature and date of the change, signed and where necessary verified, in like manner as the statement required on registration.'

[S 21 not yet in force.]

22 [Inserts section 9A in the Registration of Business Names Act 1918.]

23 [Substitutes section 15 of the Business Names Act 1918.]

24 [Substitutes section 16 for sections 16 and 16A of the Business Names Act 1918.]

PART 4

SUBSTITUTION AND INSERTION OF SECTIONS IN THE PARTNERSHIP ACT 1909

25 and 26 [Insert sections 50A and 51A respectively in the Partnership Act 1909.]

27 [Substitutes section 57 of the Partnership Act 1909.]

28 [Inserts section 60 in the Partnership Act 1909.]

PART 5

SUBSTITUTION AND INSERTION OF SECTIONS IN THE INDUSTRIAL AND BUILDING SOCIETIES ACT 1892

29 and 30 [Substitute sections 10 and 15 respectively of the Industrial and Building Societies Act 1892.]

31 [Inserts section 24A in the Industrial and Building Societies Act 1892.]

PART 6

SUPPLEMENTARY PROVISIONS

32 Amendments and repeals

- (1) The enactments specified in Schedule 1 are amended in accordance with that Schedule.
(2) The enactments specified in Schedule 2 are repealed to the extent specified in column 3 of that Schedule.

33 Short title and commencement

- (1) This Act may be cited as the Companies, etc. (Amendment) Act 2003.
(2) This Act shall come into operation on such day or days as the Treasury may by order appoint and different days may be so appointed for different provisions and different purposes.
[ADO (Schs 1 and 2 in so far as they amend the Companies (Transfer of Domicile) Act 1998) 19/12/2003; (ss 2 to 4, 6, 9, 15, 16, 18 (in so far as it inserts the new ss 11C and 11D in the Limited Liability Companies Act 1996), ss 19, 20, 22, 27 to 31,

32(1) (i.r.o. the provisions in Sch 1 that amend the following Acts to the extent noted-

Partnership Act 1909:	para 4
Registration of Business Names Act 1918:	paras 5, 6, 11
Companies Act 1931:	paras 1 to 5, 6, 11, 13, 16 to 19, 22, 28 to 30
Companies Act 1974:	paras 1, 3 to 5

Interpretation Act 1976

Companies Act 1982

Income Tax (Exempt Companies) Act 1984

Legal Practitioners Registration Act 1986

Financial Supervision Act 1988

Companies Act 1992

International Business Act 1994

Limited Liability Companies Act 1996: para 4),

s 32(2) (i.r.o. the provisions in Sch 2 that repeal the following Acts to the extent noted-

Companies Act 1931: entries relating to ss 26(2), 42(1), 82(4), 283A(2)(b), 321

Companies Act 1968: entries relating to ss 2, 8

Companies Act 1974: entry relating to s 23(4)

Companies Act 1982: entries relating to s 14(4) and (8), Part 1 of Sch 2

Companies Act 1986: entry relating to s 21

Companies Act 1992: entries relating to Sch 2 entry 4 and Sch 6 entry 6

Limited Liability Companies Act 1996: entries relating to s 2(2)(a) to (d)

Companies (Transfer of Functions) Act 2000: entries relating to Sch 1 entry 9 and Sch 2 entry 23),

s 33

1/3/2004 (SD 883/03);

(s 10,

s 32(1) (i. r. o. the provisions in Sch 1 that amend the following Act to the extent noted-

Companies Act 1931: paras 14, 15 and 27),

s 32(2) (i. r. o. the provisions in Sch 2 that repeal the following Acts to the extent noted-

Companies Act 1931: entries relating to ss 273(3), (4), (5), 319A(2), (4)

Companies Act 1986: entry relating to s 26

Companies Act 1992: entry relating to Sch 1, entry 7)

1/4/2004 (SD177/04);

(ss 1, 5, 11, 17, 18 (in so far as it inserts the new ss 11A and 11B in the Limited Liability Companies Act 1996), ss 23 to 26,

s 32(1) (i.r.o. the provisions in Sch 1 that amend the following Acts to the extent noted-

Partnership Act 1909: paras 1 to 3

Registration of Business Names Act 1918: paras 1 to 4, 7, 9, 10, 12 and 13

Companies Act 1931: paras 7, 10 relating to section 109(1) only, 24 and 25

Companies Act 1974:	para 2
Limited Liability Companies Act 1996:	paras 1, 2, 3 and 5 i.r.o. s 4A(1) and (3) only),
s 32(2) (i. r. o. the provisions in Sch 2 that repeal the following Acts to the extent noted-	
Registration of Business Names Act 1918:	
Companies Act 1931:	the entries relating to section 314(2), 319A(1) and 319A(5)
Registration of Business Names Act 1954:	
Companies Act 1968:	the entry relating to s 4
Companies Act 1974:	the entry relating to s 8
Limited Liability Companies Act 1996:	the entry relating to s 52(3)(a) only
Companies (Transfer of Functions) Act 2000	the entries in Sch 1 relating to entries 12, 17, 32, 42, 43 and 44, and in Sch 2, entries 4, 5, 31, 38, and 40)

1/11/2004 (SD688/04.)

Schedule 1

Amendment of Enactments

Miscellaneous Amendments

[Sch 1 amended by Fiduciary Services Act 2005 Sch 3, and amends the following Acts-

Partnership Act 1909 q.v.
 Registration of Business Names Act 1918 q.v.
 Companies Act 1931 q.v.
 Companies Act 1974 q.v.
 Interpretation Act 1976 q.v.
 Companies Act 1982 q.v.
 Income Tax (Exempt Companies) Act 1984 q.v.
 Legal Practitioners Registration Act 1986 q.v.
 Financial Supervision Act 1988 q.v.
 Companies Act 1992 q.v.
 International Business Act 1994 q.v.
 Limited Liability Companies Act 1996 q.v.]

[The amendments set out below have not yet been brought into operation.]

Registration of Business Names Act 1918

8. In section 5(1)(e) (manner and particulars of registration), insert 'the date of birth and', after 'surname,' (in the second place where it occurs), and omit 'and the other business occupation (if any)'.

Companies Act 1931

8. In section 107(1) (annual return to be made by company having a share capital), after 'share capital' insert 'but which is not a company limited by guarantee and having a share capital,'.

9. In section 107(3), after paragraph (d) insert-

'(dd) the company's principal business or activity, by reference to such classification as may by regulations be prescribed by the Financial Supervision Commission;'

10. In section 109 (general provisions as to annual returns-

(b) in section 109(4), for 'either of the two last foregoing sections of this Act', substitute 'section 107, 108 Or 108A'.

12. For section 143(1)(a) (register of directors), substitute-

'(a) in the case of an individual, his date of birth, his present first names and surname, any former first names or surnames and his full residential address; and'.

20. After section 313(1)(c) (documents, etc. to be delivered to Financial Supervision Commission by companies carrying on business in the Isle of Man), add-

- '(d) the name and address of a person resident in the Isle of Man, authorised by the company as the designated officer to deliver for registration the documents and particulars specified in this subsection, sections 91 and 315;
- (e) the address of-
 - (i) the registered office of the company, or
 - (ii) its principal place of management and control; and
 - (iii) its place of business in the Isle of Man;
- (f) such particulars and documents as may be required by Part III of this Act in respect of any charges on property in the Isle of Man which have been created, and of charges on property acquired in the Isle of Man, prior to registration under this section.'

21. In section 313A(7) (regulation of overseas companies in respect of their names), after the word 'officer' insert ', designated officer'.

23. In section 317(3) (obligation to state name of company, whether limited, and country where incorporated), for the words 'to be stated in legible characters in all bill-heads and letter paper, and in all notices, advertisements, and other official publications of the company', substitute ', its registered office and its registered number or code to be stated in legible characters in all official documents, including communications sent electronically, on or in which the company's name appears and which are issued or sent from the Isle of Man by the company to any person in the Isle of Man or elsewhere;'.

26. In section 318 (service on company to which Part XI applies), add after 'Isle of Man' in the last phrase, 'and at the address of the person authorised by the company as designated officer under section 313(1)(d).'

Limited Liability Companies Act 1996

5. In Schedule 3, after paragraph 4 (duty of limited liability company to register charges on property acquired), insert-

'4A. Registration of supplemental particulars

(2) The Commission shall keep, with respect to each limited liability company, in the register prescribed by paragraph 11, the further particulars (if any) which may be delivered to the Commission under this paragraph but the Commission shall not be required to issue a certificate of the registration of the further particulars filed.'

6. In Schedule 3, after paragraph 10 (right to inspect copies of instruments creating mortgages and charges and limited liability company's register of charges), add-

'11. Register of charges to be kept by Commission

(1) The Commission shall keep, with respect to each limited liability company, a register in the prescribed form of all the charges requiring registration under this Schedule, and shall, on payment of the fee prescribed under section 50, enter in the register with respect to such charges the following particulars-

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in sub-paragraph (5) of paragraph 2 of this Schedule;
- (b) in the case of any other charge-
 - (i) if the charge is a charge created by the limited liability company, the date of its creation, and if the charge was a charge existing on property acquired by the limited liability company, the date of the acquisition of the property; and
 - (ii) the amount secured by the charge; and
 - (iii) short particulars of the property charged; and

(iv) the persons entitled to the charge.

(2) The Commission shall give a certificate of the registration of any charge registered in pursuance of this Schedule, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Schedule as to registration have been complied with.

(3) The register kept in pursuance of this paragraph shall be open to inspection by any person on payment of the fee prescribed under section 50.

12. Notice

(1) A person taking a charge requiring registration under paragraph 1 of this Schedule shall be taken to have notice of any matter requiring registration and disclosed on the register at the time the charge is created.

(2) Otherwise a person shall not be taken to have notice of any matter by reason of it being disclosed on the register or by reason of his having failed to search the register in the course of making such inquiries as ought reasonably to be made.

(3) The above provisions have effect subject to any other statutory provision as to whether a person is to be taken to have notice of any matter disclosed on the register.

13. Endorsement of certificate of registration on debentures

(1) The limited liability company shall cause a copy of every certificate of registration given under paragraph 11(2) to be endorsed on every debenture or certificate of debenture stock which is issued by the limited liability company, and the payment of which is secured by the charge so registered:

Provided that nothing in this subsection shall be construed as requiring a limited liability company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the limited liability company before the charge was created.

(2) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be liable to-

(a) on information, a fine;

(b) on summary trial, a fine not exceeding £5,000.'

Schedule 2

Enactments Repealed

[Sch 2 repeals the following Acts in part-
Registration of Business Names Act 1918
Companies Act 1931
Registration of Business Names Act 1954
Companies Act 1968
Companies Act 1974
Companies Act 1982
Companies Act 1986
Companies Act 1992
Limited Liability Companies Act 1996
Companies (Transfer of Domicile) Act 1998
Companies (Transfer of Functions) Act 2000.]

[The repeals set out below have not yet been brought into operation.]

<i>Short title</i>	<i>Extent of repeal</i>
Companies Act 1931. Companies Act 1982. Companies Act 1986.	Section 107(6). Section 34. Section 18(1)(d).
Companies Act 1992.	Section 18(2). In Schedule 2-
Limited Liability Companies Act 1996. Corporate Service Providers Act 2000.	entry 13 Section 52(3)(c). In Schedule 3-
	entry 1.