

*Companies (Amendment) Bill  
Consultation draft*

*Arrangement of Sections*

**Section**

**PART 1**

**MODIFICATIONS TO THE COMPANIES ACT 1931**

*Prospectuses*

1. Insertion of new section 35A
2. Insertion of new section 38DA

*Statements in lieu of prospectus*

3. Repeal of section 40
4. Substitution of section 324A

*Registration of charges*

5. Amendment of section 79
6. Amendment of section 81
7. Amendment of section 91

**PART 2**

**MODIFICATIONS TO THE COMPANIES ACT 1982**

*Accounts and audit*

8. Amendment of section 1
9. Amendment of section 2
10. Amendment of section 3
11. Insertion of new section 3A
12. Amendment of section 6
13. Substitution of section 14
14. Insertion of new sections 17B and 17C
15. Amendment of Schedule 1

**PART 3**

**MODIFICATIONS TO THE COMPANIES ACT 1992**

*Financial assistance for acquisition of shares*

16. Substitution of sections 6 to 8
17. Amendment of section 25
18. Repeal of paragraph 4 of Schedule 6A to the 1931 Act

**PART 4**

**MODIFICATIONS TO THE LIMITED LIABILITY COMPANIES ACT  
1996**

*Winding up*

*Companies (Amendment) Bill*  
*Consultation draft*

19. Amendment of sections 27 and 28

**PART 5**

**MODIFICATIONS TO THE COMPANIES ACT 2006**

*Accounting records and financial statements*

20. Amendment of section 78

21. Amendment of section 80

22. Insertion of new sections 80 to 80E

*Appeals from decisions of Registrar*

23. Insertion of new section 208A

**PART 6**

**MISCELLANEOUS MODIFICATIONS**

24. Amendment to Contracts (Rights of Third Parties) Act 2001

**PART 7**

**SUPPLEMENTARY**

25. Interpretation

26. Short title and commencement

CONSULTATION DRAFT

*Companies (Amendment) Bill*  
*Consultation draft*



## A BILL

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

**B**E 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

#### MODIFICATIONS TO THE COMPANIES ACT 1931

##### *Prospectuses*

##### **Insertion of new section 35A**

1. After section 35 of the 1931 Act insert—

##### **“Prospectus to contain material information**

**35A.** (1) Without prejudice to section 35, the directors of a company or (in the case of a company yet to be incorporated) the proposed directors shall ensure that any prospectus issued in relation to such company shall—

- (a) contain all material information relating to the offer or invitation contained therein—
  - (i) that the intended recipients would reasonably expect to be included therein in order to enable them to make an informed decision as to whether or not to accept the offer or make the application referred to therein; and
  - (ii) of which the directors or proposed directors (as the case may be) were aware at the time of issue of the prospectus, or of which they would have been aware had they made such enquiries as would have been reasonable in all the circumstances; and
- (b) set out such information fairly and accurately.

(2) In this section, “intended recipients” means those persons who, taking into account the terms of the prospectus and all the circumstances in which the prospectus was issued, might reasonably be expected to accept an offer to acquire shares or debentures contained therein or to apply to acquire such shares or debentures pursuant thereto.”.

##### **Insertion of new section 38DA**

2. After section 38D of the 1931 Act insert—

##### **“Directions concerning defective prospectuses**

*Companies (Amendment) Bill*  
*Consultation draft*

**38DA.** (1) The Financial Supervision Commission may make a direction under subsection (2) if it becomes aware of matters which give it reasonable cause to believe that—

- (a) a statement included in a prospectus is untrue or misleading; or
- (b) a prospectus has been issued in contravention of, or otherwise than in compliance with, a provision of sections 34 to 38.

(2) In the circumstances mentioned in subsection (1) the Financial Supervision Commission may direct the company to amend the prospectus so that—

- (a) it contains no untrue or misleading statement; or
- (b) the contravention or non-compliance referred to in subsection (1)(b) is rectified.

(3) A copy of any direction under subsection (2) shall be placed by the Financial Supervision Commission upon the public file of the company maintained at the Companies Registry.

- (4) This section is without prejudice to sections 34 to 38E.”.

***Statements in lieu of prospectus***

**Repeal of section 40**

**3.** (1) Section 40 of the 1931 Act is repealed.

- (2) The Third Schedule and the Fifth Schedule to the 1931 Act are repealed.

(3) In section 27 of the 1931 Act the words “or a statement in lieu of prospectus in the form and containing the particulars set out in the Third Schedule to this Act” are repealed.

(4) In section 43(1)(c)(ii) of the 1931 Act for “disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered” substitute “disclosed in a statement in the prescribed form signed in the prescribed manner and delivered”.

- (5) Section 95(2)(a) of the 1931 Act is repealed.

(6) In the Tenth Schedule to the 1931 Act the item “Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Financial Supervision Commission;” is repealed.

- (7) In Schedule 1 to the Fines Act 1986 [c.1]—

- (a) in the entry relating to section 27(2) of the 1931 Act, the words “or statement in lieu thereof” are repealed;

- (b) the entry relating to section 40(3) of the 1931 Act is repealed.

**Substitution of section 324A**

**4.** For section 324A of the 1931 Act substitute—

**“Exemptions from prospectus requirements**

**324A.(1)** The Treasury may by regulations make provision for exemption from, or for the modification of—

- (a) sections 34 to 39 of this Act;
- (b) such other provisions of the Companies Acts 1931 to 2004 as relate to prospectuses,

*Companies (Amendment) Bill*  
*Consultation draft*

in respect of such classes of companies or in such circumstances as may be specified in the regulations.

(2) Regulations under this section shall not come into operation unless they are approved by Tynwald.”.

***Registration of charges***

**Amendment of section 79**

5. In section 79 of the 1931 Act—

(a) in subsection (1), after “the instrument, if any, by which the charge is created or evidenced” insert “(or a copy of that instrument certified in the prescribed manner to be a correct copy)”;

(b) after subsection (2A) insert—

“(2B) A charge comprising property of a company is only a charge to which this section applies if the property is owned beneficially by the company or, in the case of future property, is to be owned beneficially by the company.”;

(c) for subsection (3) substitute—

“(3) If a charge is created outside the Isle of Man and comprises solely property situate outside the Isle of Man, one month after the date on which the instrument or copy referred to in subsection (1) could, in due course of post, and if dispatched with due diligence, have been received in the Isle of Man, shall be substituted for one month after the date of the creation of the charge, as the time within which the particulars and instrument or copy are to be delivered to the Financial Supervision Commission.”;

(d) in subsection (4), after “the instrument creating or purporting to create the charge” insert “(or a copy of that instrument certified in the prescribed manner to be a correct copy)”;

(e) in subsection (7), for “together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series” substitute “together with the deed containing the charge (or a copy of the deed certified in the prescribed manner to be a correct copy), or, if there is no such deed, one of the debentures of the series (or a copy of the debenture certified in the prescribed manner to be a correct copy)”.

**Amendment of section 81**

6. In section 81 of the 1931 Act—

(a) in subsection (1), for “a company acquires any property which is subject to a charge” substitute “a company acquires as beneficial owner any property which is subject to a charge”;

(b) in the proviso to subsection (1), for “the date on which the copy of the instrument” substitute “the date on which the instrument or copy”.

**Amendment of section 91**

7. In section 91 of the 1931 Act—

(a) at the beginning of subsection (1) insert “Subject to subsection (3),”;

(b) after subsection (2) insert—

“(3) This section only applies to property in the Isle of Man which is—

*Companies (Amendment) Bill*  
*Consultation draft*

- (a) beneficially owned; or
  - (b) acquired as beneficial owner,
- by the company referred to in subsection (1).”.

**PART 2**

**MODIFICATIONS TO THE COMPANIES ACT 1982**

*Accounts and audit*

**Amendment of section 1**

**8.** In section 1(7) of the 1982 Act, the words “(other than a company which is liable to pay Non-Resident Company Duty)” are repealed.

**Amendment of section 2**

**9.** In section 2 of the 1982 Act, for subsections (1) and (2) substitute—

“(1) Subject to subsection (2), the directors of every company shall at some date not later than 18 months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than—

- (a) 9 months, in the case of a private company; or
- (b) 6 months, in the case of a public company.

(2) The Financial Supervision Commission, if for any special reason it thinks fit so to do, may—

- (a) in the case of any company, extend the period of 18 months;
- (b) in the case of a private company, extend the period of 9 months with respect to any year; or
- (c) in the case of a public company, extend the period of 6 months with respect to any year.”.

**Amendment of section 3**

**10.** In section 3 of the 1982 Act—

- (a) at the start of subsection (1) insert “Subject to section 3A,”;
- (b) after subsection (3) insert—

“(3A) If in special circumstances compliance with the provisions of subsection (2) is inconsistent with the requirement to give a true and fair view in accordance with subsection (1), the directors must depart from that provision to the extent necessary to give a true and fair view.

(3B) Particulars of a departure under subsection (3A), the reasons for it and its effect must be given in a note to the accounts.”.

**Insertion of new section 3A**

**11.** (1) After section 3 of the 1982 Act insert—

**“Additional provisions concerning presentation of accounts**

*Companies (Amendment) Bill*  
*Consultation draft*

**3A.** (1) Unless regulations made under subsection (2) require compliance with standards or the adoption of practices which are not consistent with generally accepted accounting principles or practice, in determining how amounts are presented within items within the profit and loss account and balance sheet the directors of a company must have regard to the substance of the reported transaction or arrangement in accordance with generally accepted accounting principles or practice.

(2) The Financial Supervision Commission may make regulations which, in such circumstances and for such purposes as are prescribed, require compliance with standards or the adoption of practices recommended by a body specified in the regulations, and which may in particular require compliance with standards or the adoption of practices recommended by that body from time to time (that is, after as well as before the making of the regulations).

(3) Regulations under subsection (2) shall not come into operation unless they are approved by Tynwald.

(4) In this section, “generally accepted accounting principles or practice” means accounting standards and practices recommended by the International Accounting Standards Board (International Reporting Standards) or by the Accounting Standards Board (United Kingdom Accounting Standards).”

**Amendment of section 6**

**12.** In section 6 of the 1982 Act—

(a) after subsection (3) insert—

“(3A) If in special circumstances compliance with the provisions of subsection (3) is inconsistent with the requirement to give a true and fair view in accordance with subsection (1), the directors must depart from that provision to the extent necessary to give a true and fair view.

(3B) Particulars of a departure under subsection (3A), the reasons for it and its effect must be given in a note to the accounts.”;

(b) after section 6(4) insert—

“(5) Section 3A applies in respect of group accounts in the same way it applies to the accounts of companies.”.

**Substitution of section 14**

**13.** (1) For section 14 of the 1982 Act substitute—

**“Qualifications of individual for appointment as auditor**

**14.** (1) An individual is qualified for appointment as auditor of a company if the individual is a member of a recognised accountancy body.

(2) An individual is also qualified for appointment as auditor of a company if he or she is authorised by the Financial Supervision Commission under section 14E to be so appointed.

**Qualifications of partnership for appointment as auditor**

**14A.** (1) A partnership is qualified for appointment as auditor of a company if all of the partners are so qualified.

(2) A partnership is also qualified for appointment as auditor of a company if—

(a) at least half in number of the partners are—

*Companies (Amendment) Bill*  
*Consultation draft*

- (i) individuals who are members of recognised accountancy bodies, or are authorised under section 14E;
  - (ii) partnerships which are themselves qualified for appointment as auditor of a company; or
  - (iii) bodies corporate or limited liability companies which are qualified for appointment as auditor of a company;
- (b) at least 50 per cent of the voting rights in the partnership and, if it has a management body, in that body are held by persons specified in paragraph (a); and
- (c) each of the partners who examines or reports on the accounts of the company pursuant to section 15, or who supervises the examination of or report on such accounts, is an individual who is a member of a recognised accountancy body or is authorised under section 14E.
- (3) A partnership is also qualified for appointment as auditor of a company if the partnership is authorised by the Financial Supervision Commission under section 14E to be so appointed.

**Qualifications of body corporate for appointment as auditor**

**14B.** (1) A body corporate is qualified for appointment as auditor of a company if—

- (a) each of the persons who are responsible to it for examining or reporting on the accounts of the company pursuant to section 15, or for supervising the examination of or report on such accounts, is an individual who is a member of a recognised accountancy body or is authorised under section 14E; and
  - (b) the body corporate is controlled by persons or partnerships specified in subsection (3).
- (2) A body corporate is also qualified for appointment as auditor of a company if it is authorised by the Financial Supervision Commission under section 14E to be so appointed.
- (3) Subsection (1) refers to—
- (a) individuals who are members of recognised accountancy bodies, or are authorised under section 14E;
  - (b) partnerships which are qualified for appointment as auditors of companies, or are authorised under section 14E; and
  - (c) bodies corporate or limited liability companies which are themselves qualified for appointment as auditors of companies, or are authorised under section 14E.
- (4) For the purposes of subsection (1), a body corporate is controlled by persons or partnerships specified in subsection (3) if—
- (a) they constitute at least half in number of the members of the body corporate;
  - (b) they hold at least 50 per cent of the voting rights of each class of members;
  - (c) at least half in number of the directors are individuals specified in subsection (3); or



*Companies (Amendment) Bill*  
*Consultation draft*

- (d) at least 50 per cent of the voting rights in the board of directors, committee or other management body of the body corporate are held by persons or partnerships specified in subsection (3).

**Qualifications of limited liability company for appointment as auditor**

**14C.** (1) A limited liability company is qualified for appointment as auditor of a company if—

- (a) each of the persons who are responsible to it for examining or reporting on the accounts of the company pursuant to section 15, or for supervising the examination of or report on such accounts, is an individual who is a member of a recognised accountancy body or is authorised under section 14E; and
- (b) the limited liability company is controlled by persons or partnerships specified in subsection (3).

(2) A limited liability company is also qualified for appointment as auditor of a company if it is authorised by the Financial Supervision Commission under section 14E to be so appointed.

(3) Subsection (1) refers to—

- (a) individuals who are members of recognised accountancy bodies, or are authorised under section 14E;
- (b) partnerships which are qualified for appointment as auditors of companies, or are authorised under section 14E; and
- (c) bodies corporate or limited liability companies which are themselves qualified for appointment as auditors of companies, or are authorised under section 14E.

(4) For the purposes of subsection (1), a limited liability company is controlled by persons or partnerships specified in subsection (3) if—

- (a) they constitute at least half in number of the members of the body corporate; or
- (b) they hold at least 50 per cent of the voting rights of each class of members.

**Disqualification from appointment as auditor**

**14D.** (1) This Article applies notwithstanding sections 14 to 14C.

(2) A person is disqualified from appointment as auditor of a company if the person is—

- (a) an officer, secretary or servant of the company;
- (b) a partner or employee of an officer, secretary or servant of the company;
- (c) a person against whom a disqualification order under section 26 of the Companies Act 1992 [c.4] is in force; or
- (d) a person who, on any ground described in paragraph (a), (b) or (c), is disqualified for appointment as auditor of any other body corporate which is—
  - (i) a subsidiary or holding company of the company; or
  - (ii) a subsidiary of the company's holding company,

*Companies (Amendment) Bill*  
*Consultation draft*

or who would be so disqualified if that other body corporate were a company.

(3) A partnership is disqualified from appointment as auditor of a company if any of the partners is—

- (a) a person who is disqualified under subsection (2) from such an appointment; or
- (b) the company whose accounts are to be audited, or a holding company or subsidiary of that company, or a subsidiary of any such holding company.

(4) A body corporate is disqualified from appointment as auditor of a company if—

- (a) any of the individuals specified in section 14B(1)(a) in relation to that company, or any of its shareholders or directors, is a person who is disqualified under subsection (2) from such an appointment; or
- (b) the company whose accounts are to be audited, or a holding company or subsidiary of that company, or a subsidiary of any such holding company, holds shares in the body corporate.

(5) A limited liability company is disqualified from appointment as auditor of a company if—

- (a) any of the individuals specified in section 14C(1)(a) in relation to that company, or any of its members, is a person who is disqualified under subsection (2) from such an appointment; or
- (b) the company whose accounts are to be audited, or a holding company or subsidiary of that company, or a subsidiary of any such holding company, is a member of the limited liability company.

(6) If a person or partnership—

- (a) has been appointed as auditor of a company; and
- (b) during his or her or its term of office becomes, to his or her or its knowledge, disqualified from the appointment,

that person or partnership shall thereupon vacate the office and give notice to the company that by reason of that disqualification he, she or it has done so.

**Authorisations by the Financial Supervision Commission**

**14E.** (1) An applicant for authorisation under this section to be appointed as auditor of a company (including a company within the meaning of the Companies Act 2006 [c.13] as well as a company within the meaning of this Act) shall provide such information and documents in support of the application as the Financial Supervision Commission may require.

(2) The Financial Supervision may give or may refuse to give an authorisation under this section.

(3) An authorisation under this section may be given subject to conditions.

(4) Where an authorisation has been given under this section, the Financial Supervision Commission may at any time—

- (a) revoke or suspend the authorisation;
- (b) make that authorisation subject to conditions or further conditions; or
- (c) vary or revoke any condition.

*Companies (Amendment) Bill*  
*Consultation draft*

(5) Section 32 of the Financial Services Act 2008 (appeals against Commission decisions) shall apply in respect of a decision of the Commission under subsections (2) to (4) as it applies in respect of a decision referred to in that section.

(6) A person or partnership who is authorised to be appointed as auditor of a company under this section shall, when required by the Financial Supervision Commission, provide it with such information and documents as the Financial Supervision Commission thinks necessary for the purpose of enabling or assisting it to discharge its functions under this section.

(7) Failure to comply with a requirement under subsection (6) shall be sufficient grounds for the exercise of the power conferred by subsection (4)(a).

**Power of Financial Supervision Commission to amend qualifications**

**14F.** (1) In sections 14 to 14D, “recognised accountancy body” means—

- (a) the Institute of Chartered Accountants in England and Wales;
- (b) the Institute of Chartered Accountants of Scotland;
- (c) the Institute of Chartered Accountants in Ireland;
- (d) the Association of Chartered Certified Accountants;
- (e) the Chartered Institute of Public Finance and Accountancy; or
- (f) the Association of Authorised Public Accountants.

(2) Notwithstanding sections 14 to 14D, the Financial Supervision Commission may by order—

- (a) amend the definition of “recognised accountancy body” in subsection (1) by adding, deleting or substituting any body;
- (b) provide that any individual, partnership, body corporate or limited liability company of a class described in the order shall, on such conditions as are specified in the order, be qualified for appointment as auditor of a company; or
- (c) amend section 14D(2)(a), (b) or (c) by adding, deleting or substituting persons who are disqualified for such an appointment, or by varying the circumstances in which persons described in that paragraph are disqualified for such an appointment.

(3) An order under subsection (2) shall not come into operation unless it is approved by Tynwald.

**Register of auditors**

**14G.** (1) The Financial Supervision Commission may by regulations provide for the keeping by it, in such circumstances and for such purposes as are prescribed, of registers of—

- (a) persons or bodies who are—
  - (i) qualified for appointment as auditor of companies (including companies within the meaning of the Companies Act 2006 [c.13] as well as companies within the meaning of this Act); and
  - (ii) appointed to act as auditor of such companies; and
- (b) persons or bodies authorised under section 14E.

(2) Any register maintained by the Financial Supervision Commission under subsection (1) and the information contained in any document filed may be kept in

*Companies (Amendment) Bill*  
*Consultation draft*

such manner as the Financial Supervision Commission considers fit including, either wholly or partly, by means of a device or facility—

- (a) that records or stores information magnetically, electronically or by other means; and
  - (b) that permits the information recorded or stored to be inspected and reproduced in legible and usable form.
- (3) Regulations under subsection (1) may require—
- (a) persons or bodies registered under subsection (1); or
  - (b) companies which appoint a person or body referred to in paragraph (a) as auditor,

to provide such information to the Financial Supervision Commission in such manner and at such times as the regulations prescribe.

- (4) Regulations under subsection (1) may provide for—
- (a) the keeping of registers in electronic form;
  - (b) the filing of documents in both paper and electronic form; and
  - (c) the inspection of the registers.
- (5) Regulations under this section shall not come into operation unless they are approved by Tynwald.

**Sections 14 to 14G: supplementary**

**14H.** For the purposes of sections 14 to 14F—

- (a) “limited liability company” means a company established under the Limited Liability Companies Act 1996 [c.19] or a company established outside the Island but whose characteristics correspond to a limited liability company established under that Act;
- (b) a limited liability company is deemed not to be a body corporate;
- (c) the expressions “holding company” and “subsidiary” have the same meaning as in section 1 of the Companies Act 1974 [c.30].”.

**Insertion of new sections 17B and 17C**

**14.** After section 17A of the 1982 Act insert—

**“Public oversight**

**17B.** (1) The Financial Supervision Commission may make regulations subjecting auditors of companies whose transferable securities are admitted to trading on a regulated market of a member State of the European Union to prescribed systems of—

- (a) public oversight;
- (b) quality assurance; and
- (c) investigations and penalties.

(2) Regulations under subsection (1) apply in such circumstances and for such purposes as are prescribed.

(3) Without prejudice to the generality of subsection (1), regulations under subsection (1) may—

- (a) prescribe criteria which systems referred to in subsection (1) must meet;

*Companies (Amendment) Bill*  
*Consultation draft*

- (b) require auditors to comply with prescribed systems to deter, correct and prevent inadequate audits;
- (c) appoint one or more bodies (whether or not based in the Island) to perform prescribed functions in respect of any of the matters referred to in subsection (1);
- (d) make any incidental or consequential provisions which the Financial Supervision Commission considers necessary.

(4) Without prejudice to the generality of subsection (1), regulations under subsection (1) may require compliance with standards or the adoption of practices recommended by a body specified in the regulations, and may in particular require compliance with standards or the adoption of practices recommended by that body from time to time (that is, as well after as before the making of the regulations).

(5) Regulations under subsection (1) shall not come into operation unless they are approved by Tynwald.

**Regulations concerning accounts and audit**

**17C.** (1) The Financial Supervision Commission may by regulations make such provisions as appear to it to be appropriate in connection with the accounting records and accounts of companies to which this Act applies and their audit.

(2) Without prejudice to the generality of subsection (1), regulations under subsection (1) may make provision as to—

- (a) the keeping of accounting records and accounts;
- (b) the form, preparation, publication and certification of accounts;
- (c) the accounting standards to be complied with when preparing accounts;
- (d) the form, preparation and publication of statements of, and information relating to, the accounts;
- (e) the time at which, and the manner and form in which, the accounts and information relating to them shall be provided to the auditor;
- (f) the qualifications of auditors;
- (g) the jurisdictions in which auditors must or may be based or resident;
- (h) the duties of auditors;
- (i) the practices to be adopted by auditors;
- (j) the contents of the auditor's report; and
- (k) the time within which the auditor's report must be prepared.

(3) Without prejudice to the generality of subsection (1), regulations under subsection (1) may appoint one or more bodies (whether or not based in the Island) to perform prescribed functions in respect of any of the matters referred to in subsections (1) or (2).

(4) Without prejudice to the generality of subsection (1), regulations under subsection (1) may require compliance with standards or the adoption of practices recommended by a body specified in the regulations, and may in particular require compliance with standards or the adoption of practices recommended by that body from time to time (that is, as well after as before the making of the regulations).

(5) Regulations under subsection (1) may add to, modify or repeal provisions of the Companies Acts 1931 to 2004 and may provide for any such provision to have

*Companies (Amendment) Bill*  
*Consultation draft*

effect subject to such adaptations and modifications as appear to the Financial Supervision Commission to be appropriate.

(6) Regulations under subsection (1) may contain such supplementary, incidental and transitional provisions as appear to the Financial Supervision Commission to be appropriate.

(7) Regulations under subsection (1) shall not come into operation unless they are approved by Tynwald.”.

**Amendment of Schedule 1**

**15.** (1) Paragraph 12(1)(h) of Schedule 1 to the 1982 Act is repealed.

(2) After paragraph 14 of Schedule 1 to the 1992 Act insert—

“14A.(1) The matters referred to in this paragraph shall be stated by way of note, if not otherwise shown.

(2) There must be stated—

- (a) any amount set aside or proposed to be set aside to, or withdrawn or proposed to be withdrawn from, reserves;
- (b) the aggregate amount of dividends paid in the financial year (other than those for which a liability existed at the immediately preceding balance sheet date);
- (c) the aggregate amount of dividends that the company is liable to pay at the balance sheet date; and
- (d) the aggregate amount of dividends that are proposed before the date of approval of the accounts, and not otherwise disclosed under paragraph (b) or (c).

(3) In this paragraph, “balance sheet date” means the date at which the balance sheet was made up.”.

(3) In paragraph 23(1)(b) of Schedule 1 to the 1982 Act, the words “paragraph 12(1)(h),” are repealed.

**PART 3**

**MODIFICATIONS TO THE COMPANIES ACT 1992**

*Financial assistance for acquisition of shares*

**Substitution of sections 6 to 8**

**16.** For sections 6 to 8 of the 1992 Act substitute—

**“Meaning of “financial assistance”**

P2006/46/677 and 683(2)

**6.** (1) In sections 6 to 8A (“the sections”) “financial assistance” means—

- (a) financial assistance given by way of gift;
- (b) financial assistance given—
  - (i) by way of guarantee, security or indemnity (other than an indemnity in respect of the indemnifier’s own neglect or default); or
  - (ii) by way of release or waiver;
- (c) financial assistance given—

*Companies (Amendment) Bill*  
*Consultation draft*

- (i) by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when in accordance with the agreement any obligation of another party to the agreement remains unfulfilled; or
  - (ii) by way of the novation of, or the assignment of rights arising under, a loan or such other agreement; or
- (d) any other financial assistance given by a company where—
- (i) the net assets of the company are reduced to a material extent by the giving of the assistance; or
  - (ii) the company has no net assets.

(2) “Net assets” here means the aggregate amount of the company’s assets less the aggregate amount of its liabilities (for this purpose, “liabilities” includes any provision (within the meaning of paragraph 27(1)(a) of Schedule 1 to the 1982 Act) except to the extent that the provision is taken into account in calculating the value of any asset of the company).

- (3) In the sections—
- (a) a reference to a person incurring a liability includes that person changing his or her financial position by making an agreement or arrangement (whether enforceable or unenforceable, and whether made on his or her own account or with any other person) or by any other means; and
  - (b) a reference to a company giving financial assistance for the purposes of reducing or discharging a liability incurred by a person for the purpose of the acquisition of shares includes its giving such assistance for the purpose of wholly or partly restoring that person’s financial position to what it was before the acquisition took place.

**Assistance for acquisition of shares in public company prohibited**

P2006/46/678

7. (1) Where a person is acquiring or proposing to acquire shares in a public company, it is not lawful for that company, or a company that is a subsidiary of that company, to give financial assistance directly or indirectly for the purpose of the acquisition before or at the same time as the acquisition takes place.

(2) Subsection (1) does not prohibit a company from giving financial assistance for the acquisition of shares in it or its holding company if—

- (a) the company’s principal purpose in giving the assistance is not to give it for the purpose of any such acquisition; or
- (b) the giving of the assistance for that purpose is only an incidental part of some larger purpose of the company,

and the assistance is given in good faith in the interests of the company.

- (3) Where—
- (a) a person has acquired shares in a company; and
  - (b) a liability has been incurred (by that or another person) for the purpose of the acquisition,

it is not lawful for that company, or a company that is a subsidiary of that company, to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability if, at the time the assistance is given, the company in which the shares were acquired is a public company.

*Companies (Amendment) Bill*  
*Consultation draft*

(4) Subsection (3) does not prohibit a company from giving financial assistance if—

- (a) the company's principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in the company or its holding company; or
- (b) the reduction or discharge of any such liability is only an incidental part of some larger purpose of the company,

and the assistance is given in good faith in the interests of the company.

(5) This section has effect subject to sections 8 and 8A (unconditional and conditional exceptions to prohibition).

**Assistance by public company for acquisition of shares in its private holding company prohibited**

P2006/46/679

**7A.** (1) Where a person is acquiring or proposing to acquire shares in a private company, it is not lawful for a public company that is a subsidiary of that company to give financial assistance directly or indirectly for the purpose of the acquisition before or at the same time as the acquisition takes place.

(2) Subsection (1) does not prohibit a company from giving financial assistance for the acquisition of shares in its holding company if—

- (a) the company's principal purpose in giving the assistance is not to give it for the purpose of any such acquisition; or
- (b) the giving of the assistance for that purpose is only an incidental part of some larger purpose of the company,

and the assistance is given in good faith in the interests of the company.

(3) Where—

- (a) a person has acquired shares in a private company; and
- (b) a liability has been incurred (by that or another person) for the purpose of the acquisition,

it is not lawful for a public company that is a subsidiary of that company to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability.

(4) Subsection (3) does not prohibit a company from giving financial assistance if—

- (a) the company's principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in its holding company; or
- (b) the reduction or discharge of any such liability is only an incidental part of some larger purpose of the company,

and the assistance is given in good faith in the interests of the company.

(5) This section has effect subject to sections 8 and 8A (unconditional and conditional exceptions to prohibition).

**Prohibited financial assistance an offence**

P2006/46/680



*Companies (Amendment) Bill*  
*Consultation draft*

- 7B.** (1) If a company contravenes section 7(1) or (3) or section 7A(1) or (3) (prohibited financial assistance) an offence is committed by—
- (a) the company; and
  - (b) every officer of the company who is in default.
- (2) A person guilty of an offence under this section is liable—
- (a) on conviction on information, to custody for a term not exceeding 2 years or a fine (or both);
  - (b) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000 (or both).

**Unconditional exceptions**

P2006/46/681

- 8.** (1) Neither section 7 nor section 7A prohibits a transaction to which this section applies.
- (2) Those transactions are—
- (a) a distribution of the company's assets by way of—
    - (i) dividend lawfully made; or
    - (ii) distribution in the course of a company's winding up;
  - (b) an allotment of bonus shares;
  - (c) a reduction of capital confirmed by order of the court under section 58 of the 1931 Act;
  - (d) a redemption or purchase of shares made in accordance with sections 9 to 25 of this Act or section 46A of the 1931 Act;
  - (e) anything done under an order of the court made under section 152 of the 1931 Act (order sanctioning compromise or arrangement with members or creditors);
  - (f) anything done under an arrangement made in pursuance of section 222 of the 1931 Act (liquidator in winding up accepting shares as consideration for sale of company's property);
  - (g) anything done under an arrangement made between a company and its creditors which is binding on the creditors by virtue of section 239 of the 1931 Act.

**Conditional exceptions**

P2006/46/682

- 8A.** (1) Neither section 7 nor section 7A prohibits a transaction to which this section applies—
- (a) if the company giving the assistance is a private company; or
  - (b) if the company giving the assistance is a public company and—
    - (i) the company has net assets that are not reduced by the giving of the assistance; or
    - (ii) to the extent that those assets are so reduced, the assistance is provided out of distributable profits.
- (2) The transactions to which this section applies are—

*Companies (Amendment) Bill*  
*Consultation draft*

- (a) where the lending of money is part of the ordinary business of the company, the lending of money in the ordinary course of the company's business;
  - (b) the provision by the company, in good faith in the interests of the company or its holding company, of financial assistance for the purposes of an employees' share scheme;
  - (c) the provision of financial assistance by the company for the purposes of or in connection with anything done by the company (or another company in the same group) for the purpose of enabling or facilitating transactions in shares in the first-mentioned company or its holding company between, and involving the acquisition of beneficial ownership of those shares by—
    - (i) bona fide employees or former employees of that company (or another company in the same group); or
    - (ii) spouses or civil partners, widows, widowers or surviving civil partners, or minor children or step-children of any such employees or former employees;
  - (d) the making by the company of loans to persons (other than directors) employed in good faith by the company with a view to enabling those persons to acquire fully paid shares in the company or its holding company to be held by them by way of beneficial ownership.
- (3) The references in this section to “net assets” are to the amount by which the aggregate of the company's assets exceeds the aggregate of its liabilities.
- (4) For this purpose—
- (a) the amount of both assets and liabilities shall be taken to be as stated in the company's accounting records immediately before the financial assistance is given; and
  - (b) “liabilities” includes any amount retained as reasonably necessary for the purpose of providing for a liability the nature of which is clearly defined and that is either likely to be incurred or certain to be incurred but uncertain as to amount or as to the date on which it will arise.
- (5) For the purposes of subsection (2)(c) a company is in the same group as another company if it is a holding company or subsidiary of that company or a subsidiary of a holding company of that company.”.

**Amendment of section 25**

17. In section 25, in the definition of “distributable profits”, for “(within the meaning of section 6(8))” substitute “(within the meaning of section 6)”.

**Repeal of paragraph 4 of Schedule 6A to the 1931 Act**

18. Paragraph 4 of Schedule 6A to the 1931 Act (and the cross heading relating to it) are repealed.

**PART 4**

**MODIFICATIONS TO THE LIMITED LIABILITY COMPANIES ACT  
1996**

*Winding up*

**Amendment of sections 27 and 28**

*Companies (Amendment) Bill*  
*Consultation draft*

- 19.** (1) In section 27 of the 1996 Act—
- (a) at the beginning insert “(1)”;
  - (b) in paragraph (c), for “subject to section 28(2)” substitute “subject to subsection (2) and to section 28(2)”;
  - (c) at the end insert—  
“*(2) The affairs of a limited liability company are only to be wound up on the occurrence of an event specified in subsection (1)(c) if the operating agreement of the company makes provision for the company’s affairs to be wound up upon the occurrence of that event.*”.
- (2) In section 28 of the 1996 Act—
- (a) in subsection (1), for “section 27(a) to (c) and (e)” substitute “section 27(1)(a) to (c) and (e)”;
  - (b) in subsection (2), for “section 27(c)” substitute “section 27(1)(c)”;
  - (c) in subsection (2)(a), the words “under a right to do so stated in the articles of organisation of the limited liability company” are repealed;
  - (d) in subsection (3), for “section 27(a) to (c) and (e)” substitute “section 27(1)(a) to (c) and (e)”;
  - (e) after subsection (9) insert—  
“*(10) This section is subject to section 27(2).*”.

**PART 5**

**MODIFICATIONS TO THE COMPANIES ACT 2006**

*Accounting records and financial statements*

**Amendment of section 78**

- 20.** In section 78 of the 2006 Act—
- (a) for subsection (1)(f) substitute—  
“(f) either—
    - (i) originals; or
    - (ii) copies provided in accordance with section 80(4B),of the accounting records that it is required to keep under this Act;”;
  - (b) after subsection (1)(f) insert—  
“(g) originals of any financial statements prepared.”.

**Amendment of section 80**

- 21.** (1) Section 80(2) of the 2006 Act is repealed.
- (2) For section 80(3) of the 2006 Act substitute—
- “(3) In this section “financial statements” means written accounts of the company which have approved by the directors as financial statements for the purposes of this Act and which include—
- (a) a written statement recording the assets and liabilities of the company on a specific date;

*Companies (Amendment) Bill*  
*Consultation draft*

- (b) a written statement recording the receipts, payments and other financial transactions undertaken by the company in respect of the period ending on the date of the statement referred to in paragraph (a); and
- (c) such notes as may be necessary for a reasonable understanding of the statements referred to in paragraphs (a) and (b) to be achieved.”.

(3) After section 80(4) insert—

“(4A) The accounting records shall be kept at the office of the registered agent of the company or at such other place as the directors of the company think fit.

(4B) Where accounting records are kept at a place other than the office of the company’s registered agent, the company shall provide to the registered agent—

- (a) a written record of the physical address of the place or places at which the records are kept; and
- (b) at intervals not exceeding 6 months, copies of the records.

(4C) The copies provided under subsection (4B)(b) must themselves be sufficient so as to satisfy the requirements specified in subsection (1), without requiring sight of the original records.

(4D) Where the place at which the accounting records are kept is changed, the company shall provide the registered agent with the physical address of the new location of the records within 14 days of the change of location.

(4E) The registered agent of the company may—

- (a) at any reasonable time specified by the registered agent inspect the accounting records of the company without charge and make copies of or take extracts from the records;
- (b) require the company to provide originals or copies of the accounting records to the registered agent within 14 days.

(4F) The company shall comply with a request under subsection (4E).”.

**Insertion of new sections 80A to 80E**

**22.** After section 80 of the 2006 Act insert—

**“Right to require financial statements to be prepared**

**80A.** (1) If a company has not prepared financial statements for a continuous period of 18 months or more, any member or director of the company may at any time demand that financial statements be prepared for the period since the end of the financial period to which the preceding financial statements relate or, if none, since the incorporation of the company and made up to such date as is specified in the demand, not being later than the date of demand.

(2) A demand under subsection (1) shall be made in writing and deposited at the registered office of the company.

(3) The financial statements must be prepared by the company within 6 months of the date of deposit of demand.

(4) A company that contravenes subsection (1) commits an offence.

**When auditor must be appointed**

**80B.** (1) This section only applies where—

- (a) a company’s securities are listed or admitted to trade on a securities market or exchange; and

*Companies (Amendment) Bill*  
*Consultation draft*

(b) the company is required by the rules of that market or exchange to have its financial statements audited.

(2) Where this section applies, the company must have its financial statements audited by an auditor who is qualified for appointment under this section.

(3) Subject to subsection (5), a person or body shall not be qualified for appointment as auditor of a company (within the meaning of this Act) unless that person or body is qualified for appointment as auditor under sections 14 to 14H of the Companies Act 1982 [c.2] of a company (within the meaning of that Act).

(4) Without prejudice to the generality of subsection (3), an application may be made under section 14E of the Companies Act 1982 for authorisation under that section to be appointed as auditor of a company (within the meaning of this Act) in the same manner and subject to the same provisions as an application under that section for authorisation to be appointed as auditor of a company (within the meaning of that Act).

(5) Regulations under section 80E may modify the application of subsection (3).

**Additional provisions concerning presentation of financial statements**

**80C.** (1) This section only applies where—

(a) a company's securities are listed or admitted to trade on a securities market or exchange; and

(b) the company is required by the rules of that market or exchange to have its financial statements audited.

(2) Where this section applies—

(a) the statement referred to in section 80(3)(a) must give a true and fair view of the state of affairs of the company at the end of the financial period to which it relates; and

(b) the statement referred to in section 80(3)(b) must give a true and fair view of the receipts, payments and other financial transactions undertaken by the company for the financial period to which it relates.

(3) Subsection (2) is subject to subsections (4) and (5).

(4) Unless regulations made under subsection (5) require compliance with standards or the adoption of practices which are not consistent with generally accepted accounting principles or practice, in determining how amounts are presented within items within the statements referred to in section 80(3)(a) and (b) the directors of a company must have regard to the substance of the reported transaction or arrangement in accordance with generally accepted accounting principles or practice.

(5) The Financial Supervision Commission may make regulations which, in such circumstances and for such purposes as are prescribed, require compliance with standards or the adoption of practices recommended by a body specified in the regulations, and which may in particular require compliance with standards or the adoption of practices recommended by that body from time to time (that is, after as well as before the making of the regulations).

(6) Regulations under subsection (5) shall not come into operation unless they are approved by Tynwald.

(7) In this section, “generally accepted accounting principles or practice” means accounting standards and practices recommended by the International

*Companies (Amendment) Bill*  
*Consultation draft*

Accounting Standards Board (International Reporting Standards) or by the Accounting Standards Board (United Kingdom Accounting Standards).”.

**Public oversight**

**80D.** (1) The Financial Supervision Commission may make regulations requiring auditors of companies whose transferable securities are admitted to trading on a regulated market of a member State of the European Union to comply with prescribed systems of—

- (a) public oversight;
- (b) quality assurance; and
- (c) investigations and penalties.

(2) Regulations under subsection (1) apply in such circumstances and for such purposes as are prescribed.

(3) Without prejudice to the generality of subsection (1), regulations under subsection (1) may—

- (a) prescribe criteria which systems referred to in subsection (1) must meet;
- (b) require auditors to comply with prescribed systems to deter, correct and prevent inadequate audits;
- (c) appoint one or more bodies (whether or not based in the Island) to perform prescribed functions in respect of any of the matters referred to in subsection (1);
- (d) make any incidental or consequential provisions which the Financial Supervision Commission considers necessary.

(4) Without prejudice to the generality of subsection (1), regulations under subsection (1) may require compliance with standards or the adoption of practices recommended by a body specified in the regulations, and may in particular require compliance with standards or the adoption of practices recommended by that body from time to time (that is, as well after as before the making of the regulations).

(5) Regulations under subsection (1) shall not come into operation unless they are approved by Tynwald.

**Regulations concerning accounts and audit**

**80E.** (1) The Financial Supervision Commission may by regulations make such provisions as appear to it to be appropriate in connection with the accounting records and financial statements of companies to which this Act applies and their audit.

(2) Without prejudice to the generality of subsection (1), regulations under subsection (1) may make provision as to—

- (a) the keeping of accounting records and financial statements;
- (b) the form, preparation, publication and certification of financial statements;
- (c) the accounting standards to be complied with when preparing financial statements;
- (d) the form, preparation and publication of statements of, and information relating to, the financial statements;

*Companies (Amendment) Bill*  
*Consultation draft*

- (e) the time at which, and the manner and form in which, the financial statements and information relating to them shall be provided to the auditor;
- (f) the qualifications of auditors;
- (g) the jurisdictions in which auditors must or may be based or resident;
- (h) the duties of auditors;
- (i) the practices to be adopted by auditors;
- (j) the contents of the auditor's report; and
- (k) the time within which the auditor's report must be prepared.

(3) Without prejudice to the generality of subsection (1), regulations under subsection (1) may appoint one or more bodies (whether or not based in the Island) to perform prescribed functions in respect of any of the matters referred to in subsections (1) or (2).

(4) Without prejudice to the generality of subsection (1), regulations under subsection (1) may require compliance with standards or the adoption of practices recommended by a body specified in the regulations, and may in particular require compliance with standards or the adoption of practices recommended by that body from time to time (that is, as well after as before the making of the regulations).

(5) Regulations under subsection (1) may add to, modify or repeal provisions of this Act and may provide for any such provision to have effect subject to such adaptations and modifications as appear to the Financial Supervision Commission to be appropriate.

(6) Regulations under subsection (1) may contain such supplementary, incidental and transitional provisions as appear to the Financial Supervision Commission to be appropriate.

(7) Regulations under subsection (1) shall not come into operation unless they are approved by Tynwald.”

***Appeals from decisions of Registrar***

**Insertion of new section 208A**

**23.** After section 208 of the 2006 Act insert—

**“Appeals from decisions of Registrar**

**208A.(1)** Any person who is aggrieved by a decision of the Registrar under this Act may appeal to the Court within one month after the date of the decision or such further time as the Court may allow.

(2) On hearing an appeal under subsection (1), the Court may confirm the decision or make such determination in the matter as the Court sees fit.”

**PART 6**

**MISCELLANEOUS MODIFICATIONS**

**Amendment to Contracts (Rights of Third Parties) Act 2001**

**24.** For section 6(2) of the Contracts (Rights of Third Parties) Act 2001 [c.2] substitute—

“(2) Section 1 confers no rights on a third party in the case of any contract binding on a company and its members under—

*Companies (Amendment) Bill*  
*Consultation draft*

- (a) section 20 of the Companies Act 1931 [XIII p.235]; or
- (b) section 7 of the Companies Act 2006 [c.13].”.

**PART 7**  
**SUPPLEMENTARY**

**Interpretation**

25. (1) In this Act—

“**1931 Act**” means the Companies Act 1931 [XIII p.235];

“**1982 Act**” means the Companies Act 1982 [c.2];

“**1992 Act**” means the Companies Act 1992 [c.4];

“**1996 Act**” means the Limited Liability Companies Act 1996 [c.19];

“**2006 Act**” means the Companies Act 2006 [c.13].

**Short title and commencement**

26. (1) This Act may be cited as the Companies (Amendment) Act 2008.

(2) This Act comes into operation on such day as the Treasury by order appoints and different days may be appointed for different provisions and for different purposes.

(3) An order under subsection (2) may make such transitional and saving provisions as the Treasury considers necessary or expedient.