



REPUBLIC OF NAURU

BUSINESS NAMES REGISTRATION ACT 2018

No. 39 of 2018

An Act to repeal the Business Names Act 1976 and to provide for the registration of business names and for related purposes

Certified: 18th December 2018

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Enacted by the Parliament of Nauru as follows:

PART 1 - PRELIMINARY

1 Short title

This Act may be cited as the *Business Names Registration Act 2018*.

2 Commencement

This Act commences on 15 January 2019.

3 Interpretation

'authorised officer' means an officer authorised by the Minister under section 28;

'business' means any form of economic activity, trade, profession, commerce, craftsmanship, calling or other activity carried on for the purpose of generating revenue for gain;

'business name' means the name or style under which a business is carried on by:

- (a) an individual;
- (b) a corporation if trading in a name other than the incorporated name under the Corporations Act 1972;
- (c) a firm where a partnership is carrying on a business under its registered name under the Partnership Act or any other name under this Act; or
- (d) a trust carrying on business other than its name registered under the Trusts Act 2018;

'certificate' means a certificate of registration of business name issued under section 12(2);

'corporation' includes a corporation incorporated under the Corporation Act 1972 and a foreign corporation;

'firm' means an unincorporated body of two or more individuals or of one or more individuals and one or more corporations, or two or more corporations, who or which have entered in to partnership with one another with a view to carry on business registered under the Partnership Act or under this Act;

'foreign business' for the purposes of this Act means any individual, firm or corporation having a registered business outside the Republic of Nauru whether by a Nauruan or foreign citizenship and also carrying or intends to carry on a business in Nauru as a foreign registered business;

'forename' includes every name of a person other than the surname;

'individuals' mean natural persons;

'initial' includes any recognised abbreviation of a forename;

'Minister' means the Minister for Justice;

'person' includes an individual, firm, an unincorporated or corporate body, trust or foreign business to which this Act applies and any branch thereof;

'registrant' means any person issued with a certificate of registration of business name;

'Register' means the register kept for business name by the Registrar under section 5;

'Registrar' means the Registrar of Business Names under section 4;

'trust' means a trust registered under the Trusts Act 2018 registers under this Act to carry on a business;

PART 2 – REGISTRAR OF BUSINESS NAMES

4 Registrar of Business Names

- (1) There shall be established an office of the Registrar of Business Names.
- (2) The Secretary for Justice shall be the Registrar.
- (3) The Registrar shall:
 - (a) keep and maintain the register;
 - (b) perform the functions and duties conferred on him or her under this Act;
 - (c) do all things as are necessary to be done for the proper administration of this Act; and
 - (d) keep and maintain the records for applications, and other documents required to be lodged or filed by persons seeking registration of or have registered business names under the Act.
- (4) The Registrar has the powers expressly conferred by this Act or any other written law to be able to perform his or her functions and exercise powers for the purpose of this Act.
- (5) The Minister may, on the recommendation of the Registrar appoint a Deputy Registrar.
- (6) The Deputy Registrar may perform such functions and exercise such powers of the Registrar under the Act, as the Registrar may in writing from time to time direct or authorise him or her to perform or exercise.
- (7) The Deputy Registrar shall have the same powers as the Registrar in exercising the functions and powers under subsection (6).

5 Register of Business Names

- (1) There shall be a Register of Business Names.
- (2) The Registrar shall be responsible for keeping and maintaining a Register of Business Names as prescribed by regulations.
- (3) Upon the payment of prescribed fees:
 - (a) the register shall be made available for inspection by any person during business hours; and
 - (b) certified copies of the entries in the register be provided.
- (4) The particulars registered in the Register and the records kept and maintained by the Registrar under section 4(3)(d) shall be evidence of the record of the business names kept and maintained by the Registrar.
- (5) A copy of or extract from any document contained in the Register certified to be a true copy or extract under the hand and seal of the Registrar is admissible as evidence in any legal proceedings as if it were the original document or a part of the document as extracted.
- (6) In any legal proceedings, a certificate issued under the hand and seal of the Registrar is prima facie evidence of the fact the requirements of this Act specified in the certificate:
 - (a) had or had not been complied with at a date or within a period specified in the certificate;
 - (b) had been complied with, but at a date later than that specified in the certificate.
- (7) The Registrar may refuse to accept any document lodged and request that the document be amended, completed and relodged, or a new document be lodged, if he or she is of the opinion that the document:
 - (a) contains matters contrary to law;
 - (b) by reason of any omission or misdescription has not been duly completed;
 - (c) does not comply with the requirements of this Act; or
 - (d) contains any error, alteration or erasure.

PART 3 – REGISTRATION OF BUSINESS NAMES

6 Individuals, firm corporations and trust to be registered

Subject to this Act:

- (a) an individual;
- (b) a firm;
- (c) a corporation not trading under its incorporated name; and
- (d) a trust intending to trade under a business name;
- (e) a foreign business, -

having a place of business in the Republic shall be registered in the manner required by this Act.

7 Corporations and Trusts not requiring business name

This Act shall not apply to:

- (a) a corporation incorporated under the Corporations Act 1972 or any other written law, which carries on business under its name by which it is so incorporated or established; or
- (b) a trust registered under the Trusts Act 2018, which carries on a business under its name by which it is registered.

8 Particulars to be included in an application to register a business name

- (1) A individual, firm, corporation or trust seeking to register a business name shall make an application in the prescribed form and deliver to the Registrar a statement in writing as prescribed in the regulations.
- (2) A foreign business shall provide the particulars prescribed by regulations.
- (3) The statements of particulars required under this section shall be provided by:
 - (a) in case of individual, the individual under whose name the business name is registered;
 - (b) in case of a firm, by all the individuals who are partners and by a Director or secretary of all corporations which are partners;
 - (c) in case of a corporation by 2 Directors or a Director and Secretary;
 - (d) in case of a trust, by a trustee; or
 - (e) in case of a foreign business subsection (3)(a) to (d) apply subject to the person seeking a certificate of business names, with the necessary modifications.
- (4) On receipt of a statement of particulars, the Registrar shall enter the business names of the individual, firm, corporation or trust in the register.
- (5) Where a business is carried on under two or more business names, each of those business names shall be registered.

- (6) The Cabinet may prescribe the requirements of the particulars under this section.

9 Time for application

- (1) No person shall use or trade under a business name without registering the business name under this Act.
- (2) Any person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.

10 Application for registration

- (1) An application for the registration of a business name shall:
- (a) be in the prescribed form;
 - (b) provide the relevant information;
 - (c) provide copies of relevant documents;
 - (d) be declared and signed by the person stated in subsection (2); and
 - (e) accompanied by the prescribed fee.
- (2) The statement of particulars shall:
- (a) in case of an individual, be declared and signed by him or her;
 - (b) in case of a firm, be declared and signed by all the individuals who are partners and by a Director or secretary of all corporations which are partners;
 - (c) in case of a corporation be declared and signed by 2 Directors or a Director and Secretary; or
 - (d) in case of a trust, be declared and signed by a trustee;
 - (e) in case of a foreign business paragraphs (a) to (d) apply, be declared and signed by the person seeking a certificate of business names.

11 Certificate not to be granted to minors

A certificate shall not be granted to a person under the age of 18 years.

12 Consideration of application and issue a certificate

- (1) The Registrar shall consider each application lodged and inform the person of the decision within 7 days of the date of the lodgement of the application.

- (2) Where the Registrar is satisfied that the application complies with the requirements of this Act, he or she shall issue the certificate in the prescribed form.
- (3) Every certificate issued under this section shall show the full names or name of the individuals, firm, corporation or trust.
- (4) A certificate issued under subsection (2) shall be valid until cancelled from the register.

13 Refusal to register a business name

- (1) The Registrar shall not register a business name where the proposed name:
 - (a) is identical to a registered business name;
 - (b) is similar to or is the same as the name of another business which is likely to mislead the public;
 - (c) is repugnant or otherwise undesirable;
 - (d) includes the words 'Republic of Nauru', 'Government' or 'Republic' which may mislead the public to believe that the business is conducted by the Republic or the Government; or
 - (e) is calculated to deceive or mislead the public or to cause annoyance or offence to any person or class of persons or suggestive of blasphemy or indecency.
- (2) The Registrar shall reject an application for registration of business name where:
 - (a) the business activity to be carried out contravenes any written law;
 - (b) a certificate previously held by the individual, firm, corporation or trust was cancelled by the Registrar for repeated failure to comply with the requirement of this Act or any other written law;
 - (c) the person submits false information in relation to the requirements for the application; or
 - (d) the proposed name contravenes any other written law.
- (3) Where the Registrar rejects an application under this section he or she shall inform the person of his or her decision and provide reasons for his or her decision in writing.

14 Registered business name not to be assigned

- (1) A registered business name shall not be assigned or permitted to be used by another person.

- (2) Any person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.

15 Registered business name may be transferred

- (1) A registered business name shall not be transferred to another person without the prior approval of the Registrar.
- (2) An application for the transfer of the certificate shall be made to the Registrar in the prescribed form and payment of the prescribed fee.
- (3) The Registrar shall consider the application and inform the registrant of his or her decision.
- (4) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.

16 Certificate shall be displayed

- (1) A certificate shall be displayed in a conspicuous place in or at the registrant's registered or principal place of business.
- (2) Where a person registered has multiple places of business under this Act, the original certificate shall be displayed and maintained as required under subsection (1) at the registered or principal place of business and a copy of the certificate certified by the Registrar shall be exhibited and maintained in a conspicuous position in each of such places of businesses.
- (3) A person who contravenes subsections (1) or (2) shall:
 - (a) be liable to a fixed penalty of \$1,000; and
 - (b) pay the fixed penalty within 7 days of a notice of the breach being served by an authorised officer.
- (4) A person who fails to comply with subsection (3), commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.
- (5) A person who complies with subsection (3) shall not be prosecuted for an offence under subsection (4).

17 Variation of particulars

- (1) A registrant shall notify the Register in the prescribed form and manner to be accompanied with the prescribed fee within 7 days of any variation in the registered particulars of the matters contained in section 8 or the regulations.

- (2) The Registrar shall upon receipt of the notice in subsection (1) amend the particulars contained in the register.
- (3) Where the variation is in respect of the registered business name, ownership, address or nature of the business the Registrar shall issue an amended certificate accordingly.
- (4) A person who fails to comply with subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.

18 Publication of business names

- (1) A person issued with a certificate shall state the business name in legible characters in the conduct of the business in all correspondence, showcard, contracts, invoices, receipts, negotiable instruments, orders for goods or services including bank accounts.
- (2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding \$ 10,000.

19 Suspension or cancellation of certificate of business names

- (1) The Registrar may suspend or cancel a certificate where:
 - (a) the certificate was obtained by fraud, misrepresentation or deliberate or negligent provision of false information;
 - (b) in case of an individual, where the Registrar becomes aware that a registrant has died, and the personal representative fails to transmit the business name to a beneficiary or beneficiaries of the estate of the registrant;
 - (c) in case of a firm, the partnership is dissolved;
 - (d) in case of a corporation, the corporation is wound up;
 - (e) in case of a trust if it is dormant or wound up;
 - (f) the registrant fails to file annual returns for 2 consecutive years;
 - (g) the business is struck off under the relevant Act where it is registered;
 - (h) the registrant contravenes this Act;
 - (i) any person ceases to carry on its business activity under the business name and the registrant fails to notify the Registrar of such cessation of business; or
 - (j) the registrant fails to commence business under the business name within 2 years of:

- (i) from the date of the registration of the business; or
 - (ii) from the date of giving notice to the Registrar for temporary cessation business;
 - (k) the registrant fails to comply with any directions given by the Registrar; or
 - (l) the registrant assigns, permits or transfers his or her certificate in contravention of sections 14 and 15.
- (2) Before suspending or cancelling a certificate in accordance with subsection (1), the Registrar shall:
- (a) give a written notice to the registrant;
 - (b) provide reasons for the intention to suspend or cancel; and
 - (c) require the registrant to show cause within 14 days as to why the certificate shall not be suspended or cancelled.
- (3) The Registrar may not suspend or cancel a certificate under this section if the registrant takes remedial measures to the satisfaction of the Registrar within 21 days of receipt of the notice under subsection (2).
- (4) Where the registrant fails to show cause under subsection (2) the Registrar may suspend or cancel the certificate from the register.

20 Duty to notify Registrar on cessation of business

- (1) A registrant who intends to cease carrying on business on a temporary basis in the registered business name shall notify the Registrar of such cessation and the duration of such temporary cessation.
- (2) Where a registrant ceases to carry on with the business under the registered business name permanently, the registrant shall notify the Registrar of the permanent cessation of business within 30 days after the business ceases to be carried on.
- (3) A person who fails to comply with subsection (1) or (2) commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or both.

21 Loss or destruction of certificate

- (1) Where a certificate is lost or destroyed, the registrant shall notify and may apply to the Registrar for a duplicate copy of the certificate in the prescribed form and pay the prescribed fee.
- (2) The Registrar shall within 7 days issue a duplicate copy of the certificate.

- (3) A person who without any reasonable excuse fails to notify the Registrar of the loss or destruction of a certificate under subsection (1) commits an offence and is liable to a fixed penalty of \$300.

22 Registrar to restore the cancellation of registered business name

- (1) The Registrar may restore the registration of a business name upon application by the last registered registrant in the prescribed form and payment of the prescribed fee.
- (2) The Registrar may require the registrant to comply with the requirements of this Act before restoring the certificate in the Register.
- (3) Where the business names after the cancellation is issued to another person, the Registrar shall not restore the registration under subsection (1).

23 Surrender of certificates

- (1) Where a registrant ceases to continue with the business to which the registered business name relates he or she shall notify the Registrar in writing and surrender the certificate.
- (2) Where a certificate is surrendered under subsection (1) the certificate shall lapse and be cancelled in the Register.

24 Inspection of business

- (1) An authorised officer may enter and inspect a business at any reasonable time in the performance or exercise of his or her powers under the Act.
- (2) An authorised officer may require the person operating the business to produce the certificate of the registered business name for inspection.
- (3) Any person who fails to produce a certificate of the registered business name under subsection (2) commits an offence and upon conviction is liable to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding 6 months or to both.

PART 4 – OFFENCES AND PENALTIES

25 Offence for giving or providing misleading information

Any person who:

- (a) gives or provides misleading information or documents to the Registrar in connection with this Act; and
- (b) knows or is reckless as to whether the information is misleading, -

commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.

26 Offence for obstructing an authorised officer

A person who obstructs, hinders or in any way interferes with an authorised officer in the performance of his or her duties commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.

27 Offence by officers, directors etc of corporation

(1) Where an offence has been committed under this Act by a corporation any person who at the time of the commission of the offence was a Director, manager, secretary or officer of the corporation, was purporting to act in such capacity shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly unless he or she proves that:

- (a) the offence was committed without his or her consent or collusion; and
- (b) he or she exercised all such diligence to prevent the commission of the offence as he or she ought to have exercised, having regard to the nature of his or her functions in that capacity and to all circumstances.

(2) Upon conviction, the court may impose:

- (a) in case of a corporation, a fine not exceeding \$100,000; and
- (b) in the case of a Director, manager, secretary or officer or a partner of the corporation, a fine not exceeding \$20,000 or a term of imprisonment not exceeding 12 months or both.

PART 5 – MISCELLANEOUS

28 Minister appoints authorised officers

The Minister may, by notice in the Gazette, authorise an officer of the Department or a police officer to be an authorised officer for the purposes of this Act.

29 Liability of Registrar or authorised officers

The Registrar or an authorised officer is not liable in any civil or criminal proceedings for anything done in the exercise of a power under this Act if the act or omission was done in good faith or on reasonable grounds.

30 Records

(1) A registrant shall ensure that the records including the underlying documentation such as proper accounts and records relating to the affairs of the business operating under the registered business name are kept and maintained.

- (2) The accounts and records under subsection (1) shall be kept for a period not less than 7 years from the end of the period to which the information relates.
- (3) The records kept under subsection (1) shall include underlying documentation such as:
 - (a) financial accounts;
 - (b) bank statements;
 - (c) business transaction;
 - (d) statutory taxes, licence, duties, fees;
 - (e) court proceedings;
 - (f) invoices;
 - (g) contracts;
 - (h) audited financial accounts;
 - (i) annual returns;
 - (j) details of the Director, manager, secretary or officer;
 - (k) the assets and liabilities of the individual, firm or corporation; and
 - (l) other matters prescribed by regulations.
- (4) The registrant who contravenes this section commits an offence and upon conviction is liable to a fine not exceeding \$5,000.
- (5) The Cabinet may vary the requirements of records to be kept by the registrant under this section by regulations.

31

Compliance with Beneficial Ownership Act 2017

- (1) A firm, corporation, trust or foreign business applying for a certificate under this Act shall concurrently comply with the requirements of the Beneficial Ownership Act 2017 by providing the details required for the purposes of that Act in the prescribed form.
- (2) The Registrar shall not register a business name where the person applying for a certificate fails to provide the prescribed form under subsection (1).
- (3) This section does not apply to an individual operating a business.

Annual returns

- (1) An individual shall submit annual returns to the Registrar of a business operating under the registered business names.
- (2) The annual return under subsection (1) shall be:
 - (a) in the prescribed form;
 - (b) accompanied by the documents required by the prescribed form;
 - (c) declared and signed by the registrant or an authorised person;
 - (d) accompanied by the prescribed fee; and
 - (e) provided on the anniversary of the registration date.
- (3) A registrant shall lodge annual returns to the Registrar under this Act as follows:
 - (a) in case of a firm, annual returns filed under the Partnership Act 2018;
 - (b) in case of corporation, annual returns filed under the Corporations Act 1972;
 - (c) in case of a trust, annual returns filed under the Trusts Acts 2018;
 - (d) in case of a foreign business, annual returns:
 - (i) of the operations in Nauru paragraphs (a) to (d) apply where necessary; and
 - (ii) in the place of registration in the foreign country under any equivalent laws applicable in that foreign country, -
subject to the person filing the annual returns.
- (4) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$5,000.

Information sharing

- (1) Subject to subsection (2), the Registrar may provide any information including any copy of a document, account or record that the Registrar has obtained under this Act to:
 - (a) a law enforcement or regulatory agency, whether in the Republic or in an foreign jurisdiction for the purposes of carrying out the agency's duty, power or function;

- (b) the competent authority of a foreign government with which the Republic has entered into an agreement providing for the exchange of information to the extent permitted under that agreement;
 - (c) any treaties or agreements entered into by the Republic for the purposes of exchange of information.
- (2) For information sharing under subsection (1), the Registrar shall ensure that necessary protections are in place for maintaining the confidentiality of the information.

34 Jurisdiction of the Court

The District Court shall have jurisdiction to hear and determine all offences under this Act and shall have the power to impose the full penalty or punishment in respect of the offences under this Act.

35 Regulations

The Cabinet may make regulations prescribing any matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.

36 Repeal

The Business Names Act 1976 is repealed.

37 Transitional and savings

- (1) Despite the repeal of the Business Names Act 1976, all business names registered under that Act remain valid until the registered business name is cancelled under the provisions of this Act.
- (2) All applications submitted to the Registrar under the provisions of the Business Names Act 1976 shall be determined in accordance with the provisions of that Act as if this Act had not commenced and all other matters shall be dealt with in accordance with the provisions of this Act.
- (3) The certificate of registration of business name issued under the repealed Act is taken to be the certificate of registration for the business name issued under this Act.
- (4) All proceedings, fines or decisions made under the Business Names Act 1976 remain enforceable and are deemed to have been made under this Act.
- (5) Any judicial or administrative proceedings taken under the Business Names Act 1976 shall continue as if it had commenced under this Act.