

Chapter 145.
Business Names Act 1963.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 145.

Business Names Act 1963.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Business Names Act 1963,

Being an Act relating to business names and for related purposes.

1. **INTERPRETATION.**

(1) In this Act, unless the contrary intention appears—

“**business**” includes trade and profession;

“**business name**” means a name, style, title or designation under which a business is carried on;

“**carrying on business**” includes establishing a place of business and soliciting or procuring any order from a person in the country;

“**corporation**” means any corporation formed or incorporated whether in or outside the country, and includes a foreign company within the meaning of the *Companies Act 1997*;

“**director**”, in relation to a corporation, includes any person occupying the position of director of the corporation by whatever name called;

“**firm**” means an unincorporated body of persons (whether consisting solely of individuals or of corporations or partly of individuals and partly of corporations) associated together for the purpose of carrying on business;

“**given name**” includes a forename or personal name;

“**individual**” means a natural person and does not include a corporation;

“**initial**” includes a recognized abbreviation of a given name;

“**process**” includes any writ, summons, plaint, pleading, order or document in or relating to any legal proceedings;

“**the register**” means the register of business names kept under this Act;

“the Registrar” means the Registrar of Companies under the *Companies Act 1997*, and includes any Deputy or Acting Registrar of Companies;

“the regulations” means any regulations made under this Act;

“secretary” includes—

- (a) in relation to a corporation—a person performing the duties of secretary of the corporation; and
- (b) in relation to a corporation registered under Part XX. of the *Companies Act 1997*—the person or persons authorized to accept service in the country of documents on behalf of the corporation;

“this Act” includes the regulations.

(2) For the purposes of this Act, a person shall not be regarded as carrying on business within the country for the reason only that within the country he—

- (a) is or becomes a party to an action or suit or an administrative or arbitration proceeding, or effects settlement of an action, suit or proceeding or of a claim or dispute; or
- (b) maintains a bank account; or
- (c) effects a sale through an independent contractor; or
- (d) creates evidence of a debt or creates a charge on property; or
- (e) secures or collects any of his debts or enforces his rights in regard to securities relating to his debts; or
- (f) conducts an isolated transaction that is completed within 31 days, not being one of a number of similar transactions repeated from time to time; or
- (g) invests any of his funds or holds property.

(3) For the purposes of this Act, a business name shall be deemed to be registered under this Act in relation to a person if it appears from the register that the person, alone or together with other persons, is carrying on business under that name.

2. CERTAIN PERSONS NOT TO CARRY ON BUSINESS.

(1) A person who is or has been convicted, within or without the country—

- (a) on indictment, of an offence in connection with the promotion, formation or management of a corporation; or
- (b) of an offence involving fraud or dishonesty punishable on conviction with imprisonment for three months or more; or
- (c) of an offence under Division VIII.3 of the *Companies Act 1997*, or under any corresponding law of a State or Territory of Australia,

and who carries on business in the country, except with the leave of a District Court Magistrate, alone or in association with other persons under a business name (other than a business name which consists of his name and the name of each other person (if any) in association with whom he is carrying on business, without any addition) within five years after his conviction (or if he has been sentenced to imprisonment, after his release from imprisonment), is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding six months, or both.

Default penalty: A fine not exceeding K20.00.

(3) A person shall give the Attorney-General not less than 28 days' notice of his intention to apply for leave under this section.

(4) The Attorney-General may be represented at the hearing of, and may oppose, an application under this section.

(5) Nothing in this section affects the operation of Section 3.

3. CERTAIN BUSINESS NAMES TO BE REGISTERED.

A person who, alone or in association with other persons, carries on business in the country under a business name is guilty of an offence, unless—

- (a) the business name consists of the name of that person and the name of each other person (if any) in association with whom that person is carrying on business, without any addition; or
- (b) the business name is registered under this Act in relation to that person and each other person (if any) in association with whom that person is carrying on business,

and where the business name is registered, the provisions of Section 13 that are applicable have been complied with by or on behalf of the person or persons in relation to whom the name is registered.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K20.00.

4. PERSONAL NAMES, ETC.

(1) For the purposes of Sections 2 and 3, the name of a person consists of—

- (a) in the case of an individual—
 - (i) his full name; or
 - (ii) his surname together with—
 - (A) his given name or names; or
 - (B) the initial or initials of his given name or names; or

- (C) a combination of one or more of his given names and the initial or initials of his remaining given name or names; or
- (D) the given name or names by which he is commonly known or the initial or initials by which he is commonly known, or any combination of one or more of those names and initials; or

(b) in the case of a corporation—its corporate name.

(2) For the purposes of Sections 2(1) and 3, the addition to a business name of words indicating that the business is carried on in succession to a former owner of the business shall not be deemed to be an addition to the business name.

5. BUSINESSES CARRIED ON BY OFFICIAL RECEIVERS, ETC.

Where a business is carried on—

- (a) by an official receiver; or
- (b) by a trustee in bankruptcy; or
- (c) by a trustee under a deed or a scheme of arrangement entered into under the law relating to bankruptcy; or
- (d) by a receiver, manager or other person appointed by a court, or under the powers contained in an instrument, to carry on the business,

for the purposes of this Act the business shall be deemed to be carried on by the person who carried on the business immediately before the appointment of the receiver, trustee, manager or other person.

6. CERTAIN TRANSACTIONS NOT AVOIDED.

Notwithstanding this Act, a contravention of or failure to comply with a provision of this Act does not operate to avoid an agreement, transaction, act or matter.

7. REGISTER OF BUSINESS NAMES.

(1) The Registrar shall keep a register of business names registered under this Act in such form as he thinks proper.

(2) For the purposes of this Act, a statement lodged under this Act in relation to a business name registered under this Act, whether lodged before or after the registration, shall be deemed to be incorporated with and to form part of the register.

8. REGISTRATION OF BUSINESS NAMES.

(1) An application for the registration of a business name shall be accompanied by the prescribed fee and shall be made by lodging with the Registrar a statement in the prescribed form signed by the person or persons carrying on or proposing to carry on business in the country under that name, specifying—

- (a) the business name; and
- (b) a concise description of the true nature of the business carried on or proposed to be carried on under the name by the applicant or applicants; and
- (c) the address of each place in the country where the business is or is proposed to be carried on showing, if the business is or is proposed to be carried on at more than one place in the country, which of those places is the principal place of business; and
- (d) the given names and surname, any former given names or surname and the usual place of residence of each applicant who is an individual, and the corporate name and the place of the registered office in the country of each applicant that is a corporation; and
- (e) the date or proposed date of commencement of carrying on business in the country under the business name by the applicant or applicants; and
- (f) where the business name is a name adopted by the applicant or applicants in substitution for another name—that other name.

(2) Where an applicant is an infant, he shall be so described and the date of his birth set out in the statement.

(3) Subject to this Act, on the lodging of a statement under Subsection (1) in relation to a business name the Registrar shall register the business name.

(4) On registering a business name, the Registrar shall issue a certificate of registration in the prescribed form signed by him.

(5) On payment of the prescribed fee, the Registrar may issue a further certificate of registration.

(6) A business name shall not be registered under this Act where the statement referred to in Subsection (1) is lodged with the Registrar on a date more than two months before the date shown in the statement as the proposed date of commencement of carrying on business.

(7) The Registrar may refuse to register a business name where he is not satisfied that the particulars set out in the statement lodged under Subsection (1) are correct.

9. RESIDENT AGENTS.

(1) Where a business name is required to be registered under this Act and the person or all of the persons carrying on or proposing to carry on business in the country under that name is not or are not resident within the country, or does not or do not have a fixed address or fixed addresses within the country, the statement referred to in Section 8(1) shall—

- (a) include the name and address of some person resident in the country who, in relation to the carrying on of business under that name—

- (i) has consented in writing to be the resident agent of the person or persons for the purposes of this Act; and
 - (ii) is authorized in writing by the person or persons to accept, on behalf of the person or persons, service of notices for the purposes of this Act and of any process; and
- (b) be signed by the person who has consented to be the resident agent.

(2) For the purpose of serving a notice or process under this Act, the address shown in a statement lodged with the Registrar under this Act as the address of the resident agent appointed for the purposes of this Act by the person or persons in relation to whom a business name is registered shall be deemed to be the address of a place where business is carried on by the person or persons under that name.

10. RESTRICTION ON REGISTRATION OF BUSINESS NAMES.

Except with the consent of the Minister, a business name shall not be registered under this Act where the business name is a name that, in the opinion of the Registrar, is undesirable, or is a name, or a name of a kind, that the Minister, under Section 22 of the *Companies Act 1997*, has directed the Registrar of Companies not to accept for registration under that Act.

11. POWER TO CANCEL REGISTRATION OF BUSINESS NAMES.

(1) Where a business name that could not be registered under this Act without contravention of Section 10 is registered through inadvertence or otherwise, the Registrar may send by post a notice addressed to the person or persons in relation to whom the name is registered at the place shown in the register as the place where business is carried on under that name—

- (a) stating that he proposes to cancel the registration of that name on the expiration of a period of not less than two months specified in the notice; and
- (b) setting out his reasons for the proposed cancellation,

and, on the expiration of that period, if the notice has not been annulled under Subsection (2) the Registrar may cancel the registration of that name.

(2) The Minister may, at any time before the expiration of the period specified in a notice given by the Registrar under Subsection (1), annul the notice.

(3) The Registrar may remit any fee payable in respect of an application for the registration of a new business name in place of a business name the registration of which is cancelled under Subsection (1).

12. RENEWAL OF REGISTRATION.

(1) Subject to this Act, the registration of a business name remains in force for a period of three years, but the registration may from time to time be renewed by lodging with the Registrar, at any time within the period of one month before or after

the expiry of the registration, a statement in the prescribed form signed by the person or one of the persons in relation to whom the name is registered and accompanied by the prescribed fee.

(2) Before or after the expiration of the registration of a business name, but not earlier than two months before the expiration, the Registrar shall send by post to the person or persons in relation to whom the business name is or was registered, at the place shown in the register as the place where business is carried on under that name, a notice of the date on which the registration is due to expire or has expired, as the case may be.

(3) Where the registration of a business name has expired, the Registrar shall not accept for registration from any person or persons, other than the person or persons in relation to whom the business name was registered, a business name that is identical with that business name, or that in the opinion of the Registrar so nearly resembles it as to be calculated to deceive, until the expiration of two months after the sending of the notice referred to in Subsection (2).

13. NOTIFICATION OF CHANGES IN REGISTERED BUSINESS NAMES, ETC.

(1) Where a business name is registered under this Act and a change occurs—

- (a) that renders the description of the nature of the business lodged with the Registrar insufficient to disclose the true nature of the business; or
- (b) in relation to the place or places in the country at which business is carried on under that name or in the address of any such place; or
- (c) in the registered particulars relating to the resident agent of the person or persons in relation to whom the name is registered,

there must be lodged with the Registrar within one month after the change, or within such further time as the Registrar (before the expiration of that period) allows, a statement in the prescribed form, signed by the person or one of the persons in relation to whom the name is registered at the time of the change, notifying the Registrar of the particulars of and of the date of the change.

(2) Where a change occurs—

- (a) in the given name or surname or the place of residence of any person, being an individual, in relation to whom a business name is registered under this Act; or
- (b) in the corporate name or the place of the registered office in the country of a person, being a corporation, in relation to which a business name is registered under this Act,

there must be lodged with the Registrar within one month after the change, or within such further time as the Registrar (before the expiration of that period) allows, a statement in the prescribed form, signed by that person, notifying the Registrar of the particulars of and the date of the change.

(3) Where a business name is registered under this Act in relation to a person or persons and that person ceases, or all or any of those persons cease, to carry on business in the country under that name, there must be lodged with the Registrar within one month after the cessation, or within such further time as the Registrar (before the expiration of that period) allows, a statement in the prescribed form notifying the Registrar of the cessation and of the date of the cessation, signed by each person who was carrying on business under that name immediately before the cessation or, in the case of a deceased person, by his personal representative.

(4) Where, immediately after a cessation referred to in Subsection (3), the person or all of the persons carrying on business under the business name is not or are not resident within the country, or does not or do not have a fixed address or fixed addresses within the country, the statement referred to in that subsection shall—

- (a) include the name and address of some person resident in the country who, in relation to the carrying on of business under that name—
 - (i) has consented in writing to be the resident agent of the person or persons for the purposes of this Act; and
 - (ii) is authorized in writing by the person or persons to accept, on behalf of the person or persons, service of notices for the purposes of this Act and of process; and
- (b) be signed by the person who has consented to be the resident agent.

(5) Where a business name is registered under this Act in relation to a person or persons and another person or other persons commences or commence to carry on business in the country under that name in the place of, or in association with, any person or persons in relation to whom the name is already registered, there must be lodged with the Registrar within one month after the commencement, or within such further time as the Registrar (before the expiration of that period) allows, a statement in the prescribed form notifying the Registrar of the commencement and of the date of the commencement, signed by each person carrying on business under that name immediately after the commencement and specifying, in relation to each person required to sign the statement—

- (a) in the case of an individual—
 - (i) his given names and surname and any former given names or surname; and
 - (ii) his usual place of residence,
and where he is an infant, he shall be so described and the date of his birth set out in the statement; or
- (b) in the case of a corporation—
 - (i) the corporate name; and
 - (ii) the place of the registered office in the country of the corporation.

(6) For the purposes of Subsection (5), where the person or all of the persons carrying on business under a business name is not or are not resident within the country or does not or do not have a fixed address or fixed addresses within the country, the statement referred to in that subsection shall—

- (a) include the name and address of some person resident in the country who, in relation to the carrying on of business under that name—
 - (i) has consented in writing to be the resident agent of the person or persons for the purposes of this Act; and
 - (ii) is authorized in writing by the person or persons to accept, on behalf of the person or persons, service of notices for the purposes of this Act and of process; and
- (b) be signed by the person who has consented to be the resident agent.

(7) Where, while a person is the resident agent of a person or persons in relation to whom a business name is registered under this Act, the person or any one or more of the persons in relation to whom the name is registered commences or commence to reside within the country or acquires or acquire a fixed address within the country, there must be lodged with the Registrar within one month after the person or persons commenced to reside or acquired a fixed address or fixed addresses, or within such further time as the Registrar (before the expiration of that period) allows, a statement in the prescribed form, signed by the person or one of the persons in relation to whom the business name is registered—

- (a) notifying the Registrar that the person appointed to be the resident agent of the person or persons in relation to whom the business name is registered has ceased to be the resident agent of that person or those persons; and
- (b) specifying the name or names of the person or persons in relation to whom the business name is registered who has or have commenced to reside or has or have acquired a fixed address or fixed addresses within the country, and the usual place or places of residence or the fixed address or fixed addresses within the country of that person or those persons.

(8) Where, while a person is the resident agent of a person or persons in relation to whom a business name is registered under this Act, another person or other persons commences or commence to carry on business in the country under that name in the place of, or in association with, any person or persons in relation to whom the name is already registered, and that other person or one or more of those other persons resides within the country or has or have a fixed address or fixed addresses within the country, there must be lodged with the Registrar within one month after the commencement, or within such further time as the Registrar (before the expiration of that period) allows, a statement in the prescribed form, signed by the person or one of the persons carrying on business under that name after the commencement—

- (a) notifying the Registrar that the person who was the resident agent of the person or persons in relation to whom the business name was registered immediately before the commencement is not, or has ceased to be, the resident agent of the person or persons carrying on business under that name immediately after the commencement; and
- (b) specifying the name or names of that other person or any of the other persons who resides or reside within the country or has or have a fixed address or fixed addresses within the country, and the usual place or places of residence or the fixed address or fixed addresses within the country of that other person or those other persons.

(9) Where a business name is registered under this Act and a person appointed to be the resident agent of the person or persons in relation to whom the name is registered ceases to reside within the country or ceases to be the resident agent of that person or those persons, there must be lodged with the Registrar within one month after the cessation, or within such further time as the Registrar (before the expiration of that period) allows, a statement in the prescribed form, notifying the Registrar of the name and address of some other person resident within the country who is appointed to be the resident agent of the person or persons in relation to whom the name is registered in the place of, or in succession to, the person who has ceased to be so resident or who has ceased to be the resident agent of that person or those persons, and of the date of the appointment—

- (a) signed by the person or one of the persons in relation to whom the name is registered and by the person so appointed; and
- (b) showing that the person so appointed, in relation to the carrying on of business under that name—
 - (i) has consented in writing to be the resident agent of the person or persons for the purposes of this Act; and
 - (ii) is authorized in writing by the person or persons to accept on behalf of the person or persons service of notices for the purposes of this Act and of process.

(10) Where a business name is registered under this Act and the person or all the persons in relation to whom the name is registered ceases or cease to reside within the country or to have a fixed address or fixed addresses within the country, there must be lodged with the Registrar within one month after that person or those persons has or have ceased to reside or to have a fixed address or fixed addresses, or within such further time as the Registrar (before the expiration of that period) allows, a statement in the prescribed form, notifying the Registrar of the name and address of some other person resident in the country who is appointed to be the resident agent of the person or persons in relation to whom the name is registered, and of the date of the appointment—

- (a) signed by the person or one of the persons in relation to whom the name is registered and by the person appointed; and

- (b) showing that the person appointed, in relation to the carrying on of business under that name—
 - (i) has consented in writing to be the resident agent of the person or persons for the purposes of this Act; and
 - (ii) is authorized in writing by the person or persons to accept on behalf of the person or persons service of notices for the purposes of this Act and of process.

(11) Where a statement required by a provision of this section to be lodged with the Registrar is not lodged in accordance with that provision or, if lodged, does not comply with that provision, each person required or authorized by the provision to sign the statement is, unless he proves that he took all reasonable steps to ensure compliance with the provision, guilty of an offence.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K20.00.

(12) Where by reason of a person commencing to carry on business under a business name registered under this Act a statement is lodged with the Registrar under Subsection (5), that person or any other person is not guilty of an offence against Section 3 by reason only that, before the lodging of the statement, he carried on business under that name.

(13) A statement required to be lodged with the Registrar under this section with respect to a matter may be combined with a statement required to be lodged under this section with respect to another matter.

(14) A statement lodged under this section shall be accompanied by the prescribed fee.

14. DUTY TO FURNISH INFORMATION.

(1) The Registrar may, by written notice, require any person to furnish within a period of not less than two months specified in the notice, or within such further period as the Registrar (before the expiration of that period) allows, such information as appears to the Registrar to be necessary to enable him to ascertain whether or not a person—

- (a) is carrying on business alone or in association with other persons under a business name that is required to be registered under this Act; or
- (b) has failed to lodge with the Registrar a statement required to be lodged under this Act.

(2) A person required under Subsection (1) to furnish information to the Registrar who, within the period specified in the notice, or within such further period as the Registrar allows, fails to furnish such information as is within his power to furnish, or furnishes any information which to his knowledge is false in a material particular, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(3) A person is not excused from furnishing information where required to do so under Subsection (1) on the ground that the information might tend to criminate him or make him liable to a penalty, but the information furnished by him is not admissible in evidence against him in any proceedings, civil or criminal.

15. DISABILITY OF PERSONS IN DEFAULT.

Where a person who—

- (a) is carrying on business under a business name in contravention of Section 2 or 3; or
- (b) is required to lodge a statement under Section 13 in relation to a business name and fails to lodge the statement,

commences any legal proceedings in that business name or in respect of a cause of action arising out of a dealing in or under that business name, the court before which the proceedings are commenced—

- (c) may order the person—
 - (i) to cease to contravene Section 2 or 3; or
 - (ii) to cause the statement to be lodged,

as the case requires; and
- (d) may—
 - (i) stay the proceedings until the order is complied with; or
 - (ii) allow the proceedings to continue on an undertaking being given by the person that he will comply with the order within such period as is fixed by the court.

16. SIGNING OF STATEMENTS.

(1) A statement lodged with the Registrar under this Act shall be deemed to be signed by a person who is required to sign the statement where—

- (a) in the case of an individual—it is signed on his behalf by a person authorized in writing to sign the statement; or
- (b) in the case of a corporation—it is signed by a director or manager or the secretary of the corporation.

(2) Notwithstanding this Act, where the Registrar is satisfied that it is not practicable to obtain the signature of a person required by this Act to sign a statement, the Registrar may accept the statement for registration without it being signed by that person, but a person is not relieved of the requirement to sign a statement and a statement not signed by a person is not evidence relating to that person's interest in a business by reason only of its registration under this Act.

17. VERIFICATION OF PARTICULARS.

If the Registrar, in a particular case, thinks fit, he may refuse to accept a statement required to be lodged with him under this Act unless the particulars specified in the statement are verified by a statutory declaration made by a person who signed the statement.

18. FALSE STATEMENTS.

A person who signs or lodges with the Registrar a statement, made or purporting to be made for the purposes of this Act, that to his knowledge is false in a material particular, and a person who authorizes or permits the lodging with the Registrar of such a statement that to his knowledge is false in a material particular, is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding three months, or both.

19. NOTICE OF PROPOSED CANCELLATION.

(1) Where the Registrar has reasonable cause to believe that a person or persons in relation to whom a business name is registered under this Act is not or are not carrying on business in the country under that name, he may send by post a notice addressed to the person or persons at the place shown in the register as the place where business is carried on under that name inquiring whether the person is or the persons are carrying on business under the name and stating that, unless the Registrar is satisfied within two months from the date of the notice that business is being carried on in the country by that person or those persons under that name, the registration of the business name may be cancelled.

(2) Where the Registrar has reasonable cause to believe that a provision of Section 13 that is required to be complied with by or on behalf of the person or persons in relation to whom a business name is registered under this Act has not been complied with, he may send by post a notice addressed to the person or persons at the place shown in the register as the place where business is carried on under that name stating that, unless within two months from the date of the notice the provision is complied with or the Registrar is satisfied that there was in fact no failure to comply with the provision, the registration of the business name may be cancelled.

20. CANCELLATION OF REGISTRATION.

(1) The Registrar may cancel the registration of a business name where—

(a) there is lodged with the Registrar a statement under Section 13 notifying him that the person or all the persons in relation to whom the business name is registered has or have ceased to carry on business in the country under that name, and it does not appear from the statement or another statement accompanying the statement that another person

has or other persons have commenced to carry on business in the country under that name; or

- (b) the Registrar has sent a notice under Section 19(1) to any person or persons in respect of the business name and that person does not, or those persons do not, satisfy the Registrar within one month from the date of the notice that business is being carried on in the country by that person or those persons under that name; or
- (c) the Registrar has sent a notice under Section 19(2) to any person or persons and within two months after the date of the notice the provision of Section 13 to which the notice relates has not been complied with or the person does not or those persons do not satisfy the Registrar that there was no failure to comply with the provision; or
- (d) the business name is registered in relation to a corporation only and the name of the corporation has been struck off any register of corporations kept under the *Companies Act 1997* or the corporation has been dissolved.

(2) The Registrar may, on any grounds that he thinks sufficient, revoke the cancellation by him of the registration of a business name and, in that event, the business name shall be deemed to have continued to be registered as if the registration had not been cancelled.

(3) Where the registration of a business name has been cancelled under this section, a person in relation to whom the business name was registered immediately before the cancellation may apply to the National Court for an order directing the Registrar to restore the registration of the business name.

(4) On an application under Subsection (3), if the National Court is satisfied that the applicant is carrying on business under the business name and that it is just and equitable to do so, it may make the order applied for on such terms as the Court thinks proper.

(5) On the making of an order by the National Court under Subsection (4), the business name shall be deemed to have continued to be registered as though the registration had not been cancelled and the Registrar, on the lodging with him of an office copy of the order, shall make such entries and alterations in the register as he considers necessary for the purposes of the order.

21. USE AND EXHIBITION OF BUSINESS NAME.

Where a business name is registered under this Act—

- (a) no person or persons in relation to whom the business name is registered may issue or sign in connection with the carrying on of that business any business letter, statement of account, invoice, official notice, publication, order for goods or receipt unless the business name appears in legible characters on it; and

- (b) the business name must at all times be displayed in a conspicuous position on the outside of every place at which business is carried on under that name; and
- (c) the certificate of registration of the business name must at all times be exhibited in a conspicuous position at the place where business is carried on under that name or, if there is more than one such place, at the principal place where business is so carried on,

and in the event of a contravention of this section each person carrying on business under that name is, unless he proves that he took all reasonable steps to ensure compliance with this section, guilty of an offence.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K20.00.

22. REGISTRAR MAY CORRECT ERRORS IN REGISTER, ETC.

(1) The Registrar may, on evidence which to him appears sufficient, correct an error in an entry in the register or in a certificate of registration of a business name.

(2) When correcting an error under Subsection (1), the Registrar shall not erase or render illegible the original words, and shall affix the date on which the correction was made together with his initials.

(3) An entry or certificate corrected under this section has the same validity and effect as though the error had not been made.

(4) The Registrar may accept and register a statement lodged to correct an error in, or to supply a particular omitted from, a statement previously lodged and registered and, in that event, the statement previously lodged and that lodged under this subsection shall be read as one and shall both be incorporated with and form part of the register.

23. INSPECTION OF STATEMENTS.

A person may, on payment of the prescribed fee, inspect any statement lodged with the Registrar under this Act that has not been destroyed under Section 26, and may make a copy of the statement or take extracts from it.

24. CERTIFICATES OF REGISTRATION OR NON-REGISTRATION.

(1) The Registrar shall, on written request by a person and on payment of the prescribed fee, issue to that person—

- (a) a copy of or extract from the register, or a copy of or extract from a document forming part of the register, certified under his hand to be a true copy or extract; or
- (b) a certificate under his hand that a business name was or was not registered under this Act on a date or during a period specified in the certificate.

(2) The Registrar is not required to issue a copy, extract or certificate under Subsection (1) in respect of a statement or notice that has been destroyed under Section 26 or in respect of a date or a period ending on a date earlier by more than 12 years than the date of the receipt of the request.

25. EVIDENCE OF REGISTRATION OR NON-REGISTRATION.

A document purporting to be—

- (a) a certificate of registration issued under this Act; or
- (b) a copy of or extract from the register, or a copy of or extract from a document forming part of the register, issued under Section 24(1)(a); or
- (c) a certificate issued under Section 24(1)(b); or
- (d) a combination of two or more of the certificates, copies or extracts referred to in Paragraphs (a), (b) and (c),

is, in all courts and before all persons having authority to hear, receive and examine evidence, *prima facie* evidence of any matter contained or set out in the certificate, copy or extract.

26. AUTHORITY OF REGISTRAR TO DESTROY DOCUMENTS.

The Registrar may, if in his opinion it is no longer necessary or desirable to retain it, destroy or dispose of any statement or notice lodged, filed, received or registered under this Act, where the registration of the business name or of the firm, individual or corporation, as the case may be, in respect of which the statement or notice was lodged, filed, received or registered has not been in force at any time during the preceding 12 years.

27. INVITATIONS TO THE PUBLIC TO MAKE DEPOSITS OR LOANS.

(1) Where a person is or the members of a firm are carrying on business in the country under a business name registered or required to be registered under this Act, a person who uses or makes reference to that business name in an invitation to the public or in an advertisement inviting the public to deposit money with or lend money to that person or firm, or uses or makes reference to a business name in connection with a deposit or loan, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

(2) This section does not apply to an invitation to the public made by a public company in conformity with the requirements of the *Companies Act 1997*.

28. PROCEEDINGS AGAINST PERSONS UNDER A BUSINESS NAME.

(1) Subject to Subsection (2), proceedings may be taken and prosecuted in a court of competent jurisdiction against any person or persons in the business name under which the person is or the persons are carrying on business if the business name is not registered under this Act.

(2) In proceedings to which Subsection (1) applies—

- (a) the name is, for the purpose of the proceedings, a sufficient designation of the person or persons referred to in that subsection in all writs, summonses, complaints and other legal documents and instruments; and
- (b) a judgement obtained or order made may be enforced against that person, or against those persons or any of those persons, as the case may be.

(3) This section does not exempt a person from compliance with any provision of this Act.

29. OFFENCES COMMITTED BY CORPORATIONS.

Where a person guilty of an offence against this Act is—

- (a) a corporation; or
- (b) a person who purported to act for or on behalf of a corporation,

a director, manager, secretary or other officer of the corporation who was knowingly a party to the offence is also guilty of the offence.

30. EVIDENTIARY PROVISIONS.

Where, in proceedings for an offence against this Act, proof is given that a business name has been displayed on any premises, and evidence is given from which the court may infer that the business name has reference to any business carried on at the premises, the person or persons carrying on business shall, in the absence of proof to the contrary, be deemed to be carrying on the business under the business name.

31. SERVICE OF NOTICES.

(1) In this section, “**the place where the business is carried on**” means—

- (a) the place shown in the register as the place where business is carried on; or
- (b) where more than one place is shown in the register as the place where business is carried on—
 - (i) the place shown in the register as the principal place where business is carried on; or
 - (ii) where no place is shown as the principal place—the place shown which appears first in the register as a place where the business is carried on.

(2) Where, by this Act, the Registrar is required or permitted to send a notice to the person or persons in respect of whom a business name is registered at the place where business is carried on under the business name, the notice may be sent by post addressed to the business name—

- (a) at the place where the business is carried on; or
- (b) where it appears from the register that there is, for the purposes of this Act, a resident agent—at the place shown in the register as the address of the resident agent.

(3) Service of any communication, notice or process on any person or persons carrying on business under a business name registered under this Act—

- (a) by leaving it at the place where the business is carried on by the person or persons with some other person apparently in the service of the person or persons and apparently of or above the age of 16 years; or
- (b) where it appears from the register that there is a resident agent appointed for the purposes of this Act by the person or persons—by leaving it with the resident agent or with some other person apparently in the service of the resident agent and apparently of or above the age of 16 years; or
- (c) by sending it by registered post or as certified mail addressed to—
 - (i) the person or persons at the place where the business is carried on by the person or persons; or
 - (ii) the resident agent, where it appears from the register that there is a resident agent appointed for the purposes of this Act by the person or persons, at the place shown in the register as the address of the resident agent,

shall be deemed to be personal service on the person or persons.

32. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing matters for or in relation to—

- (a) the fees to be paid to the Registrar under this Act; and
- (b) the forms to be used under this Act; and
- (c) the duties of the Registrar for the purposes of this Act; and
- (d) generally the conduct and regulation of registration under this Act; and
- (e) the imposition of penalties of fines not exceeding K40.00 for offences against the regulations.