

SOUTH AUSTRALIA

BUSINESS NAMES ACT, 1963

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 July 1991.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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SCHEDULE

APPENDIX LEGISLATIVE HISTORY

BUSINESS NAMES ACT, 1963

being

Business Names Act, 1963, No. 57 of 1963
[Assented to 5 December 1963]¹

as amended by

Business Names Act Amendment Act, 1981, No. 105 of 1981 [Assented to 23 December 1981]

¹ Came into operation 1 July 1964: *Gaz.* 21 May 1964, p. 1063.

An Act to make provision with respect to the registration and use of business names; to repeal the Registration of Business Names Act, 1928, and certain other Acts amending that Act; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:—

Short title

1. This Act may be cited as the *Business Names Act, 1963*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

Repeals, savings and transitional provisions

3. (1) The Acts mentioned in the Schedule to this Act are hereby repealed.

(2) Where in any other Act or in any document, rule or regulation a reference is made to the repealed Act or any corresponding previous enactment or to any provision of such Act or enactment, that reference shall, so far as it is applicable, be read as a reference to this Act or to the corresponding provisions, if any, of this Act.

(3) A reference in any Act, order, regulation, rule, instrument or document to a firm, individual or corporation registered or required to have been registered under the repealed Act or any corresponding previous enactment shall, unless the context otherwise requires, be construed as referring also to a firm, the members of which are, or to an individual who or a corporation which, as the case may be, is, carrying on business under a business name registered or required to be registered under this Act.

(4) A reference to the registrar in any Act, order, regulation, rule, instrument or document relating to any matter under or in connection with the repealed Act or any corresponding previous enactment shall, unless the context otherwise requires, be construed as referring to the Registrar under this Act.

(5) A business name in respect of which a firm, individual or corporation was immediately before the commencement of this Act registered under the repealed Act shall, subject to this Act, upon the commencement of this Act be deemed to be registered under this Act in relation to each member of the firm, in relation to the individual or in relation to the corporation, as the case may be, and such registration shall, subject to this Act, be in force until the date of expiration of the registration as shown in the relevant certificate of registration issued under the repealed Act, and this Act shall apply to and in relation to the business name accordingly.

(6) Where, in relation to a business name registered or deemed to be registered under this Act in relation to any person or persons, it appears from the register—

- (a) that there is a person resident in the State who has been authorized by such person or persons to accept service on his or their behalf of any notices required to be served on him or them under the repealed Act or of any process; or

3.

- (b) that there is a person resident in the State who has been appointed by such person or persons to be his or their resident agent for the purposes of this Act,

that person shall, until he ceases to be so authorized or until he ceases to be such resident agent, as the case may be, and a statement is lodged under subsection (5) of section 12 notifying the Registrar of the cessation, be deemed to be the resident agent for the purposes of this Act appointed by the person or persons in relation to whom such business name is registered or deemed to be registered.

(7) The address shown in any statement lodged with the Registrar under this Act or in any particulars furnished under the repealed Act as the address of the person who is or is deemed to be the resident agent appointed for the purposes of this Act by the person or persons in relation to whom a business name is registered or deemed to be registered under this Act shall, for the purposes of serving any notice under this Act or of serving any process, be deemed to be the address of a place where business is carried on under that business name by the person or persons in relation to whom the business name is so registered or deemed to be registered and service of any notice under this Act or of any process upon the resident agent or on the person so deemed to be the resident agent, as the case may be, at the address so shown shall be deemed to be service upon the person or persons in relation to whom the business name is so registered or deemed to be registered.

(8) The mention of particular matters in this section or in any other section shall not affect the general application of the *Acts Interpretation Act, 1915-1957*, to the repeals effected by this Act, except where that Act is inconsistent with this Act.

Interpretation

4. (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 in the State and soliciting or procuring any order from a person in the State and "to carry on business" has a corresponding interpretation:

"Christian name" includes any forename:

"corporation" means any body corporate formed or incorporated whether in the State or outside the State and includes any foreign company within the meaning of the *Companies Act, 1962*:

"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 of individuals or of corporations or partly of individuals and partly of corporations) associated together for the purpose of carrying on business for profit:

"individual" means a natural person and does not include a corporation:

"initial" includes a recognized abbreviation of a Christian name:

4.

"register" means the register of business names referred to in section 6 of this Act:

"Registrar" means the Registrar of Companies under the *Companies Act, 1962*, and includes any Deputy Registrar of Companies:

"repealed Act" means the *Registration of Business Names Act, 1928-1961*:

"secretary", in relation to a corporation, includes any person performing the duties of secretary of the corporation and, in relation to a corporation registered under Division III of Part XI of the *Companies Act, 1962*, includes the agent within the meaning of that Division of the corporation:

"section" means section of this Act.

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

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

Certain business names to be registered

5. (1) A person shall not either alone or together with other persons carry on business in the State under a business name 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 so carrying on business, without any addition; or

5.

- (b) the business name is registered or deemed to be registered under this Act in relation to that person and each other person, if any, in association with whom that person is so carrying on business and such of the provisions of section 12 as are applicable have been complied with by or on behalf of the person or persons in relation to whom the business name is registered or deemed to be registered.

Penalty: Two hundred dollars. Default penalty.

- (2) For the purposes of subsection (1) of this section the name of a person consists of—

- (a) in the case of an individual—his full name, or his surname together with—

- (i) his Christian name or names;
- (ii) the initial or initials of his Christian name or names;
- (iii) a combination of one or more of his Christian names and the initial or initials of his remaining Christian name or names; or
- (iv) the Christian 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 such names and such initials; and

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

(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 for the purposes of subsection (1) of this section be deemed not to be an addition to the business name.

(4) Where a business is carried on by an official receiver, a trustee in bankruptcy or a trustee under a deed or scheme of arrangement entered into under a law of the Commonwealth relating to bankruptcy, or by a receiver, manager or other person appointed by any court, or under the powers contained in any instrument to carry on the business, the business shall, for the purposes of this Act, be deemed to be carried on by the person or persons who carried on the business immediately before the appointment of the receiver, trustee, manager or other person.

(5) Notwithstanding anything in this Act, a contravention of or failure to comply with any provision thereof shall not operate to avoid any agreement, transaction, act or matter.

Presumption arising from advertisement of accommodation address

(6) Where any person or persons causes or cause to be published in the State an advertisement in which an address in the State is given as an address to which communications in connection with the business of the person or persons may be addressed or delivered, that address shall, for the purposes of this Act, be deemed to be the address of a place of business in the State at which the person or persons is or are carrying on business, and, if any business name is mentioned in the advertisement, the person or persons, shall, for the purposes of this Act, be deemed to be carrying on business under that business name.

Register of business names

6. (1) The Registrar shall keep a register of business names registered or deemed to be registered under this Act in such form as he thinks fit.

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

(3) The register and index of the business names of firms, individuals and corporations registered under the repealed Act, and any statement or notice furnished or sent to the Registrar under the repealed Act or any corresponding previous enactment shall be deemed to be incorporated with and to form part of the register kept under this Act.

Registration of business names

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

- (a) the business name;
- (b) a concise description of the true nature of the business carried on or proposed to be carried on under that name by the applicant or applicants;
- (c) the address of each place in the State where the business is, or is proposed to be, carried on and, where the business is, or is proposed to be, carried on at more than one place in the State, showing which of those places is, or is to be, the principal place of business;
- (d) the Christian names and surname and any former Christian 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 or proposed registered office in the State of each applicant which is a corporation;
- (e) the date or proposed date of commencement of the carrying on of business in the State 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) If any applicant is an infant, he shall be so described and the date of his birth shall be set out in the statement and, if he is not so described and the date of his birth is not set out in the statement, the statement shall, for the purposes of section 17, be deemed to be false in a material particular.

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

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

(5) The Registrar may, upon payment of such further fee as is prescribed, issue a further certificate of registration.

(6) A business name shall not be registered under this Act if the statement referred to in subsection (1) of this section is lodged with the Registrar on a date more than two months prior to 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 if he is not satisfied that the particulars set out in the statement lodged under subsection (1) of this section are correct.

Resident agent

8. Where a business name is required to be registered under this Act and the person or all the persons carrying on or proposing to carry on business in the State under that name resides or reside outside the State, or has or have no usual place or places of residence within the State, the statement referred to in subsection (1) of section 7 shall—

- (a) include the name and address of an individual resident in the State who, in relation to the carrying on of business under that name, has been appointed by that person or those persons to be his or their resident agent for the purposes of this Act and—
 - (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 service on behalf of the person or persons of any notices for the purposes of this Act and of any process; and
- (b) in addition, be signed by the person who has consented to be the resident agent.

Restriction on registration of business names that are undesirable, etc.

9. (1) Except with the consent of the Minister, a business name shall not be registered under this Act if the business name is a name that is, in the opinion of the Registrar, undesirable or is a name, or a name of a kind, that the Minister has, for the purposes of this Act, directed the Registrar not to accept for registration.

(2) The Minister shall cause a direction given by him under subsection (1) of this section to be published in the *Government Gazette* and a copy of the direction to be forwarded to the Attorney-General of the Commonwealth and the Attorney-General of each State of the Commonwealth.

Power to cancel registration of business names that are undesirable, etc.

10. (1) If a business name which could not be registered under this Act without contravention of subsection (1) of section 9 is a business name that, through inadvertence or otherwise, has been registered under this Act or is a business name in respect of which a firm, individual or corporation had, through inadvertence or otherwise, been registered under the repealed Act, the Registrar may send by post a notice addressed to the person or persons in relation to whom the name is registered or deemed to be registered under this Act—

- (a) stating that he proposes to cancel the registration upon the expiration of such period (being a period of not less than twenty-eight days) as is specified in the notice; and

8.

(b) setting out his reasons for the proposed cancellation,

and upon the expiration of that period the Registrar may, if the notice has not been annulled under subsection (3) of this section, cancel the registration.

(2) The Registrar shall not, except with the approval of the Minister, exercise his powers under subsection (1) of this section with respect to a business name in respect of which a firm, individual or corporation had been registered under the repealed Act.

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

(4) 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 or with respect to which is cancelled under subsection (1) of this section.

Duration of registration and renewal of registration

11. (1) Subject to this Act, the registration or renewal of a registration of a business name shall be in force for a period of three years but the registration may from time to time be renewed by lodging with the Registrar not earlier than one month before nor later than one month after the expiry of the registration or renewal or within such further time as the Registrar may allow, a statement in the prescribed form signed by the person or one of the persons in relation to whom the name is registered or deemed to be registered accompanied by the prescribed fee.

(2) The renewal of a registration shall take effect from the day on which the previous registration or renewal expires or has expired, as the case may be.

(3) The Registrar shall, upon renewing the registration of a business name, issue a certificate of registration in the prescribed form signed by the Registrar.

(4) The Registrar shall, before or after the expiration of the registration of a business name but not later than one month after the expiration, send by post to the person or persons in relation to whom the business name is or was registered or deemed to be registered a notice of the date on which the registration is due to expire or has expired, as the case may be.

(5) Where the registration of a business name has expired, the Registrar shall not, except where he is of the opinion that owing to the nature of the business and the locality in which it is carried on the public are not likely to be misled, accept for registration from any person or persons, other than the person or persons in relation to whom the business name was registered or deemed to be registered, any 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 one month after the expiry of the registration.

Notification of changes in particulars relating to registered business names, cessation of business, etc.

12. (1) Where a business name is registered or deemed to be registered under this Act and a change occurs—

(a) which renders the description of the nature of the business lodged with the registrar insufficient to disclose the true nature of the business;

9.

- (b) in relation to the place or places in the State 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 person who is or is deemed to be the resident agent of the person or persons in relation to whom the name is registered or deemed to be registered,

there shall be lodged with the Registrar, within fourteen days thereafter or within such further time as the Registrar may allow, a statement in the prescribed form, signed by the person or one of the persons in relation to whom the name is registered or deemed to be registered at the time of the change, notifying the Registrar of particulars of and of the date of the change.

(2) Where a change occurs in the Christian names or surname or the place of residence of any person being an individual in relation to whom a business name is registered or deemed to be registered under this Act or in the corporate name or the place of the registered office in the State of a person being a corporation in relation to which a business name is registered or deemed to be registered under this Act, there shall be lodged with the Registrar, within fourteen days thereafter or within such further time as the Registrar may allow, a statement in the prescribed form, signed by that person notifying the Registrar of particulars of and of the date of the change.

(3) Where a business name is registered or deemed to be 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 State under that name, there shall be lodged with the Registrar, within fourteen days thereafter or within such further time as the Registrar may allow, a statement in the prescribed form notifying the Registrar of the cessation and of the date thereof 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 a business name is registered or deemed to be registered under this Act in relation to a person or persons and another person commences or other persons commence to carry on business in the State under that name in place of or in association with the person or persons in relation to whom the name is already registered or deemed to be registered, there shall be lodged with the Registrar, within fourteen days thereafter or within such further time as the Registrar may allow, a statement in the prescribed form signed by the person or all of the persons carrying on business under that name immediately after that other person or those other persons so commenced carrying on business under that name, setting out the date on which that other person or those other persons so commenced to carry on business and, in relation to each person required to sign the statement—

- (a) who is an individual—the Christian names and surname and any former Christian names or surname and the usual place of residence of the individual (and where he is an infant in addition to the particulars referred to in this paragraph he shall be so described in the statement and the date of his birth shall be set out therein); or

- (b) which is a corporation—the corporate name and the place of the registered office in the State of the corporation,

and, where the person or all of the persons carrying on business under that business name after that date is or are not resident within the State or has or have no usual place or places of residence within the State, the statement shall

- (i) also set out the name and address of an individual resident in the State who, in relation to the carrying on of business under that name, has been appointed by that person or those persons to be his or their resident agent for the purposes of this Act and—
 - (A) has consented in writing to be the resident agent for the purposes of this Act of the person or persons required to sign the statement; and
 - (B) is authorized in writing by the person or persons required to sign the statement to accept on his or their behalf service of any notices for the purposes of this Act and of any process; and
- (ii) in addition, be signed by the person who has consented to be the resident agent.

(5) Where—

- (a) a business name is deemed to be registered under this Act and the person deemed to be the resident agent for the purposes of this Act of the person or persons in relation to whom the name is deemed to be registered ceases to be authorized to accept service on behalf of such person or persons of any notices or of any process; or
- (b) a business name is registered under this Act and the person appointed the resident agent for the purposes of this Act of the person or persons in relation to whom the name is registered ceases to be the resident agent of such person or persons,

there shall be lodged with the Registrar, within fourteen days after such cessation or within such further time as the Registrar may allow, a statement in the prescribed form notifying the Registrar of the cessation and of the date thereof signed by the person or any of the persons in relation to whom the name is registered or deemed to be registered or by the person so ceasing or his personal representative, and, if the person or all the persons in relation to whom the name is registered or deemed to be registered is or are residing outside the State or has or have no usual place or places of residence within the State, that person or those persons shall, within fourteen days after such cessation or within such further time as the Registrar may allow, appoint in place of or in succession to the person so ceasing another individual resident in the State as his or their resident agent for the purposes of this Act.

(6) Where another individual is so appointed, there shall be lodged with the Registrar, within fourteen days after such appointment or within such further time as the Registrar may allow, a statement in the prescribed form notifying the Registrar of the appointment and of the date thereof—

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

(b) showing that the individual so appointed—

- (i) is, in relation to the carrying on of business under that name, authorized by such person or persons to accept on his or their behalf service of any notices for the purposes of this Act and of any process; and
- (ii) has consented in writing to act as the resident agent of such person or persons for the purposes of this Act.

(7) Where the person or all the persons in relation to whom a business name is registered or deemed to be registered under this Act ceases or cease to reside within the State or to have a usual place or usual places of residence in the State, there shall be lodged with the Registrar, within fourteen days after that person or the last of those persons residing or having a usual place of residence in the State has ceased to so reside or have a usual place of residence, or within such further time as the Registrar may allow, a statement in the prescribed form notifying the Registrar of the name and address of an individual resident in the State who has been appointed for the purposes of this Act to be the resident agent of the person or persons in relation to whom the name is registered or deemed to be registered—

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

(b) showing that the individual so appointed—

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

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

Penalty: Two hundred dollars. Default penalty.

(9) Where, by reason of a person commencing to carry on business under a business name registered or deemed to be registered under this Act, a statement is lodged with the Registrar in accordance with, and within the time prescribed by, subsection (4) of this section or within such further time as the Registrar may in accordance with that subsection have allowed, neither that person nor any other person shall be guilty of an offence against section 5 of this Act by reason only that before the lodging of the statement he carried on business under that name.

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

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

Duty to furnish information

13. (1) The Registrar may, by notice in writing, require any person to furnish to the Registrar within a period specified in the notice (being a period of not less than twenty-eight days) or within such further period as the Registrar may, on the application of that person, allow and notify to that person, 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 either alone or in association with any other person or persons under a business name that is required to be registered or that is registered or deemed 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) of this section to furnish information to the Registrar shall, within the period specified in the notice or within such further period as the Registrar has allowed, furnish such information as it is within his power to furnish and shall not furnish any information which to his knowledge is false in any material particular.

Penalty: Two hundred dollars.

(3) A person shall not be excused from furnishing any information where required to do so under subsection (1) of this section on the ground that the information might tend to incriminate him or make him liable to a penalty but the information furnished by him under this section (unless contained in any statement lodged by him with the Registrar pursuant to section 7 or 12) shall not be admissible in evidence against him in any proceedings for any offence except in the case of a charge against him for an offence under section 5 or 12.

Disability of persons in default

14. (1) Where a person carrying on business under a business name in contravention of section 5 or a person who, being guilty of an offence under section 12 by reason of the failure to lodge a statement referred to in that section in relation to a business name, fails to lodge that statement, commences any suit or action in that business name or in respect of a cause of action arising out of any dealing in or under that business name, the court before which the suit or action is commenced may order the person to cease to contravene section 5 or to cause the statement to be lodged, as the case may be, and may stay all proceedings in the suit or action until the order is complied with or may allow the proceedings to be continued on an undertaking being given by the person that he will comply with the order within such time as is limited by the court.

(2) The power given by this section to a court may be exercised, in the case of the Supreme Court, by a Judge in chambers or in the case of a Local Court, by a Local Court Judge or a special magistrate.

Signing of statements

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

- (a) in the case of an individual—it is signed on his behalf by a person authorized in writing to so 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 any other provision of 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 its being signed by that person; but a person is not relieved of the requirement to sign a statement and a statement not signed by any person is not, by reason only of its registration under this Act, evidence relating to that person's interest in a business.

Verification of particulars

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

Penalty for false statement

17. A person shall not sign or lodge with the Registrar a statement made, or purporting to be made, for the purposes of this Act which, to his knowledge, is false in any material particular and a person shall not authorize or permit the lodging with the Registrar of such a statement which, to his knowledge, is false in any material particular.

Penalty: Two hundred dollars or imprisonment for three months or both.

Notice of proposed cancellation

18. (1) Where the Registrar has reasonable cause to believe that a person or persons in relation to whom a business name is registered or deemed to be registered under this Act is not or are not carrying on business in the State under that name, he may send by post a notice addressed to the person or persons at the place shown in the register as a place where business is carried on under that name or to an address deemed to be an address of a place where business is carried on under that name enquiring whether the person is or the persons are carrying on business under the name and stating that, unless the Registrar is satisfied within one month from the date of the notice that business is being carried on in the State 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 any provision of section 12 has not been complied with, he may send by post a notice addressed to the person or persons who appear to him to be guilty of an offence by reason of the failure to comply with such provision at the place shown in the register as the place where business is carried on under that name or to an address deemed to be an address of a place where business is carried on under that name stating that, unless within one month from the date of the notice that 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.

Cancellation of registration

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

- (a) if there is lodged with the Registrar a statement under section 12 notifying him that the person or all the persons in relation to whom the business name is registered or deemed to be registered has or have ceased to carry on business in the State under that name and it does not appear from that statement or another statement accompanying that statement that another person has or other persons have commenced to carry on business in the State under that name;

- (b) if the Registrar has sent a notice to any person or persons in respect of the business name under subsection (1) of section 18 and the Registrar is not satisfied within one month from the date of the notice that business is being carried on in the State by that person or those persons under that name;
- (c) if the Registrar has sent a notice to any person or persons under subsection (2) of section 18 and within one month after the date of the notice the provision of section 12 to which the notice relates has not been complied with or the Registrar is not satisfied that there was no failure to comply with the provision; or
- (d) if the business name is registered or deemed to be 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, 1962*, or the corporation has been dissolved.

(2) The Registrar may, on any grounds which he thinks sufficient, revoke any 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 or deemed to be registered immediately before the cancellation may apply to the Supreme Court for an order directing the Registrar to restore the registration of the business name.

(4) On an application under subsection (3) of this section the Supreme Court may, if it is satisfied that the applicant is carrying on business under the business name and that it is just and equitable so to do, make the order applied for upon such terms as the Court thinks fit.

(5) Upon the making of an order by the Supreme Court under subsection (4) of this section, the business name shall be deemed to have continued to be registered as if the registration had not been cancelled and the Registrar, upon 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.

Use and exhibition of business name

20. Where a business name is registered or deemed to be registered under this Act—

- (a) a person or persons in relation to whom the business name is registered or deemed to be registered shall not 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 thereon;
- (b) the business name shall 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 shall 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 shall, unless he proves that he took all reasonable steps to ensure compliance with this section, be guilty of an offence against this Act.

Penalty: One hundred dollars. Default penalty.

Registrar may correct errors in register, etc.

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

(2) When correcting an error under subsection (1) of this section the Registrar shall not erase the error or render it illegible and shall affix the date upon which the correction was made together with his initials.

(3) Any entry or certificate corrected under this section shall have the same validity and effect as if the error had not been made.

(4) The Registrar may accept and register a statement lodged to correct any error in or to supply any 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.

Inspection of statements

22. A person may, on payment of the prescribed fee, inspect any statement lodged with the Registrar under this Act, or furnished under any corresponding previous enactment and which is in the Registrar's custody and may make a copy thereof or take extracts therefrom.

Certificates of registration or non-registration

23. (1) The Registrar shall, upon request in writing made by any person and payment of the prescribed fee, issue or send by post 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, on a date or during a period specified in the certificate, registered or deemed to be registered under this Act in relation to any person or persons or that a firm, individual or corporation was, or was not, on a date or during a period specified in the certificate registered under any corresponding previous enactment.

(2) The Registrar shall not be required to issue—

- (a) under paragraph (a) of subsection (1) of this section a copy of or extract from a document forming part of the register if that document has been disposed of or destroyed pursuant to section 25; or

- (b) under paragraph (b) of subsection (1) of this section a certificate in respect of a business name or a firm, individual or corporation where any relevant document that is necessary for the purposes of the certificate and had formed part of the register has been disposed of or destroyed pursuant to section 25.

Evidence of registration or non-registration

24. A document purporting to be—

- (a) a certificate of registration issued under this Act;
- (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 paragraph (a) of subsection (1) of section 23;
- (c) a certificate issued under paragraph (b) of subsection (1) of section 23; or
- (d) a combination of two or more of the certificates, copies or extracts referred to in paragraph (a), (b) or (c) of this section,

shall in all courts and before all persons having authority to hear, receive and examine evidence be *prima facie* evidence of any matter contained or set out therein.

Authority of Registrar to destroy documents

25. Subject to Part III of the *Libraries and Institutes Act, 1939*, as amended, the Registrar may, if in his opinion it is no longer necessary or desirable to retain them, destroy or dispose of any statement or notice lodged, furnished or registered or any record kept, under this Act or under any corresponding previous enactment, 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, or the record was kept, has not been in force at any time during the preceding twelve years.

Invitations to the public to make deposits or loans

26. (1) Where a person is or persons are carrying on business in the State under a business name registered, deemed to be registered or required to be registered under this Act, no person shall use or make reference to that business name—

- (a) in any invitation to the public; or
- (b) in any advertisement inviting the public,

to deposit money with or lend money to that person or those persons or use or make reference to a business name in connection with any deposit or loan of money.

Penalty: One thousand dollars.

(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, 1962*.

Penalties and summary proceedings

27. (1) A person who—

- (a) does that which by or under this Act he is forbidden to do;

- (b) does not do that which by or under this Act he is required or directed to do; or
- (c) otherwise contravenes or fails to comply with any provision of this Act,

is guilty of an offence against this Act.

(2) A person who is guilty of an offence against this Act is liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly mentioned as the penalty or punishment for the offence.

(3) The penalty or punishment, pecuniary or other, set out in, or at the foot of, any section or part of a section of this Act shall indicate that the offence is punishable upon conviction by a penalty or punishment not exceeding that so set out and, where the penalty or punishment is expressed to apply to a part only of the section, it shall apply to that part only.

(4) Proceedings in respect of any offence against this Act or against any provision thereof made punishable by any penalty shall, unless otherwise provided, be disposed of summarily.

Default penalty

28. (1) Where, in or at the foot of any section or part of a section of this Act, there appears the expression "Default penalty", it shall indicate that any person who is convicted of an offence against this Act in relation to that section or part shall be guilty of a further offence against this Act if the offence continues after he is so convicted and liable to an additional penalty for each day during which the offence so continues of not more than twenty dollars.

(2) Where any offence is committed by a person by reason of his failure to comply with any provision of this Act by or under which he is required or directed to do anything within a particular period, that offence, for the purpose of subsection (1) of this section, shall be deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that such period has elapsed.

Offences committed by corporations

29. Where a person guilty of an offence against this Act—

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

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

Evidentiary provisions

30. If in any 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 the business shall, in the absence of proof to the contrary, be deemed for the purposes of this Act to be carrying on the business under that business name.

As to service of notices

31. Where by this Act the Registrar is required or permitted to send a notice to the person or persons in relation to whom a business name is registered or deemed to be registered, the notice may, notwithstanding any other provision of this Act, be sent by post addressed to the business name—

- (a) at the place shown in the register as the place where the business is carried on; or
- (b) where more than one place is shown in the register as the place where the business is carried on—
 - (i) at the place shown in the register as the principal place where the business is carried on; or
 - (ii) if no place is so shown as the principal place, at the place which appears first in the register as a place where the business is carried on; or
- (c) if it appears from the register that there is, in relation to the carrying on of business under that name, a resident agent appointed for the purposes of this Act by the person or persons in relation to whom the business name is registered or deemed to be registered, at the place shown in the register as the address of such resident agent in the State.

Statutory declarations

32. Where a statutory declaration is required to be made for the purposes of a provision of this Act, a declaration for the purposes of that provision purporting to be made at a place outside the State in accordance with the requirements of the law of that place relating to similar declarations shall, for the purposes of that provision, be deemed to be a statutory declaration.

Limitations of registration

33. The registration of a business name under this Act shall not be construed as authorizing the use of that name if, apart from such registration, the use thereof is or could be prohibited by any Act or law.

Regulations

34. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed to carry this Act into effect or to give effect to any power, function, duty or authority under this Act.

(2) Without limiting the generality of subsection (1) of this section the regulations may prescribe—

- (a) the fees to be paid for the purposes of this Act to the Registrar, and may provide for the recovery of those fees;
- (b) the conditions under and subject to which fees may be waived by the Registrar or the Minister;
- (c) the imposition of additional fees on the late lodgment of documents;

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- (d) the forms to be used under this Act;
- (e) the duties of the Registrar for the purposes of this Act; and
- (f) generally the conduct and regulation of registration under this Act.

(3) The regulations may prescribe penalties not exceeding forty dollars for any breach thereof.

Moneys to be provided by Parliament

35. All moneys necessary for the administration of this Act and for giving effect to the objects thereof shall be paid out of money to be voted by Parliament for the purpose.

SCHEDULE

ACTS REPEALED

Number and Year of Act	Title of Act
No. 1851 of 1928.....	Registration of Business Names Act, 1928
No. 2080 of 1932.....	Registration of Business Names Act Amendment Act, 1932
No. 23 of 1946.....	Registration of Business Names Act Amendment Act, 1946
No. 11 of 1950.....	Registration of Business Names Act Amendment Act, 1950
No. 37 of 1955.....	Registration of Business Names Act Amendment Act, 1955
No. 38 of 1961.....	Registration of Business Names Act Amendment Act, 1961

21.

APPENDIX

Legislative History