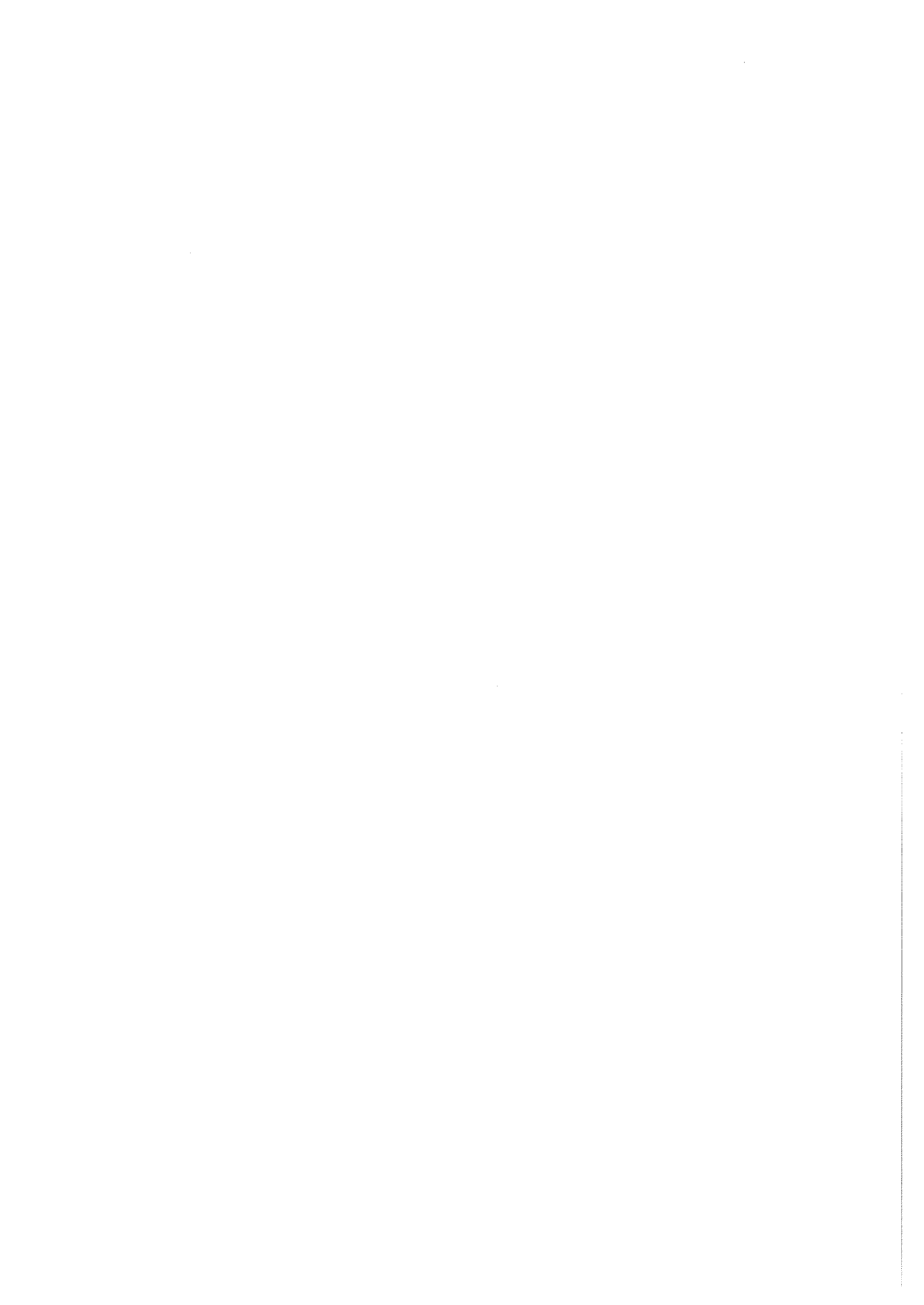


# **BUSINESS NAMES BILL 2014**

**(NO. 11 OF 2014)**





## **BUSINESS NAMES BILL 2014**

**(NO. 11 OF 2014)**

A

BILL

Entitled

**AN ACT** TO PROVIDE FOR THE REGISTRATION AND USE OF BUSINESS NAMES, FOR THE REPEAL OF THE REGISTRATION OF THE BUSINESS NAMES ACT (CAP. 178) AND FOR RELATED PURPOSES.

**ENACTED** by the National Parliament of Solomon Islands.

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6. Meaning of “carry on business”

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**SCHEDULE**

## BUSINESS NAMES BILL 2014

### PART 1—PRELIMINARY MATTERS

- |                     |  |
|---------------------|--|
| Short title         | 1. This Act may be cited as the Business Names Act 2014.   |
| Commencement        | 2. This Act commences on a date appointed by the Minister by notice in the Gazette.  |
| Objects             | <p>3. The objects of this Act are —</p> <ul style="list-style-type: none"> <li>(a) to ensure that, if an entity carries on a business under a business name, those who engage or propose to engage with that business can identify and contact the entity; and</li> <li>(b) to ensure that business names that are the same or almost the same as other business names, or the registered names of companies, charitable trusts or co-operative societies, are not used where that would confuse or mislead; and</li> <li>(c) to ensure that business names that should not be used, including because they are misleading, deceptive or offensive to the public, are not used.</li> </ul> |
| Act binds the Crown | 4. This Act binds the Crown in all its capacities, but does not make the Crown liable to prosecution for an offence.   |
| Definitions         | <p>5. In this Act, unless the contrary intention appears—</p> <p>“actual name”—</p> <ul style="list-style-type: none"> <li>(a) of an individual, means the full name, or the first name (or its initial) and the surname, of the individual; and</li> <li>(b) of a body corporate, means — <ul style="list-style-type: none"> <li>(i) if a company, the full name under which the company is registered under the</li> </ul> </li> </ul>   |

Companies Act 2009, as shown on its current certificate of incorporation under that Act; or

- (ii) if a co-operative society, the full name under which the society is registered under the Co-operative Societies Act (Cap. 164), as shown on its current certificate of registration under that Act; or
  - (iii) if a charitable trust, the full name under which the trust board for the trust is incorporated under the Charitable Trusts Act (Cap. 55), as shown on its current certificate of incorporation under that Act; or
  - (iv) otherwise, the name under which the body corporate was incorporated, or the name to which that name has been changed in accordance with law; and
- (c) of a body politic, means the full name of the body; and
- (d) of a partnership, means the actual names of each of the partners of the partnership;

“affected person”, for an appealable decision, see section 30(2);

“approved” means approved by the Registrar under section 34;

“appealable decision”, see section 30(1);

“business” includes dealing in land, goods or services (whether for profit or otherwise) and related activities, in connection with carrying on a profession, trade, occupation, vocation or calling, including by the Crown or a government body;

“business information”, for a registered business name, means each of the following—

- (a) for each entity to which the business name is registered—
  - (i) the name of the entity; and
  - (ii) if the entity is a registered company, charitable trust or co-operative society, the registration number of the entity under the written law under which it is registered or incorporated; and
  - (iii) the physical address of the entity;
- (b) for the business carried on under the business name—
  - (i) the physical address at which the business is principally carried on; and
  - (ii) a contact phone number; and
  - (iii) a contact email address (if any); and
  - (iv) a contact fax number (if any); and
  - (v) a website address (if any); and
- (c) any other prescribed information;

“business name” means a name under which a business is carried on;

“carry on a business”, see section 6;

“charitable trust” means a trust with a board incorporated under the Charitable Trusts Act (Cap. 55);

“company” means a company registered under the Companies Act 2009;



“co-operative society” means a co-operative society registered under the Co-operative Societies Act (Cap. 164);

“declared offence” means an offence against section 11, 21, 22 or 26;

“document” includes an electronic document;

“entity” means any of the following—

- (a) an individual;
- (b) a body corporate;
- (c) a body politic;
- (d) a partnership;
- (e) an unincorporated association or body of persons;

“Register” means the Register of Business Names established under section 7;

“register”, in relation to a business name, means register under section 14;

“Registrar” means the Registrar of Companies appointed under the Companies Act 2009;

“registration certificate”, for a business name, means the certificate issued under section 15(1) for the name;

“return”, in relation to the registration of a business name, means a notice in the approved form confirming or updating the business information for the business name;

“working day” means a day other than a Saturday or a Sunday, or a public holiday in Honiara;

- 6.** (1) “Carry on a business” includes—

Meaning of  
“carry on a  
business”

- (a) to establish a place of business in Solomon Islands; and
- (b) to solicit or procure an order from a person in Solomon Islands.

(2) However, a person is not regarded as carrying on a business merely because, in Solomon Islands, the person does any of the following—

- (a) is a party to a legal or administrative proceeding or an arbitration;
- (b) buys or holds a particular property;
- (c) maintains a bank account;
- (d) conducts a single transaction only;
- (e) winds up a bankrupt estate or liquidates a body corporate.

## **PART 2—REGISTER OF BUSINESS NAMES**

Register of  
Business  
Names

7. The Registrar must establish and maintain a Register of Business Names for this Act.

Contents of  
Register

8. (1) The Register must include the following for each registered business name—

- (a) the information mentioned in section 14(2);
- (b) for any changes in the registration or the business information, the date of the change.

(2) The Register must not include any other information in the Register.

How and  
where the  
Register is  
kept

9. (1) The Register may be kept in any way that the Registrar thinks appropriate, including, either wholly or partly, in electronic form.

(2) If kept in electronic form, the Register may be kept outside Solomon Islands.

(3) If kept otherwise than in electronic form, the Register must be kept in Solomon Islands.

(4) The Register must be kept in a way that facilitates searching of the Register by members of the general public.

**10.** (1) The Registrar must, on application by any person, give the person a statement, certified by the Registrar—

Certificates as to contents of the Register

(a) whether a specified business name is registered as at a particular date; and

(b) if it is registered, the business information for the business name at that date.

(2) The application must be accompanied by the prescribed fee or by evidence that arrangements satisfactory to the Registrar have been made for payment of the prescribed fee.

(3) The statement is admissible in any legal proceeding as evidence that the contents of the Register are as set out in the statement and, unless the contrary is established, is conclusive evidence of that matter.

### **PART 3—REQUIREMENTS IN RELATION TO USE OF BUSINESS NAMES**

**11.** (1) An entity commits an offence if the entity carries on a business under a name that is not registered to the entity.

Business name must be registered

Penalty—5,000 penalty units or imprisonment for 6 months, or both.

(2) It is a defence to an offence against subsection (1) if the defendant establishes that the name under which the entity carries on the business is the entity's actual name.

**12.** (1) This section applies if, in the course of carrying on a business, an entity issues a business communication.

Business communications

(2) The entity commits an offence if the business communication does not state, in a clear and legible way, the name under which the entity carries on the business.

Penalty—5,000 penalty units or imprisonment for 6 months, or both.

(3) The entity commits an offence if—

- (a) under section 11, the name under which the entity carries on the business is required to be registered to the entity; and
- (b) the name stated in the business communication as the name under which the entity carries on business is not registered to the entity in relation to the business.

Penalty—5,000 penalty units or imprisonment for 6 months, or both.

(4) It is a defence to an offence against subsection (3) if the defendant establishes that the name under which the entity carries on the business is the entity's actual name.

(5) In this section—

“business communication” includes each of the following, in connection with the business—

- (a) a letter;
- (b) a written order for goods or services;
- (c) a written offer to supply goods or services;
- (d) an invoice, account or receipt;
- (e) a demand for payment.

## PART 4—REGISTRATION OF BUSINESS NAMES

### *Division 1—Registration process*

**13.** (1) An entity may apply to the Registrar for registration of a business name to the entity.

Application for registration

- (2) The application must—
- (a) be in the approved form; and
  - (b) be accompanied by the prescribed fee or by evidence that arrangements satisfactory to the Registrar have been made for payment of the prescribed fee; and
  - (c) include or be accompanied by the other information and documents specified in the regulations or in the approved form.
- (3) Two or more business names may be registered to an entity in respect of the same business.
- (4) A separate application is required for each business name.

**14.** (1) On receiving the application, the Registrar must—

Registration of Business name

- (a) register the business name; or
  - (b) if the Registrar is not permitted to register the business name because of section 16, refuse to register the business name.
- (2) A business name is registered to an entity when the Registrar enters the following in the Register—
- (a) the name;
  - (b) the business information for the name;
  - (c) a unique registration number for the name;
  - (d) the date of registration;

(e) any other prescribed details.

(3) If the Registrar refuses to register a business name to an entity, the Registrar must give the entity written notice of the refusal, including—

- (a) the reasons for the refusal; and
- (b) an explanation of the entity's right to appeal against the refusal.

Registration  
certificate

**15.** (1) As soon as practicable after registering a business name, the Registrar must issue to the entity a registration certificate for the name, in the approved form.

(2) The entity commits an offence if—

- (a) the entity carries on a business under a registered business name; and
- (b) the registration certificate for the name is not displayed in a conspicuous position at the principal place of the business.

Penalty—1,000 penalty units.

When business  
name not to be  
registered

**16.** (1) The Registrar must not, without the written approval of the Minister, register a business name to an entity if the name suggests that the business enjoys the patronage of any of the following—

- (a) the Crown;
- (b) any member of the Royal Family;
- (c) the Governor-General;
- (d) the Government;
- (e) a local authority;
- (f) a foreign State.

(2) Without limiting subsection (1), the use of the words “Imperial”, “Royal”, “Crown”, “Empire”,

“Commonwealth”, “Government”, “provincial” or “municipal” in a name may, in the circumstances, suggest that the business enjoys patronage mentioned in subsection (1).

- (3) The Registrar must not register a business name to an entity if—
- (a) the name is the same, or almost the same, as—
    - (i) a registered business name; or
    - (ii) the actual name of a body corporate; or
    - (iii) a name for which an application for registration of an entity as a company, charitable trust or co-operative society has been lodged but not determined; or
    - (iv) a prescribed name; or
  - (b) the name is the same, or almost the same, as a business name that was registered to another entity but removed from the register within 6 months before the application was made, unless the other entity consents to the registration; or
  - (c) the Registrar is not satisfied that the entity will carry on a business under the name; or
  - (d) it appears to the Registrar that the use of the name as a business name would contravene another written law; or
  - (e) the Registrar is satisfied that the use of the name as a business name by the entity would infringe another person’s intellectual property rights (including rights in respect of trade marks); or
  - (f) the name is, in the Registrar’s opinion, likely to mislead, deceive or be offensive to the public.

Multiple applications for same name

**17.** If 2 or more applications in relation to the registration of the same, or nearly the same, business name are made, the Registrar must deal with the earlier application before the later one.

Effect of registration

**18.** (1) To avoid doubt, registration of a business name does not—

- (a) create a separate legal entity; or
- (b) relieve an entity of any requirement of another law; or
- (c) create property rights in the business name, or in a word or an expression that constitutes all or part of the business name.

(2) Registration of a business name to an entity, and the refusal to register a business name to an entity, does not affect, or create any presumption as to, the validity or effect of any document.

***Division 2—Changes to business names and business information***

Application for change of business name

**19.** (1) An entity to which a business name is registered may apply to the Registrar for a change to the registered name.

(2) The application must—

- (a) be in the approved form; and
- (b) be accompanied by the prescribed fee or by evidence that arrangements satisfactory to the Registrar have been made for payment of the prescribed fee; and
- (c) include or be accompanied by the other information and documents specified in the regulations or in the approved form.

(3) Sections 14 to 18 apply (with the necessary changes) to the application.



**20.** (1) On the registration of a business name to an entity, the Registrar must, by written notice to the entity, allocate a month for returns to be given under section 21(1).

Return months

(2) The Registrar may, by notice to the entity, allocate another month in substitution for the month allocated under subsection (1).

**21.** (1) Every 2 years after registration of a business name, during the month allocated under section 20, the entity to which the name is registered must give the Registrar a return in relation to the registration.

When return required

Penalty—1,000 penalty units.

(2) In addition, at any time the Registrar may, by notice to the entity, require the entity to give the Registrar a return in relation to the registration.

(3) The notice must specify a reasonable time for compliance.

(4) The entity must comply with the notice.

Penalty—1,000 penalty units.

**22.** (1) If the business information for a business name registered to an entity changes, the entity must give the Registrar notice of the change within 20 working days after the change.

Notice of changes of business information

Penalty—1,000 penalty units.

(2) The notice must—

- (a) be in the approved form; and
- (b) be accompanied by the prescribed fee or by evidence that arrangements satisfactory to the Registrar have been made for payment of the fee; and
- (c) include or be accompanied by the other information and documents specified in the regulations or in the approved form.

(3) The Registrar must change the Register to reflect the changes notified.

(4) The changes take effect when the Registrar enters them in the Register.

***Division 3—Removing business names from Register***

Notice of  
proposed  
removal

- 23.** (1) This section applies if it appears to the Registrar that—
- (a) a business name registered to an entity should not have been registered because of section 16; or
  - (b) the business information on the Register for a business name registered to an entity is inaccurate or incomplete.

(2) The Registrar may give a written notice to the entity—

- (a) requiring it to do either or both of the following within 20 working days after the date of the notice—
  - (i) give a return in relation to the registration;
  - (ii) show cause why the business name should not be removed from the register; and
- (b) warning the entity that the registration may be cancelled if it fails to comply with the notice.

Removal of  
name from  
Register

- 24.** (1) The Registrar must remove a business name from the Register if—
- (a) the entity to which it is registered gives notice that it is no longer carrying on the business; or

- (b) a return for the business name required under section 21(1) or (2) has not been given to the Registrar within 6 months after the date it was due; or
  - (c) the Registrar has given a notice under section 23 in respect of the business name and either—
    - (i) the entity has not complied with the notice within the time required under that section; or
    - (ii) the entity has complied with the notice and the Registrar is satisfied that—
      - (A) the business name should not have been registered because of section 16; or
      - (B) if the register were updated in accordance with the return provided in response to the notice, the business information on the Register would continue to be inaccurate or incomplete; or
  - (d) the removal is required by an order of a court.
- (2) The Registrar must give the entity notice of the removal, including—
- (a) the reasons for the removal; and
  - (b) an explanation of the entity's right to appeal against the removal.
- (3) The removal takes effect when the notice is given.

**25.** (1) Subject to section 16, the Registrar must restore the registration of a business name that has been removed from the Register if—

- (a) the entity to which the business name was registered immediately before the removal applies for the registration to be restored; and
  - (b) the application is made within 6 months after the removal.
- (2) The application must—
- (a) be in the approved form; and
  - (b) be accompanied by the prescribed fee or by evidence that arrangements satisfactory to the Registrar have been made for payment of the prescribed fee; and
  - (c) include or be accompanied by all outstanding returns in respect of the business name and all the other information and documents specified in the regulations or in the approved form.
- (3) The Registrar must give the entity notice of the restoration.
- (4) The name is restored to the Register when the Registrar enters the details mentioned in section 14(2) in the Register.
- (5) If the Registrar restores the registration of the business name, it is taken never to have been removed from the Register.
- (6) If the Registrar refuses to restore the registration, the Registrar must give the entity to which the name was registered written notice of the refusal, including—
- (a) the reasons for the refusal; and
  - (b) an explanation of the entity's right to appeal against the refusal.

#### **PART 5—ENFORCEMENT**

- 26.** (1) An entity commits an offence if—

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

Penalty—10,000 penalty units or imprisonment for 12 months, or both.

- (2) An entity commits an offence if—
  - (a) the entity gives a document that contains misleading information to the Registrar in connection with this Act; and
  - (b) the entity knows, or is reckless as to whether, the document contains misleading information.

Penalty—10,000 penalty units or imprisonment for 12 months, or both.

- (3) It is a defence to a prosecution for an offence against subsection (2) that the entity, when giving the document—
  - (a) drew the misleading aspect of the document to the Registrar's attention; and
  - (b) to the extent to which the entity could reasonably do so, gave the Registrar the information necessary to correct the document.

- (4) In this section—

“misleading information” means information that is misleading in a material particular or because of the omission of a material particular.

- 27. (1) This section applies if—
  - (a) two or more entities (the “joint venture entities”) enter into an arrangement under which they carry on a business jointly; and

(2) An “affected person”, for an appealable decision, is a person specified in the Schedule opposite the decision.

Appeal against  
decision

**31.** (1) An affected person for an appealable decision may appeal to the Magistrates’ Court against the decision on a question of law only.

(2) The appeal must be lodged—

- (a) if the person is required to be given notice of the decision, within 20 working days after the person receives notice of the decision; or
- (b) otherwise, within 20 working days after the decision is made.

(3) However, the Court may grant leave to appeal outside the time specified in subsection (2) if it is satisfied there is good cause to do so.

Conduct of  
appeal

**32.** (1) In deciding the appeal, the Court may—

- (a) confirm the decision; or
- (b) vary the decision; or
- (c) set aside the decision; or
- (d) substitute its own decision for the decision; or
- (e) refer the matter to which the appeal relates to the Registrar for reconsideration, either generally or in relation to stated matters, and for substitution of another decision.

(2) In referring the matter to the Registrar, the Court must—

- (a) give the Registrar its reasons for doing so; and
- (b) give the Registrar the directions it considers appropriate for the reconsideration of the whole or any part of the matter.

(3) The Court may make the orders it considers appropriate to give effect to its decision and the orders as to costs it considers just.

(4) A decision under subsection (1)(b) or (d) is taken for this Act (other than this Part) to be the decision of the Registrar.

**33.** (1) An appeal against an appealable decision does not affect the operation or implementation of the decision for the period until the appeal (and any further appeal) is finally determined.

Operation of  
decision pending  
appeal

(2) However, the Court may make an order staying or otherwise affecting the operation or implementation of so much of the decision as the Court considers appropriate to effectively hear and decide the appeal.

#### **PART 7—MISCELLANEOUS MATTERS**

**34.** The Registrar may approve forms for this Act.

Approved forms

**35.** (1) If a time is prescribed by or under this Act for an entity to do a specified thing (other than lodging an appeal under section 31), the Registrar may, by notice to the entity, extend the time.

Extensions of  
time

(2) The Registrar may extend the time more than once, and may do so after the time has expired.

**36.** (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as—

Protection  
from liability

(a) the Registrar; or

(b) a public officer engaged in administering this Act.

(2) Subsection (1) does not affect any liability the Crown would, apart from that subsection, have for the act or omission.

(3) In this section—

“exercise”, of a power, includes the purported exercise of the power;

“performance”, of a function, includes the purported performance of the function.

Recovery of  
fees

**37.** A fee payable to the Registrar under this Act is recoverable by the Registrar in a court of competent jurisdiction as a debt due to the Crown.

Delegation by  
Registrar

**38.** (1) The Registrar may, by instrument in writing, delegate any of the Registrar’s powers and functions (except this power of delegation) to a public officer.

(2) A delegation may be subject to conditions or limitations.

(3) If—

(a) the exercise of a power or function by the Registrar depends on the opinion, belief or state of mind of the Registrar about a matter; and

(b) the power or function has been delegated;

the power or function may be exercised by the delegate on the delegate’s opinion, belief or state of mind in relation to the matter.

(4) The delegation of a power or function does not prevent the exercise of the power or performance of the function by the Registrar.

(5) A power or function delegated under this section, when exercised or performed by the delegate, is taken to be exercised or performed by the Registrar.

Use of expert  
systems

**39.** (1) The Registrar may use, for the purposes of this Act, software or systems that automatically make decisions required by this Act.

(2) A decision made by such software or such a system is taken to be a decision of the Registrar.



(3) This section does not apply to a decision that depends on the opinion, belief or state of mind of the Registrar about a matter.

**40.** (1) A person may serve a document on an entity for the purposes of this Act by—

Service of  
documents

- (a) giving it to the entity; or
- (b) sending it by prepaid post addressed to the entity to the entity's address; or
- (c) faxing it to a fax number of the entity; or
- (d) emailing it to an email address of the entity; or
- (e) leaving it, addressed to the entity, at the entity's address with an individual who appears to be at least 16 years old and apparently employed or living at the address.

(2) A document served by post is taken to be served when it would have been delivered in the ordinary course of post.

(3) A document served by fax or email is taken to be served when it is sent unless evidence sufficient to raise doubt about the presumption is given.

(4) A document served by leaving it at an address is taken to be served when it is left.

(5) For this section, an entity's address is—

- (a) for an individual—
  - (i) to whom a business name is not registered, the individual's usual home or business address; or
  - (ii) to whom a business name is registered, the address recorded in the Register as the address at which business is principally carried on under the name; or

- (b) for an entity other than an individual—
  - (i) to which a business name is not registered, the entity’s registered or usual business address; or
  - (ii) to which a business name is registered, the address recorded in the Register as the address at which business is principally carried on under the name.

(6) For this section, an entity’s fax number or email address is—

- (a) for an individual—
  - (i) to whom a business name is not registered, the individual’s usual home or business fax number or email address; or
  - (ii) to whom a business name is registered, the fax number or email address recorded in the Register as the contact fax number or email address for the business carried on under the name; and

- (b) for an entity other than an individual—
  - (i) to which a business name is not registered, the entity’s usual fax number or email address; or
  - (ii) to which a business name is registered, the fax number or email address recorded in the Register as the contact fax number or email address for the business carried on under the name.

(7) In this section—

“serve” includes give and issue.

**41.** (1) The Minister may make regulations that are necessary or convenient for the administration of this Act.

Regulations

(2) Without limiting subsection (1), the Minister may make regulations prescribing any of the following—

- (a) how to determine whether a name is the same or almost the same as another name; and
- (b) how to determine the names that must not be registered because of section 16; and
- (c) fees payable under this Act.

#### **PART 8—REPEALS AND TRANSITIONAL MATTERS**

**42.** In this Part—

Definitions

“repeal date” means the date section 43 commences;

“repealed Act” means the Registration of Business Names Act (Cap. 178) as in force immediately before the repeal date.

**43.** The Registration of Business Names Act (Cap. 178) is repealed.

Repeal

**44.** Information on the register kept under the repealed Act immediately before the repeal date is taken to be information recorded on the Register under this Act on and from the repeal date.

Register

**45.** If, immediately before the commencement date, a business name is registered to an entity under the repealed Act—

Registered business names

- (a) the business name is taken to have been registered under this Act on and from the repeal date; and
- (b) the certificate of registration issued under the repealed Act is taken to be the registration certificate for the name issued under this Act; and

- (c) for section 20(1), the Registrar is taken to have allocated the month of the repeal date to the registration of the business name, unless the Registrar allocates another month under section 20(2).

Applications  
for  
registration

**46.** If, immediately before the repeal date, an application for registration of business name has not been determined, the application is taken to have been made under this Act.

General  
transitional  
provision

**47.** If anything of a kind required or permitted to be done under a provision of this Act was done under a corresponding provision of the repealed Act and still had effect immediately before the commencement date, the thing continues in effect after the repeal date as if—

- (a) this Act had been in force when it was done;  
and
- (b) it had been done under this Act.

Transitional  
regulations

**48.** (1) A regulation may provide for a matter of a transitional nature—

- (a) because of the enactment of this Act; or
- (b) to allow or facilitate the transition to the operation of this Act.
- (2) The regulation may have retrospective operation to a day not earlier than the repeal date.
- (3) However, to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person by—
- (a) decreasing the person's rights; or
- (b) imposing liabilities on the person.
- (4) The regulation must declare it is made under this section.
- (5) This section, and each regulation made under it, expire 1 year after the repeal date.

## SCHEDULE

(Section 30)

### APPEALABLE DECISIONS AND AFFECTED PERSONS

Appealable decision	Affected person
Registration of business name to an entity (section 14(1)(a))	an entity in relation to whom there is a real risk of substantial detriment because of the registration of the name
Refusal to register business name to entity (section 14(1)(b))	the entity
Removal of business name from Register (section 24)	the entity
Restoration of business name to Register (section 25)	an entity in relation to whom there is a real risk of substantial detriment because of the restoration
Refusal to restore business name to Register (section 25)	the applicant for restoration

## **BUSINESS NAMES BILL 2014**

### **Objects and Reasons**

The Objects of the Bill are—

- ☒ to ensure that, if an entity carries on a business under a business name, those who engage or propose to engage with that business can identify and contact the entity; and
- ☒ to ensure that business names that are the same or almost the same as other business names, or the registered names of companies, charitable trusts or co-operative societies, are not used where that would confuse or mislead; and
- ☒ to ensure that business names that should not be used, including because they are misleading, deceptive or offensive to the public, are not used.

The Bill is propose as part of the Government’s on-going program of reforming business laws to bring them into line with modern best practice and the conditions of business in Solomon Islands.

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**MINISTER FOR COMMERCE, INDUSTRY, LABOUR AND  
IMMIGRATION**

## BUSINESS NAMES BILL 2014

### Explanatory Memorandum

1.0 INTRODUCTION—This memorandum relates to the Business Names Bill 2014. The Bill is intended to repeal the current Registration of Business Names Act (Cap. 178) and replace it with a law regulating the use of business names in Solomon Islands in a way that accords with modern best practice and is suited to the particular circumstances of Solomon Islands.

#### 2.0 PARTS/CLAUSES

2.1 PART 1 (*Preliminary matters*)—This Part deals with preliminary provisions. It provides that the Act binds the Crown but does not make the Crown liable to a penalty or prosecution. It provides for the commencement date for the Bill. It sets out a number of definitions and other interpretation provisions that are required for the proper operation of the Bill.

2.2 PART 2 (*Register of Business Names*)—This Part create the office of Registrar of Business Names, and establishes the Register of Business Names.

The Registrar will be the Registrar of Companies.

The Register must include, for each business name registered, the name and address of each entity to which the business name is registered and the address and contact phone number of the business. It must also include any email address, and internet address, used by the business in connection with carrying on the business.

The Register may be kept electronically. It must be searchable (as the Companies Register is searchable). It is intended that the Register will have similar administrative arrangements as those used for the Companies Register.

This Part provides that a certificate from the Registrar as to the contents of the Register is *prima facie* evidence of the contents of the Register.

2.3 PART 3 (*Requirements in relation to use of business names*)—This Part creates the basic obligation for entities carrying on business under a

business name to register the name. It requires communications (such as letters and invoices) made by an entity carrying on business under a business name to include the relevant business name (whether or not the name is registered).

Registration of a business name is not required where the entity carries on business under its actual name. Further, because of the definition of “carry on a business”, registration is not required if the business is “passive”—simply maintaining a bank account, or being a party to legal proceedings.

- 2.4 PART 4 (*Registration of business names*)—This Part describes the process for registering business names, changing the information on the Register and removing business names from the Register. It also sets out rules that restrict the registration of certain names as business names.

Division 1 (*Registration of process names*) sets out the procedure for applying for registration, and registration (clauses 13 and 14). It provides for the issue of certificates of registration (clause 15).

Clause 16 prohibits the registration of certain names—names that suggest an association with the Crown or governments (unless the Minister has approved) and other names, to ensure that—

- ☒ confusion will not arise;
- ☒ relevant intellectual property rights can be protected;
- ☒ misleading, deceptive and offensive names are both registered.

The Part also ensures that registration does not have any legal effect other than to satisfy the requirements of the Act (for example, it does not incorporate an entity that is not otherwise incorporated).

Division 2 (*Changes to business names and business information*) requires an entity with a registered business name to give the Registrar a return confirming or updating the business information for the registration each 2 years. The Registrar may also require this to be done at any time and the entity is required to notify any change to business information within 20 days after the change occurs. It also sets out the process for applying for a change of a registered business name. Essentially, the application is dealt with as though it were an application for registration under Division 1.



Division 3 (*Removing business names from Register*) sets out the process by which a business name can be removed from the Register (essentially, the registration is cancelled), either because they were inappropriately registered or the registered business information inaccurate or incomplete. There is a “show cause” procedure before a name is removed. Division 3 also lists additional reasons for removing a name from the Register, for example, if the removal is required under a court order.

This Division also provides for the restoration of a name to the Register. In particular, there is a 6 month grace period for entities whose business names have been removed to apply for them to be restored.

- 2.5 PART 5 (*Enforcement*)—This Part creates offences for giving misleading documents and information.

This Part also provides for the way that separate entities that carry on a single business under a registered business name should comply with obligations under the Act. It also provides for the liability of executive officers of entities other than individuals.

- 2.6 PART 6 (*Appeals*)—This Part provides for the rights and procedures for appeals against certain decisions of the Registrar.

- 2.7 PART 7 (*Miscellaneous matters*)—This Part includes a range of miscellaneous provisions, including—

- ☒ providing for the approval of forms;
- ☒ permitting the Registrar to extend times for compliance with the Act's requirements;
- ☒ allowing the registration system to make use of automated systems in certain cases; and
- ☒ authorising the Minister to make regulation.

- 2.8 PART 8 (*Repeals and transitional matters*)—This Part repeals the current Act (Registration of Business Names Act (Cap. 178)) and provides for the transition from the operation of the current Act to the operation of the Business Names Act.

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