

## BUSINESS NAMES ACT.

### Act No. 11, 1962.

An Act to make provision with respect to the registration and use of business names; to repeal the Business Names Act, 1934, and certain other enactments; and for purposes connected therewith. Elizabeth II,  
No. 11, 1962  
[Assented to, 21st May, 1962.]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Business Names Act, 1962". Short title  
and com-  
mencement.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2.

**Business Names Act.**

**No. 11, 1962** **2.** This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State to the intent that where any provision of this Act or the application thereof to any person or circumstance is held invalid the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

Construc-  
tion.

Repeal, and  
savings and  
transitional  
provisions.

**3.** (1) The Acts mentioned in the Schedule to this Act to the extent to which they are therein expressed to be repealed are hereby repealed accordingly.

(2) Notwithstanding the provisions of subsection one of this section—

(a) any judgment obtained or order made in any proceedings referred to in subsection three of section thirteen of the repealed Act against a firm, individual or corporation may, to the extent that it has not been enforced before the commencement of this Act, be enforced against such firm or any member thereof or such individual or corporation; and

(b) any certificate furnished, or copy of or extract from a statement certified, in pursuance of the repealed Act shall be as valid and effectual as it would have been had the repealed Act not been repealed.

(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instrument or document to a firm, individual or corporation registered or required to have been registered under the repealed Act or any corresponding previous enactment shall unless the context otherwise requires be construed as referring also to a firm, the members of which are, or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-General in any Act, order, regulation, rule, instrument or document relating to any matter under or in connection with the repealed Act or any corresponding

corresponding previous enactment shall unless the context No. 11, 1962 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 or deemed to be 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 this Act shall apply to and in relation to the business name accordingly.

4. (1) In this Act unless the context or subject matter otherwise indicates or requires— <sup>Interpre-</sup>  
<sub>tation.</sub>

“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, 1961.

“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.

“Individual”

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“Individual” means a natural person and does not include a corporation.

“Initial” includes a recognised abbreviation of a Christian name.

“Prescribed” means prescribed by or under this Act.

“Process” includes any writ, summons, plaint, pleading, order or document in or relating to any legal proceedings.

“Register” means the register of business names referred to in section six of this Act.

“Registrar” means the Registrar of Companies under the Companies Act, 1961, and includes any Deputy Registrar of Companies.

“Regulations” means regulations made under this Act.

“Repealed Act” means the Business Names Act, 1934, as amended by subsequent Acts.

“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 3 of Part XI of the Companies Act, 1961, includes the agent within the meaning of that Division of the corporation.

“Section” means section of this Act.

“State” means the State of New South Wales.

(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)

- (d) creates evidence of any debt or creates a charge on No. 11, 1962 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.

5. (1) A person shall not either alone or together with other persons carry on business in the State under a business name unless—

Certain  
business  
names to be  
registered.

- (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
- (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 so carrying on business and any provisions of section twelve that are applicable have been complied with by or on behalf of the person or persons in relation to whom the business name is registered.

Penalty : One hundred pounds. Default penalty.

(2)

**No. 11, 1962** (2) For the purposes of subsection one 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;

(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 one 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.

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

No. 11, 1962  
Register of  
business  
names.

(2) A statement lodged under this Act in relation to a business name 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 or deemed to be registered under the repealed Act, and any statement or notice furnished or sent to the Registrar-General 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.

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—

Registration  
of business  
names.

- (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 any place in the State 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 State, which of those places is or is to be the principal place of business;
- (d)

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—

- (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 and he is not so described in the statement and the date of his birth is not set out in the statement, the statement shall for the purposes of section seventeen 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 one 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 the prescribed fee issue a further certificate of registration.

(6) A business name shall not be registered under this Act if the statement referred to in subsection one of this section is lodged with the Registrar on a date preceding by more than two months 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 one of this section are correct.

**8.**



8. (1) 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 fixed address within the State, the statement referred to in subsection one of section seven shall—

No. 11, 1962  
Resident  
agent.

- (a) include the name and address of some person resident in the State 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 authorised 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.

(2) The address shown in any 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, for the purpose of serving any notice or process on the person or persons under this Act, be deemed to be the address of a place where business is carried on by the person or persons under that name.

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.

Restriction  
on registra-  
tion of  
business  
names  
that are  
undesirable,  
&c.

(2)

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(2) The Minister shall cause a direction given by him under subsection one of this section to be published in the 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 undesir-  
able, &c.

**10.** (1) If a business name which could not be registered under this Act without contravention of subsection one of section nine 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 so 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 upon the expiration of such period (being a period of not less than twenty-eight days) as is specified in the notice; and
- (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 three of this section, cancel the registration of that name.

(2) The Registrar shall not except with the approval of the Minister exercise his powers under subsection one of this section with respect to a business name that is deemed to be registered under this Act by virtue of subsection five of section three.

(3) The Minister may at any time before the expiration of the period specified in a notice given by the Registrar under subsection one 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 which is cancelled under subsection one of this section.

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 at any time within the period of one month before or after the expiry of the registration or renewal a statement in the prescribed form signed by the person or one of the persons in relation to whom the name is registered accompanied by the prescribed fee.

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Duration of registration and renewal of registration.

(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 earlier than one month before, nor 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 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.

(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, 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.

(6) Notwithstanding the provisions of subsection one of this section the following provisions shall apply in relation to

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**No. 11, 1962** to a business name which is deemed to be registered under this Act by virtue of being registered or having been deemed to have been registered under the repealed Act—

- (a) the registration of the business name shall subject to this Act remain in force until a date fixed by the Registrar ;
- (b) notice in writing of the date so fixed shall be sent by post by the Registrar to the person or persons in relation to whom the business name is registered at the place shown in the register as the place where business is carried on under that name ;
- (c) the date fixed by the Registrar shall be a date not less than one month after the notice in writing has been sent by post to such person or persons ;
- (d) no such notice in writing shall be sent by the Registrar until the expiration of a period of at least three years from the date upon which the name was registered or deemed to be registered under the repealed Act ;
- (e) the Registrar shall not be required to send to the person or persons in relation to whom the business name is or was registered the notice referred to in subsection four of this section ; and
- (f) after the renewal of the registration of the business name the provisions of this subsection shall cease to apply in relation to the business name.

Notification  
of changes  
in particu-  
lars relating  
to registered  
business  
names,  
cessation of  
business,  
&c.

**12.** (1) Where a business name is 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 ;
- (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)

- (c) in the registered particulars relating to the resident **No. 11, 1962**  
agent of the person or persons in relation to whom  
the name is registered—

there shall be lodged with the Registrar, within fourteen days thereafter or within such further time as the Registrar may, before the expiration of that period, allow, 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 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 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 under this Act, there shall be lodged with the Registrar, within fourteen days thereafter or within such further time as the Registrar may, before the expiration of that period, 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 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, before the expiration of that period, 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 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 State under that name in place of or in association with the person or persons in relation to whom the name is already registered, there shall be lodged with the Registrar, within  
fourteen

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**No. 11, 1962** fourteen days thereafter or within such further time as the Registrar may, before the expiration of that period, 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) who 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 does not or do not have a fixed address or fixed addresses within the State, the statement shall—

- (i) also set out the name and address of some person resident in the State who in relation to the carrying on of business under that name—
  - (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 authorised in writing by the person or persons required to sign the statement to accept service on his or their behalf of any notices for the purposes of this Act and of any process ; and

(ii)

- (ii) in addition be signed by the person who has No. 11, 1962 consented to be the resident agent.

(5) Where, while a person is the resident agent of a person or persons in relation to whom a business name is registered, 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 State or acquires or acquire a fixed address or fixed addresses within the State, there shall be lodged with the Registrar within fourteen days after such person or persons so commenced to reside or acquired a fixed address or fixed addresses, or within such further time as the Registrar may, before the expiration of that period allow, a statement in the prescribed form signed by the person or one of the persons in relation to whom the 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 name is registered has ceased to be the resident agent of such person or persons; and
- (b) setting out the name or names of the person or persons in relation to whom the name is registered and who has or have commenced to reside or has or have acquired a fixed address or fixed addresses in the State, and the usual place or places of residence or the fixed address or fixed addresses within the State of such person or persons.

(6) Where, while a person is the resident agent of a person or persons in relation to whom a business name is registered, another person or other persons commences or 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 and that other or one of those other persons resides within the State or has a fixed address within the State, there shall be lodged with the Registrar within fourteen days after that other person or those other persons so commenced to carry on business or within such further time as the Registrar may, before the expiration of that period, allow, a statement in the prescribed form

No. 11, 1962 form signed by the person or one of the persons carrying on business under that name after that other or those other persons so commenced to carry on business—

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

(7) Where a business name is registered under this Act and a person appointed the resident agent of the person or persons in relation to whom the name is registered ceases to be the resident agent of that person or those persons, there shall be lodged with the Registrar a statement in the prescribed form notifying the Registrar of the appointment of another person in place of or in succession to the person who has ceased 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 by one of the persons in relation to whom the name is registered and by the other person so appointed; and
- (b) showing that the other person so appointed—
  - (i) is in relation to the carrying on of business under that name authorised by the person or persons in relation to whom the name is registered to accept service on his or their behalf of any notices for the purposes of this Act and of any process; and
  - (ii)



- (ii) has consented in writing to act as the resident agent for that person or those persons, as the case requires. No. 11, 1962

Such statement shall be lodged with the Registrar within fourteen days after the appointment or within such further time as the Registrar may, before the expiration of that period, allow.

(8) 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 State or to have a fixed address or fixed addresses in the State, there shall be lodged with the Registrar within fourteen days after that person or those persons has or have ceased to so reside or to have a fixed address or fixed addresses, or within such further time as the Registrar may, before the expiration of that period, allow, a statement in the prescribed form notifying the Registrar of the name and address of some other person appointed to be the resident agent of the person or persons in relation to whom the name is registered in the State—

- (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 other person so appointed—
  - (i) has consented in writing to be the resident agent of the person or persons for the purposes of this Act; and
  - (ii) is authorised 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.

(9) 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

**No. 11, 1962** with the provision, each person required or authorised 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 : One hundred pounds. Default penalty.

(10) 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 in accordance with and within the time prescribed by subsection four 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 five of this Act by reason only that before the lodging of the statement he carried on business under that name.

(11) 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.

(12) 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 made before the expiration of that period, 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 under this Act; or
- (b) has failed to lodge with the Registrar a statement required to be lodged under this Act.

(2)

(2) A person required under subsection one 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 : One hundred pounds.

(3) A person shall not be excused from furnishing any information where required to do so under subsection one 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 shall not be admissible in evidence against him in any proceedings civil or criminal.

**14.** (1) Where a person carrying on business under a business name in contravention of section five or a person who being guilty of an offence under section twelve 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 five 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.

**Disability  
of persons  
in default.**

(2) The power given by this section to a court may be exercised in the case of the Supreme Court by a Judge thereof in chambers in the case of a District Court by a Judge thereof in chambers or in the case of a court of petty sessions by a stipendiary magistrate in chambers or by two or more justices sitting in petty sessions.

(3)

**No. 11, 1962**  

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(3) Proceedings may be taken and prosecuted in any 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 that business name is not registered under this Act, and the name shall, for the purpose of the proceedings, be a sufficient designation of the person or persons in any process or other legal document or instrument and any judgment obtained or order made in such proceedings may be enforced against that person, or against those persons or any of those persons, as the case may be.

(4) Nothing in this section shall be construed as exempting any person from compliance with any provision of this Act.

**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 authorised 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.

**16.**

**16.** The Registrar may in a particular case if he thinks fit 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.

**No. 11, 1962**  
Verification  
of  
particulars.

**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 authorise or permit the lodging with the Registrar of such a statement which to his knowledge is false in any material particular.

Penalty  
for false  
statement.

Penalty : One hundred pounds or imprisonment for three months or both.

**18.** (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 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 the 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.

Notice of  
proposed  
cancellation.

(2) Where the Registrar has reasonable cause to believe that any provision of section twelve 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 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.

**19.**

No. 11, 1962

Cancell-  
tion of  
registra-  
tion.

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

- (a) if there is lodged with the Registrar a statement under section twelve 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 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 one of section eighteen 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 two of section eighteen and within one month after the date of the notice the provision of section twelve 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 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, 1961, 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)

(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 Supreme Court in its equitable jurisdiction for an order directing the Registrar to restore the registration of the business name. **No. 11, 1962**

(4) On an application under subsection three 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 four 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.

20. Where a business name is registered under this Act— Use and exhibition of business name.
- (a) a person or persons in relation to whom a business name is 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

**104 Business Names Act.**

**No. 11, 1962** 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 : Fifty pounds. Default penalty.

**Registrar may correct errors in register, &c.** **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 one of this section the Registrar shall not erase or render illegible the original words 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.** (1) A person may on payment of the prescribed fee inspect any statement lodged with the Registrar under this Act and not destroyed pursuant to section twenty-five, or furnished under any corresponding previous enactment and not destroyed at the commencement of this Act, and may make a copy thereof or take extracts therefrom.

(2) The Registrar may, on receiving—

(a) a written enquiry with respect to any business name specified in the enquiry; and

(b) the prescribed fee,

issue or send by post a reply to the enquiry.

**23.**



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—

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Certificates  
of registra-  
tion or non-  
registration.

- (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 under this Act in relation to a person 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 one of this section a copy of or extract from a document forming part of the register where that document has been destroyed pursuant to section twenty-five or has been destroyed before the commencement of this Act; or
- (b) under paragraph (b) of subsection one of this section a certificate in respect of a firm, individual or corporation where the registration was effected under the Registration of Firms Act, 1902, and such registration was not in force at the commencement of the repealed Act.

24. A document purporting to be—

Evidence of  
registration  
or non-  
registration.

- (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 one of section twenty-three;
- (c) a certificate issued under paragraph (b) of subsection one of section twenty-three; or

(d)

**No. 11, 1962** (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 the Archives Act, 1960, 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 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 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 the members of a firm are carrying on business in the State under a business name 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 firm or use or make reference to a business name in connection with any deposit or loan of money.

Penalty : Five hundred pounds.

(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, 1961.

General  
penalty  
provisions.

**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)

(c) otherwise contravenes or fails to comply with any No. 11, 1962 provision of this Act,

shall be guilty of an offence against this Act.

Nothing in this subsection shall apply to any offence against a regulation.

(2) A person who is guilty of an offence against this Act shall be 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.

**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 ten pounds.

(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 one 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.

(3) Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a court of petty sessions held before a stipendiary magistrate.

**Business Names Act.**

**No. 11, 1962**    **29.** Where a person guilty of an offence against this Act—

Offences  
committed  
by corpora-  
tions.

- (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.** (1) Where by this Act the Registrar is required or permitted to send a notice to the person or persons in relation to whom the business name is 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 shown 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 for the purposes of this Act a resident agent appointed for the purposes of this Act by the person or persons  
in

in relation to whom the business name is registered, No. 11, 1962  
at the place shown in the register as the address of  
such resident agent in the State.

(2) Service of any communication or notice or process on any person or persons carrying on business under a business name—

- (a) by leaving it at the place where business is carried on by such person or persons with some person apparently in the service of such person or persons and apparently of or above the age of sixteen years;
- (b) by sending it by registered post, or certified mail service, addressed to such person or persons at the place where business is carried on by such person or persons,

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

(3) For the purposes of subsection two of this section—

- (a) “the place where business is carried on” means the place shown in the register as the place where the business is carried on or where there is more than one such place shown in the register—
  - (i) 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, the place shown which appears first in the register as the place where the business is carried on; and
- (b) a resident agent appointed for the purposes of this Act by the person or persons so carrying on business shall be deemed to be a person in the service of such person or persons.

No. 11, 1962  
Regulations.

**32.** (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 one of this section the regulations may prescribe—

- (a) the fees (not exceeding ten pounds) to be paid under this Act to the Registrar;
- (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;
- (d) the forms to be used under this Act (and all such forms or forms to the like effect may be used for the purposes of this Act and shall be sufficient in law);
- (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 twenty pounds for any breach thereof.

(4) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication, or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If

**Government Railways and Transport (Amendment) Act.**

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If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before the House disallowing any regulation or part thereof, the regulation or part shall thereupon cease to have effect.

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**SCHEDULE.**

Sec. 3.

Number of Act.	Title of Act.	Extent of Repeal.
Act No. 50, 1934 ..	Business Names Act, 1934.	The whole.
Act No. 35, 1937 ..	Statute Law Revision Act, 1937.	So much of the Second Schedule as amended section 20 of Act No. 50, 1934.

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