

**REPUBLIC OF NAURU**  
**BUSINESS NAMES REGISTRATION BILL 2018**

**EXPLANATORY MEMORANDUM**

The *Business Names Registration Bill 2018* is a Bill for the *Business Names Registration Act 2018*.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

**EXPLANATION OF CLAUSES**

**PART 1- PRELIMINARY**

**Clause 1** provides that, once enacted, the short title of the Bill will be the *Business Names Registration Act 2018*.

**Clause 2** sets out when the Bill's provisions will commence which is 15 January 2019.

**Clause 3** is the definitional section which provides for the meaning of certain words used in the Bill. The terms are aligned to the Business Names Registration Act 2018 to ensure consistency. The terms such as 'corporation', 'firm', 'foreign business', 'individual', 'trust'

**PART 2- REGISTRAR OF BUSINESS NAMES**

**Clause 4** establishes the office of the Registrar of Business Names and provides that the Secretary for Justice shall be the Registrar of Business Names.

The Registrar shall keep and maintain the Register, perform other duties under this Act and do all things that are necessary to be done for the proper administration of this Act.

The Minister based on the recommendation of the Secretary may appoint a Deputy Registrar.

The Deputy Registrar may perform such functions and exercise such powers as the Registrar may in writing from time to time direct or authorise him or her to do.

**Clause 5** establishes a Register of Business and provides that the Registrar shall be responsible for keeping and maintaining a Register of Business Names.

The regulations will provide the details which will be contained in the Register. There will be a corresponding file or digital recording of information beginning from the application for registration of a business names.

Upon payment of the prescribed fees the Register shall be made available for inspection by the applicant during business hours and certified copies of the entries in the Register shall be provided.

This clause will ensure that all the records of a business name is kept and when needed will be considered together with the details in the register. The Register will contain a business name reference number which shall correspond with other records maintained by the Registrar.

### **PART 3 – REGISTRATION OF BUSINESS NAMES**

**Clause 6** requires mandatory registration under this Act of any person, a firm or corporation not trading under its incorporated name and a trust intending to trade under a business name carrying on a business in the Republic to register under this Act.

**Clause 7** provides that a corporation operates under its incorporated name under the Corporation Act 1972 or any other written law carries on a business under its incorporated name or a trust registered under the Trust Act 2018 that carries on a business under its name by which it is registered does not need to register a business name.

**Clause 8** provides for particulars to be included in an application by an individual, firm, corporation or trust seeking to register a business name shall apply in a form prescribed by regulations and deliver to the Registrar a statement in writing as prescribed in the regulations.

If a trust is to be registered under the Trusts Act 2018 registers a business name under this Act to carry on a business, the trustee shall provide the particulars prescribed by regulations.

A foreign business shall provide the particulars prescribed by regulations.

The Registrar when he or she receives the statement of particulars shall enter the firm, individual or corporation business name in the register.

Where a business is carried on under 2 or more business names each of those business name is to be stated.

The Cabinet may prescribe the requirements of the particulars under this section.

**Clause 9** provides that an individual, firm or corporation must not use a business name without first registering such name. It is an offence to do so and upon conviction the person would be liable to a fine of not more than \$10,000 or a term of imprisonment not exceeding 2 years or to both.

**Clause 10** provides that an application for the registration of a business name shall:

- (a) be in the prescribed form;
- (b) provide the relevant information;
- (c) provide copies of relevant documents;
- (d) be accompanied by additional information or documents prescribed;
- (e) be declared and signed by persons in sub clause (2); and
- (f) accompanied by the prescribed fee.

The statement of particulars shall:

- (a) in the case of an individual, be declared and signed by him or her;
- (b) in the case of a firm, be declared and signed by all individuals who are partners and by a Director or secretary of all corporations which are partners;
- (c) in the case of a corporation be declared and signed by 2 Directors or a Director and Secretary; or
- (d) in case of a trust, be declared and signed by a trustee

**Clause 11** prohibits the issue of a certificate to a person under the age of 18 years.

**Clause 12** provides that the Registrar shall consider each application lodged and inform the applicant of the decision within 7 days of the date of the lodgement of the application.

If the Registrar is satisfied that the application complies with the requirements of this Act her or she shall grant the certificate of registration in the prescribed form.

This clause gives the Registrar power to refuse registration where the requirements of the Act are not complied with. In addition, the Registrar may refuse registration where the proposed business name may contravene any written laws.

A business name is a property as such it has its goodwill and property rights. This cannot be renewed on an annual basis as this will amount to taking away the goodwill and property rights associated with the name. Any other person who may use the business name will be passing off the property rights attached to the name.

**Clause 13** provides that the Registrar shall not register a business name for a number of reasons.

This clause prohibits the breach of property rights of existing business names.

This clause prohibits the use of names which may be similar or convey a similar meaning or convey a similar identity likely to mislead the public.

This clause prohibits the use of any revolting repulsive disgusting offensive or objectionable names which otherwise is also undesirable.

This clause is to avoid confusion between private businesses and the Government or the Republic's businesses. Private businesses are not allowed to use the name of the Republic because it may confuse or mislead the public.

The Registrar shall reject an application for registration where the business name:

- (a) indicates the business activity to be carried out contravenes any written law;
- (b) certificate previously held by the individual, firm or corporation was cancelled by the Registrar; or
- (c) the applicant submits false information in relation to the requirements for the application.

If the Registrar refuses on the grounds stated above, he or she shall inform the applicants and provide the reasons for such rejection.

**Clause 14** provides that a registered business name cannot be assigned or permitted to be used by another person by the registrant.

If any person contravenes such requirement, such person commits an offence and upon conviction is liable to a fine of not more than \$10,000 or a term of imprisonment of not more than 2 years or both.

**Clause 15** provides that a registered business name shall not be transferred to another person without the prior approval of the Registrar.

The application for transfer of the certificate shall be made to the Registrar in the prescribed form and payment of the prescribed fee.

The Registrar shall consider the application and inform the registrant of his or her decision.

If a person does not comply with this clause, such person commits an offence and upon conviction is liable to a fine of not more than \$10,000 or a term of imprisonment of not more than 2 years or both.

**Clause 16** provides for the carrying of business under the business name at more than one site. The requirement is that the original certificate must be exhibited at the principal place of business. In all other places of businesses a copy of the certificate duly certified by the Registrar to be displayed in such places.

If a person does not comply with this requirement, such person shall be liable to a fixed penalty of \$1,000 and is to pay the fixed penalty within 7 days of a notice of the breach being served by an authorised officer.

If a person fails to pay the penalty fixed within 7 days the person commits an offence and upon conviction is liable to a fine of not more than \$10,000 or to a term of imprisonment of not more than 2 years or both.

If a person does pay the fixed penalty of \$1,000 within 7 days such person shall not be prosecuted for an offence under this clause.

**Clause 17** provides that the holder of a certificate shall notify the Registrar in the prescribed form and manner within 7 days of any variation in the registered particulars of the matters contained in clause 8 or the regulations.

The Registrar upon receipt of the notice shall amend the particulars contained in the Register.

If there is a variation in respect of the business name, ownership of the business, address of the business, nature of the business or partners the Registrar shall issue an amended certificate.

If a person fails to notify the Registrar for any variation in a registered particular as required under this clause commits an offence and upon conviction is liable to a fine of not more than \$10,000 or a term of imprisonment of not more than 2 years or both.

**Clause 18** provides for the publication of business names when a person who is issued a certificate shall state the business name legibly in the conduct of his or her business in all official correspondence, contracts, invoices, negotiable instruments, orders for goods or services including bank account.

A person who does not comply commits an offence and is liable to a fine not more than \$10,000.

**Clause 19** provides that the Registrar may suspend or cancel a certificate where:

- (a) the certificate was obtained by fraud or deliberate or negligent submission of false information;
- (b) in case of an individual, the Registrar does become aware of that the individual owner is dead and the personal representative fails to transmit the business name to a beneficiary of the estate to the registrant;
- (c) in case of firm, the firm is dissolved;
- (d) in case of a corporation, the corporation is wound up;

- (e) in the case of a trust if it is dormant or wound up;
- (f) the registrant fails to submit annual returns for 2 consecutive years;
- (g) the registrant contravenes the Act;
- (h) any registered business ceases to carry on its business activity and the registrant fails to notify the Registrar of such cessation of business; or
- (i) the registrant fails to commence business under the business name:
  - (i) from the date of the registration of the business; or
  - (ii) from the date of giving notice to the Registrar for temporary cessation business.

Before the Registrar suspends or cancels a certificate, the Registrar shall:

- (a) give a written notice to the registrant;
- (b) provide reasons for the intention to suspend or cancel; or
- (c) require the registrant to show cause within 14 days as to why the certificate shall not be suspended or cancelled.

The certificate may not be suspended or cancelled by the Registrar if the registrant takes remedial measures to the satisfaction of the Registrar within 14 days of the requirement to give notice.

If the registrant fails to show cause the Registrar may suspend or cancel the certificate from the register.

**Clause 20** provides that it is the duty of the registrant to notify the Registrar for cessation of business under the registered business name. The registrant is required to notify the Registrar within 3 months after the business ceases to be carried on.

Failure to notify the Registrar is an offence and upon conviction such person is liable to a fine of not more than \$10,000 or a term of imprisonment of not more than 2 years or both such fine and term of imprisonment.

**Clause 21** provides that if a certificate is lost or destroyed the registrant shall notify and may apply to the Registrar for a duplicate certificate to be issued and pay the prescribed fee.

The Registrar shall within 7 days issue a duplicate copy of the certificate.

Failure to notify the Registrar for loss or destruction of certificate without reasonable excuse is an offence and such person is liable to a fixed penalty of \$500.

**Clause 22** provides that the Registrar may restore the registration of a business name upon application by the last registered registrant in the prescribed form and payment of the prescribed fee.

The Registrar may require the registrant to comply with the requirements of this Bill before restoring the certificate in the register.

If the business names after cancellation is issued to another person, the Registrar shall not restore the registration to the last registered registrant.

**Clause 23** provides for the surrender of certificates. Where the holder of a certificate ceases to continue with the business to which the registered business name relates shall notify the Registrar in writing and surrender the certificate.

A certificate surrendered shall lapse and be cancelled in the Register.

**Clause 24** provides for the inspection of businesses. An authorised officer may require the person operating the business to produce the certificate of the registered business name during inspection.

Failure to produce a certificate of the registered business name is an offence with a fine not exceeding \$1,000 or a term of imprisonment not exceeding 6 months.

#### **PART 4 – OFFENCES AND PENALTIES**

**Clause 25** makes it an offence for any person to give misleading information or documents to the Registrar and such person upon conviction is liable to a fine of not more than \$10,000 or to a term of imprisonment not exceeding 12 months or to both such fine and term of imprisonment.

**Clause 26** provides that a person who obstructs, hinders or in any way interferes with an authorised officer in the performance of his or her duties commits an offence and upon conviction is liable to a fine of not more than \$10,000 or to a term of imprisonment of not more than 2 years or to both.

**Clause 27** provides for offences committed by corporations, firms etc and those managing the corporations, firms etc.

In addition to the corporation being charged, those in the management control of the corporations can also be charged. If found guilty, the corporation can be fined up to \$100,000.

The management employees can be fined up to \$20,000 or a term of imprisonment not exceeding 12 months or both.

## **PART 5 – MISCELLANEOUS**

**Clause 28** provides that the Minister may by notice in the Gazette authorise officers of the Department or a police officer to be authorised officers for the purposes of this Act.

**Clause 29** provides that the Registrar or an authorised officer is not liable in any civil or criminal proceedings for anything done in the exercise of a power under this Act if the act or omission was done in good faith or on reasonable grounds.

**Clause 30** provides for records to be kept. The business shall ensure that the records including the underlying documentation such as proper accounts and records relating to affairs of the business operating under the registered business name are kept and maintained.

The accounts and records shall be kept for a period of 7 years from the end of the period to which the information relates.

The records kept under subsection (1) shall include underlying documentation such as but not limited to invoices and contracts for the following:

- (a) financial accounts;
- (b) bank statements;
- (c) business transactions;
- (d) statutory taxes, licences, duties, fees;
- (e) court proceedings;
- (f) invoices;
- (g) contracts;
- (h) audited financial accounts;
- (i) annual returns;
- (j) details of the director, manager, secretary or officer;
- (k) the assets and liabilities of the individual, firm or corporation; and
- (l) other matters prescribed by regulations.

Failure to keep the proper records required is an offence and upon conviction the registrant is liable to a fine of not more than \$5,000.

**Clause 31** provides that a firm or corporation or trust applying for a certificate under this Act shall also comply with the requirements under the Beneficial Ownership Act 2017 by providing the details required in the prescribed form.

The Registrar shall not register a business name where the person applying for a certificate fails to submit the prescribed form required by the Beneficial Ownership Act 2017.



This provision does not apply to individuals operating a business.

**Clause 32** provides an individual shall submit annual returns to the Registrar in the prescribed form for an individual. The firm, corporation, trust or foreign business shall lodge with the Registrar their annual returns under the Partnership Act, Corporations Act 1972, Trust Act 2018 and foreign business respectively.

Failure to provide an annual return is an offence and upon conviction is liable to a fine not more than \$5,000.

**Clause 33** provides for information sharing by the Registrar with law enforcement or regulatory agencies whether in the Republic or foreign jurisdictions for the purpose of carrying out the agency's duty, power or function.

The Registrar shall ensure that there are in place necessary protections to maintain the confidentiality of the information.

**Clause 34** vests jurisdiction in the District Court to hear matters relating to any offence committed under the Act.

**Clause 35** provides for the Cabinet's regulation making power.

## **PART 6 - REPEAL, TRANSITIONAL AND SAVINGS**

**Clause 36** repeals the Business Names Act 1976.

**Clause 37** provides that the despite the repeal of the Business Names Act 1976, all registered business names under that Act remains valid until the registered business name is removed. The certificate of registration issued under the repealed Act is taken to remain. All fines, proceedings or decisions made under the Business Names Act 1976 remain enforceable.

Any judicial or administrative proceeding taken under the Business Names Act 1976 shall continue as if it had commenced under this Act.