

THE REPUBLIC OF KIRIBATI
(No: 1 of 1988)

I assent,

[Signature]
Beretitenti,
23/6/1988

AN ACT TO PROVIDE FOR THE REGISTRATION OF FIRMS AND
PERSONS CARRYING ON BUSINESS UNDER BUSINESS NAMES
AND FOR CONNECTED PURPOSES

Commencement:
23/6/1988

MADE by the Maneaba ni Maungatabu and assented to by the
Beretitenti.

Short title

1. This Act may be cited as the Registration of Business
Names Act 1988.

Interpretation

2. In this Act, unless the context otherwise requires -
- "business" includes any profession, trade or any activity carried
on for the purpose of gain or profit;
- "business name" means the name of style under which any business
is carried on whether in partnership or otherwise;
- "Christian name" includes any forename;
- "firm" means an unincorporated body of two or more individuals
or one or more individuals and one or more corporations or
two or more corporations who have entered into partnership
with one another with a view to carrying on business for
profit;
- "individual" means a natural person and does not include a
corporation;
- "initials" includes any recognized abbreviation of a Christian
name or any other non-Christian name;
- "Registrar" means the Registrar of Companies.

Application
of Act

3. Subject to section 4 of this Act, this Act shall apply to any firm or individual having a place of business and carrying on business in Kiribati whether before, on, or after the coming into operation of this Act.

Firms and
individuals to
be registered

4. Subject to the provisions of this Act -

- (a) every firm having a place of business in Kiribati and carrying on business under a business name which does not consist of the true surnames of all partners who are individuals and the corporate names of all partners who are corporations without any addition other than the true Christian names of individual partners or initials of such Christian names;
- (b) every individual having a place of business in Kiribati and carrying on business under a business name which does not consist of his true surname without any addition other than his true Christian name or the initials thereof; and
- (c) every company as defined in the Companies Ordinance carrying on business under a business name which does not consist of its corporate name without any addition;

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shall be registered in the manner directed by this Act:

Provided that -

- (i) where the business is carried on by a trustee in bankruptcy or a receiver or manager appointed by any court registration shall not be necessary; and
- (ii) a purchase or acquisition of property by two or more individuals as joint tenants or tenants in common is not of itself to be deemed carrying on a business whether or not the owners share any profits arising from the sale thereof.

Manner and
particulars of
registration

5(1) Every firm or individual required under this Act to be registered shall furnish by sending by post or delivering to the Registrar a statement in writing in the prescribed form containing the following particulars:-

- (a) the business name;
- (b) the general nature of the business;
- (c) the principal place of business;
- (d) where the registration to be effected is that of a firm, the present Christian name and surname, any former Christian name or surname, the nationality and, if that nationality is not the nationality or origin, the nationality of origin, the usual residence and the other business occupation, if any, of each of the individuals who are partners, and the corporate name and registered or principal office of every corporation which is a partner;

- (e) where the registration to be effected is that of an individual, the present Christian name and surname, any former Christian name or surname, the nationality and, if that nationality is not the nationality of origin, the nationality of origin, the usual residence and the other business occupation, if any, of such individual; and
- (f) if the business is commenced after the commencement of this Act, the date of the commencement of the business

(2) Where a business is carried on under two or more business names each of those business names must be stated.

Statement to be signed by persons registering

6. The statement required for the purpose of registration must in the case of an individual be signed by him and in the case of a firm either by all the individuals who are partners and by a director or the secretary of all corporations which are partners or by an individual who is a partner or a director or the secretary of a corporation which is a partner, and in either of the last two cases must be verified by statutory declaration made by the signatory:

Provided that no statutory declaration stating that any individual other than the declarant is a partner or omitting to state that any individual other than as aforesaid is a partner shall be evidence for or against any such other individual in respect of his liability or non-liability as a partner, and the High Court may, on the application of any individual alleged or claiming to be a partner direct the rectification of the register and decide any question arising under this section.

Time for registration

7(1) The particulars required to be furnished under this Act shall be furnished within two months from the date on which this Act comes into operation.

(2) This section shall apply in the case where registration is required in consequence of a change of name as if for references to the date of the commencement of the business there were substituted references to the date of such change.

Registration of changes in firm

8. Whenever a change is made or occurs in any of the particulars registered in respect of any firm or individual, such firm or individual shall, within one month after such change or such longer period as the Minister may, on application being made in any particular case whether before or after the expiration of such month, allow, furnish by sending by post or deliver to the Registrar a statement in writing in the prescribed form specifying the nature and date of the change signed and, where necessary, verified in like manner as the statement required on registration.

Penalty for default in registration

9. If any firm or individual by this Act required to furnish a statement of particulars or of any change in particulars without reasonable excuse fails to do so in the manner and within the time specified by this Act, every partner in the firm or the individual so in default shall be liable to a fine of \$20.00 for every day during which the default continues and the court shall order a statement of the required particulars or change in the

particulars to be furnished to the Registrar within such time as may be specified in the order.

Persons in default bringing action shall be ordered by the Court to register

10. Where any firm or individual by this Act required to send or deliver any statement to the Registrar fails to do so and during such default commences any suit or action in any court in the business name or for a cause of action arising out of any dealing by such firm or individual in the business name, such court shall order the firm or individual in default to send or deliver to the Registrar the proper statement as required by this Act and may stay all proceedings in the suit or action until the order is complied with or allow proceedings to be continued subject to an undertaking to comply with such order within a time to be limited by the court.

Proceedings against non-registered firms

11(1) If any firm or individual required to be registered as provided in this Act fails to register accordingly, all proceedings in any court may be taken and prosecuted against such firm or individual in the name under which such firm or individual is carrying on business and such name shall, for the purposes of such proceedings, be a sufficient designation of such firm or individual in all courts, processes, writs, summonses and other legal documents and instruments:

Provided however that nothing in this section shall be construed to exempt such firm or individual from compliance with any of the provisions of this Act.

Penalty for false statements

12. If any statement required to be furnished under this Act contains any matter which is false in any material particular to the knowledge of any individual signing it, that individual shall be liable to a fine of \$100 or to imprisonment for a term of 6 months or to both such fine and imprisonment.

Registrar to file statement and to issue certificate of registration

13. On receiving any statement or statutory declaration made in pursuance of this Act the Registrar shall cause the same to be filed and he shall send by post or deliver a certificate of the registration thereof to the firm or individual registering, and the certificate or a certified copy thereof shall be kept exhibited in a conspicuous position at the principal place of business of the firm or individual, and if not kept so exhibited every partner in the firm or the individual as the case may be shall be liable to a fine of \$50.00.

Index to be kept

14. The Registrar shall keep an index of all the firms and individuals registered at his office under this Act.

Removal of names from register.

15(1) If any firm or individual registered under this Act ceases to carry on business the partners in the firm at the time when it ceased to carry on business or the individual, as the case may be, or if such individual is dead his legal personal representative shall, within 3 months after the business has ceased to be carried on, send by post or deliver to the Registrar notice in the prescribed form that the firm or individual has ceased to carry on business.

(2) Any individual who contravenes the provisions of subsection (1) of this section commits an offence and shall be liable to a fine of \$50 and in the case of a firm every partner thereof also commits a like offence and shall be liable to a like fine.

(3) On receipt of such a notice as aforesaid the Registrar may remove the firm or individual from the register.

(4) Where the Registrar has reasonable cause to believe that any firm or individual registered under this Act is not carrying on business, he may send to the firm or individual by registered post a notice that unless an answer is received to such notice within 3 months from the date thereof the firm or individual may be removed from the register.

(5) If the Registrar either received an answer from the firm or individual to the effect that the firm or individual is not carrying on business or does not within 3 months after sending the notice receive an answer, he may remove the firm or individual from the register.

Inspection of
statements
registered

16(1) Any person may inspect, make a copy of or extracts from the statements filed with the Registrar and there shall be paid for every such inspection, copy of extract the prescribed fee.

(2) Any person may require a certificate of the registration of any firm or individual or a copy of or extract from any registered statement to be certified by the Registrar, and there shall be paid for every such certificate, copy of extract the prescribed fee.

(3) A certificate of registration or a copy of or extract from any statement registered under this Act purporting to be signed and certified by the Registrar shall in all courts within Kiribati be admitted as prima facie evidence of the fact and date of registration as shown thereon and of the other particulars therein contained.

Offences of
corporations

17. Where a corporation is guilty of an offence under this Act, every secretary and officer of the corporation who is knowingly a party to the default shall be guilty of a like offence and be liable to a like penalty.

Misleading
names

18(1) The Registrar shall refuse registration of a business name which is identical with that of a business name already registered under this Act or with the name of a company incorporated or registered under the Companies Ordinance or which, in his opinion, so nearly resembles any such name as to be likely to deceive or cause confusion or which is, in his opinion, otherwise misleading or undesirable.


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(2) The registration of a business name under the provisions of this Act shall not be construed as authorising the use of that name if apart from such registration the use thereof is prohibited.

Regulations 19. The Minister may make regulations not inconsistent with the provisions of this Act prescribing -

- (a) any fees payable under this Act;
- (b) the forms to be used under this Act;
- (c) the duties or additional duties to be performed by the Registrar for the purpose of this Act; and
- (d) any thing desirable for the better carrying into effect the provisions of this Act.

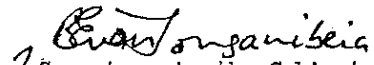
This printed impression has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on 16th May, 1988 and is found by me to be a true and correctly printed copy of the said Bill.



Clerk to the Maneaba
ni Maungatabu


Published by exhibition -

- (a) at the Public Office of the Beretitenti on the 23rd day of June, 1988.



Secretary to the Cabinet

- (b) at the Maneaba ni Maungatabu on the 23rd day of June, 1988.



Clerk to the Maneaba
ni Maungatabu.

REGISTRATION OF BUSINESS NAMES ACT 1988

EXPLANATORY MEMORANDUM

The principal aim of this Act is to make it a legal or statutory obligation for any firm or individual, among others, having a place of business and carrying on business in Kiribati under a business name which does not consist, among other things, of the true surnames of all partners (in the case of firms) or the true surname (in the case of an individual) to be registered in the manner described in the Act.

Sections 4 and 5 of the Act specify the firms and persons required to be registered under the Act and the manner and particulars of registration. Sections 9 and 12 impose penalties for default in registration and for false statements. Furthermore, Section 19 empowers the Minister to make regulations prescribing, among other things, fees payable under the Act and anything desirable for the better carrying into effect the provisions of the Act. It is to be noted that apart from the prescribed fees payable under Section 16 of the Act for inspection and making of copies or extracts of certificates of registration or statements filed with the Registrar of Business names, no fees are imposed under the Act.

At present, with the exception of companies incorporated under the Companies Ordinance (Cap. 10A), Government has no readily available source of information as to the number of individual persons or firms carrying on business under various names and styles. The types of business being carried on under such names and styles are also not readily known to Government.

This Act, on passage into law, will therefore serve as an instrument for gathering useful statistical and other data needed for Government planning and monitoring. It may also enable Government, among other things, to widen the tax net to include certain individuals and firms who or which derive substantial income from various types of business but who or which are not taxed because of the difficulty in identifying them.

The legislation envisaged by this Act will not be peculiar to Kiribati. Most countries (both developed and developing) have similar legislation and it is to be emphasised that only businesses being carried on under business names (i.e. names other than their corporate names or proprietors' names) are affected by this proposed legislation.

Michael N. Takabwebe
Attorney General