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1 January 1991 (Part 3)

CHAPTER 211

BUSINESS NAMES

Act 6 of 1990
Act 19 of 2013
Act 10 of 2015

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BUSINESS NAMES

To provide for the registration and use of business names for the matters connected therewith.

PART 1 – PRELIMINARY PROVISIONS

1. Interpretation

(1) In this act unless the context otherwise requires –

applicant means the person making application for the registration of a business name;

business includes any lawful form of trade, commerce, profession, or other activity carried on for profit or gain and includes any part of a business, provided that a person shall not be deemed to carry on a business in respect of which his sole gain is by way of salary or wages and commission received as an employee;

business name means the name or style under which any business is carried on;

certificate means a certificate of the registration of a business name issued under section 6;

the Companies Act means the Companies Act No. 25 of 2012;

corporate name means the full name of a corporation and, in the case of a company registered under the Companies Act includes the word **Limited** where appropriate;

employee means an individual who works under a contract of employment whether written or oral;

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;

the registrar means the registrar of business names;

the Regulation means the Registration of Business Names Act [Cap. 62].

(2) Any reference to the registration of a business name includes, unless the context otherwise requires, the registration of the applicant as the user thereof.

PART 2 – THE REGISTRATION OF BUSINESS NAMES

2 Requirement to register a business name

(1) Subject to subsection (2), a person who intends to carry on a business in Vanuatu under a business name must apply to the registrar to have the business name registered in the register of business names.

(2) A person must not carry on business in or from within Vanuatu under a name which does not:

(a) in the case of an individual - consist of his surname or any other name permitted under paragraph (3)(a);

(b) in the case of a firm - consist of the surnames of all partners who are individuals and the corporate names of all partners who are bodies corporate or any other name permitted under paragraph (3)(b);

(c) in the case of a body corporate - consist of its corporate name;

(d) in the case of a group - consist of the surnames of all members who are individuals and the corporate names of all members who are bodies corporate or any other name permitted under paragraph (3)(b).

(3) For the purposes of subsection (2), the following names are permitted:

(a) in the case of an individual - his forename or his initial;

(b) in the case of a firm or group - the forenames of individual partners or members of the group or the initials of those forenames or, where two or more individual partners or members of the group have the same surname, the addition of **s** at the end of that surname.

(4) Notwithstanding the provisions of this Act, an International Company registered in Vanuatu may register its business name.

(5) A person who contravenes subsection (1), commits an offence and is liable on conviction to a fine not exceeding VT100,000.

(6) The Court may, when convicting a person, in addition to any penalty imposed, make an order:

(a) to cease the operation of the business; or

(b) to prohibit the person from doing any act or engaging in any business activity or undertaking that may result in the continuation or repetition of the offence; or

(c) directing work to stop temporarily or permanently on any business activity or undertaking; or

(d) directing the seizure of the assets of the business entity; or

(e) requiring the person to comply with any other condition the court considers appropriate in the circumstances.

3. Exemptions from registration

(1) Registration of a business name shall not be required where the business is carried on by –

(a) a trustee in bankruptcy or a liquidator of a company appointed by any court or by the creditors of a company;

(b) (Repealed)

(c) a Co-operative Society registered under the Co-operative Societies Act [Cap. 152].

(2) Where a person carries on business under a business name which is registered under this Act, the registrar may exempt him from registering any name under which he carries on a part of the business if –

(a) that part of the business is carried on exclusively at the same premises as and is ancillary to and closely connected with the business in respect of which the business name is registered; and

(b) it is clearly stated in all advertising material, business letters, written orders for goods or services to be supplied to that part of the business, invoices and receipts issued in the course of that part of the business and written demands for payment of debts arising in the course of that part of the business, that the business is a part of the business in respect of which the business name is registered.

(3) Notwithstanding that a person is exempted from registering a business name under subsection (1) or (2), he may make application to register the business name under this Act.

4. Application for the registration of a business name

(1) Every application for the registration of a business name shall be made to the registrar and shall be in the prescribed form.

(2) Where the registration of two or more business names is sought by an applicant, a separate application shall be made for the registration of each business name.

(3) The application shall in the case of an individual be signed by him, in the case of a firm by any partner thereof, in the case of a corporation by a director or secretary thereof, and in the case of a group by every individual, a partner of every firm and by a director or secretary of every corporation comprised therein.

(4) Any person who, without reasonable cause for believing it to be true, makes or is privy to the making of any false statement in any application made under this section commits an offence and shall be liable on conviction to a fine not exceeding VT 200,000 or to imprisonment for a term not exceeding six months, or to both.

5. Restrictions on the registration of certain names

(1) The registrar shall refuse the registration of any business name which in his opinion is undesirable.

(2) Without prejudice to the generality of subsection (1), no business name shall be registered where the business name –

(a) is identical with the name by which a company is registered under the Companies Act or under which a company has at anytime been incorporated in Vanuatu (whether or not that company has been dissolved) or so nearly resembles such name as to be in the opinion of the registrar calculated or likely to deceive or mislead;

(b) is identical with any business name which at any time in the previous five years has been registered under this Act or under the Regulation (whether or not such business name has been deleted from the register of business names required to be kept under this Act or under the Regulation) or so nearly resembles such name as to be in the opinion of the registrar calculated or likely to deceive or mislead;

(c) is identical with any name reserved under section 11 by a person other than the applicant or so nearly resembles such name as to be in the opinion of the registrar calculated or likely to deceive or mislead;

(d) in the opinion of the registrar suggests or is likely to suggest a connection with the government or any public board or statutory corporation or any municipal or other local authority;

(e) contains the words **co-operative** or **building society**; or

(f) contains the word **fund**, unless it is an International Company registered and licensed with the word **fund** as part of it's name in a foreign jurisdiction in which subsection 2A will not apply.

(2A) A person registered as the user of a business name that includes the word **fund** in its name, must within 1 month after the commencement of this Act, lodge a statement of the change in accordance with section 10.

(3) Subject to subsection (1), a corporation may register a business name comprising its corporate name without the words **limited** or **unlimited** as the case may be, or otherwise resembling its corporate name.

(4) Subsection (2)(b) shall not apply where –

(a) the applicant is applying for the registration of a business name which at anytime in the previous five years has been deleted from the register under section 9 and of which he was, immediately prior thereto, the registered user;

(b) the applicant is the transferee of a business which at any time in the previous five years has been carried on by the transferor under the same business name.

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

6. Powers of registrar on application

(1) On receiving an application and upon payment by the applicant of the appropriate fee and any penalties payable, the registrar shall determine whether the business name should be registered or whether registration should be refused.

(2) Before making a determination under subsection (1), the registrar may require the applicant to provide further information or evidence relating to the application and he may, if in his opinion such further information or evidence has not been fully provided, refuse to register the business name.

(3) Where the registrar determines that the business name should be registered, he shall register the business name in a register to be kept for the purposes thereof and shall issue under his hand and seal a certificate of registration of the business name.

(4) Where the registrar determines that the registration of a business name should be refused, he shall notify the applicant and refund the registration fee less the appropriate fee for the making of an unsuccessful application.

7. Expiry of the registration of a business name

A business name expires two months after the last day of the anniversary period.

8. Renewal of the registration of a business name

(1) The registration of the business name may be renewed at any time during the anniversary period.

(2) A person must pay the prescribed renewal fee before the business name may be renewed.

(3) If a person registered as the user of a business name fails to renew the business name at any time during the anniversary period, the person must make a new application according to section 6.

(4) Where the registration of a business name is not renewed in accordance with this section, the registrar shall forthwith delete the business name from the register of business names and such deletion shall take effect after the last day of the two months after the anniversary period.

(5) *(Repealed)*

8A. Anniversary Period

(1) For the purposes of sections 7 and 8, **anniversary period** means the annual recurrence of the period on which a business name was registered in a previous year.

(2) To avoid doubt, if a business name was registered on the 10th of April in a particular year, the anniversary period is from the 01st to the 30th of April of the following year.

9. Removal of names from the register

(1) If any person registered as the user of a business name under this Act ceases to carry on business under the registered business name he shall within one month of ceasing to carry on business under the business name give notice to the registrar in the prescribed form that he has ceased to carry on business under the registered name.

(2) On receipt of a notice given pursuant to subsection (1), the registrar may delete the name from the register of business names.

(3) Where the registrar has reasonable cause to believe that any person registered as the user of a business name is not carrying on business under that name, he may send the person a notice by registered post that, at the expiration of one month from the date of the notice, unless cause is shown to the contrary, the name will be deleted from the register of business names.

(4) At the expiration of the time mentioned in the notice issued by the registrar under subsection (3), the registrar may, unless cause to the contrary is previously shown, delete the name from the register of business names.

10. Notification of any change in the particulars registered

(1) Whenever a change is made or occurs in any of the particulars required by this Act to be registered, other than a change in the registered user thereof, the person registered as the user of the business name shall, within one month or such longer period as the registrar may in any particular case allow, lodge a statement of the change in the prescribed form with the registrar.

(2) Where a business which is carried on under a business name registered under this Act is transferred, the transferee shall be required to register the business name under the provisions of this Act.

(3) Any person who without any reasonable excuse fails to lodge any change in the particulars required to be registered within the time specified in subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding VT 50,000.

11. Reservation of a business name

(1) A person who intends to make application to register a business name may apply to the registrar in the prescribed form for the reservation of the proposed name.

(2) The registrar, if he is satisfied as to the *bona fides* of the application and that the proposed name is a name which could be registered as a business name, shall reserve the proposed name for a period of six months from the date of the lodging of the application.

(3) No person shall be permitted to reserve a proposed name more than twice in any period of five years.

(4) The reservation of a proposed name under this section shall not in itself entitle the person who has reserved the name to register it as a business name.

12. Duty to provide registrar with evidence

(1) The registrar may require any person to provide him with such information and evidence as he shall deem necessary for the purpose of ascertaining whether or not that person should make application to register a business name, or to lodge notice of a change in the particulars registered, or whether or not any person registered as the user of a business name is carrying on business under that name.

(2) Any person who, without reasonable excuse, fails to provide such information as the registrar may require commits an offence and shall be liable on conviction to a fine not exceeding VT 50,000.

(3) Any person who, having been required by the registrar to provide him with any information or evidence pursuant to subsection (1), without reasonable cause for believing it to be true, makes any false statement or provides any false information or evidence commits an offence and shall be liable on conviction to a fine not exceeding VT 200,00 or to imprisonment for a term not exceeding six months, or to both.

13. Certificate to be displayed

(1) The person who is the registered user of a business name shall cause the certificate or a certified copy thereof, to be displayed in a permanent position at this principal place of business.

(2) Any person who contravenes the provisions of subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding VT 50,000.

14. Replacement of lost or destroyed certificates

Where it is proved to the satisfaction of the registrar that a certificate has been lost or destroyed, he shall issue a duplicate of such certificate to the person registered as the user thereof.

15. Registrar of business names

(1) The registrar shall be the person for the time being appointed to fulfill the function of registrar of companies in Vanuatu.

(2) The registrar shall have a seal to be used for the authentication of documents required for or connected with the registration of business names.

16. Registrar to keep a register of business names

(1) The registrar shall keep –

(a) a register of all business names registered in accordance with this Act; and

(b) an index of all business names registered in accordance with this Act.

(2) There shall be entered in the register against each business name such particulars as shall be prescribed.

(3) The register and index shall at all convenient times be open to the inspection of the public.

(4) Certified copies, sealed with the seal of the registrar, of any entry in the register and of any certificate shall be given to any person requiring the same.

17. Evidence of documents kept by the registrar

A copy of or extract from the register or index of business names or a copy of a certificate certified to be a true copy under the hand of the registrar, whose official position it shall not be necessary to prove, shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

18. Fees and penalties

(1) The Minister is to prescribe by Order the various fees for matters related to the registration of a business name under this Act.

(2) If a person carries on business in contravention of the provisions contained in section 2 of this Act, the person must, in addition to the fee set out in subsection 2(5), pay to the registrar the penalty set out in the Regulation for each month, or part thereof, during which he is in default subject to a minimum of VT 5,000.

(2A) In addition to subsection (2), the person must pay the prescribed registration and renewal fees which are to be calculated from the date of commencement of the business.

(3) The registrar may refuse to take any action required of him under this Act for which a fee or penalty is payable until all fees and any penalties, where applicable, have been paid.

(4) The penalty payable under subsection (2) may be reduced or remitted at the discretion of the registrar.

(5) The registrar may charge a fee in respect of incidental costs reasonably incurred in the performance of his obligations under this Act.

(6) The fees and penalties provided for in this section shall be recoverable by the registrar as a civil debt and, where due by a person which is a group comprising any combination of individuals and corporations, shall be due and recoverable jointly and severally from the individuals and corporations comprising the group.

(7) All fees and penalties paid to the registrar in pursuance of this Act shall be paid to the Registrar of Business Names.

PART 3 – THE USE OF BUSINESS NAMES

19. Persons subject to this Part

This Part applies to any person carrying on business under a business name –

(a) which he is required to register under Part 2, whether or not the name is or has been registered; or

(b) which he is exempted from registering under this Act or any other Act, but which would, apart from such exemption, be registrable under section 2.

20. Prohibition of use of business names by registrar

(1) The registrar may, where in his opinion it is undesirable for a person to carry on business under any particular business name or under any business name which includes a particular word or words, direct the person by notice in writing to cease carrying on business under the particular business name or under any business name which includes the particular word or words, within one month of the date of service of the notice upon him.

(2) Any person who continues to carry on business under any business name in contravention of subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding VT 10,000 for each day during which the offence continues.

21. Disclosure required of persons using business names

(1) A person to whom this Part applies shall –

(a) subject to subsection (3), state in legible characters in all business letters, written orders for goods or services to be supplied to the business, invoices and receipts (other than till receipts) issued in the course of the business, written demands for payment of debts arising in the course of business and in all other notices and publications issued in the course of the business –

(i) in the case of a firm or group, the name of each partner or member of the group

(ii) in the case of an individual, his name;

(iii) in the case of a corporation, its corporate name; and

(iv) in relation to each person so named, an address in Vanuatu at which service of any document relating in any way to the business will be effective; and

(b) in any premises where the business is carried on and to which the customers of the business or suppliers of any goods or services to the business have access, display in a prominent position so that it may be easily ready by such customers or suppliers a notice containing such names and addresses.

(2) A person to whom this Part applies shall secure that the names and addresses required by subsection (1)(a) to be stated on his business letters, or which would have been required but for subsection (3), are immediately given, by written notice to any person with whom anything is done or discussed in the course of the business and who asks for such names and addresses.

(3) Subsection (1)(a) does not apply in relation to any document issued by a firm of more than ten persons which maintains at its principal place of business in Vanuatu a list of the names of all the partners if –

(a) none of the names of the partners appears in the document otherwise than in the text or as a signatory; and

(b) the document states in legible characters the address of the firm's principal place of business in Vanuatu and that the list of partners' names is open to inspection at that place.

(4) Where a firm maintains a list of the partners' names for the purposes of subsection (3), any person may inspect the list during office hours.

(5) Any person who without reasonable excuse contravenes subsection (1) or (2) commits an offence and shall be liable on conviction to a fine not exceeding VT 50,000.

(6) Where an inspection required by a person in accordance with subsection (4) is refused, any partner of the firm concerned who without reasonable excuse refused that inspection, or permitted it to be refused, commits an offence and shall be liable on conviction to a fine not exceeding VT 50,000.

22. Civil remedies for breach of section 21

(1) Any legal proceedings brought by a person to whom this Part applies to enforce a right arising out of a contract made in the course of business in respect of which he was, at the time the contract was made, in breach of section 21(1) or (2) shall be dismissed if the defendant to the proceedings shows –

(a) that he has a claim against the plaintiff arising out of that contract which he has been unable to pursue by reason of the latter's breach of section 21(1) or (2); or

(b) that he has suffered some financial loss in connection with the contract by reason of the plaintiff's breach of section 21(1) or (2);

unless the court before which the proceedings are brought is satisfied that it is just and equitable to permit the proceedings to continue.

(2) This section is without prejudice to the right of any person to enforce such rights as he may have against another person in any proceedings brought by that person.

PART 4 – TRANSITIONAL PROVISIONS *(Omitted)*

PART 5 – MISCELLANEOUS PROVISIONS

25. Appeals to the Minister

An appeal against the decision of the registrar shall lie to the Minister upon payment of the appropriate fee.

26. Offences of corporations

Where under any provision in this Act a corporation is guilty of an offence, any officer of the corporation who knowingly and willingly authorizes or permits the corporation to commit the offence shall himself be guilty of a like offence and liable on conviction to a penalty not exceeding that for which the corporation is liable for the offence.

26A. Providing false or misleading information

If a person who is required to provide or furnish any information, statement, document or record, provides any false or misleading information, statement, document or record, that person commits an offence and liable on conviction to a fine not exceeding VT500,000 or imprisonment for a term not exceeding 2 years, or both.

27. Regulations

(1) The Minister may make regulations for the purpose of carrying out or giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for or in respect of all or any of the following maters –

(a) the books and registers to be kept for the purposes of this Act;

(b) the forms to be used for any matter pursuant to the provisions of this Act;

(c) prescribing anything required to be prescribed by this Act;

(d) generally for all matters incidental to or connected with the matters mentioned in this subsection.

28. Repeal

The Registration of Business Names Act [Cap. 62] is hereby repealed.

Table of Amendments

23, 24	*Transitional provisions have expired and are omitted per Cap. 295*
Section 1	*Amended by Act No 19 of 2013*
Section 1	*Amended by Act No 10 of 2015*
Section 2	*Substituted by Act No 10 of 2015*
Paragraph 3(1)(a)	*Amended by Act No 19 of 2013*
Paragraph 3(1)(b)	*Repealed by Act No. 10 of 2015*
Paragraph 5(2)(f)	*Inserted by Act No. 10 of 2015*
Subsection 5(2A)	*Inserted by Act No. 10 of 2015*
Section 7	*Substituted by Act No 10 of 2015*
Subsections 8(1),(2) and (3)	*Substituted by Act No. 10 of 2015*
Subsection 8(4)	*Amended by Act No. 10 of 2015*
Subsection 8(5)	*Repealed by Act No. 10 of 2015*
Section 8A	*Inserted by Act No. 10 of 2015*
Subsections 18(1),(2) and (2A)	*Substituted by Act No. 10 of 2015*
Subsection 18(7)	*Amended by Act No. 10 of 2015*
Section 26A	*Inserted by Act No. 10 of 2015*
Schedule	*Repealed by Act No. 10 of 2015*