

Mr. Brown.

REGISTRATION OF BUSINESS NAMES.

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A BILL INTITULED

AN ACT to provide for the Registration of Firms and Persons carrying on Business under Business Names and for Purposes connected therewith. Title.

5 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Registration of Business Names Act, 1918. Short Title.
- 10 2. In this Act, if not inconsistent with the context,—
“Business” includes profession; Interpretation.
“Business name” means the name or style under which any business is carried on, whether in partnership or otherwise; 6 & 7 Geo. V, c. 58.
sec. 22
- 15 “Christian name” includes any forename:
References in this Act to a former Christian name or surname do not, in the case of natural-born British subjects, include a former Christian name or surname where that name or surname has been changed or disused before the person bearing the name had attained the age of eighteen years, and, in the case of a married woman, do not include the name or surname by which she was known previous to the marriage;
- 20
References in this Act to a change of name do not include, in the case of natural-born British subjects, a change of name which has taken place before the person whose name has been changed has attained the age of eighteen years;
- 25

- "Court" means the Supreme Court, and includes a Judge thereof:
- "District" means a district defined for the purposes of the Companies Act, 1908:
- "Firm" means an unincorporate 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: 5
- "Foreign firm" means any firm, individual, or corporation whose principal place of business is situate outside His Majesty's dominions: 10
- "Individual" means a natural person and does not include a corporation:
- "Initials" includes any recognized abbreviation of a Christian name: 15
- "Prescribed" means prescribed by regulations made in pursuance of this Act:
- "Registrar" means the Registrar of Companies under the Companies Act, 1908, and includes an Assistant Registrar of Companies: 20
- "Showcards" means cards containing or exhibiting articles dealt with, or samples or representations thereof.

3. Subject to the provisions of this Act,—

- (a.) Every firm having a place of business in New Zealand 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; 25 30
- (b.) Every individual having a place of business in New Zealand and carrying on business under a business name which does not consist of his true surname without any addition other than his true Christian names or the initials thereof; 35
- (c.) Every individual or firm having a place of business in New Zealand, who, or a member of which, has either before or after the passing of this Act changed his name, except in the case of a woman in consequence of marriage; 40
- shall be registered in the manner directed by this Act;

Provided that—

- (a.) Where the addition merely indicates that the business is carried on in succession to a former owner of the business, that addition shall not of itself render registration necessary; and 45
- (b.) Where two or more individual partners have the same surname, the addition of an "s" at the end of that surname shall not of itself render registration necessary; and 50
- (c.) Where the business is carried on by the Official Assignee in bankruptcy, or a receiver or manager appointed by any Court, registration shall not be necessary; and

Firms and persons
to be registered.
6 & 7 Geo. V, c. 58,
sec. 1

(d.) A purchase or acquisition of property by two or more persons 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.

5 4. Where a firm, individual, or corporation having a place of business within New Zealand carries on the business wholly or mainly as nominee or trustee of or for another person, or other persons, or another corporation, or acts as general agent for any foreign firm, the first-mentioned firm, individual, or corporation shall
10 be registered in manner provided by this Act; and, in addition to the other particulars required to be furnished and registered, there shall be furnished and registered the particulars mentioned in the Schedule to this Act:

Registration by nominee, &c.
6 & 7 Geo. V, c. 58,
sec. 2

15 Provided that where the business is carried on by the Official Assignee in bankruptcy, or a receiver or manager appointed by any Court, registration under this section shall not be necessary.

20 5. (1.) Every firm or person required under this Act to be registered shall furnish by sending by post or delivering to the Registrar, or to the Assistant Registrar for the district in which the principal place of business of the firm or person is situated, a statement in writing in the prescribed form containing the following particulars:—

Manner and particulars of registration.
Ibid., sec. 3

- (a.) The business name:
- 25 (b.) The general nature of the business:
- 30 (c.) The principal place of the business:
- 35 (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 of 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:
- 40 (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:
- 45 (f.) Where the registration to be effected is that of a corporation, its corporate name and registered or principal office:
- 50 (g.) If the business is commenced after the passing of this Act, the date of the commencement of the business.

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

50 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 corporation by a director or secretary thereof, 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 some individual who is a partner, or a director or the secretary of some

Statement to be signed by persons registering.
Ibid., sec. 4

corporation which is a partner, and in either of the last two cases must be verified by a statutory declaration made by the signatory:

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

Time for registration.

6 & 7 Geo. V, c. 58, sec. 5

7. (1.) The particulars required to be furnished under this Act shall be furnished within fourteen days after the firm or person commences business, or the business in respect of which registration is required, as the case may be:

Provided that if such firm or person has carried on such business before the passing of this Act, or commences such business within two months thereafter, the statement of particulars shall be furnished after the expiration of two months and before the expiration of three months from the passing of this Act; and that if at the expiration of the said two months the conditions affecting the firm or persons have ceased to be such as to require registration under this Act, the firm or person need not be registered so long as such conditions continue.

(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. Ibid., sec. 6

8. Whenever a change is made or occurs in any of the particulars registered in respect of any firm or person such firm or person shall, within fourteen days after such change, or such longer period as the Registrar may on application being made in any particular case, whether before or after the expiration of such fourteen days, allow, furnish by sending by post or delivery to the Registrar, or to the Assistant Registrar for the district in which the principal place of business of the firm or person is situated, 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. Ibid., sec. 7

9. If any firm or person by this Act required to furnish a statement of particulars or of any change in particulars shall without reasonable excuse make default in so doing in the manner and within the time specified by this Act, every partner in the firm or the person so in default shall be liable on summary conviction to a fine not exceeding *five* pounds for every day during which the default continues, and the convicting 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.

Disability of persons in default. Ibid., sec. 8

10. (1.) Where any firm or person by this Act required to furnish a statement of particulars or of any change in particulars has made default in so doing, then the rights of that defaulter under or arising out of any contract made or entered into by or on

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behalf of such defaulter in relation to the business in respect to the carrying-on of which particulars were required to be furnished at any time while he is in default shall not be enforceable by action or other legal proceeding either in the business name or otherwise :

5 Provided always as follows :—

(a.) The defaulter may apply to the Court for relief against the disability imposed by this section, and the Court, on being satisfied that the default was accidental, or due to inadvertence or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief, either generally or as respects any particular contracts, on condition of the costs of the application being paid by the defaulter, unless the Court otherwise orders, and on such other conditions (if any) as the Court may impose ; but such relief shall not be granted except on such service and such publication of notice of the application as the Court may order, nor shall relief be given in respect of any contract if any party to the contract proves to the satisfaction of the Court that if this Act had been complied with he would not have entered into the contract :

(b.) Nothing herein contained shall prejudice the rights of any other parties as against the defaulter in respect of such contract as aforesaid :

(c.) If any action or proceeding shall be commenced by any other party against the defaulter to enforce the rights of such party in respect of such contract, nothing herein contained shall preclude the defaulter from enforcing in that action or proceeding, by way of counterclaim, set-off, or otherwise, such rights as he may have against that party in respect of such contract.

(2.) Without prejudice to the power of the Court or a Judge thereof to grant such relief as aforesaid, if any proceeding to enforce any contract is commenced by a defaulter in a Magistrate's Court, the last-named Court may, as respects that contract, grant such relief as aforesaid.

11. 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 person signing it, that person shall, on summary conviction, be liable to imprisonment with or without hard labour for a term not exceeding *three* months, or to a fine not exceeding *twenty* pounds, or to both such imprisonment and fine.

Penalty for false statements.
6 & 7 Geo. V, c. 58,
sec. 9

12. (1.) The Registrar may require any person to furnish to him such particulars as appear necessary for the purpose of ascertaining whether or not such person or the firm of which he is a partner should be registered under this Act, or an alteration made in the registered particulars, and may also in the case of a corporation require the secretary or any other officer of the corporation performing the duties of secretary to furnish such particulars ; and if any person when so required fails to supply such particulars as it is in his power to give, or furnishes particulars which are false in any material par-

Duty to furnish particulars to Registrar.
Ibid., sec. 10

particular, he shall on summary conviction be liable to imprisonment with or without hard labour for a term not exceeding *three* months, or to a fine not exceeding *twenty* pounds, or to both such imprisonment and fine.

(2.) If from any information so furnished it appears to the Registrar that any firm or person ought to be registered under this Act, or an alteration ought to be made in the registered particulars, the Registrar may require the firm or person to furnish the required particulars within such time as may be allowed by the Registrar; but where any default under this Act has been discovered from the information acquired under this section no proceedings under this Act shall be taken against any person in respect of such default prior to the expiration of the time within which the firm or person is required under this section to furnish particulars.

Registrar to file statement and issue certificate of registration.
6 & 7 Geo. V, c. 58, sec. 11

13. On receiving any statement or statutory declaration made in pursuance of this Act the Registrar shall cause the same to be filed in his office, and he shall send by post or deliver a certificate of the registration thereof to the firm or person 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 person, as the case may be, shall be liable on summary conviction to a fine not exceeding *twenty* pounds.

Index to be kept.
Cf. *ibid.*, sec. 12

14. The Registrar shall keep, at his office in Wellington, an index of all the firms and persons registered under this Act; and every Assistant Registrar shall keep an index of all the firms and persons registered under this Act at the office of that Assistant Registrar.

Removal of names from register.
Ibid., sec. 13

15. (1.) If any firm or individual registered under this Act ceases to carry on business, it shall be the duty of the persons who were partners in the firm at the time when it ceased to carry on business, or of the individual, or, if he is dead, his personal representative, within three months after the business has ceased to be carried on, to send by post or deliver to the Registrar notice in the prescribed form that the firm or individual has ceased to carry on business; and if any person whose duty it is to give such notice fails to do so within such time as aforesaid he shall be liable on summary conviction to a fine not exceeding *twenty* pounds.

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

(3.) 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 one month from the date thereof the firm or individual may be removed from the register.

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

16. (1.) Where any business name under which the business of a firm or individual is carried on contains the word "British," or any other word which, in the opinion of the Registrar, is calculated to lead to the belief that the business is under British ownership or control, and the Registrar is satisfied that the nationality of the persons by whom the business is wholly or mainly owned or controlled is at any time such that the name is misleading, the Registrar shall refuse to register such business name, or, as the case may be, shall remove such business name from the register; but any person aggrieved by a decision of the Registrar under this provision may appeal to the Court, whose decision shall be final.

Misleading business names.
6 & 7 Geo. V, c. 58,
sec. 14

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

17. (1.) At any time after the expiration of six months from the passing of this Act, or of such longer period, not being more than nine months from the passing of this Act, as the Governor-General may by Order in Council gazetted direct, any person may inspect the documents filed by the Registrar under this Act, on payment of such fees as may be prescribed, not exceeding *one shilling* for each inspection; and any person may require a certificate of the registration of any firm or person, or a copy of or extract from any registered statement, to be certified by the Registrar, and there shall be paid for such certificate of registration, certified copy, or extract such fees as may be prescribed, not exceeding *two shillings* for the certificate of registration, and not exceeding *sixpence* for each folio of seventy-two words of the entry, copy, or extract.

Inspection of statements registered.
Ibid., sec. 16

(2.) A certificate of registration, or a copy of or extract from any statement registered under this Act, if duly certified to be a true copy or extract under the hand of the Registrar, shall in all legal proceedings, civil or criminal, be received in evidence.

18. (1.) The Governor-General may from time to time, by Order in Council gazetted, make regulations concerning any of the following matters:—

Power to make regulations.
Ibid., sec. 17

- (a.) The fees to be paid to the Registrar under this Act not exceeding the sum of *five shillings* for the registration of any one statement;
- (b.) The forms to be used under this Act;
- (c.) The duties to be performed by the Registrar or any Assistant Registrar under this Act;
- (d.) Generally the conduct and regulation of registration under this Act, and any matters incidental thereto.

(2.) All fees payable in pursuance of any such regulations shall be paid into the Public Account and form part of the Consolidated Fund.

19. (1.) After the expiration of three months from the passing of this Act every individual and firm required by this Act to be registered shall, in all trade catalogues, trade circulars, showcards, and business letters on or in which the business name appears and which are issued or sent by the individual or firm to any person in any part of His Majesty's dominions, have mentioned in legible characters,—

Publication of true names, &c.
Ibid., sec. 18

- (a.) In the case of an individual, his present Christian name or the initials thereof and present surname, any former Christian name or surname, his nationality if not British, and, if his nationality is not his nationality of origin, his nationality of origin; and 5
- (b.) In the case of a firm, the present Christian names or the initials thereof and present surnames, any former Christian names and surnames, and the nationality if not British, and, if the nationality is not the nationality of origin, the nationality of origin of all the partners in the firm, or, in the case of a corporation being a partner, the corporate name. 10

(2.) If default is made in compliance with this section the individual or, as the case may be, every member of the firm shall be liable on summary conviction for each offence to a fine not exceeding *five* pounds: 15

Provided that no proceedings shall be instituted under this section except with the consent in writing of the Attorney-General.

Offences by
corporations.
6 & 7 Geo. V, c. 58,
sec. 19

20. Where a corporation is guilty of an offence under this Act every director, secretary, and officer of the corporation who is knowingly a party to the default shall be guilty of a like offence and liable to a like penalty. 20

Schedule.
Section 4.

SCHEDULE.

Description of Firm, &c.	The additional Particulars.
Where the firm, individual, or corporation required to be registered carries on business as nominee or trustee.	The present Christian name and surname, any former name, nationality and, if that nationality is not the nationality of origin, the nationality of origin, and usual residence, or, as the case may be, the corporate name of every person or corporation on whose behalf the business is carried on: Provided that if the business is carried on under any trust and any of the beneficiaries are a class of children or other persons, a description of the class shall be sufficient.
Where the firm, individual, or corporation required to be registered carries on business as general agent for any foreign firm.	The business name and address of the firm or person as agent for whom the business is carried on: Provided that if the business is carried on as agent for three or more foreign firms it shall be sufficient to state the fact that the business is so carried on, specifying the countries in which such foreign firms carry on business.