

**REPUBLIC OF KIRIBATI**



**BUSINESS NAMES ACT 2021**

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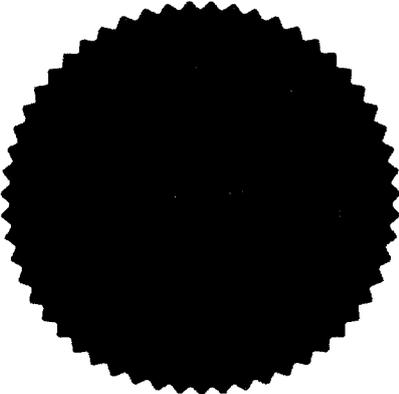
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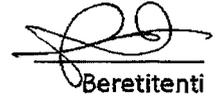
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REPUBLIC OF KIRIBATI

(No 5 of 2021)



I assent,

  
Beretitenti

this 19<sup>th</sup> day of May 2021

**An Act**

entitled

An Act to provide for the registration of business names and related purposes.

Commencement:  
2021

MADE by the Maneaba Ni Maungatabu and assented to by the Beretitenti

**PART I – PRELIMINARY MATTERS**

**1 Short title**

This Act may be cited as the *Business Names Act 2020*.

**2 Commencement**

This Act comes into operation on a date appointed by the Minister by notice.

**3 Interpretation**

In this Act, unless the context otherwise requires—

“*actual name*” has the meaning given in section 11(2);

“*approved form*” means a form approved by the Registrar under section 37 or otherwise prescribed;

“*business*” includes—

(a) dealing in land, goods or services (whether for profit or otherwise) and related activities, in connection with carrying on a profession, trade, occupation, vocation or calling; or

(b) soliciting or procuring business from a person in Kiribati;

“*business communication*” has the meaning given in section 10(2);

*“business information”* means the following—

- (a) in relation to the person to whom the business name is or is to be registered—
  - (i) the person’s actual name;
  - (ii) if the person is a company, co-operative society or other registered entity, its name (if different from its actual name) and registration number under its law of incorporation or registration; and
  - (iii) the person’s physical business address;
- (b) in relation to the business carried on or to be carried on under a registered business name—
  - (i) the physical address at which the business is principally carried on;
  - (ii) a contact phone number;
  - (iii) a contact email address; and
  - (iv) if it has a website or other web presence, its website or other web address;
- (c) in relation to each person who has an ownership or other control interest in the business carried on or to be carried on under a registered business name—
  - (i) the person’s actual name; and
  - (ii) the person’s physical business address;
- (d) any other prescribed information;

*“document”* includes any of the following—

- (a) any form of writing on material;
- (b) information recorded, transmitted or stored digitally or electronically, and any material subsequently derived from that information;
- (c) any label or mark;
- (d) any book, map, plan, graph or drawing;
- (e) any photograph, film, negative or device in, on or from which 1 or more visual images are capable of being stored or reproduced;

*“electronic signature”*, in the case of a document filed with the Registrar electronically, means a signature by electronic means that in the Registrar’s opinion—

- (a) adequately identifies the signatory and adequately indicates the signatory’s approval of the information to which the signature relates; and
- (b) is as reliable as is appropriate given the purpose for which, and the circumstances in which, the signature is required;

*“file”* means to apply, give, submit or lodge, and includes to file by electronic means;

*“form”* includes a format, including an electronic format;

*“Minister”* means the Minister responsible for the administration of this Act;

*“person”* includes any of the following—

- (a) an individual;
- (b) a corporate entity;
- (c) an unincorporated association or body;
- (d) a trust;
- (e) a partnership;
- (f) a joint venture;

*"prescribed"* means prescribed by the Regulations;

*"register"* means the register of business names established under section 5;

*"Registrar"* means the person referred to in section 34 or a person appointed as Acting Registrar under section 35;

*"Regulations"* means Regulations made under section 44;

*"sign"* includes sign by means of an electronic signature; and

*"writing"* includes writing sent or communicated in electronic form or by electronic means, and *"written"* has a corresponding meaning.

#### **4 Application to the Republic**

This Act binds the Republic.

### **PART II – REGISTER OF BUSINESS NAMES**

#### **5 Register of business names**

The Registrar must establish and maintain a register of business names.

#### **6 Contents of register**

The register must include the following for each registered business name—

- (a) the information specified in section 15(2); and
- (b) for any changes in the registration or the business information, the date of the change.

#### **7 How and where register is to be kept**

- (1) The register may be kept in any way that the Registrar thinks appropriate, including, either wholly or partly, in electronic form.
- (2) If kept in electronic form, the register may be kept outside Kiribati.
- (3) If kept otherwise than in electronic form, the register must be kept in Kiribati.
- (4) The register must be kept in a way that facilitates searching of the register by members of the public.

**8 Certificate as to contents of register**

- (1) The Registrar must, on application by any person, give the person a statement, certified by the Registrar—
  - (a) whether a specified business name is registered as at a particular date; and
  - (b) if it is registered, the business information for the business name at that date.
- (2) The application must—
  - (a) be in the approved form;
  - (b) contain or be accompanied by the information and documents required by the form or otherwise prescribed;
  - (c) be accompanied by the prescribed fee if the fee has not otherwise been paid; and
  - (d) be filed with the Registrar.
- (3) The statement is admissible in any legal proceeding as evidence that the contents of the register are as set out in the statement and, unless the contrary is established, is conclusive evidence of that matter.

**PART III – REGISTRATION OF BUSINESS NAMES**

***When registered business name required***

**9 Business must be carried on under registered business name**

- (1) Subject to section 11, a person who carries on a business in Kiribati—
  - (a) must carry on the business under a business name that is registered to that person under this Act; and
  - (b) must not carry on the business under any other name.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to a term of imprisonment not exceeding 6 months or to both.

**10 Business communication must include registered business name**

- (1) Subject to section 11, a person must not issue a business communication in the course of carrying on a business in Kiribati unless the communication clearly and legibly states the registered business name under which the business is carried on.
- (2) A business communication includes the following—
  - (a) a letter;
  - (b) a written order for goods or services;
  - (c) a written offer to supply goods or services;

- (d) a notice;
  - (e) an invoice, an account or a receipt;
  - (f) a written demand for payment; and
  - (g) a business communication issued in electronic form.
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction—
- (a) to a fine not exceeding \$2,000 or to a term of imprisonment not exceeding 6 months or to both; or
  - (b) if the person commits the offence with the intention of deceiving or defrauding the public or a member of the public, to a fine not exceeding \$4,000 or to a term of imprisonment not exceeding 1 year or to both.

## 11 Exemption for use of actual name

- (1) Sections 9(1) and 10(1) do not apply if the name under which the person carries on the business includes the person's actual name.
- (2) The actual name of a person—
- (a) in the case of an individual, is the individual's full name or first name (or its initial) and surname;
  - (b) in the case of a company registered or re-registered under the Companies Act 2020, is the full name under which it appears in the register of companies;
  - (c) in the case of a co-operative society, is the full name under which the society is registered under the Co-operative Societies Ordinance (Cap 14);
  - (d) in the case of a partnership, is the actual names of each of the partners;
  - (e) in the case of a body corporate that is not a company incorporated, registered or re-registered under the Companies Act 2020, is the name with which the body was incorporated as subsequently amended or changed in accordance with its law of incorporation; or
  - (f) in the case of any other registered entity, the name with which the entity is registered.

## 12 When person carries on business

- (1) A person carries on a business in Kiribati if the person—
- (a) establishes a place of business in Kiribati; or
  - (b) while in Kiribati solicits or procures an order from a person in Kiribati.
- (2) However, a person does not carry on a business in Kiribati merely because the person does any of the following things in Kiribati—
- (a) becomes a party to a legal or administrative proceeding or an arbitration;

- (b) buys or holds a particular property;
- (c) creates a charge over property or creates evidence of a debt secured by property;
- (d) maintains a bank account;
- (e) invests money in Kiribati;
- (f) conducts an isolated transaction that is completed within 28 days, not being one of a number of similar transactions repeated from time to time;
- (g) winds up a bankrupt estate or liquidates a body corporate.

***Application for registration of business name***

**13 Any person may apply for registration**

Any person may apply to the Registrar for the registration of a business name.

**14 Requirements for application**

- (1) An application for the registration of a business name must—
  - (a) be in the approved form;
  - (b) contain or be accompanied by the information and documents required by the form or otherwise prescribed;
  - (c) be accompanied by the prescribed fee if the fee has not otherwise been paid; and
  - (d) be filed with the Registrar.
- (2) Two or more business names may be registered to a person in respect of the same business, but a separate application is required for each business name.

**15 Registration**

- (1) Subject to section 16, the Registrar must register a business name on receipt of an application that complies with section 14(1).
- (2) The Registrar registers a business name to a person by entering the following information in the register—
  - (a) the business name;
  - (b) the business information for the person to whom the name is registered;
  - (c) a unique registration number for the name;
  - (d) the date of registration; and
  - (e) any other prescribed information.
- (3) If the Registrar refuses to register a business name to a person, the Registrar must give the person written notice of the Registrar's decision, which must include—

- (a) the reasons for refusing registration; and
- (b) an explanation of the person's right of appeal under section 31 against the Registrar's decision.

**16 Restrictions on registration**

- (1) The Registrar must not register a business name if the name suggests that the business enjoys the patronage of the Government, a local authority or a foreign state.
- (2) The Registrar must not register a business name if—
  - (a) the name is the same, or almost the same, as—
    - (i) a currently registered business name;
    - (ii) the actual name of a body corporate (except if the body corporate is the applicant);
    - (iii) the name in which an entity that has filed an application (which is yet to be determined) for registration or re-registration as a company, co-operative society, or other registered entity; or
    - (iv) a prescribed name;
  - (b) the name is the same, or almost the same, as a previously registered business name that has been removed within 6 months before the application is made, unless the person to whom the name was previously registered consents;
  - (c) the Registrar has reasonable grounds to believe that the applicant is unlikely to carry on a business under the name;
  - (d) the Registrar considers that the use of the name as a business name would contravene another written law;
  - (e) the Registrar considers that the use of the name as a business name by the applicant would infringe another person's intellectual property rights (including rights in respect of trade marks); or
  - (f) the Registrar considers that the name is likely to mislead, deceive or offend the public.

**17 Effect of registration**

To avoid doubt, registration of a business name does not—

- (a) create a separate legal entity; or
- (b) relieve a person of any requirement of another law.

**Returns**

**18 Allocation of return month**

- (1) As soon as practical after registering a business name, the Registrar must—

- (a) allocate a return month to the person to whom the name is registered; and
  - (b) give that person written notice of the allocated return month.
- (2) Subject to subsection (3), a person's return month must be the calendar month in which the business name is registered.
- (3) The Registrar, on his or her own initiative or on request filed by the person to whom a business name is registered—
- (a) may change that person's return month to another month; and
  - (b) in that case must give the person written notice of the change.

**19 Requirement to file annual return**

- (1) A person to whom a business name is registered must file an annual return that complies with subsection (2) with the Registrar in the person's return month.
- (2) The return must—
- (a) be in the approved form;
  - (b) contain or be accompanied by the information and documents required by the form or otherwise prescribed; and
  - (c) be accompanied by the prescribed fee if the fee has not otherwise been paid.
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to a term of imprisonment not exceeding 6 months or to both.

**20 Registrar may require return to be filed**

- (1) This section applies if the Registrar considers that the business information contained in the register in relation to a registered business name is incomplete or inaccurate.
- (2) The Registrar may by written notice require the person to whom a business name has been registered to file a return that complies with section 19(2).
- (3) The Registrar's notice must specify a date for filing the return that allows a reasonable time for compliance.
- (4) The requirement to file a return under this section is in addition to the requirement to file a return under section 19.
- (5) A person who fails to comply with a notice under this section commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to a term of imprisonment not exceeding 6 months or both.

### ***Keeping register updated***

#### **21 Requirement to file notice of change in business information**

- (1) A person to whom a business name is registered must file a notice that complies with subsection (2) if there is a change in the business information relating to that person or to the business carried on under the business name.
- (2) A notice of change in business information must—
  - (a) be in the approved form;
  - (b) contain or be accompanied by the information and documents required by the form or otherwise prescribed;
  - (c) be accompanied by the prescribed fee if the fee has not otherwise been paid; and
  - (d) be filed with the Registrar within 28 days after the change occurred.
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to a term of imprisonment not exceeding 6 months or both.

#### **22 Registrar may amend registered business name**

- (1) A person to whom a business name has been registered may apply to the Registrar to amend the name by modifying it or by substituting a new name.
- (2) The application must—
  - (a) be in the approved form;
  - (b) contain or be accompanied by the information and documents required by the form or otherwise prescribed;
  - (c) be accompanied by the prescribed fee; and
  - (d) be filed with the Registrar.
- (3) The name is amended when the Registrar amends the register accordingly.
- (4) Sections 15(3) (Registration) and 16 (Restrictions on registration) apply with any necessary modifications to an amendment to the amendment of the register under this section.

#### **23 Removal of business name from register**

- (1) The Registrar must remove a business name from the register if the person to whom the business name is registered—
  - (a) files with the Registrar a notice that the person is no longer carrying on a business under that business name;
  - (b) fails to file a return as required under section 19 or 20 within 6 months after the due date;

- (c) fails to file a notice of change in business information in accordance with section 21;
  - (d) in making a submission in response to a notice under section 24 fails to satisfy the Registrar that the business name should not be removed; or
  - (e) is a body corporate or other registered entity that is in liquidation, has been deregistered or has otherwise ceased to exist.
- (2) On removing a registered business name from the register under subsection (1)(b) to (e), the Registrar must without delay give a written notice that complies with subsection (3) to the person to whom the business name was registered or to the person's liquidator or other representative, as the case may require.
- (3) The notice must state—
- (a) that the business name has been removed from the register;
  - (b) the date of removal;
  - (c) the reason for removal; and
  - (d) if the name is removed on a ground set out in subsection (1)(b) to (e), that there is a right of appeal under section 31 against the removal.
- (4) Subsection (2) does not apply in the case of removal under subsection (1)(e) if the Registrar, after making reasonable inquiry, is unable to identify a liquidator or other representative of the body corporate or registered entity.

#### **24 Registrar's notice of objection to registration**

- (1) This section applies if the Registrar considers that a registered business name does not comply with a restriction of registration under section 16 and should not have been registered.
- (2) The Registrar must give the person to whom the business name is registered a written notice that—
- (a) states in adequate detail the Registrar's objection and the reasons for it;
  - (b) requires the person to file a submission in writing with the Registrar setting out why the Registrar should not remove the business name; and
  - (c) specifies a date for filing the submission that allows a reasonable time for filing the submission.

#### **25 Restoration to register**

- (1) This section applies if the Registrar has removed a business name from the register on a ground set out in section 23(1)(b) or (c).
- (2) The Registrar must restore the business name to the register on receiving an application for restoration that complies with subsection (3).
- (3) The application must—
- (a) be in the approved form;

- (b) contain or be accompanied by the information and documents required by the form or otherwise prescribed;
  - (c) if 1 or more returns are outstanding (and subject to subsection (5)), be accompanied by all outstanding returns completed to the Registrar's satisfaction;
  - (d) if a notice of change in business information is outstanding, be accompanied by the notice completed to the Registrar's satisfaction;
  - (e) unless payment has otherwise been made, be accompanied by the prescribed fee for filing each outstanding return or notice of change in business information, as the case may be;
  - (f) unless payment has otherwise been made, be accompanied by the prescribed fee for filing the application together with any applicable late filing fees and penalties; and
  - (g) be filed with the Registrar within 6 months after the date of removal.
- (4) A business name that is restored to the register under this section must be treated as not having been removed.
- (5) The Registrar in his or her discretion may waive the filing of 1 or more outstanding returns.

**26 Notice of restoration to register**

- (1) On restoring a business name to the register under section 25, the Registrar must give the person to whom the business name is registered a written notice that states—
- (a) the name has been restored to the register; and
  - (b) the date on which the name was restored.
- (2) If the Registrar considers that an application for restoration does not comply with section 25(3) and accordingly refuses the application, the Registrar must without delay give the applicant a written notice that states that—
- (a) the application is refused; and
  - (b) there is a right of appeal under section 31 against the decision.

**27 Registrar must update register**

The Registrar must update the register as necessary but in particular when—

- (a) a return or notice of change in business information is filed;
- (b) a registered business name is amended;
- (c) a registered business name is removed from the register; or
- (d) a business name is restored to the register.

**28 Registrar may correct error in register**

- (1) The Registrar may amend an entry in the register if the Registrar is satisfied that the entry contains an error or is otherwise incorrect.
- (2) The Registrar may amend on the Registrar's own initiative or on an application filed by the person to whom the business name is registered.
- (3) An application under subsection (2) must—
  - (a) be in the approved form;
  - (b) contain or be accompanied by the information and documents required by the form or otherwise prescribed;
  - (c) be accompanied by the prescribed fee if the fee has not otherwise been paid; and
  - (d) be filed with the Registrar.
- (4) The Registrar must give the person to whom the business name is registered written notice of the amendment.

**PART IV – OFFENCES**

**29 Offence of filing false or misleading document**

- (1) A person commits an offence if the person—
  - (a) files a document with the Registrar under this Act that is false or misleading in a material particular; and
  - (b) knows or is reckless as to whether the document is so false or misleading.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding \$4,000 or a term of imprisonment not exceeding 1 year or both.
- (3) It is a defence to a prosecution for an offence under subsection (1) that the defendant, on or before filing the document—
  - (a) drew to the Registrar's attention the extent to which the document was false or misleading in a material particular; and
  - (b) so far as the person was able, provided the Registrar with the necessary information to correct the document.

**30 Manager's liability for entity offence**

- (1) If an entity that is not an individual commits an offence under this Act, each individual who is responsible for the management of the entity also commits the same offence.
- (2) A manager who may be liable under subsection (1) includes the following—
  - (a) a director or executive of a company;
  - (b) a trustee of a trust;

- (c) a partner in a partnership;
  - (d) any person in an incorporated society, an unincorporated association or body or a joint venture who is responsible for the management of the society, association, body or joint venture.
- (3) It is a defence to a prosecution under subsection (1) if the defendant—
- (a) was not in a position to influence the conduct of the entity in the commission of the offence;
  - (b) took reasonable steps to prevent the commission of the offence; or
  - (c) exercised due diligence to prevent the commission of the offence.

#### **PART V – APPEALS**

### **31 Decisions that are subject to appeal**

- (1) The following decisions of the Registrar under this Act are subject to an appeal in accordance with section 32—
- (a) registration of a business name (section 15(1));
  - (b) refusal to register a business name (section 15(3));
  - (c) removal of a business name from the register on a ground set out in section 23(1)(b) to (e);
  - (d) refusal to restore a business name to the register (section 26(2)).
- (2) The person who may bring the appeal is—
- (a) in the case of registration of a business name, a person affected who claims that there is a real risk that the registration will cause substantial detriment to that person;
  - (b) in the case of a refusal to register a business name or to restore a business name to the register, the applicant; or
  - (c) in the case of the removal of a business name from the register, the person to whom the business name was registered.
- (3) In this Part, “*decision*” includes an action or other step that this Act requires the Registrar to take.

### **32 Procedure on appeal**

- (1) The appeal must be brought in the High Court and that court has jurisdiction to hear and determine the appeal according to its own procedure.
- (2) The appeal must be filed in the court within 28 days after the appellant received notice of the decision or within such longer period as the court may allow.
- (3) The court may determine the appeal by—
- (a) confirming, varying or setting aside the decision under appeal;
  - (b) substituting its own decision for the decision under appeal; or

- (c) remitting the decision under appeal to the Registrar for reconsideration.
- (4) If the court remits the decision under the appeal to the Registrar for reconsideration, the court may give the Registrar such directions as it considers necessary for reconsidering the decision.
- (5) There is no appeal from the court's determination of the appeal.

**33 Stay of decision under appeal**

The High Court may stay the removal of a business name from the register pending determination of an appeal against the decision to remove.

**PART VI – ADMINISTRATION**

**34 Registrar of Business Names**

- (1) There must be a Registrar of Business Names.
- (2) The Registrar is the person holding the office of Registrar of Companies under the Companies Act 2021.

**35 Acting Registrar**

- (1) The Minister may appoint a person as Acting Registrar of Business Names for any period during which—
  - (a) the Registrar is absent from Kiribati;
  - (b) the Registrar is incapacitated; or
  - (c) there is no person holding office as Registrar of Companies.
- (2) The appointment—
  - (a) must be notified in the *Gazette*;
  - (b) must not be for a period longer than 6 months but may be renewed; and
  - (c) may be terminated by the Minister at any time.
- (3) For the duration of his or her appointment, the Acting Registrar has all the powers, duties and functions of the Registrar under this Act.

**36 Registrar's power to require information**

- (1) The Registrar may by a written notice that complies with subsection (2) require a person to provide the Registrar with information in that person's possession or control that the Registrar considers necessary for determining whether a person or persons are in breach of—
  - (a) section 9 (Business must be carried on under registered business name); or
  - (b) section 21 (Requirement to file notice of change in business information).
- (2) The notice must—

- (a) specify the nature of the possible breach;
  - (b) describe the nature or class of the information that must be provided; and
  - (c) specify a deadline date (which must not be less than 28 days after the notice is given) for the provision of the information.
- (3) A person who fails to comply with a notice under this section commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to a term of imprisonment not exceeding 6 months or to both.
- (4) In this section, "*information*" includes a document.

**37 Approved forms**

The Registrar may approve forms for the purposes of this Act.

**38 Extensions of time**

- (1) The Registrar may extend the time for doing any of the following things under this Act—
- (a) filing a return;
  - (b) filing a notice of change in business information;
  - (c) filing a submission under section 24.
- (2) For an extension of time the Registrar must give the person seeking the extension a written notice of extension.
- (3) The Registrar may—
- (a) extend the time once only; and
  - (b) extend the time even after the time has expired.

**39 Protection from liability**

- (1) A person is not criminally or civilly liable for any act done or omitted to be done in good faith in—
- (a) the exercise or performance of a power or function under this Act; or
  - (b) the administration of this Act.
- (2) In subsection (1), "*exercise*" includes purported exercise and "*performance*" includes purported performance.

**40 Recovery of fees etc**

A fee, penalty or other sum that is payable under this Act may be recovered by the Registrar in a court of competent jurisdiction as a debt due to the Republic.

**41 Delegation by Registrar**

- (1) The Registrar may by a written delegation delegate any of the Registrar's powers or functions under this Act to a public officer, except this power of delegation.
- (2) The delegation may be subject to conditions or limitations.
- (3) If a delegated power or function requires the Registrar to form an opinion or draw a conclusion, the delegate exercises the power or performs the function by the delegate forming an opinion or drawing a conclusion.
- (4) The delegation does not prevent the Registrar from exercising or performing the power or function delegated.
- (5) A power or function delegated under this section, when exercised or performed by the delegate, is taken to be exercised or performed by the Registrar.

**42 Registrar's notices**

- (1) The Registrar may give a person a notice for the purposes of this Act in any of the following ways—
  - (a) by delivering it to the person's physical business address;
  - (b) by posting it to the person's postal address;
  - (c) by emailing it to the person's email address, if any;
  - (d) by any other prescribed means.
- (2) For the purpose of this section, a person's physical business address or postal or email address is —
  - (a) in the case of an applicant for the registration of a business name, the physical, postal or email address contained in the application; or
  - (b) in the case of a person to whom a business name is or has been registered, the physical, postal or email address contained in the person's business information most recently entered in the register.

**43 Access to register**

- (1) The register is a public record and any member of the public may—
  - (a) access the register;
  - (b) search the register; or
  - (c) obtain a hard copy of an entry in the register.
- (2) Access to the register under subsection (1) is subject to—
  - (a) payment of the prescribed fee or fees (if any); and
  - (b) regulations governing the availability of the register, including restrictions on hours of access.

**44 Regulations**

- (1) The Minister, acting on the advice of the Cabinet, may make regulations—

- (a) for any purpose for which regulations are authorised or required to be made under this Act;
  - (b) prescribing matters authorised or required by this Act to be prescribed; or
  - (c) prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may be made for all or any of the following purposes—
- (a) prescribing when a fee, penalty or other sum is payable under this Act;
  - (b) prescribing the amount of any fee, penalty or other sum is payable under this Act;
  - (c) prescribing the circumstances in which the Registrar may waive, or exempt a person or class of persons from liability to pay, a fee, penalty or other sum payable under this Act, whether in whole or in part;
  - (d) prescribing the manner of filing an application or other document;
  - (e) prescribing information that must be included in the register;
  - (f) prescribing names that must not be registered as business names;
  - (g) prescribing the means of giving a Registrar's notice;
  - (h) prescribing additional documents or information that must be filed with an application, a notice or a return;
  - (i) making provision for the filing of an application, return, notice or other document in electronic form or by electronic means, including provision for the approval by the Registrar of electronic signature or other verification by electronic means in place of a physical signature;
  - (j) making provision for the maintenance of the register and its availability for access by members of the public.

**45 Repeal**

The *Registration of Business Names Act 1988* is repealed.

**46 Transition period for registration of existing business names**

- (1) An existing business name must be treated as an unregistered business name for the purposes of this Act unless it is registered under this Act before the transition period expires.
- (2) During the transition period—
  - (a) despite its repeal by section 45, the 1988 Act continues in force in relation to an existing business name only;
  - (b) this Act does not apply to an existing business name; and

(c) there must be no registration of a new business name under the 1988 Act.

(3) In this section—

*“1988 Act”* means the Registration of Business Names Act 1988;

*“existing business name”* means a business name that is registered under the 1988 Act immediately before the commencement of this Act;

*“transition period”* means the period of 90 days after the commencement of this Act.

#### **47 Transitional regulations**

The Minister, acting on the advice of the Cabinet, may make regulations—

- (a) providing transitional provisions relating to the registration of an existing business name, which may be in addition to, or in place of, or which may amend, the provisions of section 46;
- (b) providing transitional provisions relating to the allocation of an annual return month on the registration of an existing business name, which may be in addition to, or in place of, or which may amend, the provisions of section 18;
- (c) to facilitate the bringing into force of any regulations under this Act;
- (d) providing that subject to such conditions as are specified in the regulations, during a specified transitional period, specified provisions of this Act (including definitions) do not apply; or
- (e) providing for any other matters necessary for facilitating or ensuring an orderly transition from any enactments replaced by this Act to the provisions of this Act.

#### **48 Kiribati Chamber of Commerce and Industry Act 2013 amended**

- (1) This section amends the Kiribati Chamber of Commerce and Industry Act 2013.
- (2) In section 2, delete the definition of *“Registration of Business Names Act”* and substitute the following definition:

*“Business Names Act”* means the Business Names Act 2021;”.

- (3) In section 4(3)(1)(a), delete *“Registration of”*.
- (4) In section 4(3)(1)(b), delete *“Registration of”*.

## **BUSINESS NAMES ACT 2021**

### **EXPLANATORY MEMORANDUM**

This Act repeals the Registration of Business Names Act 1988 and institutes a simpler, clearer system for registering business names. Anticipated benefits of the Act are:

- greater business certainty that the business being dealt with is legitimate, leading to increased willingness to contract with new business partners, and increased capacity to check for fraudulent transactions
- existing businesses and entities being better empowered to proactively protect their business goodwill and/or defend against detriment
- the ability for consumers to identify with whom they are dealing in the event of a dispute, and
- the Government having better information on the distribution and composition of the Kiribati private sector.

The Business Names Act comprises of 6 Parts and 48 sections.

Part I deals with preliminary matters including the short title, commencement, and definitions of key terms used throughout the Act.

Part II establishes the Register of Business Names and specifies the information that must be kept on the register. It also enables the register to be kept in electronic either in Kiribati or hosted overseas on secure servers in line with practice in other Pacific countries.

Part III deals with when businesses must register business names. Section 9 specifies that a person must conduct a business under a registered business name. There is an exemption from this requirement under s 11 if a person is using their actual name. Section 10 requires business communications to include the registered business name. Section 12 clarifies what constitutes 'carrying on a business' for the purposes of requiring a registered business name and excludes a number of transactions where it is not reasonable to expect a person to register a business name.

Section 14 specifies the requirements for a registration application and section 16 provides the Registrar the power to refuse registration in defined circumstances. Upon registration, the Registrar must allocate a 'return month' under s 18 which the registrant must file their annual return on an annual basis under s 19. Section 23 outlines circumstances in which the Registrar may remove business names. Sections 24 to 28 deal with procedures for removal, restoration and correction of entries on the register.

Part IV specifies offences. Section 29 provides an offence for a person filing a false or misleading document to the Registrar. Section 30 extends liability to individuals where an entity that is not an individual commits an offence.

Part V specifies appeals. Section 31 outlines a number of decisions that the Registrar can make under the Act that are appealable. Section 32 specifies the procedures for appeals.

Part VI deals with the administration of the Act. Section 34 establishes the Registrar of Business Names specifying that he or she is the same person as the Registrar of Companies under the Companies Act 2021. Section 36 provides the Registrar with powers to require information on a suspected breach of sections 9 or 21 of the Act. Section 37 enables the Registrar to approve forms and s 41 enables the Registrar to delegate his or her powers. Section 46 deals with the transition from the current Act to the new legal framework. Given that business names information has not been adequately updated since the 1980s, all business names will need to be re-registered during the transition period. This will enable the Registry to contain accurate data. Sections 44 and 47 deal with making regulations.

Honourable Booti Nauan  
Minister of Commerce, Industry and Cooperatives

LEGAL REPORT

I hereby certify that in my opinion none of the provisions of the above Act are in conflict with the Constitution and that His Excellency the Beretitenti may properly assent to the Act

Tetiro Maate Semilota  
Attorney General

**CERTIFICATE OF THE CLERK OF THE MANEABA NI  
MAUNGATABU**

This printed impression of the Registration of Business Names Act 2021 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 26<sup>th</sup> April 2021 and is found by me to be a true and correctly printed copy of the said Bill.

  
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**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**

Published by exhibition at the Maneaba ni Maungatabu this 19<sup>th</sup> day  
of ..... MAY ..... 2021.

  
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**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**