

# BUSINESS NAMES ORDINANCE 1935.<sup>(1)</sup>

## No. 12 of 1935.

### An Ordinance Relating to the Registration of Firms and Persons carrying on Business under Business Names.

**B**E it ordained by the Legislative Council for the Territory of New Guinea, in pursuance of the powers conferred by the *New Guinea Act 1920-1932*, as follows:—

1. This Ordinance may be cited as the *Business Names Ordinance 1935*.<sup>(1)</sup> Short title.
  
2. This Ordinance shall commence on a date to be fixed by the Administrator by notice in the *New Guinea Gazette*.<sup>(1)</sup> Commencement.
  
3. In this Ordinance, unless the contrary intention appears— Definitions.
  - “business” includes trade and profession;
  - “business name” means the name or style under which any business is carried on, whether in partnership or otherwise;
  - “Christian name” includes any forename;
  - “firm” means any two or more persons lawfully associated for the purpose of carrying on any business, but does not include a company registered or incorporated within the Territory or the British Dominions under, by, or in pursuance of, any Act, Ordinance, Letters Patent, or Royal Charter;
  - “initials” includes any recognized abbreviation of a Christian name;
  - “Registrar” means the Registrar of Firms appointed under this Ordinance, and includes any Deputy or Acting Registrar so appointed.

(1) Particulars of this Ordinance are as follows:—

Date of assent by Administrator.	Date notified in <i>N.G. Gaz.</i> as not disallowed by Governor-General in Council.	Date on which came into operation.
16.1.1935	15.6.1935	1.5.1935 ( <i>N.G. Gaz.</i> of 15.3.1935)

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Registrar  
and Deputy  
Registrars.

4.—(1.) For the purposes of this Ordinance, there shall be—

(a) a Registrar of Firms; and

(b) such Deputy Registrars of Firms as may from time to time be required for the purposes of this Ordinance.

(2.) Subject to the *Public Service Ordinance 1922-1934*,<sup>(2)</sup> the Administrator may appoint any person to be Registrar of Firms or a Deputy Registrar of Firms and, during any temporary vacancy in the office of Registrar, the Administrator may appoint any person to be an Acting Registrar of Firms.

(3.) An Acting Registrar shall have all the powers and perform all the duties of the Registrar.

Firms and  
persons to be  
registered.

5. From and after the commencement of this Ordinance—

(a) every firm carrying on business or having any place of business in the Territory under a business name which does not consist of the true surnames of all the partners (together with the Christian name or names or the initials thereof) without any addition; and

(b) every person carrying on business or having any place of business in the Territory under any business name consisting of or containing any name or addition other than his true surname (together with his Christian name or names or the initials thereof),

shall be registered in accordance with the provisions of this Ordinance:

Provided that—

(i) 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

(ii) where the business is carried on by a trustee in insolvency or a receiver, manager, or trustee appointed by any court, registration shall not be necessary; and

(iii) 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.

Manner and  
particulars of  
registration.

6. Registration under this Ordinance shall be effected by sending by post or delivering to the Registrar a statement in writing containing the following particulars—

(a) the business name;

(b) the general nature of the business;

(c) the place or places where the business is carried on, or is intended to be carried on, in the Territory;

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(2) Now the *Public Service Ordinance 1922-1940*.

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- (d) the full name, usual residence, and other occupation (if any) of the person or persons carrying on or intending to carry on the business; and
- (e) the date of the commencement of the business.

7.—(1.) A firm or person required to be registered under this Ordinance shall sign or acknowledge a statement in accordance with Form 1 in the Schedule to this Ordinance or in such other form as is prescribed, setting out the particulars required for registration, if in the Territory, in the presence of the Registrar, a Commissioner for Affidavits, a solicitor, or a Justice of the Peace, and, if elsewhere than in the Territory, in the presence of a British Consul, a notary public, a Justice of the Peace, or a Commissioner for Affidavits for any State or Territory of the Commonwealth, by whom respectively the signatures or acknowledgements shall be attested.

Particulars to be furnished by persons registering.

(2.) The foregoing provisions of this section shall be deemed to be complied with by a firm if any partner in the Territory signs or acknowledges the statement in the presence of the Registrar, a Commissioner for Affidavits, a solicitor, or a Justice of the Peace, by whom respectively the signature or acknowledgment is attested.

(3.) If there is not in the Territory any partner or person carrying on or intending to carry on a business carried on, or intended to be carried on, under a business name, the foregoing provisions of this section shall be deemed to be sufficiently complied with if the statement is signed or acknowledged by any person who has previously filed in the office of the Registrar a statutory declaration, or produced a power of attorney, showing that he is duly authorized by and on behalf of the firm or person to carry on the business the business name of which he desires to have registered, and the signature or acknowledgment is attested as provided in the last preceding sub-section.

8.—(1.) Firms and persons required to be registered under this Ordinance, who at the date of the commencement of this Ordinance are carrying on business in the Territory, shall comply with the provisions of this Ordinance within six months after that date.

Time for registration.

(2.) Other firms and persons required to be registered under this Ordinance shall register before they commence business.

9. Whenever a change is made or occurs in any of the particulars required for registration in respect of any firm or person, the firm or person shall, within twenty-eight days after the change, or such longer period as the Registrar on application being made in any particular case, whether before or after the expiration of the period of twenty-eight days, allows, send by post or deliver to the Registrar a statement in writing in accordance with Form 2

Registration of changes in firm.

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in the Schedule to this Ordinance, or such other form as is prescribed, specifying the nature and date of the change, signed and verified in like manner as the statement required on registration.

Penalty for default in registration.

**10.** Any person who by this Ordinance is required to send or deliver any statement, and who makes default without reasonable excuse in sending or delivering the statement within the prescribed time after a written demand in that behalf by the Registrar, or in the manner and within the time specified by this Ordinance, shall be guilty of an offence.

Penalty: Two pounds for the first offence, and Ten pounds for every subsequent offence.

Persons in default bringing action shall be ordered by court to register.

**11.** Where any firm or person has made default in sending or delivering any statement to the Registrar, and during the default commences any suit or action in the business name or for a cause of action arising out of any dealing by the firm or person in the business name, the court before which the suit or action is commenced shall order the firm or person in default to send or deliver to the Registrar the proper statement as required by this Ordinance, and may stay all proceedings in the suit or action until the order is complied with, or allow proceedings to be continued on an undertaking to comply with the order within a time to be limited by the court.

Proceedings against non-registered firms.

**12.** If any firm or person required to be registered as provided in this Ordinance fails to register accordingly, all proceedings in any court of competent jurisdiction may be taken and prosecuted against the firm or person in the name under which the firm or person is carrying on business, and such name shall, for the purposes of the proceedings, be a sufficient designation of the firm or person in all writs, summonses, complaints, and other legal documents and instruments:

Provided that nothing in this section shall be construed to exempt any firm or person from compliance with any of the provisions of this Ordinance.

Making false returns under this Ordinance an offence.

**13.** Every person who wilfully makes, signs, acknowledges, or sends or delivers to the Registrar any false statement purporting to be made under this Ordinance shall be guilty of an offence.

Penalty: Imprisonment for two years.

Registrar to file statement and issue certificate.

**14.** The Registrar, on receiving any statement made in pursuance of this Ordinance, shall cause it to be filed, and shall send by post or deliver a certificate of the registration thereof to the firm or person registering.

Certificate to be exhibited.

**15.** Where a certificate of the registration of a firm or person has been sent by post or delivered to the firm or person registering

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under this Ordinance it shall be kept exhibited in a conspicuous position at the principal place of business of the firm or person, and if not kept so exhibited every partner in the firm, or the person, as the case may be, shall be guilty of an offence.

Penalty: Ten pounds.

**16.** The Registrar shall keep a register and an index of all the business names of firms and persons registered under this Ordinance, together with the statements registered in reference thereto.

Register and index to be kept.

**17.**—(1.) If any firm or person registered under this Ordinance 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 person or if he is dead of his personal representative, within six months after the business has ceased to be carried on, to send by post or deliver to the Registrar notice that the firm or person has ceased to carry on business, and if any person whose duty it is to give the notice fails to do so within the prescribed time, he shall be guilty of an offence.

Removal of names from register.

Penalty: Ten pounds.

(2.) On receipt of the notice referred to in the last preceding sub-section the Registrar may remove the firm or person from the register.

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

(4.) If the Registrar either receives an answer from the firm or person referred to in the last preceding sub-section to the effect that the firm or person is not carrying on business or does not within three months from the date of the notice receive an answer, he may remove the firm or person from the register.

**18.**—(1.) Any person may inspect, make a copy of, or extracts from, the statements filed by the Registrar, and there shall be paid for every such inspection a fee of Two shillings.

Inspection of statements registered.

(2.) 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 every such certificate of registration a fee of Five shillings, and for every such copy or extract a fee at the rate of Two

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shillings for each folio of seventy-two words, or part of a folio, after the first six folios, in addition to a fee of Five shillings for the certificate of the Registrar.

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

Registrar to send reply to inquiries.

19. The Registrar shall, on receiving payment of such fees as are prescribed, send by post a reply to any inquiry made of him by letter in reference to any registration effected under this Ordinance.

Persons or firms not to be registered under certain business or other names.

20. No person or firm not incorporated shall use nor shall any person or firm required to register under this Ordinance be registered under—

- (a) a business name identical with the business name of a firm or person already registered under this Ordinance or identical with the name by which a company in existence is already registered under the *Companies Ordinance* 1912–1926 of the Territory of Papua in its application to the Territory of New Guinea;<sup>(3)</sup> or
- (b) any name likely in the opinion of the Registrar to mislead the public as to the identity of any firm or person required to register or as to the nature of its or his business.

Power to make regulations.

21. The Administrator in Council may make regulations,<sup>(4)</sup> not inconsistent with this Ordinance, prescribing all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance, and in particular prescribing matters providing for and in relation to—

- (a) the fees to be paid to the Registrar under this Ordinance;
- (b) the forms to be used and the mode of payment of fees under this Ordinance;
- (c) the conduct and regulation of registration under this Ordinance; and
- (d) the imposition of penalties not exceeding Ten pounds which may be imposed for breaches of the Regulations under this Ordinance.

(3) The *Companies Ordinance* 1912–1926 (Papua, adopted) has been amended by the *Companies Ordinance* 1933–1938 and the *Companies Ordinance* 1935, both of the Territory of New Guinea.

(4) See the *Business Names Regulations*, printed on p. 130.

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**THE SCHEDULE.**

Sec. 7.

FORM 1.

TERRITORY OF NEW GUINEA.

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**ORIGINAL REGISTRATION OF A FIRM [or PERSON].**

The business name is

The business of the firm [or person] is

It is intended to carry on the business at

Name [or Names] of person [or persons] carrying on [or intending to carry on] the business:

Full name (to be written or acknowledged by each person himself).	Usual residence.	Other occupation, description, and addition (if any).

Date of intended commencement of business or establishment of new place of business, if after the commencement of the Ordinance:

Signed and declared at \_\_\_\_\_ on the

day of \_\_\_\_\_, 19 .

Before me,

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FORM 2.

TERRITORY OF NEW GUINEA.

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**NOTICE OF CHANGE IN CONSTITUTION OF REGISTERED FIRM.**

We [or I] the undersigned [*the members of the firm as reconstituted, or the new proprietor of the business, as the case may be*] hereby give notice that on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_ the following change took place in the constitution of the firm [or person] registered by the name of \_\_\_\_\_, that is to say—

\*A.B. retired from the firm.

\*C.D. became a member of the firm.

**†DESCRIPTION OF A NEW MEMBER.**

Full name.	Usual residence.	Other occupation, description and additions (if any).

Signed and declared at \_\_\_\_\_ on the

day of \_\_\_\_\_, 19 .

Before me,

\* As the case may be.  
† As upon an original registration.