

## **REGISTRATION OF CORPORATE BUSINESS NAMES**

The Act relating to the registration of business names was originally passed over seventy years ago to require an individual or individuals and/or corporations carrying on business in partnership to be registered in the name in which the business is carried on. Under the amendments to modernize the law titled the Registration of Business Names (Amendment) Act passed on December 6, 2006 the requirement for registration of a business name will also apply to a *body corporate* that carries on a business that uses a business name other than its registered name.

The amending Act provides that a body corporate that carries on business under a name other than its corporate name must be registered and that failure to do so may attract a maximum fine on conviction of \$15,000 or up to three months in prison. The new amendments also empower the Registrar of Companies to apply to the court for an order to close down a business if its business name is not registered or its business name registration is not renewed within one year after being served three notices by the Registrar to comply. Renewal of the registration of a business name is required every three years and a statement of any change in particulars already registered must be filed with the Registrar within 14 days of the change. Such changes to be filed are the opening of an additional or substituted place of business or branch, and, the closing or disposal of a place of business or branch.

The amendments bring into being a truly modern Act that provides that applications for registration, the renewal of registration, the filing of statements of changes and all other filings with the Registrar may all be done electronically, and, that the Registrar may store records and other information electronically.

The amending Act also provides that a corporation that does not register its business name will not be able to advertise the business of the company. Breach of this section is punishable on conviction to a maximum fine of twenty thousand dollars or up to three months in prison. 'Advertise' is defined very widely to mean "*any form of communication*

*put out .....to notify the public of the business or the products of the business”.* Accordingly, the practical effect of the amendments is that the business of a corporation can be adversely affected by non-compliance with the Act because it will not be able to advertise to either get a share of or to maintain or increase its market share unless the business name is registered. Together with the penalties mentioned above that may apply if there is non-registration of a business name and the possible closure of the business if the Registrar obtains a court order to that effect, it is clear that the intended impact of the amendments is to be very far reaching.

Further, the Registrar of Companies will not register a business name which contains any undesirable, profane, indecent or obscure word or symbol, or a name that is similar to a name already registered or a name of a company already registered under the Companies Act without, in each instance, the consent of the earlier registrant.

The filing of the application for registration and of notices of changes may be done electronically and the records of filings may be stored by the Registrar by photographic, electronic or any other permanent method. The Tax Registration Number of the applicants must be filed with applications and the information obtained by the Registrar may be disclosed to the Commissioner of Inland Revenue or to his authorized agent.

The Minister of Industry Commerce & Technology is empowered to prescribe a ‘*sales threshold*’ below which a corporation is not required to register under the Act. It is hoped that that threshold will be carefully considered by the Minister in order that small businesses will not be unnecessarily burdened by these new regulatory requirements.

The rationale for modernization of the registration of business names is to recognize the intellectual rights of corporations in the intellectual property in their business names and to provide more information about the providers of goods and services to the consuming public. The amendments employ the use of electronic technology to facilitate speedy registration and to make information readily available to registrants and to the public.

The hefty new fines and the Registrar's power to apply to the court to shut down a business are designed to compel compliance by corporations.

As the regulatory grip on corporations and on their stakeholders tightens, it is hoped that in the result this will engender and reward entrepreneurship while protecting consumers – which will no doubt be a delicate, if not impossible, balancing of interests.

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