

24 August 2011

Commercial Law e-alert

Protect your good name - the new National Business Names registration system is coming soon

On August 17, 2011, a package of new legislation that establishes the new National Business Names registration system was introduced to Federal Parliament.

Any person or other legal entity carrying on a business in Australia will be affected by the new system and its changes.

What is the current system for the registration of a business name?

Currently, you need to register your business name separately in each state and territory in which you trade (unless you operate the business under your personal or company name). Different legislation, processes, fees and periods relating to the registration are applicable, which make the system of registration non-uniform, complicated and expensive for businesses.

What is the new system and what does it change?

The new system, to be operational from mid next year, will be national: rather than registering a business name in each state and territory, you will be able to register your business name on a single national database.

The Australian Securities and Investments Commission (ASIC) will manage and administer the new national register.

Other practical key features of the new legislation are:

- » The business name can be registered for a period of one year (the registration fees amount to \$30) or three years (the registration fees amount to \$70)
- » Applicants need to have an Australian business number or be in the process of applying for an ABN and not have been refused an ABN to register the business name
- » There will be a single integrated online registration process for the business name and the ABN
- » Any decision by ASIC will be reviewable on application to ASIC or the Australian Administrative Appeals Tribunal by the applicant or any person in relation to whom there is a real risk of substantial detriment due to the registration of the business name

What will happen to my existing business name?

If you already have a registered business name under a State or Territory, your business name will automatically be transferred to the national register at the introduction of the new system (this process is called "grand-fathering"). If your business name has been registered in several States or Territories, these will be consolidated into one registration. Moreover, if some identical business names have been registered by different owners in different jurisdictions, ASIC will insert a distinguishing mark or expression on the register; therefore you won't have to change your business name.

If your registration is due for renewal before the introduction of the new system, you must comply with the current system and apply for renewal in the different States and Territories you are trading in. If this renewal has to be completed after the introduction of the new system, you will be able to make one application to ASIC to cover all of Australia.

What do businesses need to do now?

If you want to register a business name, once the new system is in place, you will be able to apply simultaneously for a business name and an ABN at www.abr.gov.au, with in most cases an immediate confirmation or rejection of the business name application.

It is relevant to note that the current prohibitions for registration of a business name will continue under the new system. It is prohibited to register names which are "identical or nearly identical" to another business, which have already been registered, which are likely to be offensive, or which are likely to mislead or deceive consumers and traders. An automated test to determine registrable names will be available online in order to avoid these situations.

As these prohibitions will exist on a national level with the introduction of the new system, if you are contemplating a start up business, you should move quickly now to register your preferred business name in the jurisdiction in which you plan to trade in order to avoid the situation where your business name application will be refused in the new system because the same name has already been chosen in another jurisdiction before the commencement of the new system.

However you should also note that the new system – like the current system, does not make the registrant the owner of the business name: you must apply separately for a trademark registration to give you proprietary rights in the name.

If you have any queries or concerns in relation to the above, please contact Hunt & Hunt.

Contact us

John Kell Sydney (City)	+61 2 9391 3163	jkell@hunthunt.com.au
Catherine Logan, Sydney (City)	+61 2 9391 3267	clogan@hunthunt.com.au
Harold O' Brien (North Ryde)	+61 2 9804 5753	hobrien@hunthunt.com.au
Tony Raunic, Melbourne	+61 3 8602 9266	traunic@hunthunt.com.au
Ashley Pelman, Melbourne	+61 3 8602 9213	apelman@hunthunt.com.au
Robin Lonergan, Brisbane	+61 7 3292 9710	rlonergan@macrossans.com.au
Rick Harley, Adelaide	+61 8 8414 3373	rharley@hunthunt.com.au
Darren Miller, Perth	+61 8 9488 1300	darren.miller@culshawmiller.com.au
Antony Logan, Hobart	+61 3 6210 6213	alogan@hunttas.com.au
Chris Osborne, Darwin	+61 8 8924 2600	cosborne@huntnt.com.au

© Hunt & Hunt 2011

Disclaimer: The information contained in this e-alert is not advice and should not be relied upon as legal advice. Hunt & Hunt recommends that if you have a matter that is legal, or has legal implications, you consult with your legal adviser. If you no longer wish to receive this e-alert or any other publication from Hunt & Hunt, please email us at unsubscribe@hunthunt.com.au