

REGISTRATION OF BUSINESS NAMES ACT, 1975

No. 14



of 1975

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Interpretation
3. Registrar and register
4. Firms, individuals and bodies corporate to be registered
5. Registration by nominee, etc.
6. Manner and particulars of registration
7. Statement to be signed by persons registering
8. Time for registration
9. Registration of changes
10. Penalty for default in registration
11. Disability of persons in default
12. Penalty for false statement
13. Particulars to be furnished to Registrar
14. Certificate of registration
15. Cancellation of entries in register
16. Extension of time
17. Restriction on registration of certain business names
18. Prohibition notwithstanding registration
19. Inspection of documents and provision of copies
20. Certified copies to be evidence
21. Regulations
22. Publication of true names, etc.
23. Provisions with respect to offences
24. Penalties for offences

An Act to make provision for the registration of firms, individuals and bodies corporate carrying on business under a business name, and for matters incidental thereto and connected therewith.

Date of Assent: 8.4.75

Date of Commencement: On Notice

ENACTED by the Parliament of Botswana.

Short title
and com-
mencement

1. This Act may be cited as the Registration of Business Names Act, 1975, and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Inter-
pretation

2. (1) In this Act, except where the context otherwise requires —

“business” includes business of trade, occupation or profession established for the acquisition of gain and carried on by any person, body corporate, association, syndicate, or partnership, or by the individual members of any body corporate, association, syndicate, or partnership;

“business name” means the name, title, description or style under which any business is carried on, whether in partnership or otherwise;

71 of 1959

“body corporate” includes an external company as defined in the Companies Proclamation, 1959, but does not include a corporation sole;

“firm” means an unincorporated body of two or more individuals, or of one or more individuals and one or more bodies corporate, or of two or more bodies corporate, who or which have entered into partnership with one another with a view to carrying on business for profit;

“foreign concern” means any firm, individual or body corporate, whose principal place of business is not situated within Botswana;

“individual” means a natural person and does not include a body corporate;

“initials” includes any recognized abbreviation of a forename;

“minor” means a person who has not yet attained the age of twenty-one years;

“register” means the register which the Registrar is required to keep under section 3;

“Registrar” means the Registrar of Business Names appointed under section 3.

(2) References in this Act to a change of name do not include a change of name which has taken place before the person whose name has been changed attained the age of eighteen years.

3. (1) There shall be a Registrar of Business Names. Registrar and register
(2) The Registrar shall keep a register in the prescribed form in which shall be entered such particulars as are required by this Act to be entered therein.

4. Subject to the provisions of this Act — Firms, individuals and bodies corporate to be registered
(a) every firm having a place of business in Botswana and carrying on business under a business name which does not consist of the surnames of all individuals who are partners and the corporate names of all bodies corporate which are partners, without any addition other than the forenames of individual partners or the initials of such forenames;
(b) every individual having a place of business in Botswana and carrying on business under a business name which does not consist of his surname without any addition other than his forenames or the initials thereof;
(c) every individual or firm having a place of business in Botswana who, or a member of which, has either before or after the commencement of this Act changed his name, other than, in the case of a woman, in consequence of marriage; and
(d) every body corporate having a place of business in Botswana and carrying on business under a business name which does not consist of its corporate name without any addition, shall be registered in the manner required by this Act:

Provided that —

- (i) where two or more individual partners have the same surnames, the addition of an "s" at the end of that surname shall not of itself render registration necessary;
- (ii) where the business is carried on by a trustee in bankruptcy or manager appointed by any court, registration shall not be necessary;
- (iii) a purchase or acquisition of property by two or more persons as joint owners shall not of itself be deemed to be a carrying on of a business, whether or not the owners share any profits arising from the sale thereof.

5. Where a firm, individual or body corporate having a place of business within Botswana carries on business wholly or mainly as the nominee or trustee of or for another person or other persons, or another body corporate, or acts as general agent for any foreign concern, the first-mentioned firm, individual or body corporate shall be registered in the manner provided by this Act: Registration by nominee, etc.

Provided that where the business is carried on by a trustee in bankruptcy or manager appointed by any court, registration under this section shall not be necessary.

Manner and
particulars
of registration

6. (1) Every firm, individual or body corporate required under this Act to be registered shall send by registered post or deliver to the Registrar a statement in writing in the prescribed form (hereinafter called "the statement of particulars") which shall contain the following particulars —

- (a) the business name;
- (b) the general nature of the business;
- (c) the full address of the principal place of business and the postal address of the firm, individual or body corporate;
- (d) the full address of every other place of business;
- (e) where the registration to be effected is that of a firm, the present forenames and surname, any former forenames or surname, the nationality, the age, the sex, the usual residence, and any other business occupation of each of the individuals who are partners, and the corporate name and registered and principal office of every body corporate which is a partner;
- (f) where the registration to be effected is that of an individual, the present forenames and surnames, any former forenames and surname, the nationality, the age, the sex, the usual residence, and any other business occupation of such individual;
- (g) where the registration to be effected is that of a body corporate, its corporate name and registered and principal office;
- (h) where the registration to be effected includes a married woman, the forenames and surname of her husband in addition to her own forenames and surname;
- (i) the date of the commencement of the business; and
- (j) a list of all licences issued under the Liquor Proclamation, or the Trading Act, 1966, in which any of the persons, firms or bodies corporate identified in the registration particulars are in any way concerned either beneficially or as nominees.

69 of 1960
6 of 1966

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

(3) Any firm, individual or body corporate required to be registered under section 5 of this Act shall furnish the following particulars, in addition to those specified in subsections (1) and (2)

- (a) where the firm, individual or body corporate required to be registered carries on business as nominee or trustee, the present forenames and surname, any former forenames or surname, the nationality, and the usual residence or, as the case may be, the corporate name, of every person or body corporate on whose behalf the business is carried on;

- (b) where the firm, individual or body corporate required to be registered carries on business as general agent for any foreign concern, the business name and address of the concern as agent for whom the business is carried on :

Provided that if the business is carried on as agent for three or more foreign concerns it shall be sufficient to state the fact that the business is so carried on, specifying the countries in which such foreign concerns carry on business.

- (4) On receipt of a statement of particulars, the Registrar shall, subject to the provisions of section 17 of this Act, enter the firm, individual or body corporate in the register.

7. (1) Every statement of particulars shall, in the case of an individual, be signed by him, and in the case of a body corporate be signed by a director or the secretary thereof, and in the case of a firm by all the individuals who are partners, and by a director or the secretary of all bodies corporate which are partners:

Statement
to be signed
by persons
registering

Provided that in the case of a firm such statement of particulars may be signed by one individual who is a partner or a director or the secretary of a body corporate which is a partner, if verified by a statutory declaration made by the signatory.

(2) 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 the High Court may, on the 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.

8. (1) Every statement of particulars required to be furnished under this Act shall be furnished within twenty-eight days after the firm, individual or body corporate commences business under or commences to use the business name, or, in the case of a firm or individual carrying on business at the commencement of this Act, within twenty-eight days of such commencement.

Time for
registration

(2) When, in consequence of the death or retirement of one of the partners of a firm or of any person having changed his name or of any other happening, any firm or individual, not theretofore required to be registered under this Act, is required thereafter to be registered, the statement of particulars shall be sent by registered post or delivered to the Registrar within twenty-eight days after such happening.

9. (1) Whenever a change is made or occurs in any of the following particulars in respect of any firm, individual or body corporate, that is to say —

Registration
of changes

- (a) the business name;
- (b) the address of the principal or any other place of business;
- (c) the nature of the business;
- (d) the names of the partners,

such firm, individual or body corporate shall, within twenty-eight days after such change, send by registered post or deliver to the Registrar a notice in writing in the prescribed form specifying the nature and date of the change, signed and where necessary verified, in like manner as a statement of particulars.

(2) On receipt of such notice the Registrar shall make such entries, amendments or deletions in the register as he may deem appropriate.

Penalty for
default in
registration

10. If any firm, individual or body corporate by this Act required to furnish a statement of particulars or a notice of any change in particulars without reasonable excuse makes default in so doing in the manner and within the time specified by this Act, every partner in the firm or the individual or body corporate, as the case may be, so in default shall be guilty of an offence, and upon conviction the court shall order a statement of the required particulars or notice of the 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

11. (1) Where any firm, individual or body corporate required by this Act to furnish a statement of particulars or a notice of any change in the particulars specified in section 9 makes default in so doing, the rights of the defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business in respect of the carrying on of which the statement of particulars or any change in particulars as aforesaid was required to be furnished shall not be enforceable by action or other legal proceedings whether in the business name or otherwise while such default continues:

Provided that —

- (i) 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 to 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 contract, on such conditions, including the payment of the costs of the application by the defaulter, as the court may impose; so, however, that no such relief shall 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;

- (ii) nothing herein contained shall prejudice the rights of any other parties as against the defaulter in respect of any such contract as aforesaid ;
- (iii) if any action or proceeding is commenced by any other party to a contract 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 counter-claim, set off or otherwise such rights as he may have against that party in respect of such contract.

(2) In this section “the court” means the High Court:

Provided that, without prejudice to the power of the High Court to grant such relief as aforesaid, if any proceedings to enforce any contract are commenced by a defaulter in a subordinate court, a subordinate court may, as respects that contract, grant such relief as aforesaid.

12. If any statement, notice or application sent or delivered to the Registrar contains any matter which is false in any material particular to the knowledge of any person signing it, or which that person has no reason to believe is true, that person shall be guilty of an offence and liable to a fine of R500 and to imprisonment for one year.

Penalty
for false
statement

13. (1) The Registrar may require any individual or, in the case of a body corporate, any director or the secretary or other officer performing the duties of secretary to furnish to him in writing such particulars as appear to the Registrar to be necessary to ascertain whether or not such individual or any firm of which he is a partner or appears to be a partner, or the body corporate of which such person is a director or the secretary or other officer as aforesaid, should be registered under this Act, or whether any alteration in the registered particulars should be made, and may require any such particulars to be verified by a statutory declaration :

Particulars to
be furnished
to Registrar

Provided that, for the purposes of this section, the Registrar may require any person who is acting or purporting to act or appears to be acting on behalf of any such firm, individual or body corporate as aforesaid, whether under a power of attorney or otherwise, to furnish such particulars as aforesaid.

(2) If any person upon being required so to do under subsection (1) fails to supply such particulars as it is in his power to give, or furnishes particulars which are false in any material particular or which he has no reason to believe are true, he shall be guilty of an offence and liable to a fine of R500 and to imprisonment for one year.

Certificate of
registration

14. (1) On the registration of any firm, individual or body corporate under this Act, the Registrar shall issue a certificate in the prescribed form.

(2) On the registration of any change in the particulars registered in respect of any firm, individual or body corporate, the Registrar may in his discretion either amend the certificate previously issued or issue a fresh certificate.

(3) Every certificate issued under this section shall show the full names or name of the partners or individual, and in the case of any person who has changed his name his former name or names, and in the case of any person not of Botswana citizenship his nationality, and in the case of a minor the fact of minority shall be shown.

(4) A certificate issued under this section shall be sent by registered post or delivered to the firm, individual or body corporate registering, who shall thereupon exhibit and thereafter maintain the same in a conspicuous position at the principal place of the business so registered:

Provided that —

(i) where a fresh certificate has been issued under subsection (2), the provisions of this subsection shall apply to such fresh certificate only and not to the certificate originally issued; and

(ii) where any certificate has been lost or destroyed or rendered illegible, a copy of such certificate certified by the Registrar may be exhibited in place of the original.

(5) Where a firm, individual or body corporate registered under this Act has more than one place of business, the original certificate shall be exhibited and maintained as required by subsection (4) at the principal place of business and a copy of the certificate certified by the Registrar shall be exhibited and thereafter maintained in a conspicuous position in each of such other places of business.

(6) If any firm, individual or body corporate fails to comply with any of the provisions of subsections (4) and (5), every partner in the firm, or such individual, or such body corporate, as the case may be, shall be guilty of an offence.

Cancellation
of entries
in register

15. (1) If any firm, individual or body corporate 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 of his personal representative, or of the body corporate, as the case may be, within three months after the business has ceased to be carried on, to send by registered post or deliver to the Registrar notice in the prescribed form that the firm or individual or body corporate has ceased to carry on business:

Provided that if the firm, individual or body corporate is bankrupt or in liquidation the notice aforesaid shall be delivered by the trustee or liquidator, as the case may be.

(2) On receipt of such notice as aforesaid, the Registrar may cancel the entry in the register relating to such firm, individual or body corporate.

(3) Where the Registrar has reasonable cause to believe that any firm, individual or body corporate registered under this Act is not carrying on business, he may send to the firm, individual or body corporate by registered post a notice that unless an answer is received to such notice within twelve weeks from the date thereof the entry in the register relating to such firm, individual or body corporate may be cancelled.

(4) If the Registrar either receives an answer from the firm, individual or body corporate to the effect that the firm, individual or body corporate is not carrying on business or does not within twelve weeks after the date of the notice receive an answer, he may cancel the entry in the register relating to such firm, individual or body corporate.

(5) If, in the case of any firm, individual or body corporate registered under this Act, there occurs after the registration an event in consequence of which the continuance of the business under the business name under which such firm, individual or body corporate has been carrying on business no longer entails registration under this Act, the firm, individual or body corporate so continuing the business shall send by registered post or deliver to the Registrar notice of the happening of such event, and the Registrar may, on being so notified or on being notified under section 9 of the happening of such event, cancel the entry in the register relating to such firm, individual or body corporate.

(6) On cancelling any entry under this section, the Registrar may require any certificate issued under this Act relating thereto to be surrendered to him for cancellation:

Provided that the person surrendering such certificate may require it to be returned to him after cancellation.

16. Any period prescribed under this Act for the lodging of any statement or notice may be extended by the Registrar, on application being made in any particular case whether before or after the expiration of such period, and on payment of the prescribed fee, for such longer period as the Registrar may allow.

Extension
of time

17. (1) Save with the consent of the Minister, no business shall be registered by a name which imports or suggests that it enjoys the patronage of the President or of the Government of Botswana or of the government of any other country or of any department of any such government or of the General Assembly of the United Nations.

Restriction on
registration
of certain
business
names

(2) (a) No business shall be registered by a name, title, description or style which includes the work "Cooperative" or its equivalent in any other language or any abbreviation thereof.

(b) No business shall be registered by a name, title description or style which is identical or is similar to that by which a business is already registered under this Act or under the Companies Proclamation, 1959, if, in the opinion of the Registrar, such name, title, description or style would be likely to mislead the public.

(3) The Registrar, upon the request of any person and upon payment of the prescribed fee, shall state whether or not any proposed business name may be registered.

(4) Where the Registrar has stated that any business name may be registered, the firm, individual or body corporate which made the request shall be entitled to registration in that business name at any time within twenty-eight days of the date of the decision of the Registrar, and during that time no other firm, individual or body corporate shall be entitled to registration in that business name.

(5) If, after the commencement of this Act —

(a) any firm, individual or body corporate is, through inadvertence or otherwise, registered under a business name under which registration under this Act ought to have been refused; or

(b) any change of ownership of a business occurs as a result of which a firm, individual or body corporate is carrying on business under a business name which, on an application for registration under this Act, ought to have been refused, the Registrar shall, by notice in writing, require such firm, individual or body corporate to change such business name within such time as may be specified in such notice, and upon compliance with such notice the Registrar shall record such change without requiring the payment of any fee; and if default is made in complying with his requirements the Registrar may cancel the entry in the register relating to such firm, individual or body corporate:

Provided that, where the Registrar is satisfied that, having regard to the nature of any business and the nationality, race or religion of the persons employed therein, the retention of the business name would not be contrary to the public interest, he may in his absolute discretion permit the retention of such name subject to such conditions as he may think fit.

(6) Where registration of a business name is refused under subsection (1), any person carrying on business under that name in circumstances which require registration under this Act shall be guilty of an offence.

(7) Any person aggrieved by a decision of the Registrar under this section may appeal to the Minister, whose decision shall be final and shall not be questioned in any court.

18. The registration of a firm, individual or body corporate under this Act shall not be construed as authorizing the use of a business name, if apart from such registration the use thereof could be prohibited. Prohibition notwithstanding registration

- 19.** Any person may, upon payment of the prescribed fee — Inspection of documents and provision of copies
- (a) inspect the register or any documents filed with the Registrar;
 - (b) require to be supplied with a certificate, duly certified by the Registrar, showing the subsisting entries in the register relating to any firm, individual or body corporate registered under this Act;
 - (c) require to be supplied with a copy of or an extract from any document filed with the Registrar duly certified by the Registrar to be a true copy or extract, as the case may be.

20. A certificate purporting to be signed by the Registrar, and a copy of or extract from any certificate of registration or any document registered or filed under this Act certified under the hand of the Registrar to be a true copy or extract, and a certificate under the hand of the Registrar that any firm, individual or body corporate has not been registered under this Act, shall, in all legal proceedings, civil or criminal, be received in evidence without proof of the signature of the Registrar. Certified copies to be evidence

21. The Minister may make regulations generally for the better carrying out of the provisions and purposes of this Act, and in particular may make regulations for prescribing — Regulations

- (a) the fees to be paid to the Registrar under this Act;
- (b) anything required to be prescribed under this Act;
- (c) the duties to be performed by the Registrar under this Act.

22. (1) Every firm, individual or body corporate required by this Act to be registered shall, in all trade circulars and business letters on or in which the business name appears and which are issued or sent by the firm, individual or body corporate to any person, have mentioned in prominent, legible Roman letters — Publication of true names, etc.

- (a) in the case of an individual, his present forenames or the initials thereof and present surname, and any former forenames or surname;
- (b) in the case of a firm, the present forenames or the initials thereof and present surnames, any former surnames of all the individuals, and the corporate names of all bodies corporate which are members of the firm; and

(c) in the case of a body corporate, the corporate name.

(2) Where any individual referred to in subsection (1) is a minor, the words "a minor" shall be added in brackets after his name.

(3) If any firm, individual or body corporate fails to comply with the provisions of this section, every partner in the firm, or such individual, or such body corporate, as the case may be, shall be guilty of an offence.

Provisions
with respect
to offences

23. (1) Where a body corporate is guilty of an offence under this Act, every director, secretary and officer of the body corporate shall, unless he proves that the offence was committed without his knowledge or consent, be guilty of a like offence and liable to a like penalty.

(2) Where any firm or individual has committed any offence under this Act, then, without prejudice to the liability of such firm or individual for such offence, every manager or other person concerned in the management of the business of such firm or individual shall, unless he proves that the offence was committed without his knowledge or consent, be guilty of a like offence and liable to a like penalty.

Penalties for
offences

24. Any person who is guilty of an offence under this Act for which no other penalty is specifically provided shall be liable to a fine of R200 and in default of payment to imprisonment for three months.

Passed by the National Assembly this 24th day of March, 1975.

I. P. GONTSE,
Clerk of the National Assembly.