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THE REGISTRATION OF BUSINESS NAMES ACT

CHAPTER 499

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CHAPTER 499

REGISTRATION OF BUSINESS NAMES ACT

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CHAPTER 499**REGISTRATION OF BUSINESS NAMES ACT**

[Date of assent: 29th September, 1951.]

[Date of commencement: 29th September, 1951.]

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

[Act No. 48 of 1951, Act No. 40 of 1956, Legal Notice 300 of 1956, Legal Notice 2 of 1964, Legal Notice 374 of 1964, Act No. 29 of 1967, Act No. 10 of 1969, Act No. 11 of 1970, Act No. 7 of 1975, Act No. 10 of 1981, Act No. 6 of 2006, Act No. 19 of 2015, Legal Notice 105 of 2017.]

1. Short title

This Act may be cited as the Registration of Business Names Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

"business" includes every trade, occupation or profession;

"business name" means the name or style under which any business is carried on, whether in partnership or otherwise;

"firm" means an unincorporated body of two or more individuals, or of one or more individuals and one or more corporations, or of two or more corporations, 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 corporation whose principal place of business is not situated within the Republic of Kenya;

"individual" means a natural person and does not include a corporation;

"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 under section 3 to keep;

"Registrar" means the Registrar appointed under section 3;

(2) Where any person is required by this Act to furnish particulars of his nationality, he shall, if a British subject, also state his citizenship, if any.

(3) 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 two years.

[Act No. 28 of 1964, Act No. 14 of 1965, Act No. 7 of 1975, Sch.]

3. Registrar, his deputy and assistants, and register

(1) The Registrar-General or such other person as the Cabinet Secretary may appoint shall be the Registrar for the purposes of this Act.

(2) The Cabinet Secretary may appoint a Deputy Registrar and such Assistant Registrars as may, from time to time, be required for the purposes of this Act.

(3) The Deputy Registrar and every Assistant Registrar may, subject to the directions of the Registrar, perform any act or discharge any duty which the

Registrar may lawfully do or is required by this Act to do, and, for such purposes, shall have all the powers, privileges and authority of the Registrar under this Act.

(4) The Registrar shall keep a register in the prescribed form in which shall be entered such particulars as are required by this Act and any rules made thereunder to be entered therein.

[Act No. 40 of 1956, s. 2.]

4. Firms, individuals and corporations to be registered

Subject to this Act—

- (a) every firm having a place of business in Kenya 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 corporations which are partners, without any addition other than the forenames of individual partners or the initials of such forenames; and
- (b) every individual having a place of business in Kenya 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; and
- (c) every individual or firm having a place of business in Kenya, who, or a member of which, has either before or after the commencement of this Act changed his name, otherwise than, in the case of a woman, in consequence of marriage; and
- (d) every corporation having a place of business in Kenya and carrying on business under a business name that is not its corporate name without any addition is required to be registered as provided by this Act, except that—
 - (i) if two or more individual partners have the same surname, the addition of an "s" at the end of that surname does not of itself render registration necessary;
 - (ii) if the business is carried on by a bankruptcy trustee or an administrator appointed by the court, registration is not necessary; and
 - (iii) a purchase or acquisition of property by two or more persons as joint tenants or tenants in common does not of itself constitute the carrying on of a business, even if the owner shares any profits from the sale of the property.

[Act No. 19 of 2015, s. 122.]

5. Registration by nominee, etc.

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

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

6. Manner and particulars of registration

(1) Subject to subsection (2) of section 17, every firm, individual or corporation 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 corporation;
- (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 and, if that nationality is not the nationality of origin, the nationality of origin, 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 corporation which is a partner;
- (f) where the registration to be effected is that of an individual, the present forenames and surname, any former forenames and surname, the nationality and, if that nationality is not the nationality of origin, the nationality of origin, 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 corporation, 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 forename and surname;
- (i) the date of the commencement of the business.

(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 corporation required to be registered under section 5 shall furnish the following particulars, in addition to those specified in subsections (1) and (2)—

- (a) where the firm, individual or corporation required to be registered carries on business as nominee or trustee, the present forenames and surname, any former forenames or surname, the nationality and, if that nationality is not the nationality of origin, the nationality of origin, and the usual residence or, as the case may be, the corporate name, of every person or corporation on whose behalf the business is carried on;
- (b) where the firm, individual or corporation 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 section 17, enter the firm, individual or corporation in the register.

[Act No. 7 of 1975, Sch.]

7. Statement to be signed by persons registering

(1) Every statement of particulars shall, in the case of an individual, be signed by him, and in the case of a corporation 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 corporations which are partners:

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 corporation 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. Time for registration

(1) Every statement of particulars required to be furnished under this Act shall be furnished within twenty-eight days after the firm, individual or corporation 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.

(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. Registration of changes

(1) Subject to subsection (2) of section 17, whenever a change is made or occurs in any of the following particulars in respect of any firm, individual or corporation, that is to say—

- (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 corporation 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:

Provided that the proviso to subsection (1) of section 7 shall not apply in the case of a notice under this section relating to a firm.

(2) On receipt of such notice, the Registrar shall, subject to section 17, make such entries, amendments or deletions in the register as he may deem appropriate.

[Act No. 11 of 1970, Sch., Act No. 10 of 1981, Sch.]

10. Penalty for default in registration

If any firm, individual or corporation 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 corporation, 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.

11. Disability of persons in default

(1) Where any firm, individual or corporation 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 proceeding to enforce any contract is commenced by a defaulter in a subordinate court, the subordinate court may, as respects that contract, grant such relief as aforesaid.

12. Penalty for false statements

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 imprisonment for a term not exceeding twelve months or to a fine not exceeding two thousand shillings or to both.

13. Particulars to be furnished to Registrar

(1) The Registrar may require any individual or, in the case of a corporation, 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 corporation 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:

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 corporation 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 imprisonment for a term not exceeding twelve months or to a fine not exceeding two thousand shillings or to both.

14. Certificate of registration

(1) On the registration of any firm, individual or corporation 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 corporation, the Registrar shall issue a fresh certificate in the prescribed form.

(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 British nationality his nationality, and in the case of any individual whose nationality is not his nationality of origin his nationality of origin, 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 corporation 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 corporation 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 corporation fails to comply with any of the provisions of subsections (4) and (5), every partner in the firm, or such individual, or such corporation, as the case may be, shall be guilty of an offence.

[Act No. 11 of 1970, Sch.]

15. Cancellation of entries in register

(1) If any firm, individual or corporation 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 corporation, 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 corporation has ceased to carry on business:

Provided that if the firm, individual or corporation is bankrupt or in liquidation the notice aforesaid shall be delivered by the receiver, 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 corporation.

(3) Where the Registrar has reasonable cause to believe that any firm, individual or corporation registered under this Act is not carrying on business, he may send to the firm, individual or corporation 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 corporation may be cancelled.

(4) If the Registrar either receives an answer from the firm, individual or corporation to the effect that the firm, individual or corporation 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 corporation.

(5) If, in the case of any firm, individual or corporation 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 corporation has been carrying on business no longer entails registration under this Act, the firm, individual or corporation 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 corporation.

(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. Extension of time

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.

17. Restriction on registration of certain business names

(1) The Registrar shall refuse to register, or, in the case of an application under section 9, to register a change of business name of, any firm, individual or corporation carrying on, or proposing to carry on business under a business name

- (a) which contains any word which, in the opinion of the Registrar, is likely to mislead the public as to the nationality, race or religion of the persons by whom the business is wholly or mainly owned or controlled;
- (b) which includes any of the words "Presidential", "Government", "Municipal" or any other word which imports or suggests that the business enjoys the patronage of the President or imports any connection with the Government or with any municipality or other local authority;
- (c) which includes the word "co-operative" or its equivalent in any other language or any abbreviation thereof;
- (cc) which includes the words "Old Law Courts Mombasa" "National Monument" "Lamu Fort" "Nairobi Botanical Gardens" "Nairobi Snake Park" "National Museum" "Fort Jesus", or "Karen Blixen";
- (d) which is identical with or is similar to that of a business or corporation existing, or is already registered under this Act or under the Companies Act (Cap. 486), if in the opinion of the Registrar such registration would be likely to mislead the public;
- (e) which in the opinion of the Registrar is undesirable.

(2) Not less than seven days before commencing business under, or commencing to use, a business name, every firm, individual or corporation which after such commencement would be required under this Act to be registered shall, before posting or delivering to the Registrar the statement of particulars as required by section 6, or, in the case of a proposed change of business name, the notice of change required by section 9, send by registered post or deliver to the Registrar the prescribed fee together with a written request to be informed whether or not the business name to be proposed for registration as required by either of those sections may be registered; and the Registrar shall, within seven days of receipt of the prescribed fee, send by post or deliver to the address of such firm, individual or corporation a notification in writing stating whether or not such business name may be registered.

(3) Where the Registrar has stated that any business name or change of business name may be registered, the firm, individual or corporation 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, person or corporation shall be entitled to registration in, or of registration of change to that business name.

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

- (a) any firm, individual or corporation 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 corporation is carrying on business under a business

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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 corporation 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 corporation:

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.

(5) Where registration of a business name or change of 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.

(6) Any person aggrieved by a decision of the Registrar under this section may appeal to the High Court, whose decision shall be final.

[Act No. 29 of 1967, First Sch., Act No. 10 of 1969, Sch., Act No. 7 of 1975, Sch., Act No. 10 of 1981, Sch., Act No. 6 of 2006, s. 75.]

18. Prohibition notwithstanding registration

The registration of a firm, individual or corporation 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.

19. Inspection of documents and provision of copies

Any person may, upon payment of the prescribed fee—

- (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 corporation registered under this Act; or
- (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. Certified copies to be evidence

(1) A copy of, or extract from, any document kept, filed or registered at the office of the Registrar, and purporting to be certified under the hand of the Registrar to be true copy or extract, shall in all legal proceedings be admissible as *prima facie* evidence of the contents of the document.

(2) The Registrar shall not, in any legal proceedings to which he is not a party, be compellable—

- (a) to produce any document the contents of which can be proved under subsection (1); or
- (b) to appear as a witness to prove the matters recorded in any such document, unless the court for special cause otherwise orders.

[Act No. 29 of 1967, First Sch.]

21. Branch offices

(1) The principal office of the Registrar shall be in Nairobi, but the Registrar may maintain other offices in such places as he may, with the approval of the Cabinet Secretary, determine, and may keep copies of the register in such offices.

(2) Any person may inspect any such copy of the register on payment of the prescribed fee.

(3) No such copy of the register, nor any extract there from, shall be received in evidence in any legal proceedings.

(4) Statements, notices, applications and other documents shall be sent or delivered to the Registrar at his principal office, and shall not be sent or delivered to any other office maintained under this section.

22. Rules

The Cabinet Secretary may make rules generally for better carrying out the provisions and purposes of this Act, and in particular may make rules for prescribing

- (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.

[L.N. 300/1956, L.N.173/1960.]

23. Publication of true names, etc.

(1) Every firm, individual or corporation 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 corporation to any person, have mentioned in prominent, legible Roman letters—

- (a) in the case of an individual, his present forenames or the initials thereof and present surname, any former forenames or surname, his nationality if not Kenyan, and if his nationality is not the nationality of origin then his nationality of origin; and
- (b) in the case of a firm, the present forenames or the initials thereof and present surnames, any former forenames and surnames, and the nationality if not Kenyan, and if the nationality is not the nationality of origin then the nationality of origin, of all the individuals and the corporate names of all corporations that are partners in the firm; and
- (c) in the case of a corporation, the corporate name.

(2) Where any individual referred to in subsection (1) is a married woman, the words "wife of" followed by the forenames and surname of her husband shall be mentioned after and in addition to her own name.

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

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

[Act No. 40 of 1956, s. 3, Act No. 11 of 1970, Sch.]

24. Provisions with respect to offences

(1) Where a corporation is guilty of an offence under this Act or any rules made thereunder, every director, secretary and officer of the corporation who is knowingly a party to the default shall 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 or any rules made thereunder, 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, also be liable to be prosecuted, tried, convicted and punished for that offence.

25. Penalties for offences

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 not exceeding one thousand shillings and in default of payment to imprisonment for a term not exceeding three months.

26. Trial of offences

Any offence under this Act or any rules made thereunder may be tried by a subordinate court of the first or second class.

27. Application of Act

This Act shall apply to every firm, individual or corporation registered under any former enactment relating to business names.

28.

[Spent]