



Tonga

**REGISTRATION OF BUSINESS NAMES
ACT 2002**

Act 9 of 2002



REGISTRATION OF BUSINESS NAMES ACT 2002

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REGISTRATION OF BUSINESS NAMES ACT 2002

Act 9 of 2002

AN ACT TO PROVIDE FOR THE REGISTRATION OF BUSINESS NAMES AND FOR MATTERS INCIDENTAL THERETO

I assent,
HRH PRINCESS PILOLEVU TUITA,
29th October, 2002

[22nd of July 2002]

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:—

1 Short title

- (1) This Act may be cited as the Registration of Business Names Act 2002.
- (2) This Act shall come into force on a date proclaimed by His Majesty in Council.

2 Interpretation

- (1) In this Act unless the context otherwise requires—
“**business**” means carrying on business by any incorporated body or person and includes a profession;

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

“**Christian name**” includes any given name;

“**firm**” means an unincorporated body of individuals or corporations, who have entered into partnership with one another with a view to carrying on business for profit;

“**initials**” includes any recognized abbreviation of a Christian name;

“**Minister**” means the Minister responsible for the administration of this Act;

“**Registrar**” means the person appointed as Registrar of Business Names under section 14 of this Act;

“**Showcard**” means a card containing or exhibiting articles dealt with, or samples or representations thereof.

3 Changes of name

- (1) In the case of a noble or person usually known by a title different from his surname, the title by which he is known shall be substituted for his surname.
- (2) References in this Act to a former Christian name or surname shall not include a former Christian name or surname whereby that name or surname has been changed before the person bearing the name has attained the age of eighteen years, and in the case of a married woman, shall not include the name or surname by which she was known previous to the marriage.
- (3) References in this Act to change of name shall not include a change of name which has taken place before the person whose name has been changed has attained the age of eighteen years; or in the case of a noble or a person usually known by a title different from his surname, the adoption of or succession to the title.

4 Firm and Persons to be registered

Subject to the provisions of this Act—

- (a) every firm having a place of business in Tonga and carrying on business under a business name which does not consist of the true surnames of all partners who are individuals and the corporate names of all partners who are corporations without any addition other than the true Christian names of individual partners or initials of such Christian names;

- (b) every individual having a place of business in Tonga and carrying on business under a business name which does not consist of his true surname without any addition other than this true Christian names or the initials thereof; and
- (c) every individual having a place of business in Tonga who, or a member of which, has either before or after the commencement of this Act changed his name, except in the case of a woman in consequence of marriage;
shall be registered under this Act;

Provided that:—

- (i) where two or more individual partners have the same surname, the addition of an “s” at the end of that surname shall not itself render registration necessary;
- (ii) where the business is carried on by a trustee in bankruptcy or a receiver or manager 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.

5 Registration by Nominee

Where a firm, individual, or corporation having a place of business within Tonga carries on the business wholly or mainly as 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. In addition to the other particulars required to be furnished, there shall be furnished and registered the particulars mentioned in the Schedule.

6 Manner and Particulars of Registration

Every firm or person required under this Act to be registered shall furnish, by post or by delivery to the Registrar, a statement in writing in the prescribed form containing the following particulars;

- (a) the business name;
- (b) the general nature of the business;
- (c) the principal place of the business;
- (d) whether the registration to be effected is that of a firm, the present Christian name and surname, any former Christian name or

surname, the nationality, the usual residence, and the other business occupation (if any) of each of the individuals who are partners, and the corporate name and registered or principal office of every corporation which is a partner;

- (e) where the registration to be effected is that of an individual, the present Christian name and surname, any former Christian name or surname, the nationality, the usual residence and the other business occupation (if any) of such individual;
- (f) Where the registration to be effected is that of a corporation, its corporate name and registered or principal office;
- (g) Whether the business commenced after the commencement of this Act;
- (h) Where the registration to be effected is that of a firm, the age of each partner thereof; and
- (i) Where the registration to be effected is that of an individual, the age of such individual;

Provided that where any such partner or individual is of or over the age of twenty-one years it shall be sufficient for him to state his age as “full age”.

7 Statement to be signed by persons registering

The statement required for the purpose of registration must in the case of an individual be signed by him, and in the case of a corporation by a director secretary thereof, and in the case of a firm either by all the individuals who are partners or by the secretary thereof, and in the case of a firm either by all the individuals who are partners, or a director or the secretary of all corporations, which are partners or by some individual who is a partner, or a director or the secretary of some corporation which is a partner, and in either of the last two cases must be verified by a statutory declaration made by the signatory;

Provided that—

- (i) no such statutory declaration stating that any person other than the declarant is a partner, or omitting to state that any person other than as aforesaid 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
- (ii) the Supreme Court may on application of any person alleged or claiming to be partner, direct the rectification of the register and decide any question arising under this section.

8 Time for registration

- (1) The particulars required to be furnished under this Act shall be furnished within fourteen days after the firm or person commences business, or the business in respect of which registration, is required, as the case may be;

Provided that—

- (i) where such firm or person has carried on such business before the commencement of this Act or commences such business within two months thereafter, the statement of particulars shall be furnished after the expiration of two months and before the expiration of three months from the commencement of this Act; and
 - (ii) if at the expiration of the said two months the conditions affecting the firm or person have ceased to be such as to require registration under this Act, the firm or person need not be registered so long a such conditions continue.
- (2) This section shall apply, in the case where registration is required in consequence of a change of name, as if for reference to the date of the commencement of the business, there was substituted reference to the date of such change.

9 Registration of changes in firm

Whenever a change is made or occurs in any of the particulars registered in respect of any firm or person, such firm or person shall, within fourteen days after such change, furnish by post or delivery to the Registrar a statement in writing in the prescribed form specifying the nature and date of the change signed and where necessary verified in like manner as the statement required on registration.

10 Penalty for default in registration

- (1) If any firm or person required by this Act to furnish a statement of particulars or of any change in particulars shall, without reasonable excuse, have made default in so doing within the time specified in this Act, every partner in the firm or the person so in default shall be liable on conviction to a fine not exceeding \$500.
- (2) In the event of failure to comply with the time specified, the partner or person so ordered shall be liable on conviction to a fine not exceeding \$20 for every day that the default continues.

11 Disability of persons in default

- (1) Where any firm or person is required by this Act to furnish a statement of particulars or of any change in particulars shall have made default in so doing then the rights of that 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 to the carrying on of which, particulars were required to be furnished at any time while he is in default shall not be enforceable by action or other legal proceeding whether in the business name or otherwise.

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 some other sufficient cause or that on other grounds it is just and equitable to grant relief, may grant such relief either generally, or in respect of any particular contract, or on such terms as to costs or other conditions as the court may impose, but such relief shall not be granted except on such service and such publication of notice of the application as the court may order, nor shall relief 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 contained herein shall prejudice the rights of any other parties as against the defaulter in respect of such contract as aforesaid;
 - (iii) if any action or proceeding shall be commenced by any other party 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 “court” means the Supreme Court;

Provided that, without prejudice to the power of the Supreme Court to grant such relief as aforesaid, if any proceeding to enforce any contract is commenced by a defaulter in the Magistrates Court the Magistrate may as in respect of that contract grant such relief as aforesaid.

12 Penalty for False statements

If any statement required to be furnished under this Act contains any matter which is false in any material particular to the knowledge of the person signing it that person commits an offence and shall be liable on conviction to a fine not exceeding \$1,000 or both.

13 Duty to furnish particulars

- (1) The Registrar may require any person to furnish him with such particulars as appear necessary to the Registrar for the purpose of ascertaining whether or not he or the firm of which he is partner should be registered under this Act or an alteration made in the registered particulars, and may also, in the case of a corporation, require the secretary or any other officer of a corporation performing the duties of secretary to furnish such particulars, and if any person when so required fails to supply such particulars as it is in his power to give or furnishes particulars which are false in any material particular, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 3 months or to fine not exceeding \$500 or both.
- (2) If from any information so furnished it appears to the Registrar that any firm or person ought to be registered under this Act, or an alteration ought to be made in the registered particulars, the Registrar shall require the firm or person to furnish the required particulars within fourteen days.

14 Register to be kept

- (1) The Minister may, with the approval of Cabinet appoint a Registrar of Business Names from time to time.
- (2) The Registrar shall keep a Register of all the firms and persons registered under this Act.

15 Statements to be filed by Registrar; Exhibition of certificate

- (1) On receiving any statement of statutory declaration made under this Act, the Registrar shall cause the same to be filed, and he shall post or deliver a certificate of registration in the prescribed form to the firm or person registering, in the prescribed certificate or a certified copy thereof shall be kept exhibited in a conspicuous position at the principal place of business of the firm or individual.
- (2) Every partner in the firm, or the person, as the case may be who fails to exhibit the certificate in accordance with subsection (1), commits an offence and shall be liable on conviction, to a fine not exceeding \$200.

16 Removal of Names from Register

- (1) If any firm or individual 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, within three months after the business has ceased to be carried on, to post or deliver to the Registrar a notice in the prescribed form that the firm or individual has ceased to carry on business, and if any person whose duty it is to give such notice fails to do so within such time or extension thereof, commits an offence and he shall be liable on conviction to a fine not exceeding \$500.

Provided that the Registrar may on reasonable cause being shown extend such time as he may think fit.

- (2) On receipt of the notice under the preceding subsection, the Registrar shall remove the firm or individual from the register.
- (3) Where the Registrar has reasonable cause to believe that any firm or individual registered under this Act is not carrying on business he may send to the firm or individual by registered post a notice that, unless an answer is received to such notice within one month from the date thereof the firm or individual shall be removed from the register.
- (4) If having sent notice under the preceding subsection the Registrar either received an answer from the firm or individual to the effect that the firm or individual is not carrying on business or does not within one month after sending the notice receive an answer, he shall remove the firm or individual from the register.

17 Misleading Business names

- (1) No firm or individual shall be registered by a name which, in the opinion of the Registrar, is undesirable and if any firm or individual, through inadvertence or otherwise, is registered by a business name which, in the opinion of the Registrar, is undesirable, the Registrar shall remove such business name from the register but any person aggrieved by a decision of the Registrar under this provision may appeal to the Minister whose decision thereon shall be final.
- (2) Where any business name under which the business of a firm or individual is carried on contains the word Tonga, Royal, National or any other word which, in the opinion of the Registrar, suggests that the business is under the ownership and control of His Majesty or of Government, the Registrar shall refuse to register such business name or, as the case may be, remove such business name from the register, but any person aggrieved by a decision of the Registrar under this provision may appeal to the Minister whose decision shall be final.

- (3) The Registrar shall not, without the consent of Privy Council, register any business name which includes any word which, in the opinion of the Registrar, suggests the patronage of His Majesty and if any such business name is through inadvertence or otherwise registered, the Minister shall require the firm or individual carrying on business under that name to change the name and upon such change being made, the Registrar shall enter the new name on the register in place of the former name and shall issue a new certificate of registration and the provisions of section 15 shall apply in relation to such new certificate.
- (4) If the Registrar, in accordance with the provisions of this section, removes any business name from the register, he shall send to the firm or individual carrying on business under such name, by registered post, a notice that such name has been removed from the register.
- (5) The registration of a business name under this Act shall not be construed as authorising the use of that name if, apart from such registration, the use thereof may be prohibited.

18 Inspection of statements registered

- (1) Any person may inspect the documents filed with the Registrar on payment of such fees as may be prescribed for each inspection and any person may require a certificate of the registration of any firm or person, or a copy of or extract from the registered statement to be certified by the Registrar, and there shall be paid for such certificate of registration, certified copy or extract such fees as may be prescribed.
- (2) A certificate of registration or a copy of or extract from any statement registered under this Act if duly certified to be a true copy or extract under the hand of the Registrar shall be deemed to be correct unless the contrary is proved.

19 Regulations

The Minister may, with the consent of Cabinet make regulations concerning any of the following matters but not limited to—

- (a) fees payable under this Act;
- (b) forms to be used under this Act;
- (c) duties to be performed by the Registrar under this Act; and
- (d) generally the conduct and regulation of registration under this Act and any matters incidental thereto.

20 Publication of true names, etc.

- (1) Every individual and firm required by this Act to be registered shall in all trade catalogues, trade circulars, showcards, orders, invoices, statements, letters or otherwise, on or in which the business name appears and which are issued or sent by the individual or firm to any person, have mentioned in legible characters—
 - (a) in the case of an individual, his present Christian names and present surname, any former Christian name or surname and his nationality;
 - (b) in the case of a firm, the present Christian names and present surnames, any former Christian names and surnames, and the nationality, of all the partners in the firm or, in the case of a corporation being a partner, the corporate name; and
 - (c) in all cases the address at which documents may be served.
- (2) If default is made in compliance with this section, the individual or, as the case may be every member of the firm, commits an offence and shall be liable on conviction for each offence to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding six months or both.

21 Offences by Corporations

Where a corporation is guilty of an offence under this Act, 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.

SCHEDULE

(Section 5)

**ADDITIONAL PARTICULARS REQUIRED FOR REGISTRATION BY
NOMINEE, TRUSTEE OR GENERAL AGENT**

Description of firm etc.	The additional particulars
Where the firm, individual, or corporation required to be registered carries on business as nominee or trustee.	<p>The present Christian name and surname, any former name, nationality and usual residence, or as the case may be, the corporate name, of every person or corporation on whose behalf the business is carried on:</p> <p>Provided that if the business is carried on under any trust and any of the beneficiaries are a class of children or other persons, a description of the class shall be sufficient.</p>
Where the firm, individual, or corporation required to be registered carries on business as general agent for any foreign firm.	<p>The business name and address of the firm or person for whom the business is carried on by the agent.</p> <p>Provided that if the business is carried on as agent for three or more foreign firms, it shall be sufficient to state the fact that the business is so carried on, specifying the countries in which such foreign firms carry on business.</p>

Passed by the Legislative Assembly this 22nd day of July, 2002.