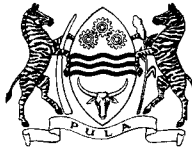


REGISTRATION OF BUSINESS NAMES ACT, 2018

No. 25



of 2018

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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: 29.06.18

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

Short title and
Commencement

1. This Act may be cited as the Registration of Business Names Act, 2018, and shall come into operation on such a date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

2. (1) In this Act, unless the context otherwise requires —
“beneficial owner” means a natural person who, directly or indirectly through any contract, arrangement, understanding, relationship or otherwise, is the ultimate beneficiary of a share or other securities in a company”;

Cap. 42:01

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

“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;

Cap. 18:01

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

Cap. 42:04

“firm” means an incorporated body of one or more individuals who have entered into partnership with one another with a view to carrying on business for profit and may include societies registered in terms of the Societies Act and cooperatives registered in terms of the Co-operatives Societies Act;

“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 recognised abbreviation of a forename;

Cap.42:13

“register” means the register which the Companies and Business Names Office is required to keep under section 20 (b) of the Companies and Intellectual Property Authority Act;

“Registrar” means the Registrar of Companies and Business Names appointed under section 25 (1) (a) of the Companies and Intellectual Property Authority Act;

(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 18 years.

3. (1) Subject to the provisions of this Act, every firm, body corporate or individual having a place of business in Botswana and carrying on business under a business name shall be registered in the manner required by this Act.

Business names
to be registered

(2) Where the business is carried on by a trustee in bankruptcy or manager appointed by any court, registration shall not be necessary.

(3) Where a name or full name of an individual is used as part of the business name, another word or suffix shall be added to the name, to differentiate the business name from the name of the individual.

(4) A purchase or acquisition of property by two or more persons as joint owners shall not be construed as carrying on of a business, whether or not the owners share any profits arising from the sale thereof.

4. (1) The Registrar shall, on written application by the applicant, reserve a name pending the registration of a business name or the change of a name of an existing business; and such reservation shall be for a period of 30 days.

Application for
reservation of
name

(2) An application for the reservation of the name of a business shall be made to the Registrar in the prescribed form.

(3) The Registrar may not reserve a name and no business may be registered by a name —

(a) the use of which will contravene the Banking Act or any other enactment;

(b) that is identical or almost identical to, the name of a registered business or a registered foreign concern or a body corporate, or a name registered under the Companies Act, unless the registered business or registered foreign concern is in liquidation or insolvency and signifies in such manner as the Registrar may require, its consent to the registration;

(c) that is identical or almost identical to a name that the Registrar has already reserved under this Act; or

(d) that, in the opinion of the Registrar, would be likely to mislead the public or cause offence to a person or any class of persons or is suggestive of blasphemy or indecency.

(4) The Registrar shall, within 10 working days from the date the application was received, advise the applicant by notice in the prescribed format —

(a) whether or not the Registrar has reserved the name; and

(b) if the name has been reserved, that unless the reservation is sooner revoked by the Registrar, the name is available for registration of a business with that name or on a change of name, for the period of time stated in the notice.

(5) The reservation of a name that is to be registered or in respect of a proposed change of the name, as the case may be, shall not entitle any person to use the reserved name before a certificate is issued by the Registrar.

Cap. 46:01

Name of
business

5. Except with Minister's written consent, no business, including a foreign concern, shall be registered under a name which includes —

- (a) the word "Authority", "Botswana", "Commonwealth", "co-operative" "Government", "National", "President", "Presidential", "Regional" or "State";
- (b) the combined words "United Nations" or
- (c) any other word which, in the Registrar's opinion suggests, or is likely to suggest, that it enjoys the patronage of a statutory corporation or of the Government of Botswana or of the government of any other state or of a department of any such government or of the General Assembly of the United Nations.

Registration by
Nominee, etc.

6. Where a firm, individual or body corporate having a place of business within Botswana carries on business wholly or mainly as a 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 prescribed manner.

Manner and
particulars of
registration

7. (1) Every firm, individual or body corporate intending to register under this Act shall deliver to the Registrar a notice, in the prescribed manner, which shall provide the following details —

- (a) business name;
- (b) business activities;
- (c) full address of the principal place of business and the postal address of the firm, individual or body corporate;
- (d) full address of every other registered place of business;
- (e) where the registration to be effected is that of a firm or partnership —
 - (i) full name, nationality, age, gender and residential address of the individual(s) who are partners, and
 - (ii) corporate name, registered and principal place of business of every body corporate which is a partnership;
- (f) where the registration to be effected is that of an individual, the full name, nationality, age, gender, residential address and contact details of the individual; and
- (g) where the registration to be effected is that of a body corporate, its corporate name, registered and principal office, contact details and full name, nationality, age, gender and residential address of the individual who is a shareholder and a beneficial owner.

(2) Any firm, individual or body corporate required to be registered under section 6 shall provide the following details, in addition to those specified in subsection (1) —

- (a) where the firm, individual or body corporate carries on business as a nominee or trustee, the present forenames and 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; and

(b) where the firm, individual or body corporate 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.

(3) On receipt of an application for a business name, the Registrar shall enter the firm, individual or body corporate in the register and shall issue firm, individual or body corporate the certificate of registration in the prescribed form.

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

Statement to be signed by persons registering

(2) Notwithstanding subsection (1), 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.

(3) 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 or her 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.

(4) Every statement of particulars required to be furnished under this section shall be furnished within 30 days after the firm, individual or body corporate has reserved a name.

9. A certificate of registration of a business name issued under section 7 is a conclusive evidence that —

Certificate of registration

(a) all the requirements of this Act as to registration have been complied with; and

(b) on and from the date of registration stated in the certificate, the business name is registered under this Act.

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

Prohibition notwithstanding registration

11. (1) Whenever a change occurs in any of the following particulars in respect of any firm, individual or body corporate —

Registration of changes

(a) business name;

(b) address of the principal place of business;

(c) business activities; or

(d) names, particulars of individuals or body corporate and particulars of partners, shareholders or beneficial owners,

such firm, individual or body corporate shall within 14 days of such change, deliver to the Registrar a notice, in the prescribed form, specifying the nature and date of the change.

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

Penalty for default in registration of changes

12. (1) If any firm, individual or body corporate required by this Act 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 commits 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.

(2) A firm, individual or body corporate that contravenes subsection (1) shall be liable to a civil penalty not exceeding P2, 500 for each day on which the contravention occurs or continues to occur, up to a maximum period of 90 days, to be imposed by the Registrar.

(3) Where a firm, individual or body corporate continues to contravene subsection (1) after a period of three months, the Registrar shall cancel the registration of business name with immediate effect.

Disability of persons in default

13. (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 11 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.

(2) Notwithstanding subsection (1), —

(a) the defaulter may apply to the court with notice to the Registrar for relief against the disability imposed by this section;

(b) the court on being satisfied that the default was accidental or due to inadvertence or to some other sufficient cause, may grant such relief, either generally or in respect of any particular contract, on such conditions, including the payment of the costs of the application by the defaulter, as the court may impose;

(c) 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 or she would not have entered into the contract;

(d) nothing herein contained shall prejudice the rights of any other parties as against the defaulter in respect of any such contract as aforesaid; and

(e) 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.

(3) In this section “court” means the High Court.

(4) Notwithstanding subsection (3), if any proceedings to enforce any contract are commenced by a defaulter in a magistrate's court, a magistrate's court may, as respects that contract, grant such relief.

14. 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 commits an offence and liable is to a fine not exceeding P10 000 or to imprisonment for a term not exceeding five years, or to both.

Penalty for
false statement

15. (1) The Registrar may require any individual, director, secretary or other officer performing the duties of secretary to furnish him or her with such particulars as appear necessary to ascertain whether or not such individual, firm or the body corporate 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

(2) 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 individual, firm or body corporate as aforesaid, whether under a power of attorney or otherwise, to furnish such particulars as aforesaid.

(3) If any person upon being required to furnish particulars under subsection (1) fails to supply such particulars as it is in his or her power to give, or furnishes particulars which are false in any material particular or which he has no reason to believe are true, he or she commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding five years, or to both.

16. (1) If any firm, individual or body corporate registered under this Act ceases to carry on business, it shall be the duty of the —

Cancellation of
business name

(a) persons who were partners in the firm at the time when it ceased to carry on business;

(b) individual or if he or she is deceased of his or her appointed representative; or

(c) body corporate,
to deliver to the Registrar, within 30 days, notice in the prescribed form that the firm, individual or body corporate has ceased to carry on business.

(2) Notwithstanding subsection (1), if the firm, individual or body corporate is bankrupt or in liquidation, the notice shall be delivered by the trustee or liquidator, as the case may be.

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

(4) 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 or she may deliver to the firm, individual or body corporate, by a notice that unless an answer is received to such notice, within 4 weeks from the date thereof, the entry in the register relating to such firm, individual or body corporate may be cancelled.

(5) If the Registrar does not —

- (a) receive 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
 - (b) receive answer to the notice sent under subsection (4) within 4 weeks, he or she may cancel the entry in the register relating to such firm, individual or body corporate.
- (6) If there occurs after the registration an event in consequence of which the continuance of the business under the business name under which a 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 11 of the happening of such event, cancel the entry in the register relating to such firm, individual or body corporate.
- (7) The Registrar shall cancel a business name where —
- (a) the business name is upgraded and registered as a company under the Companies Act;
 - (b) the body corporate is deregistered in terms of the Companies Act; and
 - (c) the business name has expired and no application for renewal has been made.
- (8) Upon cancellation of a business name under this section, the business name shall be available for use by any person after three months from the date of cancellation.
- (9) A firm, individual or body corporate running a business under a cancelled business name commits an offence.

Restoration of
business name

17. Where the name of a firm, individual or body corporate has been cancelled from the register, the Registrar may on application of the concerned firm, individual or body corporate made in such form as may be prescribed, direct that the name of the firm, individual or body corporate be restored to the register.

Duration and
renewal of
business name

18. (1) A business name registered under this Act shall, unless previously renewed or cancelled, expire at the end of three years.

(2) A firm, individual or body corporate wishing to renew a business name shall, at least one month before the expiry of the business name, apply in the prescribed form to the Registrar for renewal.

(3) The Registrar shall, if the business name has not been cancelled, and upon payment of the appropriate fee and any outstanding fines, renew the business name for a further period of three years from the date on which it would otherwise expire.

(4) An application for the renewal of a business name that had expired over a year before the date of the application shall be treated as an application for a new business name.

19. Any period under this Act for the lodging of any statement or notice may, under exceptional circumstances 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 a prescribed fee, for a period not exceeding 60 days.

Extension of time

20. Any person may, upon payment of a 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 body corporate 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.

Inspection of documents and provision of copies

21. (1) A certificate purporting to be signed by the Registrar, and a copy or extract from any certificate of registration or any document registered or filed under this Act certified under the hand of the Registrar shall be a true copy or extract.

Certified copies to be evidence

(2) 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.

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 or her present forenames or the initials thereof and present surname;
- (b) in the case of a firm, the present forenames or the initials and present surnames 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 or her name and the name of his or her appointed representative.

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

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

Offences

(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, unless he or she proves that the offence was committed without his or her knowledge or consent, commits a like offence and is liable to a like penalty.

Penalties

24. Any person who commits an offence under this Act for which no other penalty is specifically provided is liable to a fine not exceeding P5000 and in default of payment to imprisonment for a term not exceeding two years.

Repeal of
Cap. 42:05

25. The Registration of Business Names Act, hereinafter referred to as “the repealed Act”, is hereby repealed.

Savings and
transitional
provisions

26. (1) All subsidiary legislation made under the repealed Act and in force immediately prior to the coming into operation of this Act shall, in so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

(2) The repeal of the Act shall not be construed as invalidating any process undertaken in terms of the repealed Act.

Regulations

27. The Minister may make regulations generally for the better carrying out of the provisions and purposes of this Act, and without prejudice to the generality of the foregoing, such regulations may provide for —

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

PASSED by the National Assembly this 12th day of April, 2018.

BARBARA N. DITHAPO,
Clerk of the National Assembly.