

ACT 151

REGISTRATION OF BUSINESS NAMES ACT, 1962

ARRANGEMENT OF SECTIONS

SECTION

1. Persons to be registered.
2. Manner and particulars of registration.
3. Statement to be given by person registering.
4. Time for registration.
5. Refusal to register and cancellation of registration.
- 5A. Annual renewal of registration.
6. Changes in particulars registered.
7. Penalty for default in registration.
8. Penalty for false statements.
9. Issue of certificate of registration.
10. Removal of name upon cessation of business.
11. Duty to furnish particulars to registrar.
12. Searches.
13. Copies of entries in registers.
14. Publication of true names.
15. Disability of person in default.
16. Regulations.
17. Interpretation.
18. Repeal and saving.
19. Exclusion of partnerships.
20. Commencement.

ACT 151

REGISTRATION OF BUSINESS NAMES ACT, 1962¹

AN ACT to consolidate with amendments the law relating to the registration of business names.

1. Persons to be registered

- (1) Subject to subsection (2), there shall be registered in accordance with this Act,
- (a) an individual having a place of business in the Republic, who
 - (i) carries on business under a business name which does not consist of the true surname of that individual without an addition other than the first names or the initials, or

1. The Act was assented to on 22nd November, 1962.

- (ii) has before or after the commencement of this Act changed the name of that individual, except in the case of a woman in consequence of marriage,
- (b) a company carrying on business in the Republic under a business name which does not consist of its corporate name without an addition.

(2) Registration is not necessary

- (a) where the addition referred to in subsection (1) merely indicates that the business is carried on in succession to a former owner of the business, or
- (b) where the business is carried on by a receiver or manager appointed by a court of competent jurisdiction.

2. Manner and particulars of registration

A person required under this Act to be registered, shall furnish to the registrar at the office of the registration a statement in writing in the prescribed form containing

- (a) the business name,
- (b) the general nature of the business,
- (c) the principal place of the business,
- (d) any other places at which the business is carried on,
- (e) where the registration to be effected is that of an individual
 - (i) the present first name and surname of that individual,
 - (ii) the nationality and, if that nationality is not the nationality of origin, the nationality of origin of that individual,
 - (iii) the usual residence and other business occupation of that individual, and
 - (iv) whether that individual is under the age of twenty-one years at the date of furnishing the statement and, if so, the date of birth of that individual,
- (f) where the registration to be effected is that of a company, its corporate name and registered office,
- (g) the date of the commencement of the business.

3. Statement to be given by person registering

The statement mentioned in section 2 shall be signed,

- (a) in the case of an individual, by the individual, and
- (b) in the case of a company, by a director or secretary of the company.

4. Time for registration

The particulars referred to in section 2 shall be furnished within fourteen days after that person commences the business in respect of which registration is required.

5. Refusal to register and cancellation of registration

(1) The registrar shall refuse to register the business name of a person if the registrar has reason to believe that the business carried on or about to be carried on by that person is unlawful.

(2) The registrar may refuse to register the business name of a person if, in the opinion of the registrar, the name is calculated to lead to the belief that the general nature of the business is other than that specified in the written statement furnished under section 2, or is in any other respect misleading or undesirable.

(3) A person aggrieved by the refusal of the registrar to register a business name under subsection (1) or (2), may, within twenty-one days of the receipt of a notification from the registrar regarding the refusal and the grounds for the refusal, appeal to the High Court.²

(4) Where a business name registered under this Act is subsequently found to be misleading or undesirable by reason of a change in the nature of the business carried on, the registrar may notify the person responsible for the registration of the intention to cancel the registration.

(5) At the expiration of twenty-one days from the date of the notice or a longer period that the registrar may allow, the registrar shall cancel the registration unless within that time that person had lodged an appeal to the High Court against the registrar's decision.³

5A. Annual renewal of registration

(1) Once in a year an individual or company registered under this Act shall deliver to the registrar for registration a renewal notice in the prescribed form renewing the registration.

(2) Without prejudice to any other liability prescribed by this Act, a registration which is not renewed in accordance with this section shall lapse and the registrar may remove from the register the business name of a person whose registration has lapsed after the expiration of the period prescribed for the renewal.

(3) In the case of a person registered between the 1st day of January and the 30th day of June in a year the renewal notice shall be delivered for registration within twenty-eight days after the 1st day of January each year; and in the case of a person registered between the 1st day of July and the 31st day of December in a year the renewal notice shall be delivered for registration within twenty-eight days after the 1st day of July each year.

(4) Section 5 shall apply to a renewal of registration as it applies to a first registration.

(5) There shall be paid for each renewal of registration the prescribed fee.⁴

2. The concluding words of the subsection stating that the decision of the High Court "shall be final" is omitted in view of article 137 of the Constitution.

3. The concluding words of the subsection that "the decision of the High Court on any such appeal shall be final" has been omitted in view of article 137 of the Constitution.

4. Inserted by section 1 of the Registration of Business Names (Amendment) Decree, 1974 (N.R.C.D. 293). Section 2 of that Decree also provided that "In the case of persons who immediately before the commencement of the Decree were registered under the Act between the 1st July and 31st December, the first renewal shall be effected within 21 days after the commencement of the Decree." That provision is spent.

6. Changes in particulars registered

(1) Where a change is made or occurs in any of the particulars registered under this Act in respect of a person, that person shall notify the change to the registrar in writing signed as provided in section 3.

(2) The change shall be notified within twenty-eight days after it is made or occurs.

7. Penalty for default in registration

Where a person who fails to comply with a provision of sections 1 to 6, that person, and in the case of a company every director of the company, is liable to a fine of one hundred penalty units for every day during which the default continues; and the High Court shall order a statement of the required particulars to be furnished to the registrar within the time specified in the order.

8. Penalty for false statements

Where a statement required to be furnished under this Act contains a matter which is false in a material particular to the knowledge of a person signing it, that person commits an offence and is liable on conviction to a fine not exceeding two hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment.

9. Issue of certificate of registration

(1) A statement furnished under this Act shall be filed by the registrar who shall deliver a certificate of the registration to the person registering.

(2) The certificate or a certified copy of the certificate shall be exhibited in a conspicuous position at the principal place of business of that person, and if not so exhibited, that person, and in the case of a company, every director of the company, is liable to a fine not exceeding one hundred and fifty penalty units.

10. Removal of name upon cessation of business

(1) Where a person registered under this Act ceases to carry on business,

- (a) in the case of an individual, the individual, or if that individual is dead, the personal representative, or
- (b) in the case of a company, the persons who were directors in the company at the time when it ceased to carry on business and a liquidator of the company

shall, within three months after the business has ceased to be carried on, send by post or deliver to the registrar a notice stating that that person or company has ceased to carry on business.

(2) Where a person whose duty it is to give the notice fails to do so within that time that person is liable to a fine of twenty-five penalty units.

(3) On receipt of the notice, the registrar may remove the business name of that person or the company from the register.

(4) Where the registrar has reasonable cause to believe that a person registered under this Act is not carrying on business, the registrar shall send to that person by registered post a notice that, unless an answer is received to the notice within one month from the date of the notice, the business name of that person shall be removed from the register.

(5) Where the registrar receives an answer from that person indicating that the business is not being carried on or does not within one month after sending the notice receive an answer, the registrar shall remove that business name from the register.

11. Duty to furnish particulars to Registrar

(1) The registrar may require a person to furnish the particulars that appear to the registrar necessary for the purpose of ascertaining whether or not that person should be registered under this Act, or an alteration made in the registered particulars; and may, in the case of a company, require a director, the secretary or any other officer of the company discharging the duties of secretary to furnish those particulars.

(2) Where a person when required under subsection (1) fails to supply the particulars as it is in the power of that person to give, or furnishes particulars which are false in a material particular, that person commits an offence and is liable on conviction to a fine, not exceeding two hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment.

(3) Where, from an information furnished, it appears to the registrar that a person ought to be registered under this Act or an alteration should be made in the registered particulars, the registrar may require that person to furnish the required particulars within the time allowed by the registrar; but where a default under this Act is discovered from the information required under this section, proceedings under this Act shall not be taken against a person in respect of the default prior to the expiration of the time within which that person is required by the registrar under this section to furnish those particulars.

12. Searches

The registrar shall allow searches to be made at a reasonable time in a register book, register or file or registered documents in the possession of the registrar.

13. Copies of entries in registers

(1) The registrar shall, on request, give a certified copy of an entry in a register book or register, or any other filed document.

(2) A certified copy shall be received in evidence, without further or any other proof in legal proceedings.

14. Publication of true names

(1) A person required by this Act to be registered shall, in the trade circulars and business letters issued or sent by that person to any other person, have written or printed in legible characters on those circulars and letters,

- (a) in the case of an individual, the present first name or the initials and present surname and any first name or surname of that individual;
- (b) in the case of a company, the present first names and surname and the former first or surname of every director.

(2) Where a person fails to comply with subsection (1), that person, and in the case of a company, every director of the company, is liable to a fine of fifty penalty units.

15. Disability of person in default

(1) Where a person required to furnish a statement of particulars or of a change in particulars defaults in so doing, the rights of the defaulter under, or arising out of, a contract made or entered into by, or on behalf of, the defaulter in relation to the business in respect of which particulars were required at any time while the defaulter is in default, are enforceable by action or any other legal proceedings in the business name or otherwise.

(2) For the purposes of subsection (1),

- (a) the defaulter may apply to the High Court for relief against the disability imposed by subsection (1), and the High Court, on being satisfied that the default was accidental, or due to inadvertence, or any other sufficient cause, or that on other grounds, it is just and equitable to grant relief, may grant that relief generally or as respects a particular contract and on the conditions that the High Court may impose;
- (b) the rights of any other parties as against the defaulter in respect of the contract are not prejudiced;
- (c) if an action or a proceeding is commenced by any other party against the defaulter to enforce the rights of the party in respect of the contract, this section does not preclude the defaulter from enforcing in that action or proceeding by way of counter-claim, set-off or otherwise, the rights that the defaulter may have against that party in respect of that contract.

16. Regulations

The Minister may, by legislative instrument, make Regulations,

- (a) for the appointment of registrars and for the direction and guidance of registrars and of the persons acting under the registrars;
- (b) prescribing the forms to be used for the purposes of this Act;
- (c) prescribing the fees to be taken by the officers by or before whom the acts for which the fees are payable are done; and
- (d) generally for the better carrying out of the purpose of this Act.

17. Interpretation

In this Act, unless the context otherwise requires,

“business” includes a profession;

“business name” means the name or style under which or by which a business is carried on whether in partnership or otherwise;

“company” includes a company or corporation incorporated in the Republic or elsewhere and a company carrying on business in partnership with any other person;

“**director**” includes a person, by whatever name called, who is appointed to direct and administer the business of the company, or poses as a director or knowingly allows other persons to hold that person out as a director of the company, or on whose directions or instructions the only appointed directors of the company are accustomed to act;

“**first name**” includes a forename and when used with surname includes any other name;

“**initials**” include a recognised abbreviation of a first or any other name;

“**Minister**” means the Minister responsible for Justice;

“**prescribed**” means prescribed by Regulations made under section 16;

“**registrar**” means the person appointed in accordance with this Act as registrar, whether generally or for a particular place.

18. Repeal and saving

*Spent.*⁵

19. Exclusion of partnerships

This Act shall not apply to a partnership registered under the Incorporated Private Partnerships Act, 1962 (Act 152).

20. Commencement

*Spent.*⁶

5. The section provided that,

“(1) The Registration of Business Names Ordinance (Cap. 177), the Registration of Business Names (Amendment) Ordinance, 1957 (No. 28 of 1957), and Part Two of the Companies and Registration of Business Names (Amendment) Act, 1959 (No. 25 of 1959) are hereby repealed.

(2) Without prejudice to the general effect of the Interpretation Act, 1960 (C.A. 4) as to repeals, every regulation or registration made under an enactment repealed by this Act and in force immediately before the commencement of this Act shall continue in force as if made under the corresponding provision of this Act.”

6. The section provided that this Act shall be deemed to have come into operation at the same time as the Incorporated Private Partnerships Act, 1962 (Act 152) which was assented to on 20th November, 1962.

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