

[Chap4602]CHAPTER 46:02

## BUSINESS NAMES REGISTRATION

### ARRANGEMENT OF SECTIONS

#### SECTION

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## Schedule

7 of 1922

7 of 1925

13 of 1941

16 of 1997

G.N. 22/1963

219/1964 (N)

An Act to provide for the Registration of Firms and Persons carrying on Business under Business Names and for purposes connected therewith

[19TH APRIL 1922]

[Ch4602s1]1. Short title

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

[Ch4602s2]2. Interpretation

In the construction of this Act, unless there be something in the subject or context repugnant to such construction—

“business” includes profession;

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

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

“first name” includes any forename;

“foreign firm” means any firm, individual, or corporation whose principal place of business is situated in any country outside the Commonwealth or the Republic of Ireland;

“individual” means a natural person and shall not include a corporation;

“initials” includes any recognized abbreviation of a first name;

“showcards” means cards containing or exhibiting articles dealt with, or samples or representations thereof.

In the case of a peer or person usually known by a British title different from his surname, the title by which he is known shall be substituted in this Act for his surname.

References in this Act to a former first name or surname shall not, in the case of Commonwealth citizens, include a former first name or surname where that name or surname has been changed or disused before the person bearing the name had 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 her marriage.

Reference in this Act to a change of name shall not include, in the case of Commonwealth citizens, 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 peer or a person usually known by a British title different from his surname, the adoption of or succession to the title.

[Ch4602s3]3. Firms and persons to be registered

Subject to this Act—

(a) every firm having a place of business in Malawi 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 first names of individual partners or initials of such first names;

(b) every individual having a place of business in Malawi and carrying on business under a business name which does not consist of a true surname without any addition other than his true first names or the initials thereof; and

(c) every individual or firm having a place of business in Malawi, who, or a member of which, has either before or after the passing of this Act changed his name, except in the case of a woman in consequence of marriage, shall be registered in the manner directed by this Act:

Provided that—

(a) where two or more individual partners have the same surname, the addition of an “s” at the end of that surname shall not of itself render registration necessary; and

(b) 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

(c) 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.

[Ch4602s4]4. Registration by nominee, etc.

Where a firm, individual, or corporation having a place of business within Malawi 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 manner provided by this Act, and, in addition to the other particulars required to be furnished and registered, there shall be furnished and registered the particulars mentioned in the Schedule:

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

[Ch4602s5]5. Manner and particulars of registration

(1) Every firm or person required under this Act to be registered shall furnish by sending by post or delivering to the Registrar at the Register Office 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 business;

(d) where the registration to be effected is that of a firm, the present first name and surname, any former first name or surname, the nationality, and if that nationality is not the nationality of origin, the nationality of origin, 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 first name and surname, any former first name or surname, the nationality, and if that nationality is not the nationality of origin, the nationality of origin, the usual residence, and the other business occupation (if any) of such individual;

(f) where the registration to be effected is that of an individual of non European origin the name of his father in addition to his own name;

(g) where the registration to be effected is that of a corporation, its corporate name and registered or principal office;

(h) if the business is commenced after the passing of this Act, the date of the commencement of the business;

(i) where the registration to be effected is that of a firm, the age of each partner thereof;

(j) 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 21 years it shall be sufficient for him to state his age as "full age".

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

[Ch4602s6]6. 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 or secretary thereof, and in the case of a firm either by all the individuals who are partners, and by 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 an affidavit or statutory declaration made by the signatory:

Provided that no such affidavit or statutory declaration stating that any person other than the deponent or declarant is a partner, or omitting to state that any person other than as aforesaid is a partner, shall be evidence for or against such other person in respect of his liability or non-liability as a partner, and that the High Court may on 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.

[Ch4602s7]7. Time for registration

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 if such firm or person has carried on such business before the passing 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 passing of this Act, and that 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 as such conditions continue.

This section shall apply in the case where registration is required in consequence of a change of name, as if for references to the date of the commencement of the business there were substituted references to the date of such change.

[Ch4602s8]8. 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 or such longer period as the Registrar may, on application being made in any particular case, whether before or after the expiration of such fourteen days, allow, furnish by sending by post or delivery to him 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.

[Ch4602s9]9. Penalty for default in registration

If any firm or person by this Act required to furnish a statement of particulars or of any change in particulars shall without reasonable cause make default in so doing in the manner and within the time specified by this Act, every partner in the firm or the person so in default shall be liable to a fine of £5 for every day during which the default continues, and the court shall order a statement of the required particulars or change in the particulars to be furnished to the Registrar within such time as may be specified in the order.

[Ch4602s10]10. Disability of persons in default

(1) Where any firm or person by this Act required 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 always as follows—

(a) 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 as respects any particular contract, on condition of the costs of the application being paid by the defaulter, unless the Court otherwise orders, and on such other conditions (if any) 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;

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

(c) 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 the expression “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.

[Ch4602s11]11. 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 any person signing it that person shall, be liable to a fine of £50 and to imprisonment for three months.

[Ch4602s12]12. Duty to furnish particulars to the Registrar

(1) The Registrar may require any person to furnish to him 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, he shall be liable to a fine of £50 and to imprisonment for three months.

(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 may require the firm or person to furnish to him the required particulars within such time as may be allowed by him, but, where any default under this Act has been discovered from the information acquired under this section, no proceedings under this Act shall be taken against any person in respect of such default prior to the expiration of the time within which the firm or person is required by the Registrar under this section to furnish particulars to him.

[Ch4602s13]13. Registrar to file statement and issue certificate of registration

On receiving any statement, affidavit or statutory declaration made in pursuance of this Act the Registrar shall cause the same to be filed, and he shall send by post or deliver a certificate of the registration thereof to the firm or person registering and the certificate or certified copy thereof shall be kept in a conspicuous position at the principal place of business of the firm or individual and if not kept so exhibited every partner in the firm, or the person as the case may be, shall be liable to a fine of £50.

[Ch4602s14]14. Index to be kept

At the Register Office the Registrar shall keep an index of all the firms and persons registered at that office under this Act.

[Ch4602s15]15. 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 send by post or deliver to the Registrar 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 as aforesaid, he shall be liable to a fine of £50:

Provided that the Registrar may in his absolute discretion on reasonable cause therefor being shown, extend such time as aforesaid to such time as he may think fit.

(2) On receipt of such a notice as aforesaid the Registrar may 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 may be removed from the register.

(4) If the Registrar either receives 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 may remove the firm or individual from the register.

#### [Ch4602s16]16. Misleading business names

(1) Where any business name under which the business of a firm or individual is carried on contains the word "British" or any other word which, in the opinion of the Registrar, is calculated to lead to the belief that the business is under British ownership or control, and the Registrar is satisfied that the nationality of the persons by whom the business is wholly or mainly owned or controlled is at any time such that the name is misleading, 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.

(2) The registration of a business name under this Act shall not be construed as authorizing the use of that name if apart from such registration the use thereof could be prohibited.

#### [Ch4602s17]17. Restrictions on the registration of certain business names

The Registrar shall not register any business name containing any word or words expressing or implying the sanction, approval or patronage of the President, of a Government or of an African Administration, or of any officer thereof except with the approval of the Minister.

#### [Ch4602s18]18. Registrar

The Registrar of Companies or such other person as the Minister may appoint shall be Registrar for the purposes of this Act.



[Ch4602s19]19. Inspection of statements registered

At any time after the expiration of six months from the passing of this Act or of such longer period, not being more than nine months from the passing of this Act, as the Minister may by order direct, any person may inspect the documents filed by the Registrar on payment of such fees as may be prescribed not exceeding two shillings and sixpence 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 any 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 not exceeding five shillings for the certificate of registration, and not exceeding sixpence for each folio of seventy-two words of the entry, copy, or extract.

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 of or extract under the hand of the Registrar (whom it shall not be necessary to prove to be the Registrar), shall, in all legal proceedings, civil or criminal, be received in evidence.

[Ch4602s20]20. Power of Minister to make Rules

16 of 1997(1) The Minister may make Rules concerning any of the following matters—

- (a) the fees to be paid to the Registrar under this Act so that they do not exceed the sum of K500 for the registration of any one statement;
- (b) the forms to be used under this Act;
- (c) the duties to be performed by the Registrar under this Act;
- (d) the performance by assistant registrars and other officers of acts by this Act required to be done by the Registrar; and
- (e) generally the conduct and regulation of registration under this Act, and any matter incidental thereto.

[Ch4602s21]21. Publication of true names, etc.

(1) After the expiration of three months from the passing of this Act every individual and firm required by this Act to be registered shall, in all trade catalogues, trade circulars, showcards and business letters, on or in which the business name appears and which are issued or sent by the individual or firm to any person to any part of the Commonwealth, have mentioned in legible characters—

- (a) in the case of an individual, his present first name or the initials thereof and present surname, any former first name or surname, his nationality if not British and, if his nationality is not his nationality of origin, his nationality of origin;

(b) in the case of a firm, the present first names or the initials thereof and present surnames, any former first names and surnames, and the nationality if not British, and if the nationality is not the nationality of origin, the nationality of origin of all the partners in the firm or, in the case of a corporation being a partner, the corporate name; and

(c) in the case of an individual or partner of a firm, as the case may be, who is of non-European origin the name of his father in addition to his own name.

(2) If default is made in compliance with this section the individual or, as the case may be, every member of the firm shall be liable for each offence to a fine of £5.

#### [Ch4602s22]22. Offences by corporation

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

Description of firm, etc. The additional particulars Where the firm, individual or corporation required to be registered carries on business as nominee or trustee. The present first name and surname, any former name, nationality, and, if that nationality is not the nationality of origin, the nationality of origin, 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: 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. Where the firm, individual or corporation required to be registered carries on business as general agent for any foreign firm. The business name and address of the firm or person as agent for whom the business is carried on: 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.

#### SUBSIDIARY LEGISLATION

##### BUSINESS NAMES REGISTRATIONS RULES

under s. 20

G.N. 74/1922

46/1942

2/1989

1/1999

1. Citation

These Rules may be cited as the Business Names Registrations Rules.

2. Fees

The fees to be paid in pursuance of the Act shall be the fees specified in the First Schedule.

3. Size of paper

Subject to any directions which may be given by the Registrar, all applications, notices, statements or other documents to be left with or sent to the Registrar shall be upon foolscap paper of a size approximately 13 inches by 8 inches and shall have on the left-hand part thereof a margin of approximately 2 inches.

4. Form of application

Every application for registration shall be made in the form set out in the Second Schedule.

5. Certificate

The Registrar shall issue a certificate of registration in the form set out in the Third Schedule to every firm or person registered under the Act.

6. Alteration

Every change in any of the particulars registered shall within 14 days of such change be notified in the form set out in the Fourth Schedule to the Registrar who shall alter the register accordingly.

7. Notice of cessation of business

Every notice to the Registrar that any firm or individual registered under the Act has ceased to carry on business shall be in the form set out in the Fifth Schedule.

8. Inspection of register

The register and all documents in connexion with the registration of business names shall be open for inspection of the public and copies of or extracts from such register or documents may be obtained on every business day during the hours that the Registrar's office is open for business.

9. Certificate for legal proceedings

A certificate of registration to be used in legal proceedings or for any other specified purpose will be issued upon application but such certificate shall have specified on the face thereof the purpose for which it is issued.

FIRST SCHEDULE r. 2, G.N. 2/1989, 1/1999

FEES

Kt1. On filing statement of particulars or notice of change of particulars registered, such fee to cover the issue of one certificate of registration .....200002.

On filing notice of cessation of business .....200003. For inspection of the register .....40004. For certified copy certificate of registration except within paragraph 1 hereof .....50005. For copies of any registered document per folio of 72 words .....2000

SECOND SCHEDULE r. 4

Application for Registration of Business Name

(In filling up the application forms for registration, attention is drawn to the following provisions of the Business Names Registration Act (Cap. 46:02) viz: sections 2, 4, 5 and 6 and the Schedule)

STATEMENT OF PARTICULARS REQUIRED TO BE GIVEN PURSUANT TO THE BUSINESS NAMES REGISTRATION ACT (CAP. 46:02)

In the case of a Corporation

1. Corporate name.
2. Registered or principal office.
3. Date of commencement of the business.

This date need only be stated where the business was commenced after the 19th April, 1922.

(Signed) .....

Dated this ..... day of ..... 20 .....

STATEMENT OF PARTICULARS REQUIRED TO BE GIVEN PURSUANT TO THE BUSINESS NAMES REGISTRATION ACT (Cap. 46:02)

In the case of a firm

1. Business name to be registered. Where a business is carried on under two or more business names, each of these business names must be stated.

2. General nature of business.

3. Principal place of the business.

4. Present, first name (or names) and surname of each of the individuals who are partners. If any of the individuals who are partners are of non-European origin, such individual or individuals (as the

case may be) must also state the first name (or names) and surname of his, her or their fathers respectively.

5. Former first name (or names) and surname (if any) of each of the individuals who are partners.

6. Nationality of each of the individuals who are partners. If the nationality stated is not the nationality of origin, such nationality of origin must in every case be stated.

7. Usual place of residence of each of the individuals who are partners.

8. Other business occupation (if any) of each of the individuals who are partners.

9. Date of commencement of business.

The date need only be stated where the business was commenced after the 19th April, 1922.

10. Corporate name of each corporation which is a partner.

11. Registered or principal office of each corporation which is a partner.

(Signed) .....

Dated this .....day of .....19.....

#### STATEMENT OF PARTICULARS REQUIRED TO BE GIVEN PURSUANT TO THE BUSINESS NAMES REGISTRATION ACT (Cap. 46:02)

In the case of an application by an individual

1. Business name to be registered. Where a business is carried on under two or more business names each of these business names must be stated.

2. General nature of business.

3. Principal place of the business.

4. Present first name (or names) and surname. If the applicant is of non-European origin the first name (or names) of applicant's father must be stated.

5. Former first name (or names) and surname (if any).

6. Nationality. If present nationality is not the nationality of origin, the nationality of origin must be also stated.

7. Usual place of residence.

8. Other business occupation (if any).

9. Date of commencement of business.

This date need only be stated where the business was commenced after the 19th April, 1922.

(Signed) .....

Dated this .....day of .....19...

### THIRD SCHEDULE r. 5

#### THE BUSINESS NAMES REGISTRATION ACT

##### Certificate of registration

I HEREBY CERTIFY that ..... this ..... day of .....19..... have (has) been duly registered pursuant to and in accordance with the Business Names Registration Act (Cap. 46:02), and the Rules made thereunder, and have (has) been entered under the number ..... in the Index of Registration.

GIVEN under my hand at ..... this ..... day of ..... One thousand nine hundred and .....

Registrar for the purpose of the Business

Names Registration Act.

### FOURTH SCHEDULE r.6

#### NOTICE OF CHANGE IN PARTICULARS REGISTERED

Pursuant to the Business Names Registration Act

To

The Registrar,

appointed for the purposes of the above-mentioned Act.

WHEREAS We (I) the undersigned were (was) duly registered pursuant to the Business Names Registration Act (Cap. 46:02) on the.....day of.....under the Number.....in the Index of Registration.

AND WHEREAS a change (or changes) has (or have) occurred (or been made) in respect of the particulars registered as hereinafter mentioned.

Now We (I) the undersigned hereby give you notice that on the date (or dates) hereunder specified the following change (or changes) occurred (or was or were made) in the particulars registered; that is to say

Dated this .....day of .....19.....

(Signed).....

FIFTH SCHEDULE r.7

NOTICE OF CESSATION OF BUSINESS

Pursuant to the Business Names Registration Act

To

The Registrar,

appointed for the purposes of the above-mentioned Act.

WHEREAS We (I) the undersigned registered under the Number .....in the Index of Registration have ceased to carry on business.

Now We (I) hereby give notice that We (I) have ceased to carry on business as ..... as from the ....day of ..... 19.....save for the purpose of winding up the business.

Dated this.....day of .....19.....

(Signed).....