

THE REGISTRATION OF BUSINESS NAMES BILL 1995  
ARRANGEMENT OF SECTIONS

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**SCHEDULE:** Additional particulars required for registration by nominee, trustee or general agent.

**A BILL FOR  
AN ACT TO PROVIDE FOR THE REGISTRATION OF BUSINESS NAMES;  
AND TO PROVIDE FOR MATTERS INCIDENTAL THERETO:**

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

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| Short title                               | 1. | The Act may be cited as the Registration of Business Names Act.  |
| Interpretation                            | 2. | (1) In this Act unless the context otherwise requires-<br><br>“business” includes profession;<br>“business name” means the name or style under which any business is carried on, whether in partnership or otherwise;<br>“Christian name” includes any given name<br>“firm” means an unincorporated body of one or more individuals or one or more corporations, who have entered into partnership with one another with a view to carrying on business for profit;<br>“foreign firm” means a natural person and shall not include a corporation;<br>“initials” includes any recognized abbreviation of a Christian name;<br>“Minister” means the Minister responsible for the administration of this Act;<br>“Registrar” means the person appointed as Registrar of Business Names and includes and Assistant Registrar, Deputy Registrar or Acting Registrar,<br>“Show cards” means a cards containing or exhibiting articles dealt with, or samples or representations thereof. |
| <b>Changes of name</b>                    | 3. | (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.<br><br>(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.<br><br>(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.  |
| <b>Firms and Persons to be registered</b> | 4. | Subject to the provisions of this Act-<br><br>(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;
- (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;

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; and
- (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.

**Registration nominee**

- 5. Where a firm, individual, or corporation having a place of business by 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.

**Manner and**

- 6. 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, and if that nationality is not the nationality of origin, the nationality or 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 Christian 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 a corporation, its corporate name and registered or principal office;
- (g) Whether the business is commenced after the commencement of the Act.
- (h) Where the registration to be effected is that of a firm the age and sex of each partner thereof;
- (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"

**Statement to be signed by persons registering**

7. 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 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 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 a statutory declaration made by the signatory;

Provided that-

- (i) No such statutory declaration stating that any person other than the declaring is a partner, or omitting to state that any person other than as aforesaid is a partner, shall be evidence for and 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.

**Time for registration**

8. (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) 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 as 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 references to the date of such change.

**Registration of changes in firm**

9. 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.

**Penalty for default in registration**

10. If any firm or person by this Act required 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 T\$20 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 court order.

**Disability of persons in default**

11. (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 of 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 herein contained 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 or a Judge thereof;

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

**Penalty for False statements**

12. 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 signing it that person shall on conviction be liable to imprisonment for a term not exceeding six months or to a fine not exceeding T\$1,000 or to both such imprisonment and fine.

**Duty to furnish particulars**

13. (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, he shall, on conviction, be liable to imprisonment for a term not exceeding three months or to a fine not exceeding T\$500 or to both such imprisonment and fine.
- (2) If from any information so furnished it appear 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.

**Registrar; Index to be kept**

14. (1) His Majesty in Privy Council may from time to time appoint a Registrar.
- (2) The Registrar shall keep an index of all the firms and persons Registered under this Act.

**Statements to be filed by Registrar; Exhibition of certificate**

15. (1) On receiving any statement or statutory declaration made in pursuance of this Act, the Registrar shall cause the same to be filed, and he shall post or deliver a certificate of registration thereof to the firm or person registering,