

Business Names Registration Act

Principal Act

Act. No. 1918-21	<i>Commencement</i>	22.10.1918
	<i>Assent</i>	22.10.1918

Amending enactments	Relevant current provisions	Commencement date
Act.1918-27	s. 16(1)	
1935-08	ss. 7, 9	
1953-14	ss. 2(3)-(5), 3, 5(1), 15-16, 20(1), Sch.	
1980-04	s. 2A(2)	
1983-12	ss. 18(1), 19(1)	
1990-51	ss. 2A(1), (3), 9, 11, 12(1), 13, 15, 20(2)	15.11.1990
1999-34	ss. 2(1), (3), 2A(1)-(2), 3(a)-(b), 5(1)(d)-(e), (g)-(h), 8-9, 11, 12(1), 13(1)-(2), 14, 14A, 15(1), 16(1), (3)-(4), 19(1)-(2), 20(1)(a)-(b), (2)-(4), Sch	1.1.2000
2013-18	s. 2	19.9.2013
2014-32	ss. 13(2), 14A.(1)	27.11.2014

Delegation to the Registrar of the powers of the Governor under ss.8 and 12 by notice of 6 May 1958 appears under the title Interpretation and General Clauses.

English sources

Registration of Business Names Act 1916 (6 & 7 Geo. 5 c.58)
Companies Act 1947 (10 & 11 Geo. 6 c.47).

ARRANGEMENT OF SECTIONS

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SCHEDULE.

Particulars to be furnished by Nominee, Trustee or General Agent.

AN ACT TO PROVIDE FOR THE REGISTRATION OF FIRMS AND PERSONS CARRYING ON BUSINESS UNDER BUSINESS NAMES AND FOR PURPOSES CONNECTED THEREWITH.

Short title.

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

Interpretation.

2. (1) In this Act, unless the context otherwise requires,—

“business” includes profession and the establishment or operation of a website—

(a) in or from within Gibraltar; or

(b) through an internet service provider in Gibraltar,

in connection with or for the purpose of promoting in any way any trade, business or profession whatsoever and wherever situated;

“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;

“foreign firm” means any firm, individual or corporation whose principal place of business is situate outside Gibraltar;

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

“initials” include any recognised abbreviation of a fore name;

“Minister” means the Minister with responsibility for finance;

“Registrar” means the Registrar of Business Names appointed by section 2A;

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

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

(3) References in this Act to a former fore name or surname shall not, in the case of a married woman, include the name or surname by which she was known previous to her marriage, and, in the case of any person shall not include a former fore 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 or has been changed or disused for a period of not less than twenty years.

(4) References in this Act to a change of name shall not include, 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.

(5) An individual or firm shall not require to be registered under this Act by reason only of a change of his name, or of the name of a member of the firm, if the change has taken place before the person who has changed his name has attained the age of eighteen years or if not less than twenty years have elapsed since it took place.

Registrar.

2A. (1) The Registrar of Business Names shall be the person designated by the Minister for this purpose.

(2) The Minister may designate one or more assistant registrars of business names, and any assistant registrar so designated may, subject to any directions given to him by the Registrar, exercise all the powers and perform all the duties of the Registrar under this Act.

(3) The Registry of the Supreme Court or such other place as the Minister may appoint by notice in the Gazette shall be the office for the registration of firms and persons under this Act.

Firms and persons to be registered.

3. Subject to the provisions of this Act,—

- (a) every firm having a place of business in Gibraltar 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 fore names of individual partners or initials of such fore names;
- (b) every individual having a place of business in Gibraltar and carrying on business under a business name which does not consist of his true surname without any addition other than his true fore names or the initials thereof;
- (c) every individual or firm having a place of business in Gibraltar, 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; and

- (d) every company as defined in the Companies Act having a place of business in Gibraltar and carrying on business under a business name which does not consist of its corporate name,

shall be registered in the manner directed by this Act:

Provided that—

- (i) where the addition merely indicates that the business is carried on in succession to a former owner of the business, that addition shall not of itself render registration necessary; and
- (ii) 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
- (iii) where the business is carried on by an official trustee in bankruptcy or a receiver or manager appointed by any court, registration shall not be necessary; and
- (iv) 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 by nominee, etc.

4. Where a firm, individual or corporation having a place of business in Gibraltar 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 a 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 an official trustee in bankruptcy or a receiver or manager appointed by any court, registration under this section shall not be necessary.

Manner and particulars of registration.

5. (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 fore name and surname, any former fore 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 fore name and surname, any former fore name and 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; and
- (g) the date of the commencement of the business;
- (h) where the firm or person is—
 - (i) licensed under the Financial Services Act, 1989; or
 - (ii) authorised under the Banking Act, 1992 or the Financial Services Act, 1998;
 - (iii) licensed or authorised in accordance with a Community requirement other than one falling within sub-paragraphs (i) or (ii),

or is required to be so licensed or authorised, evidence of the consent of the competent authority under the relevant legislation to the proposed business name.

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

Statement to be signed by persons registering.

6. 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 partner, and in either of the last two cases must be verified by a statutory declaration made by the signatory:

Provided that 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 liability or non-liability as a partner, and that the Supreme 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.

Time for registration.

7. 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. 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.

Registration of changes in firm.

8. 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 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 and the Registrar shall register such change and issue, if appropriate a certificate as provided for in section 13(1), but containing the details of the change or changes, as the case may be.

Penalty for default in registration.

9. 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 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 is guilty of an offence and is liable on summary conviction to a fine of one half of the amount at level 2 on the standard scale 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.

Disability of persons in default.

10. (1) Where any firm or person by this Act required to furnish a statement of particulars or any change in particulars makes default in so doing, 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 either 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 contracts, 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 the 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;
 - (c) if any action or proceeding is 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, if any proceeding to enforce any contract is commenced by a defaulter in the Court of First Instance in the exercise of the jurisdiction conferred upon it by the provisions of the Court of First Instance Act or in the magistrates’ court, such court may, as respects that contract, grant such relief.

Penalty for false statements.

11. 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 is guilty of an offence and is liable on summary conviction to imprisonment for three months and to a fine of one half of the amount at level 4 on the standard scale.

Duty to furnish particulars to the Registrar.

12. (1) The Registrar may require any person to furnish to him such particulars as appear necessary to him for the purpose of ascertaining whether or not that person 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 the 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 is guilty of an offence and is liable on summary conviction to imprisonment for three months and to a fine of one half of the amount at level 4 on the standard scale.

(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 the Registrar the required particulars within such time as may be allowed by the Registrar, 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 the Registrar.

Registrar to file statement and issue certificate of registration.

13.(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 send by post or deliver a certificate of the registration thereof to the firm or person registering and the certificate or a certified copy thereof shall be kept exhibited in a conspicuous position at the principal place of business of the firm or person, and if not kept so exhibited, every partner in the firm or the person, as the case may be, is guilty of an offence and is liable on summary conviction to a fine of one half of the amount at level 4 on the standard scale.

(2) The registration of the business name and the certificate issued under sub-section (1) shall be valid for a period of one calendar year from the date of issue unless the registration shall have been renewed in accordance with section 14A(2).

Index to be kept.

14. The Registrar shall keep a register in the form of an index of all the firms and persons registered under this Act.

Annual Statement of Particulars.

14A.(1) There shall be furnished to the Registrar by any company, firm or individual in respect of every business name required to be registered under this Act, irrespective of the date on which the business name was first registered, once at least in every calendar year an annual statement of particulars in the form specified by the Registrar together with the documents specified in subsection (2) during the last month of the current period of registration.

(2) On receipt by the Registrar of—

(a) the form prescribed in subsection (1) properly completed;

- (b) a declaration from the firm, individual or corporation that the information supplied at the time of the application for registration remains true, or in the event of a change in any of that information, a declaration containing details of the change or changes;
- (c) such other documents or information as the Registrar may reasonably require to satisfy himself that the requirements of the Act in respect of the registration of the business name continue to be satisfied;
- (d) the prescribed fee;

if he is satisfied that the business name continues to be one to which paragraphs (a) and (b) of section 16(1) do not apply, and subject to subsections (3)(b) and (4), the Registrar shall enter in the register the date of renewal of registration.

(3) Where —

- (a) after one month, or such longer period as the Registrar may agree in writing, from the date on which a registration has ceased to be valid under the provisions of section 13(2)(b) or this section the Registrar has not received an application for renewal of the registration of a registered business name; or
- (b) having received an application for renewal of registration, the Registrar has determined that the business name does not satisfy the requirements of the Act,

the Registrar shall terminate the registration of the business name on the register and shall give notice of his decision to the company, firm or individual.

(4) Where a company, firm or individual has made a declaration of a change in any particular in accordance with subsection (2)(b), the Registrar shall require such evidence of the change or changes of particulars so declared as may be required for the purposes of this Act and shall apply the requirements of this Act in respect of the matters so declared as changed, including if necessary the issuing of a revised certificate of registration.

Removal of names from register.

15. (1) If any company, firm or individual registered under this Act ceases to carry on business, it shall be the duty of the persons who were directors or, as the case may be, liquidator of the company, or 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 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 company, 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, he is guilty of

an offence and is liable on summary conviction to a fine of one half of the amount at level 4 on the standard scale.

(2) On receipt of such notice the Registrar may remove the company, firm or individual from the register.

(3) Where the Registrar has reasonable cause to believe that any company, firm or individual registered under this Act is not carrying on business he may send to the company, 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 company, firm or individual may be removed from the register.

(4) If the Registrar either receives an answer from the company, firm or individual to the effect that the company, 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 company, firm or individual from the register.

Misleading business names.

16. (1) Where any business name under which the business of a firm or individual is carried on contains either—

- (a) 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; or
- (b) in the opinion of the Registrar such business name is undesirable,

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 who shall appoint a committee of not more than three to hear and report to him upon the appeal and upon such report shall give his decision which shall be final.

(2) Where registration of a business name is refused under this section, any person carrying on business under that name in such circumstances as to require registration under this Act shall be liable under section 9 to the same penalties as if he had without reasonable excuse made default in furnishing a statement of particulars with respect to that name.

(3) 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.

(4) The provisions of subsection (1) in respect of the right of appeal to the Minister and any rules made under section 19 for the purpose of regulating the conduct of such appeals shall apply *mutatis mutandis* to any decision to remove a business name from the register made under sections 14A or 15.

17. *Renumbered as 2A.*

Inspection and copies.

18. (1) Any person may, on payment of such fees as may be prescribed:

- (a) inspect any document filed by the Registrar;
- (b) require a certificate of the registration of any firm or person; or
- (c) require a copy of or extract from any statement, certified by the Registrar.

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

Rules.

19. The Minister may make rules—

- (a) prescribing the duties to be performed by the Registrar;
- (b) prescribing the forms to be used;
- (c) prescribing the fees to be paid; and
- (d) generally for the better carrying out of the provisions of this Act.

Publication of true names, etc.

20. (1) 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 ..., have mentioned in legible characters—

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

- (b) in the case of a firm, the present fore names, or the initials thereof and present surnames, any former fore names and surnames, and the nationality if not British, of all the partners in the firm or, in the case of a corporation being a partner, the corporate name.
- (2) If default is made in compliance with this section the individual or, as the case may be, every member of the firm is guilty of an offence and is liable on summary conviction for each offence to a fine of one half of the amount at level 3 on the standard scale.
- (3) No proceedings shall be instituted under this section except by or with the consent of the Attorney-General.
- (4) For the purposes of this section, “business letters” includes any form of communication by electronic means, including but not limited to fax, e-mail and websites.

Offences by corporations.

21. 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 is guilty of a like offence and is liable to a like penalty.