



Tonga

**REGISTRATION OF BUSINESS NAMES  
BILL 2013**





## REGISTRATION OF BUSINESS NAMES BILL 2013

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# REGISTRATION OF BUSINESS NAMES BILL 2013

## A BILL FOR AN ACT TO REPLACE THE REGISTRATION OF BUSINESS NAMES ACT 2002

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

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### 1 Short title and commencement

- (1) This Act may be cited as the Registration of Business Names Act 2013.
- (2) This Act shall come into force on a date specified by the Minister by Notice published in the Gazette

### 2 Interpretation

- (1) In this Act unless the context otherwise requires-
  - “**business**” includes, but is not limited to, engaging in wholesale or retail trade, the practice of a profession or occupation, soliciting or procuring business from a person in the country, and provision of services, whether or not for profit;
  - “**business name**” means a name other than the true name of a sole proprietor, partnership, firm, company, incorporated society, other registered entity or unincorporated collection of persons or entities, under which it conducts business or holds itself out for business in the country, whether or not the business is conducted for profit;

“**company**” means any company formed or incorporated inside or outside the country, and registered with the Registrar under the Companies Act 1995 (as amended);

“**firm**” means an unincorporated body of persons (whether consisting solely of individuals or of registered entities or partly of individuals and partly of registered entities) associated together for the purpose of carrying on business, whether or not for profit;

“**initials**” includes any recognized abbreviation of a name of a natural individual;

“**Minister**” means the Minister responsible for the administration of this Act;

“**Ministry**” means the Ministry of Commerce, Tourism and Labour;

“**person**” means a natural individual, firm, partnership, company, overseas company, incorporated society, other registered entity or unincorporated collection of natural individuals or other entities;

“**register**” means the register of business names kept under this Act;

“**registrant**” means any person or persons that file an application for a certificate of business name registration and thereafter any person or persons listed on the certificate of business name registration as an owner of the business name;

“**Registrar**” means the person appointed as Registrar of Business Names under section 13 of this Act;

“**signature**” means in relation to any document to be submitted to or produced from the Registrar, a tangible indication of assent to the document to which it is attached, which need not be an original ink signature on paper and may consist of entry of the signer’s name in an electronic form or a faxed signature;

“**true name**” means: for a natural person, a name that includes the current full name or the first name (or initial thereof) and surname of the natural person; for a domestic company, the name on the current certificate of incorporation; for a foreign company, the name on the current certificate of registration; for an incorporated society or other publicly registered entity, the name on the current registration document; for an unregistered partnership, firm or other unregistered entity or association, a name that includes the name of every partner or member.

### 3 Business name to be registered

- (1) Any person or persons who intend to transact business in the country under a business name shall, before beginning to transact business under the name, obtain from the Registrar a certificate of business name registration.
- (2) Any business name may be registered so long as the business name to be registered:

- (a) is not misleading, deceptive or offensive on its face;
  - (b) is not identical or almost identical to the name of another active local or foreign company, association, business group, previously registered active business name or active reservation of name;
  - (c) if the use of which would contravene any law or enactment; or
  - (d) does not seriously mislead the public about the nature of the business.
- (3) A person or persons may conduct business under more than one business name, provided that the use of multiple business names is not calculated to mislead the public about the activities being conducted.
- (4) A separate certificate of business name registration shall be obtained for each business name used.
- (5) Where a business name that could not be registered under this Act without contravention of this section is registered through inadvertence or otherwise, the Registrar shall send a notice to the registrant at the place shown in the register as the principal place where business is carried on under that name stating that the Registrar will cancel the registration of that name on the expiration of a period of not less than one month from the date of the notice. The registrant may file a certificate for a new business name or an amendment changing the improperly issued business name. If the registrant fails to file an amendment, then the Registrar shall cancel the registration of that business name.
- (6) The Registrar shall forgive any fee payable in respect of an application for the registration of a new business name or an amendment of the existing name for which a notice under subsection (5) was delivered to the registrant.

#### **4 Exceptions to registration requirements**

- (1) Where the business is carried on by a trustee in bankruptcy or a receiver or manager appointed by any court, registration under this Act shall not be necessary.
- (2) 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 under this Act whether or not the owners share any profits arising from the sale thereof.
- (3) Where the business is being carried on by a personal representative of a deceased registrant solely for the purposes of winding up and closing the business, an application for registration under this Act shall not be required of the personal representative.
- (4) Where the business conducted solely related to the hawking or selling of -
- (a) fish;
  - (b) agricultural produce; or
  - (c) native articles,

which are the produce of, or articles of Tonga, then registration under this Act shall not be necessary.

## 5 Registration by Nominee

Where a person having a place of business within Tonga carries on the business wholly or primarily as nominee or trustee of or for another person or other persons that are the beneficial owners of the business, or acts as an agent for any person, the true name of the person that is the beneficial owner of the business name shall be registered in the manner provided by this Act and the regulations hereunder.

## 6 Manner and Particulars of Registration

- (1) An application for a certificate of business name registration shall be submitted to the Registrar prior to the commencement of business and shall be on the prescribed form and accompanied by the prescribed application fee.
- (2) The application shall include:
  - (a) the business name as it is to be used in the transaction of business;
  - (b) the true name and business address of each person who has an ownership or other control interest in the business to be transacted under the business name, provided:
    - (i) if the registrant is an entity registered with the Registrar of Companies then only the name and registration number shall be indicated;
    - (ii) if the registrant is a partnership or unregistered organization, the true name and business address of each partner and managing person shall be indicated;
    - (iii) if a person who has an ownership or other control interest in the business is not resident in the country, then a copy of their passport shall be provided.
  - (c) identification of the registrant as a natural individual, partnership, firm, incorporated company, incorporated society, any other incorporated entity or unincorporated entity, joint venture or other collection of natural individuals;
  - (d) the principal business address at which business is to be conducted under the business name, and if there are additional addresses at which business is conducted under the same business name, all such addresses shall be indicated;
  - (e) a general description of the type of business to be transacted under the business name;
  - (f) the date or proposed date of commencement of business in the country under the business name, which date may not be more than three months after the date of application for registration;



- (g) the signature of an authorised person for the registrant; and
- (h) such other particulars as set forth in the regulations.

## **7 Effect of registration**

- (1) Upon the issuance of a certificate of business name registration, the registrant may conduct business under the business name.
- (2) The issuance of a certificate of business name registration does not relieve a registrant of any other obligation under the laws of the Kingdom.
- (3) The issuance of a certificate of business name does not create a separate legal entity.

## **8 Registration of changes**

- (1) If the identity or business address of any registrant changes, or if any address at which business is conducted under the business name changes, or if the certificate of business name registration becomes misleading in any other way, the registrant shall, within 10 working days thereafter, register an amendment of the certificate of business name registration in a form prescribed by the Registrar together with the prescribed fee.
- (2) The amendment shall include:
  - (a) the business name to which the amendment relates;
  - (b) the registration number of the certificate of business name registration to be amended;
  - (c) a statement of the respect in which the certificate of business name registration is to be amended; and
  - (d) the signature of an authorised person for the registrant.

## **9 Consequences for noncompliance**

- (1) Non-compliance with the registration requirements of this Act shall be held to include, but not be limited to:
  - (a) the failure to obtain a certificate of business name registration when required to do so;
  - (b) providing or authorizing the providing of false, misleading or incomplete information in an application for certificate of business name or amendment thereto;
  - (c) the failure to identify a beneficial owner of a business as required under section 6 of this Act; or
  - (d) the failure to amend a certificate of business name registration when required to do so.

- (2) Any person who transacts business in the country under a business name without having complied with the requirements of this Act shall not be entitled to maintain any legal action in the courts of this country until the person has obtained a certificate of business name registration.
- (3) Noncompliance with this Act does not operate to void an agreement, transaction or act of any person.
- (4) Any person who suffers a loss because of another person's noncompliance with the requirements of this Act shall be entitled to recover for their loss in the amount of the loss, and attorney fees and costs incurred in connection with recovery for the loss suffered.
- (5) When the Registrar reasonably determines that a person may be carrying on business in noncompliance with this Act, the Registrar shall send a notice to such person requiring them to cease and desist from carrying on business until such time as the person is in compliance with this Act. If the noncompliance with this Act continues for more than five (5) days after receipt of the notice from the Registrar, the person is liable hereunder –
  - (a) for a first act of noncompliance to a fine not exceeding \$20 per day the noncompliance continues; or
  - (b) for a second or subsequent act of noncompliance, to a fine of an amount not exceeding \$100 per day that the noncompliance continues and, upon conviction, to a term of imprisonment for a period not exceeding 1 month.
- (6) A person commits a separate offence if their noncompliance with this Act was intentionally committed to deceive or defraud the public in any manner and shall be liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 1 year, or both.
- (7) Where a person guilty of an offence against this Act is–
  - (a) a corporation; or
  - (b) a person who purported to act for or on behalf of a corporation,each director or other officer of the corporation who was knowingly a party to the offence is also guilty of the offence.

## 10 Register to be kept

- (1) The business names register may be kept in such manner as the Registrar thinks fit including, either wholly or partly, by means of a device or facility –
  - (a) that records or stores information electronically or by other means; and
  - (b) that permits the information so recorded or stored to be readily inspected or reproduced in usable form.
- (2) Documents may be submitted to the Registrar in any media permitted by the Registrar, including electronic media.

- (3) On receipt of a document for registration under this Act, the Registrar shall -
  - (a) subject to subsection (4), register the document in the register; and
  - (b) give written advice of the registration to the person from whom the document was received.
- (4) If a document received by the Registrar for registration under this Act -
  - (a) is not in the prescribed form, if any;
  - (b) does not comply with this Act or regulations made under this Act;
  - (c) is not printed or typewritten;
  - (d) where the register is kept wholly or partly by means of an electronic device or facility, is not in a form that enables particulars to be entered directly by electronic or other means in the device or facility;
  - (e) has not been properly completed; or
  - (f) contains material that is not clearly legible -the Registrar may refuse to register the document, and in that event, shall request either -
  - (i) that the document be appropriately amended or completed and submitted for registration again; or
  - (ii) that a fresh document be submitted in its place.
- (5) For the purposes of this Act, a document is registered when the document itself or its particulars are entered into the registry.
- (6) Neither registration nor refusal of registration of a document by the Registrar affects, or creates a presumption as to the validity or invalidity of the document or the correctness or otherwise of the information contained therein.
- (7) The Registrar may, on evidence which to the Registrar appears sufficient, correct an error in an entry in the register or in a certificate of business name registration.
- (8) When correcting an error under this section, the Registrar shall not eliminate or render illegible the original words, and shall indicate in the register the date upon which the correction was made.
- (9) An entry or certificate corrected under this section has the same validity and effect as though the error had not been made.
- (10) The Registrar may accept and register a statement lodged to correct an error in, or to supply a particular omitted from, a statement previously lodged and registered and, in that event, the statement previously lodged and that lodged under this section shall be read as one and shall both be incorporated with and form part of the register.

**11 Office of the Registrar**

- (1) The chief executive officer of the Ministry shall be the Registrar responsible for the issuing of business name certificates under this Act.
- (2) The chief executive officer may delegate, in writing, any of his powers under this Act to one or more officers in the Ministry.

**12 Notices from the Registrar**

- (1) A notice that the Registrar is required or permitted by this Act to give shall be given in writing and in a manner that the Registrar considers appropriate in the circumstances.
- (2) Without limiting subsection (1), the Registrar may give notice in writing to any person by-
  - (a) having it delivered to that person;
  - (b) posting it, or delivering it by courier, to that person at that person's last known address;
  - (c) sending it by facsimile machine to a telephone number used by that person for transmission of documents by facsimile;
  - (d) sending it to an email address if such an email address has been provided to the Registrar by a registrant; or
  - (e) having it published in a newspaper or other publication in circulation in the area where that person lives or is believed to live.
- (3) A document that -
  - (a) appears to be a copy of a notice given by the Registrar; and
  - (b) is certified by the Registrar, or by a person authorised by the Registrar, as having been derived from a device or facility that records or stores information electronically or by other means,shall be admissible in legal proceedings as a copy of the notice.

**13 Cessation of business**

- (1) If any registrant ceases to carry on business it shall be the duty of the registrant to deliver to the Registrar a notice of cessation of business in the prescribed form within one month from the date of cessation of carrying on business.
- (2) If the registrant is an individual and if such individual is deceased, it shall be the duty of the personal representative to deliver to the Registrar a notice of cessation within one month from the date of cessation of carrying on business.
- (3) The Registrar may on reasonable grounds being shown extend the time to deliver a notice of cessation of business as the Registrar thinks fit.

- (4) On receipt of the notice under subsection (3), the Registrar shall remove the business name from the register.
- (5) If any person whose duty it is to give such notice fails to do so within such time or any extension thereof, such person shall, in addition to any other fees payable to the Registrar, be charged a late fee as may be prescribed in the regulations.

#### **14 Removal from register by Registrar action**

- (1) Where the Registrar has reasonable cause to believe that any registrant under this Act is not carrying on business the Registrar may send to the registrant a notice that, unless an answer is received to such notice within 10 working days from the date thereof, the business name shall be removed from the register.
- (2) If having sent notice under subsection (1) the Registrar either receives an answer from the registrant to the effect that the firm or individual is not carrying on business or does not within one 10 working days after sending the notice receive an answer, the Registrar may remove the business name from the register.

#### **15 Duration and renewal of registration**

- (1) Subject to this Act, the certificate of business name registration remains in force for a period of one year, but the registration may from time to time be renewed by lodging with the Registrar, at any time within the period of one month before the expiry of the registration, a statement of renewal in the prescribed form signed by an authorised person and accompanied by the prescribed fee.
- (2) Before the expiration of the certificate of business name, but not earlier than two months before the expiration, the Registrar may deliver to the registrant a notice of expiration containing the date on which the registration is due to expire.
- (3) The failure by the Registrar to deliver a notice of expiration shall not relieve the registrant from the duty to file a statement of renewal.
- (4) If a statement of renewal is submitted after its due date, then in addition to the regular filing fee, the statement shall be accompanied by an additional late filing fee as prescribed in the regulations. If a statement has not been filed within two months of its due date, then the business name shall be cancelled by the Registrar.
- (5) If after cancellation of a business name under this section a registrant may file an application for reinstatement of business name notice and pay the prescribed filing fee together with all additional late fees and penalties as prescribed in the regulations, then the Registrar shall reinstate the business name. A business name reinstated pursuant to this section shall be deemed to

have remained valid for any period in which it was cancelled for the failure to file the statement of renewal in a timely manner. In no event shall an application for reinstatement be permitted where the statement of renewal has not been filed within two months of the date it was due.

- (6) Where the certificate of business name registration has expired, the Registrar shall not accept for registration from any person or persons, other than the registrant, a company or business name that is identical with that cancelled business name, or that in the opinion of the Registrar so nearly resembles it as to be calculated to deceive, until the expiration of two months after the expiry of the certificate of business name registration.

## **16 Public inspection of documents registered**

- (1) Any person may inspect the documents filed with the Registrar on payment of such fees as may be prescribed for each inspection and any person may require a certificate of the registration of any business name, or a copy of or extract from the 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.
- (2) The Registrar may make the register or any part thereof available to the public via electronic means.

## **17 Publication of true names**

- (1) Where a business name is registered under this Act, the registrant shall ensure that the business name so registered shall be clearly stated:
  - (a) in every written communication sent by, or on behalf of, the business; and
  - (b) in every document issued or signed by, or on behalf of, the business that evidences or creates a legal obligation of the registrant.
- (2) The business name shall at all times be displayed in a conspicuous position at every place at which business is carried on under that name.
- (3) A registrant commits an offence for noncompliance with this section unless such registrant proves that he took reasonable steps to ensure compliance and shall be liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding six months, or both.

## **18 Service of legal documents**

Service of writs, summonses, complaints and other legal documents and instruments on any registrant or registrants acting in such capacity under a business name registered under this Act shall be made in accordance with the applicable law governing service of legal documents on the particular type of registrant to be served.

## 19 Evidentiary matters

A document purporting to be—

- (a) a certificate of business name registration issued under this Act;
- (b) a copy of or extract from the register, or a copy of or extract from a document forming part of the register, issued under this Act;
- (c) a certificate issued under this Act; or
- (d) a combination of two or more of the certificates, copies or extracts referred to in paragraphs (a), (b) and (c),

is, in all courts and before all persons having authority to hear, receive and examine evidence, prima facie evidence of any matter contained or set out in the certificate, copy or extract.

## 20 Registrar's powers of inspection

- (1) The Registrar may, by written notice, require any person to furnish within a period of not less than ten days as specified in such notice, or within such further period as the Registrar (before the expiration of that period) allows, such information as appears to the Registrar to be reasonably necessary to enable the Registrar to ascertain whether or not a person—
  - (a) is carrying on business alone or in association with other persons under a business name that has not been registered as required under this Act; or
  - (b) has failed to lodge with the Registrar an amendment to an existing certificate of business name registration as required under this Act.
- (2) A person required under subsection (1) to furnish information to the Registrar who, within the period specified in the notice, or within such further period as the Registrar allows, fails to furnish such information as is within their power to furnish, or furnishes any information which to their knowledge is false or misleading, commits an offence and shall be liable upon conviction to a fine not exceeding \$100 for each day the noncompliance continues or imprisonment for a term not exceeding six months, or both.

## 21 Regulations

The Minister may, with the consent of Cabinet make regulations concerning any of the following matters but not limited to—

- (a) fees, late fees and penalties payable under this Act;
- (b) forms to be used under this Act;
- (c) duties to be performed by the Registrar under this Act; and

- (d) generally the conduct and regulation of registration under this Act and any matters incidental thereto, including the maintenance of the registry in any media deemed appropriate by the Registrar.

## **22 Repeal, savings and transitional**

- (1) The Registration of Business Names Act 2002 is hereby repealed.
- (2) Every existing registrant shall apply for re-registration under this Act no later than 3 months from the date of the commencement of this Act.
- (3) Any existing business name that is not re-registered under this Act pursuant to subsection (2) will be removed from the register.
- (4) The re-registration of an existing business name under this section does not—
  - (a) create a new legal entity;
  - (b) affect the property, rights, liabilities or obligations of the registrant; or
  - (c) affect proceedings by or against the registrant.
- (5) An application for re-registration of an existing business name shall be made to the Registrar in the prescribed form.
- (6) If the business name does not appear on the existing register, the registrant shall provide evidence to the Registrar that the company is in existence in order to re-register. A certificate of business name registration previously issued by the Registrar shall serve as conclusive evidence of the existence of the business name to be re-registered.
- (7) As soon as the Registrar receives an application for re-registration the Registrar shall:
  - (a) if the business name is not entered on the register, enter it on the register; and
  - (b) issue a certificate of re-registration of business name in the prescribed form.

Passed by the Legislative Assembly this                      day of                      2013.



## **EXPLANATORY NOTES**

(These notes do not form part of the Bill and are only intended to explain its purpose)

The proposed new provisions of the Bill make it compliant with advancing technology and to make compliance with the Bill more efficient for the private sector.

### ***Registration Fees***

The registration fees are lowered from their current rates. The final rates will be determined at a later date.

### ***Electronic Filing***

The Bill allows for the online filing of business names registrations. Therefore the relevant provisions are similar to that found in the Companies Act.

### ***Name Restrictions and Protection***

The current Act does not provide any guidance on name restrictions (what words may not appear in a business name) nor on whether filing a business name prevents others from using the same name. Therefore the Bill includes provisions to such effect.

### ***Service of Notices by the Registrar***

There are occasions where the Registrar may have need to send a notice to the registrant under the Bill. The typical delivery method is by mail. However, anticipating a future where filings are completed on-line and registrants are required to provide email addresses, notices may be sent to those email addresses.

**Attorney General**