

CHAPTER 63

THE BUSINESS NAMES ACT

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BUSINESS NAMES

AN ACT to provide for the names under which persons may carry on business in Antigua and Barbuda and for the registration of firms and persons carrying on business under business names and for other purposes connected therewith.

(3rd August, 1989.)

16/1989.

1. This Act may be cited as the Business Names Act. **Short title.**

2. (1) In this Act— **Interpretation.**

"business" includes a profession;

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

"christian name" includes any forename;

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

"foreign firm" means any firm, individual, or corporation whose principal place of business is situate outside Antigua and Barbuda;

"individual" means a natural person and does not include a corporation;

"initials" includes any recognised abbreviation of a christian name;

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

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

Firms and persons to be registered.

3. (1) The following shall be registered in the manner directed by this Act:

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

(c) every individual or firm having a place of business in Antigua and Barbuda, 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.

(2) 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.

(3) 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

(4) 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.

(5) 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 sale thereof.

4. (1) Where a firm, individual or company having a place of business in Antigua and Barbuda—

Registration by nominee. etc.

(a) carries on the business wholly or mainly as a nominee or trustee of or for another person or another company; or

(b) acts as general agent for any foreign firm,

such individual or corporation shall be registered in the 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 First Schedule.

First Schedule.

(2) Where the business referred to in subsection (1) is carried on by a trustee in bankruptcy or a receiver or manager appointed by the court, registration under this section shall not be necessary.

5. (1) Every firm or person required under this Act to be registered shall furnish by sending by post or delivering to the Registrar a statement in writing in the prescribed form containing the following particulars—

Manner and particulars of registration.

(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 christian name and surname, any former 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 each of the individuals who are partners and the corporate name and registered or principal office of every corporation which is a partner;

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

(g) if the business is commenced after the passing of this Act, the date of the commencement of the business.

(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 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; but

(a) no such statutory declaration stating that any person other than the declarant is a partner or omitting to state that any person other than as aforesaid 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

(b) the Registrar 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. (1) The particulars required to be furnished under this Act shall be furnished within fourteen days after the firm or person commences business.

(2) 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.

9. Where any firm or person is by this Act required to furnish a statement of particulars or of any change in particulars, without reasonable excuse, makes 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 liable on summary conviction to a fine of one hundred dollars 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.

Penalty for default in registration.

10. (1) Where any firm or person by this Act is required to furnish a statement of particulars or of any change in particulars makes 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 proceedings either in the business name or otherwise.

Disability of persons default.

(2) Notwithstanding subsection (1), the defaulter may apply to a Judge for relief against the disability imposed by this section and the Judge, 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 conditions of the costs of the application being paid by the defaulter, unless the Judge otherwise orders, and on such other conditions (if any) as the Judge may impose, but such relief shall not be granted except on such service and such publication of notice of the application as the Judge may order, nor shall relief be given in respect of any contract if any party to the contract proves to the satisfaction of the Judge that, if this Act had been complied with, he would not have entered into the contract.

(3) Nothing herein contained shall prejudice rights of any other parties as against the defaulter in respect of such contract.

(4) Where 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 counterclaim, set-off or otherwise, such rights as he may have against the party in respect of such contract.

(5) Without prejudice to the power of a Judge to grant relief under this section, where any proceedings to enforce any contract is commenced by a defaulter in any magistrate's court such court may, as respects that contract, grant such relief as aforesaid.

Penalty for false statements.

11. Where 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, on summary conviction, be liable to imprisonment for three months or to a fine of one thousand dollars, or to both such imprisonment and fine.

Duty to furnish particulars to 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 such person or the firm of which such person is a 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.

(2) Any such person when so required who fails to supply such particulars as it is in his power to give or furnishes particulars which are false in any material particular shall on summary conviction be liable to a fine of one thousand dollars and to imprisonment for six months.

(3) Where 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.

13. 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 individual, and if not kept so exhibited, every partner in the firm or the person, as the case may be, shall be liable on summary conviction to a fine of one thousand dollars.

Registrar to file statement and issue certificate of registration.

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

Index to be kept.

15. (1) Where 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 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 firm or individual has ceased to carry on business.

Removal of names from register.

(2) Any person whose duty it is to give such notice who fails to do so within such time as aforesaid shall be liable on summary conviction to a fine of one thousand dollars.

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

(4) 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.

(5) Where 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.

**Misleading
business names.**

16. (1) Where any business name under which the business of a firm or individual is carried on contains any word which, in the opinion of the Registrar is calculated to lead to the belief that the business is under the ownership or control of Antigua and Barbuda citizens and the Registrar is satisfied that the nationality of the person 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.

(2) Any person aggrieved by a decision of the Registrar under this section may appeal to a Judge whose decision shall be final.

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

**Inspection of
statements
registered.**

17. (1) Any person may inspect the documents filed by the Registrar on payment of such fees as may be prescribed and any person may require a certificate of the registration of any firm or person or a copy extract from any registered statement to be certified by the Registrar or Deputy Registrar.

(2) A certificate of registration, or a copy or extract from any statement registered under this Act, duly certified to be a true copy or extract under the hand of the Registrar or the Deputy Registrar (whom it shall be necessary to prove to be the Registrar or Deputy Registrar) shall, in all legal proceedings, civil or criminal be received in evidence.

**Power to make
rules.**

18. The Minister may make rules—

(a) prescribing the forms to be used under this Act;

(b) providing generally for the conduct and regulation of registration under this Act and for any matters incidental thereto.

19. (1) There shall be payable to the Registrar in respect of the matters set out in the Second Schedule the fees specified therein in relation to those matters. **Fees. Second Schedule.**

(2) All fees received under subsection (1) shall be paid by the Registrar into the Consolidated Fund.

(3) The Minister responsible for Finance may at any time by order amend the Second Schedule by increasing or reducing any fees specified in the Schedule.

(4) An order made under subsection (3) shall be subject to negative resolution of the House.

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 part of Antigua and Barbuda have mentioned in legible characters— **Publication of true names, etc.**

(a) in the case of an individual, his present christian names or the initials thereof and present surname, former christian name or surname, his nationality if he is not an Antigua and Barbuda citizen, and if his nationality is not his nationality of origin; and

(b) in the case of a firm, the present christian names or the initials thereof and present surnames, any former christian names and surnames, and the nationality if he is not an Antigua and Barbuda citizen, 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.

(2) Where default is made in compliance with this section the individual or, as the case may be, every member of the firm shall be liable on summary conviction for each offence to a fine of five hundred dollars; but no proceedings shall be instituted under this section except by or with the consent of the Director of Public Prosecutions.

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 shall be guilty of a like offence and liable to a like penalty.

Expenses.

22. All expenses incurred in carrying out the provisions of this Act shall be paid out of moneys to be provided by Parliament.

FIRST SCHEDULE

(Section 4)

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 christian name 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, 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 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.

SECOND SCHEDULE

(Section 19)

Fees	\$
1. By any firm or person furnishing a statement of particulars required by section 5 which fee shall cover the issue of one certificate of registration.....	100.00
2. By any firm or person furnishing and registering any particulars required by the First Schedule when such particulars are not furnished with the statement of particulars required by section 5, which fee shall cover the issue of one certificate of registration.....	100.00
3. By any firm or person furnishing a statement of any change within the meaning of section 8, which fee shall cover the issue of one certificate of the registration of such statement.....	50.00
4. By any firm or person sending or delivering a notice under section 15 that the firm or person has ceased to carry on business.....	50.00
5. By any person inspecting under section 17 the documents filed by the Registrar, for each inspection.	10.00
6. By any person requiring under section 17—	
(a) a certificate of registration of any firm or person	50.00
(b) a copy of or extract from any registered statement certified by the Registrar, per page	2.00
7. By any person applying or appealing to a Judge under section 5, 10 or 16, as the case may be	25.00