

REGISTRATION OF BUSINESS NAMES (AMENDMENT) BILL, 2021

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A Bill for

AN ACT of Parliament to amend the Registration of Business Names Act, and for connected purposes.

ENACTED by the Parliament of Kenya as follows—

- Short title **1.** This Act may be cited as the Registration of Business Names (Amendment) Act, 2021.
- Amendment of section 2 of the principal Act. **2.** The Registration of Business Names Act, Chapter 449, in this Act referred to as “the principal Act” is amended in section 2 by—
- No. 17 of 2015. (a) inserting the following new definitions in their proper alphabetical order—
- “address” has the same meaning as assigned under the Companies Act;
- “alternate address” means an address used by a proprietor of a business that is not his primary address;
- No. 15 of 2015. “board” means the Board of Directors established under section 5 of the Business Registration Service Act;
- “certificate” means the certificate of registration issued under section 14;
- “proprietor” means an individual or corporation who has registered a business name;
- (b) deleting the words "twenty-one" in the definition of the term “minor” and substituting therefore the words "eighteen";
- (c) deleting the definition of the term “foreign concern”; and
- (d) deleting the definition of the term “Registrar” and substituting therefore the following new definition;
- “Registrar” means the Registrar appointed under the Companies Act;
- (e) deleting the words “if a British subject” under subsection (2).
- (f) deleting subsection (3).
- Amendment of section 3 of the principal Act. **3.** Section 3 of the principal Act is deleted and substituted therefore the following new section—

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- Act
- Appointment of Deputy and Assistants Registrar.
3. (1) The Deputy Registrar and every Assistant Registrar appointed pursuant to section 831(3) of the Companies Act shall for purposes of this Act, be the Deputy and Assistant Registrar of Business Name.
- (2) The Registrar shall in the prescribed manner, keep and maintain a register in which shall be entered such particulars as are required under this Act.
- Amendment of section 4 of the principal Act.
4. Section 4 of the principal Act is — amended by:
- (a) deleting the words “firm individuals and corporations” and substituting therefore the word “proprietor”
 - (b) deleting the word “administrative receiver” immediately after the term “administrative”
5. Section 5 of the principal Act is deleted.
- Amendment of section 6 of the principal Act.
6. Section 6 of the principal Act is deleted and substituted therefore the following new section—
- Manner and particulars of registration.
7. (1) Subject to section 17, every proprietor required under this Act to be registered shall submit in the prescribed form an application containing—
- (a) the business name;
 - (b) a concise description of the true nature of the business to be carried on under the name by the applicant;
 - (c) the address of each place where the business is to be carried on showing, if the business is to be carried on at more than one place, an indication of the principal place of business;
 - (d) the given names and the usual place of residence of each applicant who is an individual, and the corporate name and the place of the incorporation office of each applicant that is a corporation;
 - (e) the full address of every other place of business;
 - (f) the alternate address of the proprietor;
 - (g) the proposed date of the commencement of the business; and
 - (h) such other information concerning the Business Name as may be required by the Registrar.
- (2) Where a business is carried on under two or more business names, each of those business names shall be

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stated.

(3) On receipt of a statement of particulars, the Registrar shall, subject to section 17, enter the firm, individual or corporation in the register.

New insertion.

8. The principal Act is amended by inserting the following new section immediately after section 6—

Electronic lodgement documents. of

6A. (1) The Registrar may require any document to be lodged or issued electronically under this Act.

(2) If a document is required to be lodged with the Registrar electronically, the Registrar may allow the document to be lodged by an agent of the person who is required to lodge it, subject to such conditions (if any) as the Registrar may impose from time to time.

(3) A copy of a document lodged electronically with the Registrar under this Act, purporting to be certified by the Registrar as being a true copy of the original document, is, in the absence of evidence to the contrary, admissible in all legal proceedings as proof of the original document.

Amendment of section 8 of the principal Act.

9. Section 8 of the principal Act is deleted and substituted therefore the following new section—

Time for registration.

8. (1) A person may register a Business Name under this Act after commencement of a business.

(2) Despite subsection (1), the person responsible for a business shall, not later than thirty days from the date of the commencement of the business, apply to the Registrar for the registration of the business.

Amendment of section 9 of the principal Act.

10. Section 9 of the principal Act is deleted and substituted therefore the following new section—

Change of particulars.

9. (1) Whenever a change is made or occurs in any of the particulars registered in respect of any proprietor of a business or of the business, that proprietor or, in the case of the particulars of the business, the person responsible for the business shall, within thirty days after

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the change is made or occurs, submit to the Registrar in the prescribed form the particulars of the change.

(2) Upon receipt of the particulars of the change and upon payment of the prescribed fee, the Registrar shall make the necessary amendments to the register.

(3) The change of particulars referred to in subsection, may include a change in the—

- (a) general nature of a business;
- (b) addition or removal of a proprietor;
- (c) name of a business; or
- (d) address of the proprietor or of the principal place of the business or any other place where the business is carried out.

(4) The Registrar may require any individual or authorized representative, to furnish to him in writing such particulars as appear to the Registrar to be necessary to ascertain whether or not such individual should be registered under this Act, or whether any alteration in the registration particulars should be made, and may require any such particulars to be verified by a statutory declaration.

(5) If any person upon being required so to do under subsection (4), fails to supply such particulars as it is in his power to give, or furnishes particulars which are false in any material particular or which he has no reason to believe are true, commits an offense.

(6) Upon approval of the application for the change of particulars of a business name, the Registrar shall issue—

- (a) a certificate of change of particulars; and
- (b) cancel the existing certificate of registration.

10.

10. If a proprietor required to furnish a statement of particulars for a notice of any change in particulars without reasonable excuse makes default in so doing in the manner and within the time specified by this Act, such proprietor in default

commits an offence and shall on conviction be liable to a fine not exceeding twenty thousand shillings or the Court shall order a statement of the required particulars or notice of the

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change in the particulars to be furnished to the Registrar within such time as may be specified in the order or to both.

Amendment of section 12 of the principal Act.

11. Section 12 of the principal Act is deleted and substituted therefore the following new section—

Penalty for false statements.

12. A person who—

(a) signs or submits to the Registrar a statement or particulars, made or purporting to be made for the purpose of this Act, that to his knowledge is false; or

(b) authorizes or permits the submission to the Registrar such a statement or particulars that to his knowledge is false,

commits an offence and shall on conviction be liable to a fine of one hundred thousand or to imprisonment for a term of three years, or to both.

12. Section 13 of the Principal Act is deleted.

13. The Principal Act is amended in Section 14 by –

(a) deleting subsection(2)

(b) deleting the words “and in the case of any person not of British nationality his nationality” and “and in the case of a minor, the fact of minority shall be shown” in subsection (3).

New insertions.

14. The principal Act is amended by inserting the following new sections immediately after section 14—

Effect of registration.

14A. (1) Every person whose business name has been entered in the register, shall, for as long as the name remains in the register, be entitled to adopt and use the registered business name.

(2) A certificate of registration or a certified copy of any entry in the register in respect of any business shall be prima facie evidence of the truth of the facts stated therein; but, subject to the provisions of this Act, the admission of such evidence shall not prevent any party to a proceeding from proving, that some person who is not registered as such is nevertheless an associate of a business

Renewal of Registration.

14B. (1) Registration of a business name remains in

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force for a period of three years, 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 or after the expiry of the registration, a statement in the prescribed form signed by the person or an authorized agent, and upon payment the prescribed fee.

(2) Where the registration of a business name has expired, the Registrar shall not accept for registration from any person, other than the person in relation to whom the business name was registered.

(3) If the Registrar refuses to renew any registration under subsection (2), the Registrar shall notify the applicant in writing of the decision.

(4) Upon the expiry of three years from the date of registration or last renewal of a Business Name, the—

- (a) Business Name shall be deemed to be deregistered;
- (b) last certificate of registration shall be cancelled; and
- (c) Registrar shall cancel that Business Name from the register.

(5) Any person aggrieved by a decision of the Registrar under this section may appeal to a court of competent jurisdiction.

Amendment
of section 15
of the
principal
Act.

15. Section 15 of the principal Act is amended in subsection (3) by deleting the words "twelve weeks" appearing between the word "within" and "from" and substituting therefore the words "three months".

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New insertions.

16. The principal Act is amended by inserting the following new section immediately after section 15—

Restoration of business to the register.

15A. (1) A person whose registration has been cancelled pursuant to section 15 may, in the prescribed manner, make an application to the Registrar to restore to the register a business name that has been struck off, on the ground that the—

- (a) applicant was carrying on business or in operation at the time of striking off of the business name; and
- (b) the application is accompanied with registration documents relating to the business.

(2) An application under subsection (1), may be made—

- (a) whether or not the business has in consequence been dissolved;
- (b) only by a former partner of the business; and
- (c) not be made after the expiry of six years from the date on which the business was dissolved.

Amendment of section 17 of the principal Act.

17. Section 17 of the principal Act is deleted and substituted therefore the following new sections:

Prohibited names

17. (1) The Registrar may not register a business name by a particular name if—

- (a) the use of the name would constitute an offence;
- (b) the name consists of abbreviations or initials not authorised by or under this Act;
or
- (c) the Registrar is, after taking into account the relevant criteria, of the opinion that the name is offensive or undesirable.

(2) For the purposes of subsection (1)(c), the relevant criteria are the criteria (if any) prescribed by the regulations.

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Name suggesting connection with the State or local or public authority

17A. The approval of the Registrar is required for a company to be registered under this Act by a name that would be likely to give the impression that the company is connected with—

- (a) State organ;
- (b) a county government; or
- (c) any public authority prescribed by the regulations.

Applicant to seek views of specified public officer or body if regulations so require

17B. (1). The Registrar shall require an applicant for a name reservation, to seek the authority of a state organ or any public entity for the use of a specified name, if the use of the proposed name is likely to give the impression that the name is connected with the state organ or public entity.

(2) If an applicant for the use of a specified name, or a name of a specified description, is required to seek the views of a specified public officer or public body, that officer or body may, in addition to giving those views, veto the use of the name, but only on reasonable grounds and on providing the applicant with a written statement setting out those grounds.

(3) In subsection (1), "specified" means specified in the regulations

Regulations may permit or prohibit the use of certain characters, signs or symbols

17C. (1). The regulations may—

- (a) provide for the letters or other characters, signs or symbols, including accents and other diacritical marks, and punctuation that may be used in the name of a business name to

be registered under this Act;
and

- (b) specify a standard style or format for the name of a business for the purposes of registration.

(2) The regulations may prohibit the use of specified characters, signs or symbols when appearing in specified positions, in particular, at the beginning of a name.

(3) The Registrar may not register a company by a name that consists of or includes anything that is not permitted in accordance with the regulations.

Name not to be the same as another in the index

17D.

The Registrar may refuse to register a business name under a name, or allow a business name to change its name to one that in the opinion of the Registrar is –

(a) it is the same as a name appearing in the Registrar's Index of Company Names, Business Names, Limited Liability Partnerships or Partnerships;

(b) it has a close phonetic resemblance to the name of company, business name, limited liability partnership or partnership that is already registered;

(c) it differs from the name of another business name, company, limited liability partnership or partnership that is already registered only by the addition of the name of a place, locality or region within Kenya;

(d) it is identical to, or closely resembles, that of a name that has been reserved by the Registrar for use in connection with a proposed company, business name, limited liability partnership or partnership;

(e) it is identical to, or closely resembles, the name of a company or limited liability partnership that has been dissolved, or has been struck off the register of companies or register of limited liability partnerships, or the entry of a business in the register of business names or partnerships kept under the Registration of Business Names Act has been cancelled;

(f) it is the same as a name of a body corporate or established under a written law;

(g) the Registrar believes on reasonable grounds that its use would involve the commission of a criminal offence; or

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(h) the Registrar believes on reasonable grounds that it is offensive or undesirable or contrary to public interest.

Power to direct 17E.

change of name in (1) The Registrar may direct a business name to change its name
case of similarity if it has been registered by a name that is the same as or, in the
opinion of the Registrar, too similar to—

(a) a name appearing at the time of the registration in the Registrar's index of company names; or

(b) a name that should have appeared in that index at that time.

(2) A direction under subsection (1) may be give as the Registrar may specify in writing in a particular case.

(3) In giving a direction under subsection (1), the Registrar shall specify the period within which the business name is required to comply with the direction.

(4) If the business name does not comply with the direction issued under subsection (1) within fourteen days, the Registrar shall cancel the entry in the register relating to such proprietor.

Proprietor may apply
to Court to quash
direction under
Section

(1) A proprietor that is dissatisfied with a direction given to it under section 17E may apply to the Court to quash the direction.

(2) An application under subsection (1) is ineffective if not made within twenty-one days after the date on which the direction is notified to the company.

(3) On hearing an application made under subsection (1), the Court may either quash the direction or confirm it.

(4) If the direction is confirmed, the Court shall specify the period within which the proprietor is required to comply with the direction.

18.

Amendment
of section 23
of the
principal
Act.

19. Section 23 of the principal Act is amended by—

(a) deleting sub section (2); and

(b) deleting subsection (3).

Amendment
of section 25
of the
principal

20. The principal Act is amended by deleting section 25 and substituting therefore the following new section—

General penalty.

25. A person who fails to comply with any of the provisions

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Act.

of this Act, for which no penalty is prescribed, commits an offense and shall on conviction, be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

Amendment
of section 26
of the
principal
Act.

21. Section 26 of the principal Act is deleted.

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MEMORANDUM OF REASONS AND OBJECTS.