

# The Registration of Businesses Act, 1933

*Date of commencement: 21st July, 1933.*

*An Act to provide for the registration of businesses other than registered companies and certain other associations.*

## Part I

### General

*Short title.*

1. This Act may be cited as the Registration of Businesses Act, No. 42 of 1933.

*Interpretation.*

2. In this Act, unless inconsistent with the context —

“business” means any business carried on in Swaziland by one or more persons (whether in partnership or not) if a License is required therefor by the Trading Licenses Act, No. 27 of 1939 or any amendment thereof, but the term “business” shall not include a business carried on by —

- (a) a company, or foreign company, as defined by the Companies Act, No. 7 of 1912;
- (b) a company incorporated by letters patent, Royal Charter, or Act of Parliament of the United Kingdom; or
- (c) a society registered under the Co-operative Societies Act, No. 28 of 1964;

“business name” or “business style” shall mean the name or style under which any business is carried on in Swaziland;

“License” shall mean a License, under the Trading Licenses Act, No. 27 of 1939 to carry on a business;

“License officer” shall mean any public officer charged with the duty of issuing Licenses;

“Minister” means Minister for Enterprise and

Employment; “prescribed” shall mean prescribed by this Act or by regulation;

“registrar of companies” shall mean the officer carrying out the duties of such registrar under the Companies Act, No. 7 of 1912.

## Part II

### Conditions Precedent to Grant, Renewal, Or Transfer Of Trading Licenses To Firms

*Affidavit by applicant.*

3. (1) From and after the commencement of this Act every License holder and every person applying for the grant or renewal of a License in respect of a business shall make an affidavit or a solemn declaration in writing stating —
  - (a) the business name;
  - (b) the nature of the business carried or to be carried on, and in the case of a new License, the names of all persons (if any) from whom the business was acquired by the intending License holder;
  - (c) unless the business is a hawker’s or pedlar’s business, the full addresses of all the premises in

Swaziland in which the business is intended to be, or, in case of an application for renewal of a License, is being carried on;

- (d) the full name, the usual residence, and all the occupations, of every person intending to carry on, or in the case of an application for renewal of a License, actually carrying on, the business;
- (e) if in the case of a new License the intending License holder is a partnership, the date when the partnership came into existence.

(2) In the case of a partnership, it shall be sufficient compliance with this section if the affidavit or solemn declaration be made by one partner in Swaziland, or, if there be no partner in Swaziland, it shall be a sufficient compliance with this section if the affidavit or solemn declaration be made by a person producing to the License officer a power of attorney, authenticated as required by law, showing that such person is duly authorised to apply for the grant or renewal of the License on behalf of the partnership.

(3) No License shall be issued or renewed by a License officer in respect of any business until the provisions of this section have been complied with.

(4) Nothing in this section shall render it necessary to declare the names of an anonymous or a sleeping partner in the case of an anonymous partnership or partnership *en commandite*.

*Change in business.*

4. (1) Whenever there is a change in the style, constitution, personnel, or premises of a business registered under this Act, notice of the change shall, within fourteen days after such change takes place, be advertised on behalf of the business in three consecutive ordinary issues of the Gazette and once in each week for three consecutive weeks in a newspaper circulating in every region wherein the business premises were situate before the change, or, in the case of a hawker's or pedlar's business, wherein the business was being carried on before the change.

(2) Application in writing shall further be made on behalf of the business for endorsement on the License of the particulars of the change, and the License officer shall, if satisfied that the provisions of sub-section (1) have been complied with, and on production of the License, endorse the License accordingly, or issue a new License as the case may require, and make corresponding entries in his register.

*Transfer and sale.*

5. (1) Whenever any person desires to transfer his business, or to transfer or sell, with the view to the transfer or abandonment of any business, any stock in trade or other assets held or used for the purpose of such business, notice of the proposed transfer or sale shall be advertised by that person before the date on which the transfer or sale is to take effect in three consecutive ordinary issues of the Gazette, and once in each week for three consecutive weeks in a newspaper circulating in every region wherein the business premises are situate, or, in the case of a hawker's or pedlar's business, wherever the business is being carried on.

(2) The License officer shall, notwithstanding anything in the Trading Licenses Act, No. 27 of 1939 refuse to issue a new License or transfer an existing License in respect of the business unless he is satisfied that sub-section (1) has been complied with.

(3) Sub-sections (1) and (2) shall apply in respect of the devolution of a business by testamentary or intestate succession, save that the prescribed notice shall be advertised by the executor of the deceased License holder, or, if there be no executor by any *curator bonis* lawfully appointed to take charge of the estate of the deceased.

(4) No business which has been transferred shall continue to be carried on under a License in the name of the transferor.

### Part III

#### Registration of Business

##### *Register to be kept by License officer.*

6. (1) Every License officer shall, in the prescribed form, keep a register of every business in respect of which a License has been issued, renewed, or transferred in his office.
  - (2) The register shall, in addition to the prescribed particulars, contain all the particulars furnished on behalf of a business to the License officer under this Act.
  - (3) A certified copy of the register shall be transmitted by the License officer to the registrar of companies not later than the thirty-first day of January and thereafter at the end of each succeeding month, if any change in his register has taken place during such month.

##### *Register to be kept by registrar of companies.*

7. (1) The registrar of companies shall, in the prescribed form, keep a register of information furnished to him by License officers under section 6, and an alphabetical index of business names and of persons registered under this Act.
  - (2) Particulars of such information and such further information as may from time to time be prescribed, shall be published in the Gazette once every six months by the registrar of companies.

##### *Inspection of registers.*

8. (1) The registers kept under sections 6 and 7 may on written application be inspected during the ordinary office hours by any person on payment of a fee of ten cents.
  - (2) Copies of any such register or a portion thereof may also be made during the hours in which it is open for inspection on payment of a fee of ten cents for every hundred words or less copied.
  - (3) The registrar of companies shall, if required, furnish any person a certificate of registration of any business under this Act, or a certified copy of any portion of the register kept by him.
  - (4) A fee of ten cents shall be payable for such certificate of registration and a fee of ten cents for every five hundred words or less copied shall be payable for every such certified copy.
  - (5) All fees payable under this section shall be paid by means of revenue stamps affixed to the document, or in the case of an application for inspection, to the form of application.
  - (6) The License officer or registrar receiving the fee shall duly deface the stamps in manner required by law.
  - (7) Every certified copy issued by the registrar of companies under sub-section (3) shall, if it is duly stamped and purports to be signed and certified by the registrar of companies be *prima facie* evidence in all courts and places in Swaziland of the facts stated on such copy.
  - (8) Every certificate of registration, so duly stamped, signed and certified, shall be conclusive evidence in all courts and places that all requirements of this Act in respect of registration have been complied with.

### Part IV

#### Special Provisions as To Business Partnerships

##### *Legal proceedings.*

9. (1) Legal proceedings may be instituted by or against the partnership in the registered business style of the partnership without setting forth the names of the individual partners in the notice of motion, summons, declaration, plea or other like document in the proceedings.
  - (2) Legal proceedings may be instituted against a partnership in a court having jurisdiction in any district wherein the registered business premises of the partnership are situate or wherein any registered partner resides.

(3) If a partner whose name forms part of the business style of the partnership retires from the partnership or dies, the remaining partners shall not carry on a partnership under the same style for longer than six weeks after the date of the retirement or death of such partner except with the consent of the retiring partner, or in the case of his death, with the consent of his executor, or failing an executor, a *curator bonis* lawfully appointed to take charge of the deceased's estate.

*Dissolution of partnership.*

10. (1) If a partnership is dissolved or the members thereof cease to carry on business as a partnership, every such member shall transmit to the License officer within fourteen days after the dissolution or cessation (as the case may be) written notice thereof.

(2) Whenever a License officer has received a notice transmitted under sub-section (1) that a partnership has been dissolved or has ceased to carry on business as that partnership, he shall make entries upon his register accordingly.

*Sequestration of partner or partnership.*

11. (1) If the separate estate of a partner or the joint estate of a partnership be sequestered by order of the court or surrendered under the law for the time being relating to insolvency, the License officer and the registrar of companies shall make entries accordingly in their respective registers and shall further make entries of the fact of any order setting aside a sequestration or of an order of rehabilitation.

(2) The registrar of the court which made any such order or accepted the surrender shall, as soon as may be there after, furnish to the License officer and to the registrar of companies such information as will enable them to carry out the provisions of this section.

Part V

Miscellaneous

*Certain agreement void.*

12. (1) Every agreement entered into after the commencement of this Act for the alienation of a business name from the business to which that name belongs shall be void to all intents and purposes.

(2) Every agreement to transfer or sell any business or to transfer or sell, with a view to transfer or abandonment of any business, any stock in trade or other assets held or used for the purpose of such business or to reconstitute any business shall be void as against creditors of the business unless all the provisions of this Act applicable to the business have been complied with.

*Name of business.*

13. (1) A business may not be registered by a name identical with that by which a business in existence is already registered or so nearly resembling that name as to be calculated to deceive, except where the business in existence is in the course of being dissolved in the prescribed manner:

Provided that nothing herein contained shall be construed to prevent a business from being registered by the name it actually bears at the date of the commencement of this Act.

(2) A business may not be registered by a name calculated to cause annoyance or offence to any person by a name suggestive of blasphemy or indecency.

(3) A business may not, without the consent of the Minister, be registered by a name which includes the words "Royal", "Crown", "Empire", "Government", or any other word which imports or suggests that it enjoys the patronage of

Her Britannic Majesty or of the king of Swaziland; but nothing in this sub-section shall be construed as preventing the registration of a business name which was held at the commencement of this Act.

(4) If a business, through inadvertence or otherwise, is registered in conflict with the provisions of this section it shall change its name, and, until it has changed its name, the right to trade under a License shall be suspended, and, during the period of suspension, the business shall be deemed to be unlicensed.

(5) Nothing in this section shall be construed as preventing the registration of a business name which consists only of one of the Christian names and the surname of the License holder or of any partner of the License holder who is liable *in solidum* for the partnership debts.

*Verification of statement.*

14. (1) Every License officer may require any statement material to the purposes of this Act, if not already verified by the affidavit or solemn declaration of a particular person, to be so verified by that person.

(2) No stamp duty shall be chargeable upon any affidavit or solemn declaration specifically required by this Act or any regulation, notwithstanding anything contained in the Stamp Duties Act, No. 37 of 1970.

(3) Any person who makes a false statement in any affidavit or solemn declaration made under this Act or a regulation or makes, signs, sends, or delivers any false statement under this Act, knowing the same to be false, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.

*Offences and penalties.*

15. Any person who makes default in complying with any requirement of this Act, or contravenes any provision of this Act, shall, if for the default or contravention no penalty is specially provided, be liable on conviction —

(a) in the case of a first offence to a fine not exceeding one hundred emalangeni or in default of payment thereof to imprisonment for a period not exceeding three months; and

(b) in the case of a second or subsequent offence to a fine not exceeding two hundred emalangeni or in default of payment thereof, to imprisonment for a period not exceeding six months, or to both such fine and imprisonment, or to such imprisonment without the option of a fine;

and, in the case of a continuing offence, to a fine not exceeding ten emalangeni for every day during which the offence continues, or in default of payment thereof to imprisonment for a period not exceeding seven days for every ten emalangeni so ordered to be paid.

*Offences by partnership.*

16. (1) In the case of an offence against this Act by a partnership, the manager and each partner in Swaziland (other than such a partner as is described in section 3(4)) shall be liable to prosecution and to the penalties provided for the offence, unless he shall prove to the satisfaction of the court that the offence was committed without his knowledge, authority or permission.

(2) In the case of an offence against this Act in respect of any business, if every proprietor of the business is outside Swaziland, the manager or agent in Swaziland for the business and every person who carries on the business therein shall be liable to prosecution and to the penalties provided for the offence.

*Regulations.*

17. (1) The Minister may make, alter, or rescind regulations, not inconsistent with this Act or any other law, prescribing

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(a) the fees (other than as are specially fixed by this Act) to be paid to License officers and the registrar of companies in respect of matters to be done by those officers under this Act;

(b) the forms of registers to be kept and of certificates of registration and other documents to be given or used for the purposes of this Act, the particulars to be entered in those registers and on those certificates and documents, and the particulars to be from time to time published;

(c) the duties of License officers and the registrar of companies under this Act; and generally for the better carrying out of the objects and purposes of this Act.

(2) Every such regulation or alteration or rescission thereof shall be of force and effect when published in the Gazette.