
ACTS

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Act 7

Registration of Business Names Act

2008

THE REGISTRATION OF BUSINESS NAMES ACT, 2008

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LAWS OF SOUTHERN SUDAN**THE REGISTRATION OF BUSINESS NAMES
ACT, 2008**

In accordance with the provisions of Article 59(2)(b) read together with Article 85(1) of the Interim Constitution of Southern Sudan, 2005, the Southern Sudan Legislative Assembly, with the assent of the President of the Government of Southern Sudan, hereby enact the following—

CHAPTER I**PRELIMINARY PROVISIONS****1. Title and Commencement.**

This Act may be cited as “The Registration of Business Names Act, 2008” and shall come into force on the date of its signature by the President. *Signed on 2nd July, 2008*

2. Repeal and Saving.

- (1) The Registration of Business Names Act, 1931 and any provisions of existing legislation in force in Southern Sudan which are governed by this Act, are hereby repealed or cease to operate in Southern Sudan provided that all registration, proceedings or Acts and regulations taken or made thereunder, except to the extent they are revoked, cancelled by or are otherwise inconsistent with the provisions of this Act, shall remain in force or effect, until they are repealed or amended in accordance with the provisions of this Act.

- (2) Where any offence, being an offence for the continuance of which a penalty was provided, was committed under the Registration of Business Names Act, 1931 or the new Sudan Companies Act, 2003, proceedings may be taken under this Act in respect of the continuance of the offence after the coming into force of this Act in the same manner as if the offence has been committed under the corresponding provisions of this Act.
- (3) The mention of particular matters in this section shall be without prejudice to the general application of the provisions of the Interpretation of Laws and General Provisions Act, 2006 which relate to the effect of repeals.

3. Purpose.

The purpose of this Act is to provide for the registration of firms, individuals and corporations carrying on business under business names in Southern Sudan, and for matters incidental thereto and connected therewith.

4. Authority and application.

- (1) This Act is issued in accordance with the provisions of Article 55 of the Interim Constitution of Southern Sudan, 2005.
- (2) This Act shall apply to every business operating in Southern Sudan and is required to register under section 8 of this Act, and save as is otherwise provided herein.
- (3) A reference in this Act, express or implied, to the date of registration of an existing business name, shall be construed as a reference to the date on which such business was registered.

5. Interpretations.

- (1) In this Act, unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them respectively—

“Business” means a commercial enterprise carried on for profit and it includes every trade, occupation or employment habitually engaged in for livelihood or gain;

“Business name” means the name or style under which any business is carried on, whether in partnership or otherwise, other than the true names of an individual;

“Court” means a court of competent jurisdiction;

“Firm” means an unincorporated body of two or more individuals, or one or more individuals and one or more corporations, or of two or more corporations, who or which have entered into partnership with one another with a view to carrying on business for profit;

“Foreign concern” means any individual, firm or corporation whose principal place of business is not situated within Southern Sudan;

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

“Initials” includes any recognized abbreviation of a forename;

“Minister” means the Minister of Legal Affairs and Constitutional Development;

“President” means the President of the Government of Southern Sudan;

“Register” means the register, which the registrar is required to keep under section 6;

“Registrar” means the Chief Registrar of Companies, Businesses, Non Governmental Organisations and Associations appointed under section 6.

- (2) Where any person is required by this Act to furnish particulars of his or her nationality, he or she shall also state his or her citizenship, if any.
- (3) Reference in this Act to a change of name does not include a change of name, which has taken place before the person whose name has been changed attained the age of eighteen years.

CHAPTER II

REGISTRAR, REGISTER AND OFFICE OF REGISTRAR

6. Registrar, Deputy Registrar and Assistant Registrars.

- (1) The Chief Registrar shall be the Registrar for the purposes of this Act.
- (2) The Minister may assign a Deputy Chief Registrar and such Assistant Registrars as may, from time to time, be required for the purposes of this Act.
- (3) The Deputy Chief Registrar and every Assistant Registrar may, subject to the directions of the Registrar, perform any act or discharge any duty which the Registrar may lawfully do or is required by this Act to do, and, for such purposes, shall have all the powers, privileges and authority of the Registrar under this Act.
- (4) The Registrar shall keep a register in the prescribed form in which shall be entered such particulars as are required by this Act and any regulations made under this Act to be entered in the Register.

7. Office of the Registrar.

- (1) The principal office of the Registrar shall be in Juba, but the Registrar may maintain other offices in such places as he or she may, with the approval of the Minister, determine, and may keep copies of the register in such offices.

- (2) Any person, with a vested interest, may inspect any such copy of the register on payment of the prescribed fee.
- (3) Statements, notices, applications and other documents shall be sent or delivered to the Registrar at his or her principal office or at the branch office.

CHAPTER III

REGISTRATION

8. Individuals, Firms and Corporation to be Registered.

- (1) Subject to the provision of this Act—
 - (a) every individual having a place of business in Southern Sudan and carrying on business under a business name which does not consist of his or her surname without any addition other than his or her the forenames or the initials of forenames;
 - (b) every firm having a place of business in Southern Sudan and carrying on business under a business name which does not consist of the surnames of all individuals who are partners and the corporate names of all corporations which are partners, without any addition other than the forenames of individual partners or the initials of such forenames;
 - (c) every individual or firm having a place of business in Southern Sudan, who, or a member of which, has before or after the commencement of this Act changed his or her name, otherwise than, in the case of a woman, in consequence of marriage; and
 - (d) every corporation having a place of business in Southern Sudan and carrying on business under a business name which does not consist of its corporate name without any addition,shall be registered in the manner required by this Act.

- (2) Notwithstanding the provision of subsection (1) above—
 - (a) 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;
 - (b) where the business is carried on by a trustee in bankruptcy or by a receiver or manager appointed by the court, registration shall not be necessary; and
 - (c) a purchase or acquisition of property by two or more persons as joint tenants or tenants in common shall not of itself be deemed to be a carrying on of a business, whether or not the owners share any profits from the sale thereof.

9. Registration by Nominee.

Where an individual, a firm or corporation having a place of business within Southern Sudan carries on business wholly or mainly as the nominee or trustee of or for another person or other persons, or another corporation, or acts as general agent for any foreign firm, the individual, firm or corporation shall be registered in the manner provided by this Act.

10. Reservation of Business Name.

- (1) Not less than seven days before commencing business under this Act, or commencing to use a business name, every individual, firm or corporation which after such commencement would be required under this Act to be registered shall, before posting or delivering to the registrar the statement of particulars as required by section 11 below or, in the case of a proposed change of business name, the notice of change required by section 14 herein, send by registered post or deliver to the Registrar the prescribed fee together with a written request, to be informed whether or not the business name to be proposed for registration as required by either of those sections may be registered.

- (2) Within seven days of receipt of the written request and prescribed fee under subsection (1) above, the Registrar shall send by post or deliver to the address of such individual, firm or corporation, or cause to be received by such individual, firm or corporation, a notification in writing stating whether or not the business name may be registered.
- (3) Where the Registrar has stated that the business name or change of business name may be registered, the individual, firm or corporation which made the request shall be entitled to registration in that business name at any time within twenty-eight days from the date of the decision of the Registrar.
- (4) During the period specified under subsection (3) above, no other firm, person or corporation shall be entitled to registration in, or of registration of change to that business name.

11. Manner and Particulars of Registration.

- (1) Subject to the provisions of section 22 (2) herein, every individual, firm or corporation required under this Act to be registered shall send by registered post or deliver to the Registrar a statement in writing in the prescribed form referred to in this Act as the statement of particulars, which shall contain the following particulars—
 - (a) the business name;
 - (b) the general nature of the business;
 - (c) the date of commencement;
 - (d) the physical address of the principal place of business and the postal address of the individual, firm or corporation;
 - (e) the physical address of any other place of business;

- (f) where the registration to be effected is that of a firm, the present forenames and surname, any former forenames or surname, the nationality, the age, the gender, the usual residence, and any other business occupation of each of the individuals who are partners, and the corporate name and registered and principal office of every corporation which is a partner;
 - (g) where the registration to be effected is that of an individual, the present forenames and surname, any former forenames and surname, the nationality, the age, the gender, the usual residence, and any other business occupation of such individual;
 - (h) where the registration to be effected is that of a corporation, its corporate name and registered and principal office; and
 - (i) 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 shall be stated.
- (3) Any individual, firm or corporation required to be registered under section 9 of this Act, shall furnish the following particulars, in addition to those specified in subsections (1) and (2) above—
- (a) where the individual, firm or corporation required to be registered carries on business as nominee or trustee, the present forenames and surname, any former forenames or surname, the nationality and, if that nationality is not the nationality of origin, the nationality of origin, and the usual residence or, as the case may be, the corporate name, of every person or corporation on whose behalf the business is carried on;
 - (b) where the individual, firm or corporation required to be registered carries on business as general agent for any foreign concern, the business name and address of the concern as agent for whom the business is carried on;

- (c) where the business is carried on as agent for three or more foreign concerns, it shall be sufficient to state the fact that the business is so carried on, specifying the countries in which such foreign concerns carry on business; and
 - (d) where the commencement of the business or any part thereof requires prior written approval of a competent authority, a copy of such approval authorizing the commencement of the business.
- (4) On receipt of a statement of particulars, the registrar shall, subject to section 23, enter the individual, firm or corporation in the register.

12. Statement to be Signed by Persons Registering.

- (1) Every statement of particulars shall, in the case of an individual, be signed by the individual, and in the case of a corporation be signed by a director or the secretary of the corporation, and in the case of a firm by all the individuals who are partners, and by a director or the secretary of all corporations which are partners.
- (2) In the case of a firm, the statement of particulars may be signed by one individual who is a partner or a director or the secretary of a corporation which is a partner, if verified by a statutory declaration made by the signatory.
- (3) A 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 not be admitted as evidence for or against any other person in respect of his or her liability or non-liability as a partner.
- (4) The court may, on the 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.

13. Time for Registration.

- (1) The particulars required to be furnished under this Act, shall be furnished within twenty eight days after the individual, firm or corporation commences business or commences to use the business name, as the case may be.
- (2) Where an individual, firm or corporation changes the name of the business as a consequence of the death or retirement of one of the partners of a firm or of any person having changed his or her name or of any other reason, any firm or individual, not until then required to be registered under this Act, is required thereafter to be registered.
- (3) For the purposes of registration in pursuance of subsection (2) above, the statement of particulars shall be sent by registered post or delivered to the Registrar within twenty eight days after such happening.

14. Registration of Changes.

- (1) Subject to provisions of section 22(2) herein, whenever a change is made or occurs in any of the following particulars—
 - (a) the business name;
 - (b) the physical address of the principal or any other place of business;
 - (c) the nature of the business; or
 - (d) the names of the partners,

in respect of any individual, firm or corporation, such individual, firm or corporation shall, within twenty-eight days after such change, send by registered post or deliver to the Registrar a notice in writing in the prescribed form specifying the nature and date of the change signed, and where necessary verified, in like manner as a statement of particulars.

- (2) Notwithstanding the provisions of this section, the provisions of section 12 (2) of this Act, shall not apply in the case of a notice under this section relating to a firm.
- (3) On receipt of such notice, the Registrar shall, subject to the provisions section 22 herein, make such entries, amendments or deletions in the register as he or she may deem appropriate.

15. Penalty for Default in Registration.

Where a firm, individual or corporation required by this Act to furnish a statement of particulars or a notice of any change in particulars, makes default in so doing in the manner and within the time specified by this Act without reasonable excuse, every partner in the firm or the individual or corporation, as the case may be, so in default commits an offence, and shall upon conviction be liable to a fine not exceeding twenty five Sudanese Pounds for every day during which the default continues, and the court shall Act a statement of the required particulars or notice of the change in the particulars to be furnished to the Registrar within such time as may be specified in the Act.

16. Disability of Persons in Default.

- (1) Where any individual, firm or corporation required by this Act to furnish a statement of particulars or a notice of any change in the particulars specified in section 14 above, makes default in so doing, the rights of the 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 the statement of particulars or any change in particulars was required to be furnished may, upon application by an aggrieved contracting party, be declared unenforceable by the court.

- (2) The court may, subject to a finding 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, declare such contract enforceable, on condition of the costs of the application being paid by the defaulter, provided that the court may not make such declaration if any party to the contract proves to the satisfaction of the court that, if this Act had been complied with, he or she would not have entered into the contract.
- (3) Nothing in this section shall prejudice the rights of any other parties as against the defaulter to enforce the rights of that party in respect of such contract as aforesaid.
- (4) If any action or proceedings are commenced by any party against the defaulter to enforce the rights of that party in respect of such contract, nothing in this subsection shall preclude the defaulter from enforcing in that action or proceeding by way of counterclaim, set off or otherwise, such rights as he or she may have against that party in respect of the contract.

17. Penalty for False Statements.

If any statement, notice or application sent or delivered to the Registrar contains any matter which is false in any material particular to the knowledge of any person signing it, or which that person has no reason to believe is true, that person commits an offence.

18. Particulars to be Furnished to Registrar.

- (1) The Registrar may require any individual or, in the case of a corporation, any director or the secretary or other officer performing the duties of secretary to furnish to him or her, in writing, such particulars as appear to the Registrar to be necessary to ascertain whether or not such individual or any firm of which he or she is a partner or appears to be a

partner, or the corporation of which such person is a director or the secretary or other officer, should be registered under this Act, or whether any alteration in the registered particulars should be made, and may require any such particulars to be verified by a statutory declaration.

- (2) For the purposes of this section, the Registrar may require any person who is acting or purporting to act or appears to be acting on behalf of any such individual, firm or corporation referred to in subsection (1) above, whether under a power of attorney or otherwise, to furnish such particulars as are referred to in subsection (1) above.
- (3) Where a person upon being required so to do under subsection (1) or (2) above, fails to supply such particulars as it is in his or her power to give, or furnishes particulars which are false in any material particular or which he or she has no reason to believe are true, he or she commits an offence.

19. Certificate of Registration.

- (1) On the registration of any individual, firm or corporation under this Act, the Registrar shall issue a certificate in the prescribed form.
- (2) The Registrar shall assign a registration number to any individual, firm or corporation so registered.
- (3) On the registration of any change in the particulars registered in respect of any individual, firm or corporation, the Registrar shall issue a fresh certificate in the prescribed form.
- (4) Every certificate issued under this section shall show the full names or name of the partners or individual, and in the case of any person who has changed his or her name his or her former name or names.

- (5) A certificate issued under this section shall be sent by registered post or delivered to the individual, firm or corporation registering, who shall thereupon exhibit and thereafter maintain the certificate in a conspicuous position at the principal place of the business so registered.
- (6) Where a fresh certificate has been issued under sub-section (2), this subsection shall apply to such fresh certificate only and not to the certificate originally issued.
- (7) Subject to the provisions of subsection (4) above, where any certificate has been lost or destroyed or rendered illegible, a copy of such certificate certified by the registrar may be exhibited in place of the original.
- (8) Where an individual, firm or corporation registered under this Act has more than one place of business, the original certificate shall be exhibited and maintained as required by subsection (5) at the principal place of business and a copy of the certificate certified by the Registrar shall be exhibited and thereafter maintained in a conspicuous position in each of such other places of business.
- (9) Where an individual, firm or corporation fails to comply with any of the provisions of subsections (5) and (8), every partner in the firm, or such individual, or such corporation, as the case may be, commits an offence.
- (10) At the Registrar's office, the Registrar shall keep an index of all the firms and persons registered at the office under this Act.

20. Cancellation of Entries in Register.

- (1) Where an individual, firm or corporation 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 of the individual or if he

or she is dead of his or her personal representative, or of the directors and officers of the corporation, as the case may be, within three months after the business has ceased to operate, to send by registered post or deliver to the Registrar notice in the prescribed form that the firm or individual or corporation has ceased to carry on business.

- (2) Where the individual, firm or corporation is bankrupt or in liquidation, the notice in subsection (1) above shall be delivered by the receiver, trustee or liquidator, as the case may be.
- (3) On receipt of the notice referred to in subsection (1) above, the Registrar may cancel the entry in the register relating to such individual, firm or corporation.
- (4) Where the Registrar has reasonable cause to believe that any individual, firm or corporation registered under this Act is not carrying on business, he or she may send to the individual, firm or corporation by registered post and by publication in the media, a notice that unless a response is received to such notice within twelve weeks from the date thereof the entry in the register relating to such individual, firm or corporation shall be cancelled.
- (5) Where the Registrar receives a response from the individual, firm or corporation to the effect that the individual, firm or corporation is not carrying on business or does not within twelve weeks after the date of the notice receive a response, he or she may cancel the entry in the register relating to such individual, firm or corporation.
- (6) Where, in the case of a firm, individual or corporation registered under this Act, there occurs after the registration an event in consequence of which the continuance of the business under the business name under which such firm, individual or corporation has been carrying on business no longer entails registration under this Act, the individual,

firm or corporation so continuing the business shall send by registered post or deliver to the Registrar notice of the occurrence of such event, and the Registrar may, on being so notified or on being notified under section 14 herein, of the occurrence of such event, cancel the entry in the register relating to such individual, firm or corporation.

- (7) On cancelling any entry under this section, the Registrar may require any certificate issued under this Act relating thereto to be surrendered to him or her for cancellation.

21. Restriction on Registration of Certain Business Names.

- (1) Where, after the commencement of this Act—
 - (a) an individual, firm or corporation is, through inadvertence or otherwise, registered under a business name under which registration under this Act ought to have been refused; or
 - (b) a change of ownership of a business occurs as a result of which an individual, firm or corporation is carrying on business under a business name which, on an application for registration under this Act, ought to have been refused,

the Registrar shall, by notice in writing, require such individual, firm or corporation to change such business name within such time as may be specified in such notice, and upon compliance with such notice the Registrar shall record such change without requiring the payment of any fee; and if default is made in complying with his or her requirements the Registrar may cancel the entry in the register relating to such individual, firm or corporation.

- (2) Notwithstanding the provisions of subsection (1) above, where the Registrar is reasonably satisfied that, having regard to the nature of any business the retention of the business name would not be contrary to public interest, he or she may permit the retention of such name.

22. Refusal of Registration.

- (1) The Registrar shall refuse to register a business name which—
 - (a) is identical with or so nearly resembles another registered business name or is similar to that of an existing corporation, as to be reasonably capable of deceiving the public, except when the proprietor of the existing registered business name or corporation, signifies his or her consent in such manner as the Registrar requires;
 - (b) contains any words “Presidential”, “Government”, “State” or any other word which imports or suggests that the business enjoys the sanction, approval or patronage of the President or imports any connection with the Government, state or with any other local authority;
 - (c) which includes the word “co-operative” or its equivalent in any other language or any abbreviation thereof; or
 - (d) contains the words “bank”, “banking” or Chamber of Commerce” except with the consent in writing of the Minister responsible for finance or authority to which such powers have been delegated.
- (2) Where registration of a business name or change of business name is refused under subsection (1) above, any person carrying on business under that name in circumstances which require registration under this Act commits an offence.
- (3) Any person aggrieved by a decision of the Registrar under this section may appeal to the High Court.

23. Inspection of Documents and Provision of Copies.

Any person with a vested interest may, upon payment of the prescribed fee—

- (a) inspect the register or any documents filed with the Registrar;
- (b) require to be supplied with a certificate, duly certified by the Registrar, showing the subsisting entries in the Register relating to any individual, firm or corporation registered under this Act; or
- (c) require to be supplied with a copy of or an extract from any document filed with the Registrar duly certified by the registrar to be a true copy or extract, as the case may be.

24. Certified Copies to be Evidence.

A certificate of registration or a copy of, or extract from any document kept, filed or registered at the office of the registrar, if duly certified to be a true copy or extract under the hand of the Registrar, shall in all legal proceedings, civil or criminal, be admissible as prima facie evidence of the contents of the document.

25. Publication of True Names.

- (1) Every individual, firm or corporation required to be registered by this Act shall, in all trade circulars and business letters on or in which the business name appears and which are issued or sent by the individual, firm or corporation to any person, have mentioned in prominent, legible Roman letters—
 - (a) in the case of an individual, his or her present forenames or the initials thereof and present surname, any former forenames or surname, his or her nationality;

- (b) in the case of a firm, the present forenames or the initials thereof and present surnames, any former forenames and surnames, and the nationality of all the individuals and the corporate names of all corporations that are partners in the firm; and
 - (c) in the case of a corporation, the corporate name.
- (2) Every individual, firm or corporation required to be registered by this Act shall indicate its registration number on all its official documents.
- (3) Where an individual, firm or corporation fails to comply with the provisions of this section, every partner in the firm, or such individual, or such corporation, as the case may be, commits an offence.

CHAPTER IV

OFFENCES AND PENALTIES

26. Offences.

- (1) Where a corporation commits an offence under this Act, every director, secretary or officer of the corporation who is knowingly a party to the default commits a like offence and is liable to a like penalty.
- (2) Where any firm or individual has committed any offence under this Act, or any regulations made thereunder, then, without prejudice to the liability of such firm or individual for such offence, every manager or other person concerned in the management of the business of such firm or individual shall, unless he or she proves that the offence was committed without his or her knowledge or consent, and shall on conviction, be punished for that offence.

27. Penalties.

Any person who commits an offence under this Act, for which no other penalty is specifically provided shall, on conviction be liable to a fine not exceeding one thousand Sudanese Pounds and in default of payment, to imprisonment for a term not exceeding three months.

CHAPTER V**MISCELLANEOUS PROVISIONS****28. Extension of Time.**

Any period prescribed under this Act for the lodging of any statement or notice may be extended by the Registrar, on application being made in any particular case whether before or after the expiration of such period and on payment of the prescribed fee, for such longer period as the Registrar deems appropriate.

29. Regulations.

The Minister may make regulations generally for effective and efficient implementation of the provisions of this Act, and in particular may make regulations prescribing—

- (a) the fees for registration under this Act; as shall be determined by Minister of Finance and Economic Planning;
- (b) the forms to be used under this Act;
- (c) the duties to be performed by the Registrar under this Act;
- (d) the performance by Assistant Registrars and other officers of acts required by this Act to be done by the Registrar;
- (e) generally, the conduct and regulation of registration under this Act, and any matters incidental thereto.