

BUSINESS REGISTRATION BILL, 2005

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"agent", in relation to an absent person, includes-

- (a) the agent, legal practitioner, factor, receiver or manager in The Gambia of the person; and
- (b) a person in The Gambia through whom the person is in receipt of any profit or income arising in or derived from a registrable business;

"business" means any form of trade, commerce, craftsmanship, calling or other activity carried on for the purpose of gain;

"certificate" means a business registration certificate, and includes an original certificate or a renewal of that original certificate;

"Commissioner-General" means the Commissioner-General of Taxes;

"Court" means the High Court of The Gambia;

"exempted business" means a business of a class or nature which has been exempted from registration by the Secretary of State by Order published in the *Gazette* from the operation of the provisions of this Act;

"firm" means the group of persons who have entered into partnership with one another;

"incapacitated person" means a minor, lunatic, an idiot or person of unsound mind;

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"original certificate" means the business certificate granted to a proprietor on the registration of his or her business;

"previous Act" means the Business Registration Act in force before the commencement of this Act;

"proprietor" means a person who manages or owns a business;

"register" means the register of businesses;

"Registrar" means the person appointed to register businesses and includes any other person authorized by him or her to act as Registrar under this Act;

"renewal certificate" means the business certificate granted to the proprietor on the annual renewal of the original certificate granted for carrying on the same business;

"Secretary of State" means the Secretary of State responsible for the administration of this Act;

"tax identification number" means the number given by the Commissioner-General as the identification number for every person to use in his or her communication with the Commissioner-General or with any other revenue collection or non-revenue authority in The Gambia;

"trustee" includes –

- (a) a person appointed or constituted as trustee by an act of parties, by a will, or by an order or a declaration of a court, or by operation of the law;
 - (b) an executor, administrator, guardian, a tutor, or curator;
 - (c) a liquidator or judicial manager;
 - (d) any person having, either in a private or official capacity, the possession, direction, control, or management of any property of a person under a legal disability; or
 - (e) any person who manages assets under a private foundation or other similar arrangement.
- (2) For the purpose of this Act, a "person carrying on business" means-
- (a) in the case of an individual or corporate body, that person or corporate body;
 - (b) in the case of a business carried on by a partnership, each and all of the partners; and
 - (c) in the case of a business carried on by any body of persons, the principal officers of that body.

(3) An act or a thing required by or under this Act to be done by a person carrying on a business is, if the person is incapacitated or absent from The Gambia, deemed to be required to be done by the trustee of the incapacitated person or by the agent of the person who is absent, as the case may be.

(4) For the purpose of subsection (3), a person is deemed to be absent from The Gambia if, on the Registrar having posted a registered letter to that person's place of business requiring him or her to attend on the Registrar, he or she fails to attend during ordinary office hours at the place specified in the letter within twenty-one days of the posting of the letter.

(5) The secretary, manager, or director of a company is answerable for the doing of an act or a thing, if the person who is required under this Act to do that act or thing is a company.

3. (1) A person carrying on a business in The Gambia which is not an exempted business without a certificate granted by the Registrar commits an offence.

Obligation to register

(2) The Secretary of State may, from time to time by Order published in the *Gazette*, declare that a particular type or class of business is an exempted business, and on the declaration the provisions of this Act shall not apply to the exempted business.

(3) Notwithstanding the provisions of this Act, an existing business which is being carried on under a valid certificate of registration issued under the previous Act is deemed to be carried on under a certificate issued under this Act.

Application for registration.

4. (1) A person who desires to carry on a business shall, unless the business is an exempted business, make an application to the Registrar in the prescribed form for the registration of that business.

(2) Notwithstanding the provisions of this section, only one application for the registration of a business is required to be made in respect of any one business.

(3) An application shall be made in the prescribed form signed by the proprietor, containing the following particulars-

- (a) the name of the business;
- (b) a description of the general nature of the business;

(c) the principal place where the business is carried on;

(d) where the application is made on behalf of a body corporate, the name of the company and address of its registered office or its principal place of business;

(e) where the application is made on behalf of a partnership, the full names and any former names, the nationality, residential addresses and other business occupation, if any, of each of the partners;

(f) where the application is made by a sole proprietor, the present full name, any former name, the nationality, the usual address, and any other business occupation of the proprietor; and

(g) the tax identification number of the company, each partner in a partnership or the individual proprietor.

(4) The application shall be accompanied with a statement in writing issued by the Commissioner-General certifying that the company, each partner in a partnership or the sole proprietor has either paid or made satisfactory arrangements for payment of any tax, penalty or fine which has become due under the Income and Sales Tax Act, 2004.

Registration and issue of certificate

5. (1) The Registrar may, on receiving an application under section 4, register the business in the register in accordance with this section.

(2) The Registrar shall, on registering the business, issue a certificate in the prescribed form, if he or she is satisfied that-

- (a) the name under which the business is to be conducted is not prohibited by law and that, if the business is being carried on under a name other than the name of the proprietor, the name is not similar to the name of an existing business or likely to mislead members of the public;
- (b) the particulars contained in the application are correct and sufficient to enable him or her to maintain the register in accordance with section 22;
- (c) the provisions of subsection (3) and section 4 have been fully complied with;
- (d) the business is not an exempted business under the provisions of this Act;
- (e) the prescribed fee for registration has been paid; and
- (f) such other conditions as may be prescribed, have been complied with.

(3) The Registrar may, for the purpose of satisfying himself or herself as required under subsection (2), orally or in writing, request a proprietor, partner, shareholder or former partner or shareholder to supply him or her with such information as he or she considers necessary, and the person so requested shall promptly comply with the request.

(4) Subject to subsections (2) and (5), the Registrar shall issue a certificate in respect of each business registered, valid until the 31st day of December of the year of issue.

(5) Where one fee is payable in respect of several businesses, the Registrar shall issue one certificate in respect of all the businesses.

(6) The Registrar shall not register a business if he or she is not satisfied as required under subsection (2).

(7) The issue of a certificate in respect of a business shall not be deemed to imply that the requirement of any law in relation to the business or to the persons carrying on the business or employed in the business has been complied with.

Display of certificate.

6. (1) The certificate granted under section 5 or a certified copy of the certificate shall be prominently exhibited in a conspicuous position at the principal place in which the business is carried on.

(2) A proprietor who fails to display his or her certificate commits an offence and is liable to the penalty specified under section 20.

(3) A proprietor of a business which is required to be registered under this Act shall permit the Registrar or any person authorized in writing by him or her for the purpose to-

- (a) enter and inspect all premises and places where the business is carried on or controlled or where a certificate is displayed; and
- (b) carry out such investigations as may be considered necessary for the carrying into effect of the provisions of this Act.

Payment of fees.

7. The Registrar has the power to call on a proprietor who is not in possession of a valid certificate in respect of the business to pay the prescribed fee, but the exercise of the power conferred on the Registrar does not exempt the person from any penalty arising from his or her failure to procure a certificate.

8. (1) A proprietor shall, within fourteen days of any change in the particulars of the business as set out in the application form for registration, notify the Registrar and the Commissioner-General in writing of the change.

Change of particulars to be furnished.

(2) A proprietor shall, within fourteen days of the cessation of his or her business, notify the Registrar and the Commissioner-General in writing.

(3) Where a business ceases and is thereafter recommenced, the proprietor shall, within fourteen days of the commencement, notify the Registrar and the Commissioner-General in writing of the recommencement.

Annual renewal of certificate.

9. (1) A certificate issued under section 5 shall be valid until the 31st day of December of the year of issue and shall, if the business continues, be renewed for each succeeding year ending on the 31st day of December.

(2) For the purpose of obtaining a renewal certificate, the proprietor shall present to the Registrar-

- (a) an application in the prescribed form;
- (b) evidence of payment of the prescribed fee; and
- (c) in the case of a business which has been in existence for more than twelve months, a declaration by the Commissioner that the proprietor has submitted to him or her the audited accounts for the business in the prescribed form and detail for the immediately preceding year.

(3) For purposes of subsection (2)(c), the Commissioner-General may extend the period within which the audited accounts shall be submitted, in which case, a provisional certificate may be granted pending the presentation of the accounts.

(4) The provisions of sections 4 and 5 shall apply to an application for renewal under this section as if the application were an application for registration and registration of a business under those sections.

Renewal of certificate

10. (1) On receiving an application for the renewal of a certificate pursuant to section 9, the Registrar shall, if satisfied as required under section 5 (2)-

- (a) issue a renewal certificate in the prescribed form, which shall be valid for the period specified in the certificate, but not beyond the 31st of December of that year; and
- (b) record the renewal in the register.

(2) The provisions of section 6 apply to a renewal certificate as if the references in that section to a certificate were references to a renewal certificate issued under this section.

Annual return

11. (1) A person carrying on a business shall, not later than the 30th day of June in each year, except the calendar year in which the business is registered, deliver to the Registrar a return in a prescribed form showing-

- (a) the particulars of the persons carrying on the business; and
- (b) the nature of the business carried on during the preceding period of January 1st to December 31st.

(2) The returns shall be signed, in the case of an individual or firm consisting only of individuals, by the individual or individuals and, in the case of a body corporate or a partner who is a body corporate, by a director and the secretary.

(3) A person who fails to comply with any of the provisions of this section commits an offence and is liable on conviction a fine of ten thousand dalasis, and if the offence continues, to a fine of hundred dalasis for each day during which the offence continues.

Power of Registrar to retain money paid.

12. If the Registrar refuses to register a business or to renew a certificate, he or she-

- (a) shall give reasons in writing for the refusal; and
- (b) may, for work already performed by him or her in respect of the application or renewal, retain any fee paid in respect of the application for the registration or renewal.

Power of Registrar to cancel registration.

13. (1) The Registrar may, for good and sufficient reason, cancel a registration or a certificate issued under this Act, and strike the name of a business off the register.

(2) Without prejudice to the provisions of subsection (1), where a proprietor has not obtained a renewal certificate by the 1st of July of each year due to his or her failure to furnish any particular or information, the registration of that business shall be deemed to have been cancelled automatically and the Registrar shall strike the name of the business off the register.

(3) Where the Registrar cancels a registration certificate or renewal certificate after the date of registration, the monies paid as fees under section 5 or section 9 shall not be refunded to the proprietor.

(4) Where a registration or renewal certificate has been cancelled, the proprietor shall cease to carry on the business-

(a) on the expiry of the prescribed period for filing an appeal to the Secretary of State under section 25; or

(b) where an appeal has been filed within the prescribed period, on the expiry of fifteen days from the date of the decision of the Secretary of State confirming the cancellation of the registration or renewal of registration.

14. (1) The Registrar shall, if of the opinion that registration would likely mislead the public, refuse to register or, as the case may be, cancel the registration of a business where the business name under which a business is carried on or to be carried on -

(a) contains the word "~~The Gambia~~" "~~National~~", "~~Government~~", "~~Municipal~~", "~~State~~", or any word which imports or suggests that the business enjoys the patronage of the State or Local Government;

(b) contains the word "co-operative" or its equivalent in any other language or any abbreviation;

Prohibited
and restricted
names and
businesses.

(c) contains the words "~~Chamber of Commerce~~", "~~Building Society~~", "~~Guarantee~~", "~~Trustee~~", "~~Investment~~", "~~Bank~~", "~~Insurance~~" or any word of similar connotation;

(d) is identical with or similar to a name by which any firm, company, individual or body corporate is registered under this Act; or

(e) is similar to any trade mark registered in The Gambia,

unless the applicant has first obtained the consent of the Secretary of State.

(2) The Registrar shall refuse to register a business name, or, as the case may be, cancel the registration if the business name under which the business is carried on -

(a) contains any word which, in the opinion of the Registrar, is likely to mislead the public as to the nationality, race or religion of the persons by whom the business is wholly or mainly owned or controlled; or

(b) is, in the opinion of the Registrar, deceptive or objectionable in that it contains a reference direct or otherwise to a person, age, practice or an institution, or is otherwise unsuitable as a business name.

(3) The Registrar may refuse to register a business carried on or to be carried on by an individual or firm under this Act if the age of the individual or of any individual who is a partner is less than eighteen years.

(4) The Registrar shall refuse to register a business if he or she has irrefutable evidence to the effect that an individual, a firm or body corporate that has previously been involved in fraudulent trade malpractices either in local or international trade is submitting an application for the registration of a new business.

Searches
15. The Registrar shall, on payment of the prescribed fee, allow searches to be made, at all reasonable times, in any register book, register or file of registered documents in his or her possession.

Copies of entries in registers.
16. (1) The Registrar shall, on request and payment of the prescribed fee, give a certified copy of any entry in any register book, register or filed documents in his or her possession.

(2) A certified copy shall be received in evidence, without any further or other proof, in all legal proceedings, civil or criminal.

Publication of true name
17. An individual or firm carrying on a business and required by this Act to be registered shall in any trade catalogue, trade circular, show card and business letter issued or sent by the individual or firm to any person cause to be mentioned in legible characters -

(a) in the case of an individual, his or her present or the initials of his or her present forenames and the present surname and any former forenames or surname and his or her nationality;

(b) in the case of a firm, the present or the initials of the present forenames and present surname, and any former forenames or surnames, and the nationality of all the partners in the firm or in case of a body corporate which is a partner, the corporate name; and

(c) the registration number of the business name.

Liability of person in default
18. (1) Where a person carrying on a business which is required under this Act to furnish a statement of particulars or of any change in particulars makes default in doing so, the rights of the defaulter under or arising out of any contract made or entered into by or on behalf of the defaulter in relation to the business, in respect of which particulars were required, shall not, during the period of default, be enforceable by action or other legal proceedings in the business name or any other name.

(2) A defaulter may apply to the Court for relief against the disability imposed by this section, and the Court may, on being satisfied that-

(a) the default was accidental, or due to inadvertence, or some other sufficient cause; or

(b) on other grounds it is just and equitable to grant relief,

grant the relief either generally as regards all contracts enforceable by the Court or as respects any particular contract and on such conditions as the Court may impose.

(3) Nothing contained in the section shall-

(a) prejudice the rights of any other party as against the defaulter in respect of the contract as referred to in subsection (1);

(b) if any action or proceeding is commenced by any other party against the defaulter to enforce the rights of the party in respect of the contract referred to in subsection (1), preclude the defaulter from enforcing in that action or proceeding by way of a counter claim, set-off or otherwise, any rights which he or she may have against that party in respect of the contract.

Penalties for late payment of fees

19. (1) Where a prescribed fee has not been paid within the time specified for its payment under section 7, a person liable to pay the fee shall further be liable to pay ~~for~~ ten per cent of the fee due to be recovered.

(2) If the prescribed fee, together with any sum ordered to be paid under subsection (1), is not paid within thirty days after the time specified for payment, the person liable to pay the fee shall further pay fifteen per cent of the sum due in addition to the fee payable at that time and at the end of each succeeding month.

(3) The Registrar may-

(a) extend the time specified for the payment of a fee; or

(b) remit any sums paid in addition to a fee payable under subsection (1) or subsection (2).

(4) Where a proprietor, without reasonable excuse, fails to-

(a) make an application under section 4 or to make it within the prescribed period;

(b) comply with the provisions of section 6;

(c) furnish the particulars referred to in section 8; or

(d) furnish the application required under section 9 (2).

he or she commits an offence and is liable on conviction to a fine not exceeding twenty thousand dalasis.

Offences.

20. A person who-

- (a) carries on a business which is not an exempted business-
- (i) without a certificate, in contravention of section 3 or 9 (1);
- (ii) after the cancellation of the registration or of a renewal, in contravention of section 13;
- (b) furnishes false information in any application or statement filed or in any information furnished or in any records produced; or
- (c) contravenes a provision of this Act in respect of which no penalty has been fixed under this Act,
- commits an offence and is liable on conviction to a fine not exceeding twenty thousand dalasis or imprisonment for a term not exceeding one year, or to both the fine and imprisonment.

Exemption from fee, if fee paid under any other Act.

21. (1) Notwithstanding the provisions of this Act, the prescribed fee for registration or renewal of registration is not required to be paid by a business or person carrying on business which is required to be registered under any other enactment, if that enactment makes provision for the payment of a registration or renewal fee.

(2) The payment of a licence fee under the Licences Act does not amount to a registration or renewal fee under this Act.

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Maintenance of register

22. (1) The Registrar shall maintain a register into which shall be entered all the particulars supplied in the application for a registration or a renewal as specified in sections 4 (4) and 9 (2).

(2) Where a business is carried on under two or more business names that fact shall be stated in the register.

(3) A change in the particulars specified in subsection (2) which is reported to the Registrar shall be recorded in the register.

(4) A person may inspect the register during working hours and may, on the payment of the prescribed fee, take extracts from the register.

Publication in the Gazette

23. (1) The Registrar shall cause to be published, on a regular basis in the Gazette, notices of the particulars specified in sections 4 (4), 9 (2) and 22, of every business registered under this Act or of the particulars supplied by a business on registration under any other enactment.

(2) A notification of a change in the particulars of a business pursuant to section 8 or in accordance with the appropriate section of any other enactment shall also be published in the Gazette.

Inspection

24. (1) The Registrar may, with the approval of the Secretary of State, authorise a person in writing to be an Inspector for the purposes of this Act.

(2) An Inspector authorised under subsection (1) shall, for the purpose of ascertaining whether the provisions of this Act are being complied with, have power at all reasonable times to enter any premises at which he or she has reason to believe a business is being carried on and to make such examination and inquiry as may be necessary for that purpose.

Appeals to
the Secretary
of State

25. (1) Where the Registrar refuses to register a business or issue a certificate under section 5 or cancels a registration, renewal of registration or certificate under section 13, a proprietor affected by the refusal or cancellation may appeal to the Secretary of State.

(2) An appeal under subsection (1) shall be filed within thirty days of the date of refusal or cancellation.

(3) Where the Secretary of State allows an appeal under this section, the business in respect of which the appeal was made shall, subject to compliance with any condition imposed by the Secretary of State, be registered or restored to the register, as the case may be, and if its registration or certification was cancelled, the registration or certificate shall be deemed never to have been cancelled and the Registrar shall publish a notice to that effect in the *Gazette*.

Regulations

26. The Secretary of State may make regulations providing for-

- (a) the form of the application and manner in which the application for registration of a business shall be made;
- (b) any information additional to that specified under this Act to be furnished to the Registrar;
- (c) the form of and particulars additional to the particulars specified in section 22 to be entered in the register;
- (d) the forms of the certificate;
- (e) the issue of duplicate certificates;
- (f) fees payable for-
 - (i) the application for registration of business form;
 - (ii) the registration of a business;
 - (iii) the issue of a certificate of registration of business;
 - (iv) the certification of a certificate; and
 - (v) searches in the registers; and
- (g) generally for the carrying into effect of the provisions of this Act.

Repeal
Cap. 95:02

27. (1) The Business Registration Act is hereby repealed.

(2) A registration made or certificate issued under the repealed Act shall remain in force for the period of its validity and may be renewed in accordance with the provisions of this Act.

(3) Notwithstanding subsection (1), the regulations made under the Business Registration Act repealed under subsection (1) shall, if not inconsistent with this Act, continue in force as if they were made under this Act until revoked.

OBJECTS AND REASONS

The Bill is one of the requisite legal frame works necessary for The Gambia to adjust to the new realities of the business world to adequately encourage investment and participation by small-scale investors, and facilitate the pursuit of legitimate business without unnecessary restriction.

The Bill repeals the Business Registration Act, 1973, retains some of its provisions, but introduces others, which are responsive to new opportunities and challenges of the business sector.

The Bill also seeks to improve and modernise the law relating business to support and strengthen the financial sector of The Gambia.

RAYMOND C. SOCK
ATTORNEY GENERAL AND SECRETARY OF STATE
FOR JUSTICE