

## REGISTRATION OF FIRMS.

### No. 14 of 1897.

Reprinted pursuant to the Amendments Incorporation Act, 1938, as amended by the Acts No. 26 of 1899,\* 1 and 2 Edw. VII., No. 14,† and No. 32 of 1940.‡

### AN ACT to provide for the Registration of Firms.

[Assented to 23rd December, 1897.]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Registration of Firms Act*, 1897-1940.
2. This Act shall come into operation on the first day of March, one thousand eight hundred and ninety-eight.
3. In this Act, unless the context otherwise requires—  
“Business” includes trade and profession;  
“Firm” means any two or more persons lawfully associated for the purpose of carrying on any business, but shall not include a company registered or incorporated within the British dominions under, by, or in pursuance of any Act of Parliament, letters patent, or Royal Charter;  
“Firm-name” means the name or style under which any business is carried on, whether in partnership or otherwise;

Short title.

No. 14 of  
1897, s. 1;  
No. 32 of  
1940, s. 3.

Commence-  
ment of Act.

No. 14 of  
1897, s. 2.

Interpreta-  
tion.

No. 14 of  
1897, s. 3.

\* Assented to 16th December, 1899; † assented to 19th February, 1902;  
‡ assented to 16th December, 1940.

- “Prescribed” means prescribed by regulations made in pursuance of this Act;
- “Usual name” includes a signature habitually used for business purposes.

Firm and persons to be registered. No. 14 of 1897, s. 4.

4. From and after the commencement of this Act—
- (a) Every firm carrying on business or having any place of business in Western Australia under a firm-name which does not consist of the full or usual names of all the partners without any addition; and
- (b) Every person carrying on business or having any place of business in Western Australia under any firm-name consisting of or containing any name or addition other than the full or the usual name of that person;
- shall register, in the manner directed by this Act, the name under which their or his business is or is intended to be carried on.

Prohibition against use of certain firm-names and of certain words in firm-names. Inserted by No. 32 of 1940, as s. 4A, now re-numbered s. 5. of. Vic. 19, Geo. V., No. 3648, s. 21.

5. (1) From and after the commencement of this section, and notwithstanding anything in any Act, no firm or person shall use a firm-name, and no firm-name shall be registered which—

- (a) includes the word “Royal” or the word “King,” or the word “Queen,” or the word “Crown,” or the word “Empire” or the word “Imperial,” or the word “Commonwealth” or the word “State,” or any word which, in the opinion of the Registrar of Companies, suggests, or is calculated to suggest, the patronage of His Majesty or any member of the Royal Family or Government support or patronage unless the Governor by Order in Council published in the *Government Gazette* consents to the use of such word in the said firm-name:

Provided that nothing in this paragraph shall prevent the continuance of the use by any firm or person or its or his successor in interest of any of the words (other than the word “Commonwealth” or the word “State”) the use of which is prohibited by this para-

graph, in any firm-name under which it or he was registered under this Act prior to the commencement of this section;

- (b) includes the word "saving" or "savings" or the words "savings bank" or "savings institution" or "savings department" or "savings section" as part of the designation or title, or as a description of the business, or of any department, section, or other part of the business of such firm or person;
- (c) includes the word "bank," "banker," "banking company," "banking house," "banking association," or "banking institution," or words of like import, or the word "proprietary," or the word "co-operative," or the word "trust" or "trustee," as part of the designation or title or as a description of the business of such firm or person;
- (d) is identical with the firm-name of a firm or person already registered under this Act, or which, in the opinion of the Registrar of Companies, so nearly resembles that firm-name as to be calculated to deceive, except where the Registrar of Companies is satisfied that such firm or person has ceased carrying on business for a period of not less than one year or where the said firm or person is about to cease carrying on business and signifies its or his consent in such manner as the Registrar of Companies requires;
- (e) is identical with that by which—
  - (i) a company which is registered under (or has complied with Part VIII. of) the Companies Act, 1893, is registered or known;
  - (ii) an association in existence is already incorporated under the Associations Incorporation Act, 1895;
  - (iii) a society in existence is already registered or deemed to be registered under the Friendly Societies Act, 1894-1938;or, in the opinion of the Registrar of Com-

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panies, so nearly resembles that name as to be calculated to deceive, or contains any words or combination of letters which are or is identical with the words or initial letters of the name by which a society in existence is already registered or deemed to be registered as aforesaid or any words so nearly resembling the words or any of the words of that name as to be calculated to deceive except where the company, association or society in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar of Companies desires;

(f) in the opinion of the Registrar of Companies, is likely to mislead the public as to the identity of any firm or person required to register or as to the nature of its or his business.

(2) Any firm or person which or who in any respect contravenes any of the provisions of subsection (1) of this section shall be guilty of an offence.

Penalty: Ten pounds, and, in addition, a daily penalty of two pounds during every day or part of a day upon which the offence is continued.

(3) The consent of the Governor as provided for in paragraph (a) of subsection (1) of this section shall not be granted in any case if in the opinion of the Governor the use of any word mentioned in the said paragraph (a) in a firm-name by the firm or person using or proposing to use the same would imply or be likely to convey the impression that such firm or person is or will be wholly or partly authorised or supported by or connected with His Majesty's Government in any part of His Majesty's Dominions.

(4) Every application for the consent of the Governor under subsection (1) of this section shall be made in the first instance to the Registrar of Companies and shall be in writing; and for any Order in Council granting any consent under the said subsection (1) there shall be paid by the applicant to the Registrar of Companies a fee of five pounds five shillings.

(5) Nothing in this section contained shall apply to any person whose Christian or surname may include any

word or words prohibited from use as aforesaid nor shall such person be prohibited from continuing to use such name or names provided such name or names are not used in combination with any other word or words unless the consent of the Governor by Order in Council be first obtained.

(6) (a) Any firm or person which or who, through inadvertence or otherwise, is registered under any firm-name prohibited or containing any word or words or combination of letters prohibited by this section—

- (i) may, with the sanction of the Registrar of Companies, change its or his firm-name; and
- (ii) shall comply with the provisions of this Act relating to the change of particulars registered in respect of firms or persons so far as such provisions are applicable.

(b) The Registrar of Companies shall enter the new firm-name in the register in place of the former name and issue a certificate of registration altered to meet the circumstances of the case.

(7) If any firm or person registered under any firm-name prohibited or containing any word or words or combination of letters prohibited by this section (the use of which has not been consented to as aforesaid) neglects or refuses to take within three months all necessary steps to change its or his firm-name after being required by the Registrar of Companies by notice in writing to change the same, every member of such firm and every such person shall be guilty of an offence.

Penalty—Five pounds, and, in addition, a daily penalty of five pounds for every day or part of a day during which such offence continues.

(8) Nothing in this section shall affect any liability incurred by any firm or person under this or any other Act.

6. Registration under this Act shall be effected by filing with the Registrar of Companies a statement in writing containing the following particulars:—

- (a) the firm-name;
- (b) the nature of the business;
- (c) the place or places of the business;

Manner and particulars of registration.  
No. 14 of 1897, s. 5.

- (d) the full name, usual residence, and other occupation (if any) of the person or persons carrying on or intending to carry on the business.

Particulars to be written by persons registering, and to be attested.  
No. 14 of 1897, s. 6.

7. (1) Such statement shall be signed or acknowledged, if in Western Australia, in the presence of a Justice of the Peace, or a Commissioner of the Supreme Court for taking affidavits, or a solicitor, police officer, postmaster or postmistress, and if elsewhere than in Western Australia, in the presence of a British Consul, or Notary Public, or the Agent General of the Colony or his Secretary, by whom, respectively, such signatures or acknowledgments shall be attested.

(2) The foregoing provisions of this section shall be deemed to be complied with if any partner in Western Australia signs or acknowledges the said statement.

(3) The foregoing provisions of this section shall be deemed to be sufficiently complied with if the said statement be signed or acknowledged by any person who has previously filed, in the office of the Registrar of Companies, a statutory declaration that he is duly authorised by and on behalf of such persons as are described in such declaration to carry on the business the firm-name of which he desires to have registered.

(4) A fee of five shillings shall be paid to the Registrar of Companies on filing any such statutory declaration.

Time for registration.  
No. 14 of 1897, s. 7.

8. (1) Firms and persons who at the commencement of this Act are carrying on business in Western Australia shall comply with the provisions of this Act within three months after such commencement.

(2) Other firms and persons required to be registered, as provided by this Act, shall register accordingly before they commence business.

Registered name always to be used.  
No. 14 of 1897, s. 8.

9. The firm-name of any firm or person registered under this Act shall be used in all matters connected with or relating to the business carried on by such firm or person.

Registration on change of firm-name.  
No. 14 of 1897, s. 9.

10. When a change occurs in the constitution of a registered firm, the members of the firm, as reconstituted,

shall, within one month after such change, file with the Registrar of Companies a statement thereof in the form in the Schedule to this Act, or in any other prescribed form.

11. A registered firm changing its firm-name shall be registered as if it were a new firm, and the statement sent or delivered to the Registrar of Companies shall mention the former name of the firm as being abandoned by it as well as the particulars required for a new registration.

Schedule.  
Registration on change of firm-name.  
No. 14 of 1897, s. 10.

12. Any person who shall fail to comply with any of the provisions of this Act shall, on conviction, be liable to a penalty not exceeding Five pounds for the first offence, and for every subsequent conviction to a penalty not exceeding one hundred pounds.

Penalty for default in registration.  
No. 14 of 1897, s. 11.

\*13. The penalties imposed by section eleven of this Act may be recovered before a court of summary jurisdiction.

Penalties how recoverable.

14. (1) When any firm or person shall fail to comply with the provisions of this Act, and during the default brings, institutes, or commences an action, suit, or proceeding in any Court in the firm-name, or otherwise, for a cause of action arising out of any dealing by or with such firm, or person in the firm-name, such Court may stay all proceedings in the action until such provisions be duly complied with by such firm or person.

Persons in default bringing action shall be ordered by Court to register.  
No. 14 of 1897, s. 12.

(2) The power by this section given to the Court may be exercised by a Judge in Chambers.

[s. 13 of 1897, No. 14, repealed by 1 and 2 Edw. VII., No. 14, s. 3, Third Schedule.]

15. On receiving any statement made in pursuance of this Act, the Registrar of Companies shall cause the same to be filed, and he shall send by post, or deliver a certificate of the registration thereof to the firm or person registering.

Registrar to file statement and issue certificate of registration.  
No. 14 of 1897, s. 14.

16. The Registrar of Companies shall keep, in proper books to be provided for the purpose, a register, and an index of all the firms and the firm-name of persons registered, and of all the statements registered in reference thereto.

Register and index to be kept.  
No. 14 of 1897, s. 15.

\* This section was originally s. 2 of the Act No. 26 of 1899 and is now inserted in this reprint as section 13.

Inspection of  
statements  
registered.  
No. 14 of  
1897, s. 16.

17. (1) Any person may inspect, make a copy of or extracts from the statements filed by the Registrar of Companies, and there shall be paid, for every such inspection, a fee of one shilling.

(2) Any person may require from the Registrar of Companies a certified copy of the certificate of registration of any firm or person or of the whole or any portion of any registered statement to be certified by the Registrar of Companies, and there shall be paid for every such certificate of registration a fee of five shillings, and for each folio of seventy-two words a fee of sixpence, or such other fees as may be prescribed by the Governor.

(3) A certificate of registration or a copy of or extract from any statement registered under this Act purporting to be signed and certified by the Registrar of Companies shall, in all courts and before all arbitrators, be admitted as *prima facie* evidence thereof, and of the fact and date of registration as shown thereon.

Power for  
Governor to  
make regula-  
tions.  
No. 14 of  
1897, s. 17.

18. The Governor may make, repeal, or alter regulations as to all or any of the following matters:—

- (a) Prescribing the fees to be paid to the Registrar of Companies under this Act. Provided that for the registration of any one statement the fee shall not exceed the sum of five shillings.
- (b) Prescribing the forms to be used and the mode of payment of fees under this Act.
- (c) Prescribing the duties or additional duties to be performed by the Registrar of Companies for the purposes of this Act; and, prescribing generally the conduct and regulation of registration under this Act, and as to any matters incidental thereto.

Regulations  
to be laid be-  
fore Parlia-  
ment.  
No. 14 of  
1897, s. 18.

19. All regulations when made by the Governor shall be published in the *Government Gazette*, and shall, within one month after the making thereof, be laid before both Houses of Parliament, if Parliament be then in Session, or, if not, then within fourteen days after the commencement of the next Session of Parliament; and all such regulations, not inconsistent with this Act, when so published shall have the force of law, and shall continue in force, unless repealed or altered as aforesaid, or disallowed by both Houses of Parliament.



20. For the purpose of making the statements required by this Act the forms in the Schedule to this Act or any prescribed forms to the like effect may be used, and, if used, shall be sufficient.

Forms.  
No. 14 of  
1897, s. 19.

**SCHEDULE.**

*Form of Statement.*

REGISTRATION OF FIRMS ACT, 1897-1940.

*A.—Original Registration of a Firm.*

The Firm-name is

The business of Firm is

It is intended to carry on the business at

Names of persons carrying on [or intending to carry on the business].

Full Name (to be written or acknowledged by each person himself).	Usual Residence.	Other Occupation, Description, and Addition (if any).

Date of intended commencement of business, or establishment of a new place of business, if after the commencement of the Act.

Signed and declared at  
on the day of 189

Before me a Justice of the Peace  
for , [or as the case may be,] Commissioner of the  
Supreme Court for taking Affidavits, or  
Solicitor, or British Consul at , or  
Notary Public of or the Agent-General, or his  
Secretary.

REGISTRATION OF FIRMS ACT, 1897-1940.

*B.—Notice of Change in Constitution of Registered Firm.*

We, the undersigned [the members of the firm as reconstituted]\* hereby give notice that on the day of 189, the following change took place in the constitution of the firm registered by the name of & Co., that is to say,—

\*Registered firm-name & co.

† A.B. retired from the firm.

† C.D. became a member of the firm.

†As the case may be.

‡ *Description of a New Member.*

‡As upon original registration.

Full Name.	Usual Residence.	Other Occupation, Description, and Additions (if any).

Signed and declared, &c.

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REGISTRATION OF FIRMS ACT, 1897-1940.

*C.—Notice of Change of Registered Firm-name.**(In addition to Form A.)*

§ Registered  
firm-name &  
co.

The persons now registering are the persons who heretofore carried on business under the registered firm-name of § & Co., which is abandoned as from the date of this notice.