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The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

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PART IV (A) — PROVINCIAL COUNCILS

Provincial Councils Notifications

SOUTHERN PROVINCE PROVINCIAL COUNCIL

Registration of Trading Places precept of the Southern Provincial Council

I, Udalamaththa Gamage Dayawansha Ariyathilaka, Minister of Trade of the Southern Provincial Council do hereby notify that the draft of the registration of trading places precept No. of 2019 of the Southern Provincial Council published hereunder will be presented in the Southern Provincial Council of the expiry of two weeks from the date of its publication in this *Gazette*. Any person who wishes to make any representation or amendment regarding any of the provisions of the said precept, shall forward the same to me within the said period.

UDALAMATHTHA GAMAGE DAYAWANSHA ARIYATHILAKA,
Minister,
Southern Provincial Ministry of Agriculture,
Agrarian Development, Irrigation, Water Supply and
Drainage, Food Supply and Distribution,
Trade and Cooperative Development.

Office of the Minister of Trade,
Galle,
On 14th January, 2019.



SOUTHERN PROVINCE PRECEPT FOR REGISTRATION OF TRADING PLACES
No. OF 2019

This Precept is, to regularize the trading establishments that have not been incorporated within the Southern Province, to register the institutions and persons who conduct such establishments, to make provisions for all activities associated with such regulation and to create regulations to rescind the Southern Province Trade Names Registration Precept No. 1 of 1991.

It is herewith enacted by the Provincial Council of the Southern Province of the Democratic Socialist Republic of Sri Lanka.

Abbreviated name
& date effective

1. This Precept shall be known as the Southern Province Trading Places Registration Precept No. of 2019 and shall come into effect when approved by the Governor of the Southern Province.

SECTION 1

Business
institution &
persons should
register

2. (1) All persons who carry out a business place of trade, not incorporated, within the Southern Province (hereinafter referred to as Places of Trading), should register under this Precept and conduct the trade with a relevant certificate.
- (2) The Certificate so obtained for a place of trade under this article should be clearly exhibited within the precinct of the place of business.
- (3) As per this article the work procedures applicable, to register a place of business, to cancel a registration granted, to specify the specimen forms applicable and to prescribe other associated activities connected to registration, should be according to the rules enacted by the Minister under this Precept.

Previously
registered
institutions

3. Those trading establishments or person/persons who have obtained Trade Name Certificates, prior to the date of activation of this precept and are conducting their trade, under Southern Province Trade Name Precept No. 1 of 1991, should be considered as having been registered under this precept. However, any change or cancellation that takes place after the date of activation of this precept should be instituted according to the provisions of this precept.

Word that should
not be used for
business names

4. (1) It is not permitted to apply for a trade name containing words such as, the President, Presidential, Nation, State, Sri Lanka, Money, Monetary or Urban or Incorporated or words in the opinion of the registrar may imply, or have room to imply, some relationship with a Municipal Council, any other Local Government Institution, with a society incorporated under an act of Parliament, with a Board, a state institution, or words similar to Corporation, Corporative or words that are for Historical or Cultural heritage or words that signify a community, a caste or a religion or words that the Provincial Company registrar may consider to be inappropriate.
- (2) If, the nature and the manner in which the trade name and the registration is used undermines social virtues and threatens public peace or has the potential to hurt religious or communal values of a particular group of persons, or to mislead the public, or if the name applied is already awarded within the Southern Provincial Council under the Company Law, such Trade names should not be applied for, Similarly, if the Registrar receives such names for registration, he/she should decline to register such names.

5. (1) The change of nature of the business, or the change of place of business, could be accomplished by forwarding a written request to that effect. Amendments
- (2) In the case of change of ownership in business, the following procedure should be followed :
- (a) in the event where the owner of the business is alive,
- the owner of the business (registered owner) should submit an affidavit whereby he expresses his willingness to transfer the business and the succeeding owner should forward a letter of consent to take over the business.
- (b) In the event where the preceding owner is deceased.
- (I) if the deceased owner has mentioned about the transfer of business in a Last Will he has executed before his death, the business would be transferred as mentioned in the Will subject to the relevant judiciary process.
- (II) If the deceased owner has no last will and if he/she is married, the business could be transferred in the name the legitimate inheritor, with the consent of children above 18 years of age (the consent should be in the form of affidavits) and if there are children below 18 years of age, the business could be transferred in the name of the legitimate inheritor (subject to a request from the legitimate inheritor).
- (III) If the deceased owner is not married and if he has no last will, the business could be transferred in the name of a person upon his/her request with the consent of the Father, mother and brothers and sisters above 18 years of age (the consent in the form of affidavits).
- (3) (a) In cases of (II) and (III) above it is advisable to call for a report from the Grama Sevaka of the area before the transfer is affected on the request forwarded.
- (b) In the case of (I) and (II) above, the estate of the deceased will be subject to a judicial process and hence the transfer of the business should be in keeping with the court order issued.
- (4) When a new partner is taken in to a partnership business, the inclusion request should be made by way of an amendment application. When there are more than two partners it is possible for one or more partners to leave the partnership and new partners to enter. However, when there are only two partners and when one partner is leaving the business the remaining partner should cancel the partnership and register the business as a sole proprietorship.
- (5) Converting a sole proprietor business in to a partnership.
This conversion could be accomplished by obtaining the consent of the existing proprietor and the prospective partners for the purpose, by way of affidavits. In this case the commencement date of the partnership business would be the date on which the documents are handed over to the office.
- (6) Converting a Partnership in to a sole Proprietorship.
The consent of all partner should be obtained by way of affidavits. In that it should be expressed that the preceding partners wish the business to run in the future. (It should

mention the exit of the partners who leave and the fact that the business is to continue as a sole proprietorship). Further the person who is taking over the business should express, by way of an affidavit, his willingness clearly, to take over the business.

- (7) However, when effecting the above amendments, it should be ensured that such Amendments are done subject to the fulfillment of the following conditions.
- (a) The name of the sole proprietorship or the partnership should not be amended fully.
 - (b) The nature of the business should not be drastically amended.
 - (c) When a sole proprietorship is converted into a partnership, the sole proprietor of the sole proprietor business should be a partner in the partnership.
 - (d) When a partnership is converted into a sole proprietorship the sole proprietor of the succeeding business should be one of the partners of the preceding business.

SECTION II

Appointments, Conduct and Administration

Appointment of
the registrar and
registrar's duties

6. (1) It is necessary to appoint a Provincial Registrar of Trading places (in future referred to as the Registrar) to conduct the duties of registering the trading places of the province. For this purpose, the Secretary to the Minister in charge of Trade in the Southern Provincial Council, by virtue of the office he/she holds is being appointed to the position of the Provincial Registrar of the Trading Places in the Southern Provincial Council.
- (2) In keeping with the provision of this precept the general administration and the Supervision of the registration of Trading places within the province falls within the purview of the registrar.

Delegation of
powers

7. As per this Precept, the powers of the registrar, his work objectives and duties could be delegated to an officer to be performed under the authority and supervision of the registrar. Accordingly, power could be delegated to the AGA of the District or any such officer and that officer who performs the duties on behalf of the secretary would be empowered to place his own signature and issue certificates for trade places registrations.

Providing
information to the
registrar

8. (1) As per this Precept, the Registrar may issue a directive to a particular person to provide certain information that is required in the opinion of the registrar, within the time specified by the registrar, to evaluate whether a business owned or partnered by that person should be registered under this Precept or not, or whether any change should be affected to the particulars, provided for registration. In the case of a corporation, the registrar may issue the directive to either the Secretary of the corporation or to the person discharging the duties of the Secretary.
- (2) A person who has not responded to the information solicited by the registrar as per clause (1) above within the time specified by him or within the time further accommodate by the registrar or a person who provides false information is guilty of an offence and when found guilty at a summary trial, is liable to pay a sum not exceeding rupees one thousand five hundred for every single day for which that directive is continuously

disregarded or to undergo a terms of imprisonment for period not exceeding six months or in either of the two ways, should be subjected to either a period of imprisonment or a fine and a period of imprisonment.

- (3) During the course of a trial as mentioned in clause (2) above, if the Court forms the opinion that the information as specified in the directive issued within the time specified by the registrar should be made available to the registrar, the Courts may issue such directive to the person concerned to provide or cause to provide such information.
 - (4) If, according to this observations of the Registrar, a certain business organization or a certain businessman has affected changes to a business as against the particulars provided at the time of its registration, the registrar may order the business establishment or person concerned to provide the information so required within the time allowed by the registrar. However, when it is revealed that the provision of information has been disregarded and when the registrar has issued notice to provide reasons for such disregard under this clause, no legal action may be instituted until the lapse of the period mentioned in the registrar's notice.
 - (5) In the event where a change takes place every time in the nature of business, place of business or the ownership of the business of a business registered under this precept, an application for registration of those changes should be made supported by an affidavit within one month of such changes and due registration should be obtained.
9. (1) If the registrar forms the opinion that a certain business is not providing sufficient information for him to carry out the duties under this precept and further, if he feels that certain items of material information have not been disclosed, the registrar has the authority to appoint an officer in writing for the purpose of investigation and securing the required information as specified by the registrar and such delegation of authority or appointment should be logged in the relevant current duty log.
- (2) In case where a situation warrants the appointment of an officer as stated in clause (1) above, the officer so appointed may obtain the services of a Peace Officer if he feels that is required, or he may resort to anyone, or all of the following courses of action in the discharge of his duty.
- (a) If he/she has confidential information to believe that the relevant documents are available at a particular place or a building he/she may enter that place or building and inspect or cause to inspect those documents and information.
 - (b) May also obtain a copy, a note or an inventory from a book, registrar or Document stumbled upon during the course of an inquiry or search in a particular building.
 - (c) May also question and inquire any person found in such premises with regard to duties and matters relevant to this precept ; the provisions available for inquiries and searches under Criminal Procedure Code No. 15 of 1979 should be made available as far as possible for inquiries conducted under this article.
 - (d) May also take into his custody, any document or book that he feels is relevant after having issued a receipt for such removal to the person in whose possession that item had been and may also take steps to enlist such item in the current duty log mention in clause (1) above.

Power to inquire
& search

- (3) If any person, organization, corporation, representative, director, officer or an employee of an organization, obstruct or fails to allow the registrar or the person authorized by the registrar in writing to perform his/her duty in providing an information, a book, a document, a report or any other written material, when such duties have been detailed under the provisions of this Precept, such person or organization is guilty of an offence, unless it is proved that such officer or employee of the organization did so without that person's knowledge or that everything possible has been done with due enthusiasm to prevent such obstruction or failure.
- (4) In a situation where the person who commits the offense as per clause (3) above is in a partnership, all the members of that partnership and managers at the time of committing that offense would be considered guilty of the said offence, and when found guilty at a summary trial before a court of justice, should be punished, either of the two ways of a term of imprisonment or a fine or a term of imprisonment and a fine, both.
- (5) In extending an existing registration or in issuing a new registration under this Precept, it should not be a bar to issue a certificate under a prior business registration.

Filing statements
by the registrar
displaying the
certificate

10. (1) When a registration of a business is sought under this Precept, if the registrar requests the submission of an additional statement from the applicant, the applicant should submit such additional statement within the time specified and that statement should be allowed to be filed in the relevant file. Accordingly, when that statement is to the satisfaction of the registrar, steps should be taken to enable the applicant to receive, or to be sent by registered post, the certificate of registration of the business.
- (2) The person or business organization issued with a registration certificate as per clause (1) above, should take steps to properly displayed that registration certificate or a certified copy of that certificate at the principal place of its business and all other places of business connected to the registration within 14 days of such issue.
- (3) Every business organization or person registered under this Precept should :
 - (a) carry in all their Letterheads,
 - (I) the name of the person or the names of all the partners of the business, the registration number of the Business certificate and the principal place of business, in a business run by a person (where not a single partner is a corporation) and run in collaboration with partners.
 - (II) the name of the person or the name of all the partners of the business including the names of the corporations and the particulars of incorporation, the registration number of the Business certificate and the principal place of business, in a business run by a person (where one or more partners are a corporation) and run in collaboration with partners.
 - (b) carry in all their Receipts,
 - (I) the name of the business and
 - (II) the registration number of the business certificate

- (4) A person or business organization that do not comply with clause (2) and clause (3) above, if that person or organization is a partner of a business registered under the Precept, every partner, manager or custodian of such business, is committing an offence and once found guilty at a summary trial before a court of justice, should be subjected to a fine not exceeding rupees two thousand.
 - (5) A statement made, should not understood for its *prima facie* value or for connected matters therein except against the person who makes that statement or for registering that a statement, or for the certificate of registration.
11. (1) If a business organization or a person registered under this Precept ceases its business activities under its certificate of registration, that organization or person, within three months of such cessation, should notify the registrar of that cessation by handing over or sending by registered post a statement in the form specified. This duty under this article should be performed by the partners or the person registered at the time of this cessation or in the event of death of partners or the person, by the personal representatives of such partners or person.
- Notice of termination & de-listing from the Registrar
- (2) When the person who is bound to make the declaration as per clause (1) above, has disregarded to act accordingly within the period specified, he is guilty of committing an offence under this precept, and when found guilty at a summary trial before Court of Justice is subject to a fine not exceeding rupees ten thousand.
 - (3) Once the declaration as per clause (1) above is received by the registrar, the registrar should file that statement accordingly and taken the name of the subject person or organization off the register and should mention that fact in the register.
 - (4) When the registrar has justifiable reasons to believe that a person or organization registered under this precept is not conducting business under that particular registration ;
 - (a) the registrar may notify the concerned person or business by registered post or by a notice published in public press to submit reasons within a month of that notice, to furnish reasons if there are to say, as to why the registration of that particular person or organization should not be cancelled. Having done that, if the register does not receive a satisfactory response within one month of that notification, the registrar may proceed to notice that the registration of the subject business has been cancelled. If the registrar receive no response to that notice within one month of that notice he/she should make a notification in the *gazette* that such persons or organization will be taken off from the business name register or
 - (b) sent or cause to send by registered post that notice to the person, organization and to each partner to his/her residential address a copy of that notice immediately.
 - (5) Having made that notification duly, and if the registrar does not receive a protest within one month of that notification, the registrar may proceed to take the name of that business person or organization off from the business register.
12. (1) When a particular application for registration of a business is made contravening this Precept or the rules and provisions enacted under the precept, the registrar or the officer delegated with due authority should refuse to register that application.
- Power to refuse registration

	(2) In parentheses to registering a place of business under this Precept, if that place could be barred from the use as a premises to the business, the registration should not be construed to bestow power to the use of such premises.
Fine for using a trade name refused or terminated	13. In the event where as applicaton for registration of a business is refused or a registration of a business is terminated under this precept, a person or organization continuing to conduct that business is committing an offence under this precept and once found guilty at a summary trial before a Court Justice, should be subject to a fine of rupee two thousand and a further fine of rupees five hundred for every date that the business is made to function since found guilty.
Appeals	14. When a person or organization is not satisfied with the decision made or an order issued by the registrar on a particular issue, such person or organization, once that decision or order is communicated in writing, may make an appeal to the Minister in charge of the subject. The minister in turn should make known his decision within three months of making such appeal and that descision would be the final decision on the issue.
Examining the statements registered and issuing certified copies	<p>15. (1) A person or organization may inspect the record of his business by scrutinizing the files and records maintained by the registrar after paying the fees specified for the purpose.</p> <p>(2) A business person or an organization registered under the precept is entitle to request a certificate of registration or a certificate done on a specified format with information about the business from the registrar. That certificate or certified copy however, is issued at a fee determined by the registrar.</p> <p>(3) A certificate of registration or a copy of a statement registered supplied under this Precept or a photo copy or an extract, when certified as a true copy by the registrar's signature duly such document should be considered as evidence in any Court of Law.</p> <p>If the registrar, after a due inquiry, is convinced that a particular trading certificate, filed or bound in a certain file or a registrar, is lost, has deteriorated or is destroyed or that certain notes or material parts of such notes have been erased or made illegible, the registrar may prepare and issue another certificate in place.</p>
Handing over the notices	16. If, a notice, written notificaion, a certificate or any other document that has to be sent as required by the provisions of this Precept, has been sent by registered post to the registered address of the main place of business of the recipient by the Business Names Registrar, that could be considered as duly sent or handed over for all intents and purposes.
Situations where applications are rescinded	<p>17. (1) In a situation where a certain business person or an organization has requested a trading certificate under this precept and where that party has disregarded to submit some information the registrar has requested in writing or has not made amendments in the first application as ordered by the registrar, the registrar may issue a notice on a specified format to that person or organization stating to provide that information or to make that amendment. From the date of such notice, within a period of one month or within an extended period the registrar may agree to grant, if the concerned person or organization fail to fulfill the requirements laid down, the registrar may consider that application for registration to have rescinded and thus, may refuse to take any further action to issue a certificate.</p> <p>However, if that person or organization pays the extra fees ordered on the initial application and provides the information prescribed by the registrar or to make the amendment directed by the registrar, the registrar may take further action on the rescinded application.</p>

- (2) A person or organization that used a Business Certificate cancelled under this article and is continuing to use such certificate without taking steps to act as per 2nd paragraph clause (1) above, is committing an offense as per the Precept and once found guilty at a summary trial before a Magistrate should be subject to a fine not exceeding rupees two thousand and for a further continuing fine of rupees one hundred for every day that the business continues to commit that offense.
18. (1) The fees chargeable under this Precept, for registering a business organization, for extending a registration, for issuing a certificate relevant to registration, for issuing a statement, copy or for any other service provided by the registrar, should be according to the orders issued by the Minister as per the rules.
- (2) The compensatory stipend payable to the authorized officers for discharging their duty in acting and maintaining activity with powers delegated by the registrar under this Precept, should be made with the recommendation of the Southern Province Chief Secretary, approved by the Board of Ministers of the Southern Provincial Council.
19. (1) As specifically mentioned as, should be done according to rules', on certain matters in this Precept, the Minister may formulate rules under this precept.
- (2) Every rule formulated by the Minister should be published in the *Gazette* and should be effective from the date of the *Gazette* or from the future date mentioned in the *Gazette* notification and having come into effect thus, should be submitted to the Southern Provincial Council for approved within three months of the date of which, it came in to effect.
- (3) Accordingly, if the Southern Provincial Council happens to turn down certain rules submitted for its approval, such rules should be treated as rescinded from the date on which those were turned down out subject to the position that no adverse impact on that rescindment may be fall on the activities that have taken place from the date those rules were considered effective and that date on which those were rescinded.
- (4) In such an event, the date that is considered as the date on which the subject rules were rescinded should be published in the *Gazette*.
20. (1) (a) A person or organization that maintains that a particular business is registered while being knowledgeable of that statement falsity and a person or organization that deliberately changes the registration number of the business registration certificate.
- (b) A business person or organization that submits or causes to submit a false affidavit, are guilty of an offence and once found guilty at a summary trial before a Magistrate is subject to a penalty of either a sum of rupees not exceeding twenty thousand or a term of imprisonment not exceeding a period of six months.
21. Even though this Precept and rules made under the same bestows absolute power on the registrar, despite the fact that there is opportunity for the affected party to forward reasons on his/her behalf, the registrar should always exercise his absolute power in good faith subject to unquestionable *bona-fides*.
22. A notebook on registration maintained by the registrar under this Precept where documents discrepancies are noted from time to time, the registrar could follow up and rectify same after conducting his/her own examination.

Rules to determine the charges

Making false statements and claiming registration by default

Registrar's absolute power

Rectifying Document Short Comings

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| Unable to prosecute the registrar | 23. It is not ethical or a 'done thing' to file action of cause to file action against the registrar under this Precept, when he has discharged his duties with, or said to have done with, the best of <i>bonafide</i> intentions. |
| Registrar and other officers are public servants | 24. The registrar and any other person acting on delegated power of the registrar, as along as they perform their duties in that capacities should be considered as public servant for the purpose of definition in the Penal Code. |
| Maintaining reports and registers | 25. All documents, report and register that are prescribed to be maintained under the provisions of this Precept should be maintained at the registered office under the supervision of the registrar or the office authorized by the registrar. |
| Internal arrangements | <p>26. (1) From the day this Precept comes into effect, the Southern Province Business Names Precept No. 1 of 1991 stands rescinded by this Precept, and all registers maintained under the said precept with due supervision of the Provincial Business names registrar or an officer authorized by him, should be considered as those maintained under the present Precept</p> <p>(2) The certificates issued under the Business Names Precept No. 1 of 1991 should be considered as certificates issued under the current Precept to the required extent during the period up to 31st December of the financial year succeeding the year in which the current Precept was brought into effect.</p> <p>(3) Further any legal matter that is being pursued in any judiciary under the said Precept should continue to proceed as per the provision and definitions of the said Precept.</p> <p>27. Unless an alternative definition is required for the terms used in this Precept.</p> <p style="padding-left: 40px;">'Business' shall mean a sale or trade where money is exchanged</p> <p style="padding-left: 40px;">'Business Registraion Certificate' shall mean certificate issued under the Southern Province Registration of Trading Places Precept for a name or descresion under which a sole proprietorship or a partnership business is registered and carried out.</p> <p style="padding-left: 40px;">'Corporation' shall mean an institution created by an act of parliament or the Southern Provincial Council and includes institutions created under the Companies Act, as well</p> <p style="padding-left: 40px;">'Director' and 'Secretary' shall mean a position that discharge the duties of a director or the secretary but known by any other title.</p> <p style="padding-left: 40px;">'Business institution' shall mean a business establishment comprising one or more persons brought together for the purpose of making a profit. However, it excludes a company established and created under the Companies Act, No. 1 of 2007.</p> <p style="padding-left: 40px;">'Person' or 'Persons' shall mean a natural person or persons
(person/persons above 18 years of age who have established business within the Southern Province)</p> <p style="padding-left: 40px;">'The Minister' shall mean the Minister in charge of the subject of Trade in the Southern Provincial Council.</p> |
| Prevalence of Sinhala version when inconsistent | 28. In the event where there is inconsistency between the Sinhala, English and Tamil versions of this Precept, the Sinhala version should prevail. |