

THE REGISTRATION OF BUSINESS NAMES BILL, 2011

MEMORANDUM

The objects of this Bill are to—

- (a) provide for the registration of business names;
- (b) repeal and replace the Registration of Business Names Act, 1931; and
- (c) provide for matters connected with, or incidental, to the foregoing.

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Attorney-General

THE REGISTRATION OF BUSINESS NAMES BILL, 2011

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A BILL

ENTITLED

An Act to provide for the registration of business names; repeal and replace the Registration of Business Names Act, 1931; and provide for matters connected with, or incidental to, the foregoing.

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY

1. This Act may be cited as the Registration of Business Names Act, 2011. Short title
2. (1) In this Act, unless the context otherwise requires Interpretation
- “Agency” means the Patents and Companies Registration Agency established under section *three* of the Patents and Companies Registration Agency Act, 2010;
- “business” means a trade, occupation, profession or venture conducted or carried on by one or more persons for gain or profit;
- “business name” means the name or style under Act No. 15 of 2010 which any business is carried on, whether in partnership or otherwise, other than the true names of an individual; Act No. 15 of 2010
- “certificate” means the certificate of registration issued under section *seven*;
- “court” means a court of competent jurisdiction;
- “firm” means an unincorporate body of two or more individuals or one or more individuals and one or more corporations, or two or more corporations, who have entered into partnership with one another with a view to carrying on business for profit;
- “foreign firm” means any firm, individual or corporation whose principal place of business is situated outside Zambia;
- “individual” means a natural person, and does not include a corporation;
- “initials” includes any recognised abbreviation of a forename;
- “Register” means the Register established under section *nineteen*;
- “Registrar” means the person appointed as Registrar under section *fourteen* of the Patents and Companies Registration Cap. 389

Agency Act, 2010; and

“repealed Act” means the Registration of Business Names Act.

(2) References in this Act to a former forename or surname shall not include a former forename or surname where that name or surname has been changed or disused before the person bearing the name attained the age of eighteen years, and, in the case of a married woman, shall not include the name or surname by which she was known previous to the marriage. 5

(3) References in this Act to a change of name shall not include a change of name which has taken place before the person whose name has been changed has attained the age of eighteen years. 10

Scope of Act 3. This Act does not apply to a corporate body, established or registered under the provisions of any law, in respect of any business carried on by it under the name by which it is so established or registered. 15

PART II

REGISTRATION

Firms and persons to be registered 4. (1) Subject to the provisions of this Act, the following shall apply for registration under the provisions of this Act: 20

(a) every individual or firm with a place of business in Zambia and carrying on business under a business name which does not consist of the true surname of the individual or surnames of all the partners who are individuals and the corporate names of all the partners who are corporations without any addition other than the true forename or forenames of the individual partners or initials of the forenames; and 25

(b) every individual or firm with a place of business in Zambia, who, or a member of which, has either before or after the commencement of this Act changed the individual’s or firm’s name, except in the case of a woman in consequence of marriage: 30

Provided that—

(i) where two or more individual partners have the same surname, the addition of an As@ at the end of that surname shall not of itself render registration necessary; 35

(ii) where the business is carried on by a trustee in bankruptcy or a receiver or manager appointed by a court, registration shall not be necessary; and 40

- (iii) a purchase or acquisition of property by two or more persons as joint tenants or tenants in common is not of itself to be deemed as carrying on a business, whether or not the owners share any profits arising from the sale thereof.
- (2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.
- 5
- 10 **5.** (1) An application for a certificate shall be made to the Registrar in the prescribed manner and form upon payment of the prescribed fee. Application for certificate
- (2) The Registrar may request an applicant to furnish within such period as the Registrar may determine any other information relevant for the purposes of this Act.
- 15 **6.** (1) A person may apply to the Registrar, in the prescribed manner and form, for the reservation of a business name for which registration is sought. Reservation of name
- (2) The Registrar shall, upon receipt of an application under subsection (1), reserve the proposed name for a period not exceeding three months.
- 20 **7.** (1) The Registrar shall, within fourteen days of receipt of an application made under section *five*, issue the applicant with a certificate of registration if Issue of certificate
- 25 (a) the application is in accordance with the provisions of this Act; and
- (b) the activity or business to be carried out does not contravene any law.
- (2) Subject to the other provisions of this Act, a certificate issued under this Act shall have an unlimited period of validity.
- 30 **8.** (1) The Agency may register an individual or a firm with a place of business within Zambia where the individual or firm carries on the business wholly or mainly as a nominee or a trustee of, or for, another person or corporation or acts as an agent for a foreign firm. Registration by nominee, etc.
- 35 (2) Notwithstanding subsection (1), where a business is carried on by a trustee in bankruptcy or a receiver or manager appointed by a court, registration under this section shall not be necessary.
- 9.** (1) The Registrar shall reject an application for the registration of a business name if the business name in respect of which the application is made— Rejection of application
- 40 (a) is identical with that of another existing business name;
- (b) is similar to, or is the same as, the name of another business

- name and is likely to mislead the public;
 (c) is repugnant or otherwise undesirable;
 (d) includes the word “Zambia”, “Government”, “State” or any other word, abbreviation or initial which—
 (i) imports or suggests that the applicant enjoys the patronage of the Head of State, the Government or administration of any foreign State or of any department or institution of the Government or a foreign State; or
 (ii) is calculated to mislead the public to believe that the business is under Zambian ownership or control;
 (e) is calculated to deceive or to mislead the public or to cause annoyance or offence to any person or class of persons or is suggestive of blasphemy or indecency; or
 (f) suggests or implies a connection with a political party or a leader of a political party.

(2) The Registrar shall reject an application for a certificate if—

- (a) the activity or business to be carried out contravenes any law in force;
 (b) the certificate previously held by the applicant has been revoked by the Registrar; or
 (c) the applicant submits false information in relation to the requirements for the application.

(3) The Registrar shall, where the Registrar rejects an application under subsection (1), inform the applicant accordingly and give the reasons therefor.

Publication of name **10.** A holder of a certificate issued under this Act shall set out the business name in legible characters in all official correspondence, contracts, invoices, negotiable instruments and orders for goods or services issued or made on behalf of the holder of the certificate.

Display of certificate **11.** A holder of a certificate issued under this Act shall display the certificate in a conspicuous place at the place of business.

Annual return **12.** (1) A holder of a certificate shall submit to the Registrar an annual return in the prescribed manner and form upon payment of the prescribed fee.

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Surrender of certificate **13.** (1) Where the holder of a certificate decides not to continue with the business to which the certificate relates, the holder shall

notify the Registrar, in writing, and shall agree with the Registrar on the terms and conditions of the surrender of the certificate.

(2) Where a certificate is surrendered under subsection (1), the certificate shall lapse and subject to section *sixteen*, be cancelled.

5 **14.** (1) A certificate shall not be transferred to a third party without the prior approval of the Registrar.

Transfer of
certificate

10 (2) An application for approval to transfer a certificate shall be made to the Registrar and the Registrar may, within fourteen days of receipt of the application, approve the application in accordance with this Act.

15 **15.** (1) A holder of a certificate issued under this Act shall, where a change is made or occurs in any of the following registered particulars:

Registration
of change in
particulars

- 15 (a) the business name;
 (b) the ownership of the business;
 (c) the physical address of the principal or other place of
 business;
 (d) the nature of the business; or
 (e) the names of the partners;

20 notify the Registrar in the prescribed manner and form within fourteen days of the change.

 (2) The Registrar shall, upon receipt of the notice referred to in subsection (1), amend the certificate accordingly.

25 (3) The Registrar shall, where the Registrar identifies an error on the Register relating to any particulars of a certificate, inform the holder of the certificate and amend the certificate accordingly.

30 (4) An individual who, or a firm which, contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding one thousand penalty units for each day during which the default continues.

35 (5) In addition to the penalty imposed under subsection (4), the rights of the individual or firm under, or arising out of, any contract made or entered into by, or on behalf of, the individual or firm in relation to the business in respect of the carrying on of which the particulars were required to be furnished at any time while the individual or firm is in default shall not be enforceable by any action or legal proceeding whether in the business name or otherwise:

 Provided that—

- 40 (a) the individual or firm may apply to the court for relief against the prohibition referred to in this subsection, and the court may, upon being satisfied 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, grant the relief either generally, or as respects a particular contract, on condition that the costs of the application shall be paid by the individual or firm, unless 5 the court otherwise orders, and on such other conditions, if any, as the court may impose, and the relief shall not be granted except on the service and publication of notice of the application as the court may order, nor shall relief be granted in respect of a contract if a party 10 to the contract proves to the satisfaction of the court that if this Act had been complied with, the party would not have entered into the contract;

(b) nothing shall prejudice the rights of any other parties as against the individual or firm in respect of the contract; 15 or

(c) where any action or legal proceeding is commenced by any other party against the individual or firm to enforce the rights of the party in respect of the contract, nothing shall preclude the individual or firm from enforcing in 20 that action or proceeding, by way of counter claim, set off or otherwise, such rights as the individual or firm may have against that party in respect of the contract.

Suspension
or
cancellation
of certificate

16. (1) Subject to the other provisions of this Act, the Registrar may suspend or cancel a certificate if the holder 25

(a) obtained the certificate by fraud or deliberate or negligent submission of false information or statements;

(b) in the case of a partnership, is dissolved;

(c) fails to submit annual returns for two consecutive years; 30 or

(d) contravenes this Act or any other written law.

(2) The Registrar shall, before suspending or cancelling a certificate in accordance with subsection (1), give written notice to the holder thereof of the intention to suspend or cancel the certificate and shall give the reasons for the intended suspension or cancellation 35 and require the holder to show cause, within a period of not more than thirty days, why the certificate should not be suspended or cancelled.

(3) The Registrar shall not suspend or cancel a certificate under this section if the holder takes remedial measures to the satisfaction 40 of the Registrar within the period of thirty days referred to in subsection (2).

(4) If a holder who is notified under subsection (2) fails to

show cause to the satisfaction of the Registrar, or does not take any remedial measures to the satisfaction of the Registrar within the time specified in that subsection, the Registrar may suspend or cancel the certificate.

- 5 (6) Where a certificate is cancelled, the holder of the certificate shall return the certificate to the Registrar and the Registrar shall cancel the name and the particulars relating to the certificate from the Register.

- 10 **17.** Where the registration of any individual or firm has been cancelled or suspended, the individual or firm affected may apply for re registration in the prescribed manner and form. Re-registration

18. (1) A holder of a certificate who loses the certificate may apply to the Registrar for a duplicate certificate in the prescribed manner and form. Loss of certificate

- 15 (2) The Registrar shall, within fourteen days of the receipt of an application under subsection (1), issue a duplicate certificate.

- 19.** (1) The Registrar shall keep and maintain a Register of all the individuals and firms registered under this Act in which the Registrar shall enter the names and other details relating to the individuals and firms. Register

(2) The Register referred to in subsection (1) shall be kept at the offices of the Agency and shall be open to inspection by the public at such times and on such conditions, including the payment of a fee for inspection, as the Agency may determine.

- 25 (3) A person may, upon payment of the prescribed fee, require a copy of the certificate of any individual or firm or a copy or extract of any other particulars from the Register to be certified by the Registrar.

- (4) Any document purporting to be an extract or copy of any entry in the Register and duly certified to be a true copy or extract under the hand of the Registrar shall be received in evidence as to the matters stated therein in any legal proceedings.

- 35 **20.** (1) An individual or a partner of a firm registered under this Act shall, where the individual or firm ceases to carry on business, notify the Registrar that the individual or firm has ceased to carry on business, within three months after the business ceases to be carried on. Removal of names from Register

- (2) A person who, without reasonable excuse, fails to give the notice required under subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding one thousand five hundred penalty units for each day during which the default continues.

- (3) The Registrar shall, on receipt of the notice referred to

under subsection (1), remove the individual or firm from the Register.

(4) The Registrar may, where the Registrar reasonably believes that an individual or a firm registered under this Act is not carrying on business, send to the individual or firm, by registered post, a notice that unless an answer is received to the notice within thirty days from the date thereof, the individual or firm shall be removed from the Register. 5

(5) The Registrar may, where the Registrar sends a notice under subsection (4) and receives an answer from the individual or firm to the effect that the individual or firm is not carrying on business or does not within thirty days after sending the notice receive an answer, remove the individual or firm from the Register. 10

(6) The Registrar may, where a business name is removed from the Register or ceases to exist, restore the name on request by the owner of the business name: 15

Provided that the Registrar may, where a person who is not the owner of the business name requests for its restoration, restore it only after five years from the date of its removal from the Register or cessation.

Publication
of registered
individuals
and firms
Appeal

21. The Agency shall publish the names of all the individuals and firms registered under this Act in a daily newspaper of general circulation in Zambia. 20

22. (1) A person who is aggrieved with the decision of the Registrar under this Act may appeal to the Minister within thirty days of the Registrar's decision.

(2) A person who is aggrieved with the decision of the Minister under subsection (1) may appeal to the High Court within thirty days of the Minister's decision. 25

PART III

GENERAL PROVISIONS

Penalty for
failure to
provide
information

23. A person who, where required under this Act to furnish any information or other particulars, without any reasonable excuse, fails to furnish the information in the manner and within the time specified by this Act commits an offence and is liable, upon conviction, to a fine not exceeding two thousand penalty units for each day during which the default continues. 30 35

Penalty for
false
statement

24. A person commits an offence who—

(a) makes, signs or utters a false statement or declaration in support of an application or forges, defaces or alters a certificate; or

(b) knowingly or recklessly gives false or incomplete information for the purpose of obtaining a certificate or 40

other requirement; and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

- 5 **25.** Where an offence under this Act is committed by a firm, every partner, director or manager of the firm shall be liable, upon conviction, as if the partner, director or manager had personally committed the offence, unless the partner, director or manager proves to the satisfaction of the court that the act constituting the
10 offence was done without the knowledge, consent or connivance of the partner, director or manager or that the partner, director or manager took reasonable steps to prevent the commission of the offence.

Offences by
firm

- 15 **26.** (1) The Minister may, on the recommendation of the Agency, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.

Regulations

(2) Without prejudice to the generality of subsection (1), regulations under that subsection may make provisions for —

- 20 (a) the procedure and forms to be used, and the fees payable for registration and other matters under this Act;
 (b) the information to be supplied in an application for registration;
 (c) the format of the returns to be submitted; and
 (d) anything required to be prescribed under this Act.

- 25 **27.** (1) The Registration of Business Names Act, 1931, is hereby repealed.

Repeal of
Cap. 389
Act No. 29 of
1931

(2) Notwithstanding subsection (1) —

- (a) a certificate issued under the repealed Act shall continue to be valid as if issued under this Act; and
 (b) an application for a certificate pending immediately before the commencement of this Act shall be dealt with in accordance with the provisions of this Act.

Cap. 389

