

**THE BUSINESS REGULATORY (AMENDMENT) BILL, 2018**

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MEMORANDUM

The object of this Bill is to amend the Business Regulatory Act, 2014, so as to—

- (a) continue the Business Regulatory Review Agency and establish it as a body corporate;
- (b) re-constitute the Business Regulatory Review Committee as the Board of the Agency; and
- (c) provide for matters connected with, or incidental to, the foregoing.

A. MWANSA,  
*Solicitor-General*

# A BILL

ENTITLED

## **An Act to amend the Business Regulatory Act.**

ENACTED by the Parliament of Zambia.

Enactment

1. This Act may be cited as the Business Regulatory (Amendment) Act, 2018, and shall be read as one with the Business Regulatory Act, 2014, in this Act referred to as the principal Act.

Short title  
Act No. 3 of  
2014

5 2. The principal Act is amended in the long title by the deletion of the words “establish the Business Regulatory Review Committee” and the substitution therefor of the words Aconstitute the Board of the Agency”.

Amendment  
of long title

3. Section 2 of the principal Act is amended by—

Amendment  
of  
section 2

10 (a) the deletion of the definition of “Committee”; and  
(b) the insertion of the following new definitions in the appropriate places:

“associate” has the meaning assigned to the word in the Anti-Corruption Act, 2012;

Act No. 3 of  
2012

15 “Board” means the Board of the Agency constituted under section 8;

“Executive Director” means the person appointed as Executive Director under section 17;

20 “relative” has the meaning assigned to the word in the Anti-Corruption Act, 2012;.

Act No. 3 of  
2012

**N.A.B. 12, 2018**

Repeal and replacement of Parts III, IV and V

**4.** The principal Act is amended by the repeal of Parts III, IV and V and the substitution therefor of the following:

**PART III**

**THE BUSINESS REGULATORY REVIEW AGENCY**

Establishment of Agency

**5.** There is established the Business Regulatory Review Agency which is a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and with the power, subject to the provisions of this Act, to do all acts and things that a body corporate may, by law, do or perform. 5  
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Seal of Agency

**6.** (1) The seal of the Agency shall be a device that may be determined by the Agency and shall be kept by the Secretary.

(2) The affixing of the seal shall be authenticated by the Chairperson or the ViceChairperson and the Secretary or another person authorised in that behalf by a resolution of the Board. 15

(3) A contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Agency by the Secretary or any other person generally or specifically authorised by the Board in that behalf. 20

(4) A document purporting to be a document under the seal of the Agency or issued on behalf of the Agency shall be received in evidence and shall be considered to be so executed or issued, as the case may be, without any further proof, unless the contrary is proved. 25

Functions of Agency

**7.** (1) The functions of the Agency are to provide an efficient, cost effective and accessible business licensing system.

(2) Despite the generality of subsection (1), the Agency shall  
(a) review a matter relating to business regulation or licensing on its own initiative or on a representation from a person or business; 30

(b) advise Government on matters relating to business regulation and licensing;

(c) issue guidelines and standards for regulatory impact assessments and public consultations to be undertaken by regulatory agencies; 35

(d) manage and update the e-registry;

(e) approve regulatory frameworks submitted under this Act;

- (f) promote more accessible and systematic public consultation strategies and develop a website portal for public interventions on issues of business regulation;
- 5 (g) advise regulatory agencies on the efficient and cost effective regulation and licensing of business activities;
- (h) monitor and report on the activities of regulatory agencies related to business regulation, quality control and compliance with this Act;
- 10 (i) determine requests for licensing of business activities by a regulatory agency;
- (j) design an annual action plan for the implementation of regulatory services centres and a single licensing system and oversee and coordinate the implementation of the action plan; and
- 15 (k) carry out, periodically, regulatory impact assessments on business regulation and licensing.

**8.** (1) There is constituted the Board of the Agency which comprises the following part-time members appointed by the Minister: Board of Agency

- 20 (a) a representative each of the—
- (i) Attorney-General;
  - (ii) Ministry responsible for commerce;
  - (iii) Ministry responsible for finance;
  - (iv) Ministry responsible for local government;

25 (v) Ministry responsible for tourism;

  - (vi) Zambia Association of Chambers of Commerce and Industry;
  - (vii) Zambia Association of Manufacturers;
  - (viii) Economic Association of Zambia;

30 (ix) Law Association of Zambia;
- (b) two representatives of an organisation representing persons operating businesses in the tourism and hospitality sector; and
- 35 (c) two other persons with expertise in business licensing regulatory matters.
- (2) The representatives referred to in subsection (1)(a) and (b) shall be nominated by their respective organisations.

(3) The Minister shall appoint the Chairperson from among the members, except members appointed under subsection (1)(a) (i), (ii), (iii), (iv) and (v).

(4) The members of the Board shall elect the Vice-Chairperson from amongst themselves. 5

(5) A person shall not be nominated or appointed as a member of the Board if that person—

(a) has been convicted of an offence under any law and sentence to a term of imprisonment of not less than six months without the option of a fine; 10

(b) is legally disqualified from performing the duties of a member of the Board; or

(c) is adjudged or declared bankrupt.

Functions of Board

9. (1) The Board is the governing body of the Agency and shall exercise and perform the functions of the Agency. 15

(2) Without limiting the generality of subsection (1), the functions of the Board are to—

(a) approve the policies, programmes and strategies of the Agency;

(b) approve the annual work plan, action plans and activity reports of the Agency; 20

(c) approve the annual budget estimates and financial statements of the Agency;

(d) produce, at least once a quarter, a report on the quality of business regulation, and propose any actions necessary to improve the business environment so as to support the developmental policies of the Government; and 25

(e) monitor and report on the activities of regulatory agencies related to business regulation, quality control and compliance with this Act. 30

(3) In the performance of its functions, the Board may—

(a) require a public body or a person to provide it with such information as the Board may require for the performance of its functions; 35

(b) invite representations from the public;

(c) undertake and publish, studies, research and evaluations for purposes of this Act; and

(d) liaise with other research bodies within and outside Zambia carrying out comparable studies, research and evaluation.

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(4) The Minister may enter into a performance contract with the Board for a specific period, which shall be consistent with the provisions of this Act.

**10.** (1) Subject to the other provisions of this Act, a member of the Board shall hold office for a period of three years from the date of appointment and may be reappointed for one further period of three years.

Tenure of office and vacancy

(2) A member shall, on the expiration of the period for which that member is appointed, continue to hold office until a successor is appointed, but in no case shall the further period exceed four months.

(3) The office of a member becomes vacant if that member—

(a) dies;

(b) is adjudged bankrupt;

(c) is absent from three consecutive meetings of the Board of which the member has had notice, without the prior approval of the Board;

(d) resigns;

(e) becomes legally disqualified from performing the duties of a member of the Board;

(f) is removed by the Minister;

(g) ceases to be a member of the organisation which nominated the member; or

(h) is convicted of an offence under any law and sentence to a term of imprisonment of not less than six months without the option of a fine.

(4) The Minister shall, where the office of a member becomes vacant before the expiry of the term of office, appoint another member in place of that member, but that person shall hold office as a member only for the unexpired part of the term of the Board.

(5) A member may resign from office by giving not less than one month's notice in writing to the Minister.

Proceedings  
of Board

**11.** (1) Subject to the other provisions of this Act, the Board may regulate its own procedure.

(2) The Board shall meet for the transaction of business, at least once in every three months at the places and times that the Board may determine. 5

(3) The Chairperson shall call for a meeting of the Board, on giving notice of not less than fourteen days, if not less than one-third of the members so request in writing, except that if the urgency of any particular matter does not permit the giving of notice, a special meeting may be called on giving a shorter notice. 10

(4) The quorum at a meeting of the Board shall be seven.

(5) There shall preside at any meeting of the Board—

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice Chairperson;  
and 15

(c) in the absence of both the Chairperson and the Vice Chairperson, a member that the members present may elect from amongst themselves for the purpose of that meeting.

(6) A decision of the Board on any question shall be by a 20 majority of votes of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have, in addition to a deliberative vote, a casting vote.

(7) Where a member is for any reason unable to attend any meeting of the Board, the member may, in writing, nominate another 25 person from the same organisation to attend that meeting in that member's stead and that person is considered to be a member for the purpose of that meeting.

(8) The Board may invite any person whose presence is in its opinion desirable to attend and to participate in the deliberations of 30 a meeting of the Board but that person shall have no vote.

(9) The validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled to do so, took part in the 35 proceedings.

(10) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and every meeting of a committee established by the Board.

5 **12.** (1) The Board may for the purpose of performing its functions under this Act, constitute a committee and delegate to that committee functions that it thinks fit. Committees of Board

(2) The Board may appoint as members of a committee constituted under subsection (1), persons who are or are not members of the Board and that persons shall hold office for a 10 period that Board may determine.

**13.** There shall be paid to members of the Board or any committee of the Board allowances that the Minister may determine with the approval of the Emoluments Commission. Allowances of members

15 **14.** (1) A person who is present at a meeting of the Board or a committee of the Board at which any matter, in which that person or that person's relative or associate is directly or indirectly interested in a private capacity, is the subject of consideration shall, as soon as is practicable after the commencement of the meeting, disclose that interest and shall not take part in any consideration or discussion 20 of, or vote on, any question relating to that matter. Disclosure of interest

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

25 **15.** (1) A person shall not, without the consent in writing given by or on behalf of the Board, otherwise than in the course of duties of that person, publish or disclose to any other person, the contents of any document, communication or information, which relates to, or which has come to the knowledge of that person in the course of that person's duties under this Act. Prohibition of publication of, or disclosure of information to unauthorised persons

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

35 (3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates the information to any other person, commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.



- Immunity of members of Board and staff of Agency      **16.** An action or other proceeding shall not lie or be instituted against a member of the Board or a committee of the Board, or a member of staff of the Agency, for or in respect of any act or thing done or omitted to be done in good faith in the exercise or performance, of any of the powers, functions or duties conferred under this Act. 5
- Executive Director      **17.** (1) The Board shall appoint, on the terms and conditions that the Emoluments Commission may determine, the Executive Director, who shall be the chief executive officer of the Agency.  
(2) The Executive Director shall attend the meetings of the Board and may address those meetings but shall not vote on any matter. 10
- Secretary      **18.** The Board shall appoint a Secretary, on the terms and conditions that the Emoluments Commission may determine.
- Directors and other staff      **19.** The Board may appoint, on the terms and conditions that the Emoluments Commission may determine, Directors and other staff that it considers necessary for the performance of the functions of the Agency. 15

#### PART IV

#### FINANCIAL PROVISIONS 20

- Funds of Agency      **21.** (1) The funds of the Agency consist of monies that may be appropriated by Parliament.  
(2) The Agency may, subject to the approval of the Minister—  
(a) accept monies by way of grants or donations from any source within or outside Zambia; or 25  
(b) raise by way of loans or otherwise, monies that it may require for the discharge of its functions.  
(3) There shall be paid from the funds of the Agency—  
(a) the emoluments of the members and staff of the Agency as approved by the Emoluments Commission; 30  
(b) travelling and other allowances for members of the Board, members of a committee of the Board or staff of the Agency when engaged on the business of the Agency at rates that the Agency may approve; and  
(c) any other expenses incurred by the Agency in the performance of its functions under this Act. 35  
(4) The Board may, with the approval of the Minister, invest in a manner that it considers appropriate funds of the Agency that it does not immediately require for the discharge of its functions.

- 22.** The financial year of the Agency shall be a period of twelve months ending on 31<sup>st</sup> December in each year.
- 23.** (1) The Agency shall cause to be kept proper books of accounts and other records relating to its accounts. Accounts and audit
- 5 (2) The accounts of the Agency shall be audited annually by the AuditorGeneral or an auditor appointed by the AuditorGeneral.
- (3) The AuditorGeneral’s fees shall be paid by the Agency.
- 24.** (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Agency shall submit to the Annual report
- 10 Minister a report concerning its activities during the financial year.
- (2) The report referred to in subsection (1) shall include information on the financial affairs of the Agency and there shall be appended to the report—
- (a) an audited statement of financial position;
- 15 (b) an audited statement of comprehensive income; and
- (c) other information that the Minister may require.
- (3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in sub section (1), cause the report to be laid before the
- 20 National Assembly.
- PART V**  
**GENERAL PROVISIONS**
- 25.** (1) A person or public body aggrieved with a decision of the Agency may appeal to the Minister against the decision within Appeals
- 25 thirty days of the decision.
- (2) A person or public body aggrieved with the decision of the Minister may appeal to the High Court.
- 26.** The Minister may, by statutory instrument, make Regulations
- 30 **27.** The Schedule applies to the savings and transitional arrangements. Savings and transitional provisions
- 28.** The principal Act is amended by the repeal of the First Schedule and the substitution therefor of the Schedule set out in the Appendix. Repeal and replacement of First Schedule

APPENDIX

(Section 5)

SCHEDULE

(Section 27)

SAVINGS AND TRANSITIONAL PROVISIONS

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Vesting of  
assets of  
former  
Agency

1. (1) On or after the appointed date, there shall be transferred to, and vest in, or subsist against, the Agency by virtue of this Act and without further assurance

(a) the affairs of the former Agency;

(b) any one-stop centre or shop established under any other law shall continue to exist as if established under this Act and shall be renamed regulatory services centres under the auspices of the Agency; 10

(c) subject to this Act, all property, rights and obligations which immediately before the appointed date were the property, rights and obligations of the former Agency. 15

(2) In this Schedule, “former Agency” means the Business Regulatory Review Agency which served as the secretariat of the Committee.

(3) Except as provided in this Act, every deed, bond and agreement (other than an agreement for personal service) to which the Government was a party immediately before the commencement of this Act in respect of the former Agency, whether in writing or not, and whether or not of such a nature that rights, liabilities and obligations thereunder could be assigned, shall, unless its subjectmatter or terms make it impossible that it should have effect as modified in the manner provided by this paragraph, have effect as from the date of the assignment thereof, as if — 20

(a) the Agency had been a party thereto;

(b) for any reference to the Government there were substituted, as respects anything falling to be done on or after the appointed date, a reference to the Agency; and 30

(c) for any reference to any officer of the former Agency not being a party thereto and beneficially interested therein there were substituted, as respects anything falling to be done, a reference to an officer of the Agency. 35

(3) Subject to the provisions of subsection (2), documents, other than those referred to therein, which refer specifically or generally to the former Agency shall be construed in accordance with subsection (2) as far as applicable.

5     **2.** (1) Whenever in pursuance of this Act, any property, rights, liabilities and obligations of the Government through the former Agency are deemed transferred to the Agency in respect of which transfer a written law provides for registration, the Agency shall make an application in writing to the appropriate authority for  
10 registration of the transfer. Registration of property to be transferred by Government

(2) The registration authority referred to in subparagraph (1) shall make the entries in the appropriate register as shall give effect to the transfer and , where applicable, issue to the transferee concerned a certificate of title in respect of the property or make  
15 necessary amendments to the register, as the case may be, and shall make endorsement on the deeds relating to the title, right or obligation concerned; and no registration fees, stamp duty or other duties shall be payable in respect thereof.

20     **3.** (1) Without prejudice to the other provisions of this Act, where any right, liability or obligation vests in the Agency by virtue of this Act, the Agency and all other persons shall, as from the appointed date, have the same right, powers and remedies (and in particular the same rights as to the instituting or defending of legal  
25 proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting that right, liability or obligation as they would have had if it had at all times been a right, liability or obligation of the Agency. Legal proceedings

(2) Any legal proceedings or application of any authority pending immediately before the appointed date, by or against the  
30 Government in respect of the former Agency may be continued by or against the Agency.

(3) After the appointed date, proceedings in respect of any right, liability or obligation which were vested in, held, enjoyed, incurred or suffered by the Government in respect of the Agency  
40 may be instituted by or against the Agency.

45     **4.** (1) On or after the appointed date, the Agency shall on the terms and conditions that emoluments Commission may determine, appoint as officers of the Agency public officers from the Civil Service that may be necessary for the performance of the functions Terms of service of employee of for Agency

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(2) Where an officer from the Civil Service is appointed to the service of the Agency the terms and conditions of service with the Agency shall not be less favourable than those the officer enjoyed in the Public Service.

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