

**REPORT OF THE COMMITTEE ON ECONOMIC AFFAIRS AND LABOUR
ON THE REGISTRATION OF BUSINESS NAMES BILL, N.A.B. NUMBER 3 OF
2011 FOR THE FIFTH SESSION OF THE TENTH NATIONAL ASSEMBLY,
APPOINTED ON THURSDAY, 23 SEPTEMBER 2010**

Consisting of:

Mr C W Kakoma, MP (Chairperson); Ms E M Imbwae, MP; Dr P D Machungwa, MP; Mr D Matongo, MP; Mr G W Mpombo, MP; Mr W C Simuusa, MP; Mr F R Tembo, MP; and Mr J K Zulu, MP

Mr G Lubinda, MP was co-opted in your Committee when it faced quorum problems on Wednesday, 9 March 2011.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

Your Committee has the honour to present its Report on the Registration of Business Names Bill, N.A.B. No. 3 of 2011, for the Fifth Session of the Tenth National Assembly, referred to them by the House on Tuesday, 1 March 2011.

Functions of the Committee

2. In addition to the duties conferred upon it by the Honourable Mr Speaker, or any other Order of the House, your Committee is mandated to consider any Bills that may be referred to it by the House.

Meetings of the Committee

3. Your Committee held seven (7) meetings to consider the Bill.

Procedure adopted by the Committee

4. In considering the Bill, your Committee sought both written and oral submissions from selected stakeholders (Appendix II). The presentation and analysis in paragraphs 6, 7 and 8 of this Report contains the views of the selected stakeholders.

Object of the Bill

5. The object of the Bill is 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.

Purpose of Repealing and Replacing the *Registration of Business Names Act, Chapter 389 of the Laws of Zambia*

6. Your Committee was informed that in Zambia, most small and medium scale entrepreneurs prefer to register their businesses as business names due to the low capital

requirement and the relatively simple requirements needed to accomplish the registration process. However, despite business names being by far the preferred form of business association, particularly by micro and small-scale businesses, and notwithstanding the social economic developments that have taken place over the years, the *Registration of Business Names Act* has not been amended or revised since 1931.

The proposed repeal of the current act was by and large prompted by the changing economic situation in Zambia and abroad. While the essence of the Bill is to regulate businesses and provide a registration system for purposes of ensuring an orderly business sector, it is also intended to broadly improve the registration procedures in general by-

- (a) improvement of the layout and flow of the new Bill in accordance with modern drafting style;
- (b) as a consequence of (a) above, simplification of the law and thus make it much more user friendly particularly to micro and small businesses;
- (c) addressing gaps and grey areas in the current law and thereby ensuring legal clarity and certainty; and
- (d) streamlining administrative procedures and strengthening the role of the Registry in ensuring an up-to-date and reliable database of business information.

Provisions of the Bill

7. Your Committee learnt that a number of changes have been included in the Bill which will improve the administration of the proposed Act. These changes will also guarantee clear and simple procedures in the process of business registration thereby benefitting the majority of Small and Medium Enterprises which may not be conversant with the legal language contained in the old statute. This is in line with the Ministry of Commerce, Trade and Industry's policy on current reforms aimed at promoting the ease with which to do business in Zambia as exemplified by the initiatives which have been put in place. These, amongst others, include the creation of a one-stop-shop in Lusaka for ease of registration and the decentralisation of registration processes through the use of other institutions under the Ministry such as the Citizens Economic Empowerment Commission.

Highlights of the parts are given below.

(A) Part I - Preliminary

This has three clauses:

- (i) **Clause 1** is the short title of the Bill.
- (ii) **Clause 2** defines key terms used in the Bill.
- (iii) **Clause 3** defines application of the Act.

(B) Part II - Registration

This part has nineteen clauses:

- (i) **Clause 4:** unlike in the current Statute, this Clause has been drafted in a manner that clearly outlines persons that qualify to apply for registration of a business name including individuals or firms with a place of business and carrying on business under a name which does not consist of their true surnames. A penalty in respect of failure to register a business required to be registered has been introduced.
- (ii) **Clause 5** specifies how an application for a certificate of registration of a business name shall be made. Unlike in the current law, this Clause

provides more clarity *vis-a-vis* the procedure for applying for a business name.

- (iii) **Clause 6** unlike in the existing law, this Clause expressly provides for an applicant to reserve a proposed name for a period not exceeding three (3) months.
- (iv) **Clause 7** introduces a new feature in the law by making it mandatory on the Registrar to issue a certificate of registration not later than fourteen (14) days from the date of lodgement, provided the application satisfies the requirements.
- (v) **Clause 8** allows the Agency to register an individual or a firm with a place of business within Zambia where the individual or firm carries on the business as a nominee, trustee, or an agent for a foreign company.
- (vi) **Clause 9** whereas the grounds upon which the Registrar may reject an application are to a large extent merely implied and scattered all over the current Act, this Clause lists them down. The grounds for rejection have been broadened and the Registrar is obliged to notify and furnish the applicant with reasons for rejecting a name.
- (vii) **Clause 10** places an obligation on a holder of a certificate of registration of a business name to clearly show the name of the business name on all official documents.
- (viii) **Clause 11** introduces an obligation on the holder of a certificate of registration of a business name to display the certificate in a conspicuous place at the place of business.
- (ix) **Clause 12** the current Act does not expressly provide for the filing of annual returns, a matter that is critical in updating the Registry's records. Annual returns have thus hitherto been provided for under a statutory instrument. This Clause provides for the filing of annual returns.
- (x) **Clause 13** obligates the holder of a certificate of registration of a business name, who decides not to continue with the business to which the certificate relates, to notify the Registrar, in writing, and to agree with the Registrar on the terms and conditions of the surrender of the certificate.
- (xi) **Clause 14** prohibits the transfer of a certificate of registration of a business name to a third party without the prior approval of the Registrar.
- (xii) **Clause 15** makes it mandatory for a holder of a certificate of a business name to notify the Registrar, within fourteen days, where a change is made or occurs in, among other things, the business name, ownership of the business, or the nature of the business.
- (xiii) **Clause 16** Empowers the Registrar to cancel or suspend any certificate where the certificate was obtained by fraud or was otherwise based on false information. Measures to safeguard the provisions from possible abuse have also been provided.

- (xiv) **Clause 17** permits any individual or firm whose registration has been cancelled or suspended to re-register in the prescribed manner and form.
- (xv) **Clause 18** allows a holder of a certificate of registration of a business name who loses the certificate to apply to the Registrar for a duplicate certificate in the prescribed manner and form.
- (xvi) **Clause 19** obliges the Registrar to maintain a Register of all individuals and firms registered which the public can inspect at such times and conditions as the Patents and Companies Registration Agency may determine.
- (xvii) **Clause 20** makes it mandatory for an individual or partner of a firm to notify the Registrar, where the individual or firm ceases to carry on business within three months after the business ceases to be carried on.
- (xviii) **Clause 21** obligates the Agency to publish the names of all the individuals and firms registered under the proposed Act in a daily newspaper of general circulation in Zambia.
- (xix) **Clause 22** allows a person who is aggrieved with the decision of the Registrar to appeal.

(C) *Part III - General Provisions*

This part has five (5) clauses.

- (i) **Clause 23** creates an offence for failure to furnish information or other particulars, when required without reasonable excuse.
- (ii) **Clause 24** creates an offence for making, signing, or uttering a false statement or declaration in support of an application or forging, defacing or altering a certificate of registration of business name. The clause further creates an offence for knowingly or recklessly giving false information.
- (iii) **Clause 25** provides that where an offence is created by a firm, every partner, director or manager of the firm will be held liable.
- (iv) **Clauses 26 and 27** relate to regulations, and repeal of Cap 389, respectively.

Stakeholders' Concerns

8. Stakeholders that were invited raised the concerns set out hereunder with suggestions on the way forward.

(1) *Penalties*

The proposed penalties may deter formalisation of Zambian owned businesses as they are excessive.

Stakeholders' specific concerns on the penalties were:

- (a) the fine of 200,000 penalty units (K36million) or imprisonment not exceeding two years for contravening Clause 4 (Firms and persons to be registered) and Clause 12 (Filing of Annual Returns) is too severe

particularly for micro and small businesses. In any case, criminalising the offences is inappropriate. A one-off punitive fine of 1000 penalty units at the point of each successive inspection with no option of imprisonment is proposed;

- (b) the fine of 1000 penalty units (K180, 000) per day for contravening provisions of Clause 15 (Registration of Change in Particulars), Clause 20 (Removal of Names from Register) and Clause 23 (Penalty for Failure to Provide Information) is excessive. A one-off punitive fine of 1000 penalty units at the point of each successive inspection is proposed; and
- (c) the penalty prescribed in Clause 24 (Penalty for False Statement) is aimed at promoting registration with integrity amongst the majority of Zambian owned businesses. As such the fine should not exceed 50,000 units or imprisonment for a period not exceeding one year, or to both.

(2) *Compliance and Cost of doing Business*

Given the present reality that the PACRA only has four offices in Lusaka, Ndola, Livingstone and Chipata, and the low productivity and profitability of Small and Medium Enterprises (SMEs), this may be perceived as adding to the cost of doing business, which may affect compliance levels. The economics of implementation were not given much thought. It is, therefore, important that introduction of other forms of registration be considered such as using local authorities as agents for registration of businesses.

According to the Zambia Business Survey of 2010, less than two (2) percent of SMEs are registered with PACRA or local authorities. There is need to ensure that provisions in the proposed legislation are not a barrier to the intended goal of formalisation of business activities.

(3) *Clause 7 - Issue of Certificate*

This provision should be subject to Clause 20 (Removal of Names from Register). This provision will assist in removing dormant companies from the Register thereby freeing opportunities for new companies to use previously registered names.

(4) *Clause 9 - Rejection of Application*

- (i) The phrase '*is similar to*' in Clause 9(1) (b) should be struck out as it is ambiguous and opens doors to individual interpretation. Business names using common words such as town names, city names, province names, district names, village names, and many other geographical features, names can be understood to be 'similar' and can therefore be unnecessarily rejected.
- (ii) The words '*or to cause annoyance or offence to any person or class of persons*' in Clause 9(1)(e) should be removed because they introduce options for a broad interpretation of 'annoyance' or 'offence'. There are sufficient provisions in this Clause and other statutes for members of the public to deal with the possible levels of annoyance and offensiveness that a business name may invoke.

- (iii) The words '*give reasons therefor*' in Clause 9(3) at the end of the sentence should be replaced by the words '*give reasons for the rejection*' to make the statement clearer and precise.

COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

9. After considering the submissions, your Committee observes the following:
- (a) the major changes in the Bill justifying the repeal of the *Registration of Business Names Act, Cap 389* of the laws of Zambia were in :
- (i) Clause 4 - Firms and persons to be registered;
 - (ii) Clause 5 - Application for Certificate;
 - (iii) Clause 6 - Reservation of Name;
 - (iv) Clause 7 - Issue of Certificate;
 - (v) Clause 9 - Rejection of Application;
 - (vi) Clause 11 - Display of Certificate;
 - (vii) Clause 12 – Filing Annual Return;
 - (viii) Clause 14 - Transfer of Certificate;
 - (ix) Clause 16 - Suspension or Cancellation of Certificate; and
 - (x) Clause 17 - Re-registration;
- (b) the penalties being introduced in the Bill are excessive, particularly that the majority of businesses in Zambia are in the micro and small categories. This will affect compliance. With the exception of Clause 24 (Penalty for False Statement), there is no need to include the option of imprisonment for the offences;
- (c) there is no penalty specified for failing to display the Certificate of Registration under Clause 11;
- (d) compliance will be further affected by the limited decentralisation of PACRA; and
- (e) there are provisions in the Bill that are ambiguous such as Clause 9 which should be made more precise.

Your Committee supports the broad intentions of the Bill with the following recommendations:

- (i) the Ministry of Commerce, Trade and Industry should strike a balance between attaining satisfactory levels of compliance and achieving the objective of formalising the majority of Zambian owned businesses;
- (ii) a one-off punitive fine of 1,500 penalty units should be introduced at the point of each successive inspection with no option of imprisonment for contravening Clauses 4 (Firms and Persons to be Registered), 11 (Display of Certificate), 12 (Filing of Annual Returns), 15 (Registration of change in Particulars), 20 (Removal of names from Register) and 23 (Penalty for failure to provide Information);
- (iii) the option of a fine should be included in Clause 16 (4) (Suspension or cancellation of Certificates);
- (iv) in order to encourage compliance in areas where there are no PACRA Offices, local authorities should be designated as agents to carry out the registration; and

- (v) the proposals to delete the words '*is similar to*' in Clause 9(1)(b), '*or to cause annoyance or offence to any person or class of persons*' in Clause 9(1)(e) and replacing the words '*give reasons therefor*' in Clause 9(3) with '*give reasons for the rejection*' should be taken into account.

CONCLUSION

10. Your Committee wishes to express its gratitude to all stakeholders for their written and oral submissions. Your Committee also wishes to thank you, Mr Speaker and the Office of the Clerk, for affording it the opportunity to scrutinise the Bill, and for the guidance and services that were rendered to it when carrying out the exercise.

We have the Honour to be, Sir, your Committee on Economic Affairs and Labour, mandated to consider the Registration of Business Names Bill, N.A.B. No. 3 of 2011 for the Fifth Session of the Tenth National Assembly.

Mr C W Kakoma, MP
(Chairperson)

Ms E M Imbwae, MP
(Member)

Dr P D Machungwa, MP
(Member)

Mr D Matongo, MP
(Member)

Mr G W Mpombo, MP
(Member)

Mr W C Simuusa, MP
(Member)

Mr F R Tembo, MP
(Member)

Mr J K Zulu, MP
(Member)

Mr G Lubinda MP
(Co-opted Member)

March 2011
LUSAKA

Mr C W Kakoma, MP
CHAIRPERSON

APPENDIX I

List of National Assembly Officers

Mr S M Kateule, Principal Clerk of Committees
Mr G Lungu, Deputy Principal Clerk of Committees
Ms M K Sampa, Committee Clerk (FC)
Mr S C Kawimbe, Committee Clerk (SC)
Mr M F Kateshi, Assistant Committee Clerk
Mrs M K Siwo, Assistant Committee Clerk
Mrs A S Lloyd, Typist
Ms S Kayawa, Typist
Mr R Mumba, Committee Assistant
Mr C Bulaya, Committee Assistant
Mr S Likunyendo, Parliamentary Messenger

APPENDIX II

WITNESSES

Ministry of Justice (Permanent Witness)

Mrs P Jere, Chief Parliamentary Counsel
Mr A Nkunika, Senior Parliamentary Counsel
Ms P Goma, Parliamentary Counsel
Ms B L Musopelo, Parliamentary Counsel

Zambia Business Forum

Mr S Habeenzu, Chief Executive Officer

Private Sector Development Association

Mr Y Dodia, Chairperson

Patents and Companies Registration Agency

Mr L S Thole, Acting Registrar
Mr N J Moola, Acting Assistant Registrar
Mr M Mapani, Senior Examiner – Trade Marks

Ministry of Commerce, Trade and Industry

Mrs P Mlewa, Acting Permanent Secretary
Mrs S Zulu, Acting Director
Mr A Mutale, Senior Economist
Mr M Mulenga, Programme Officer