

**THE PATENTS AND COMPANIES REGISTRATION
AGENCY ACT, 2010**

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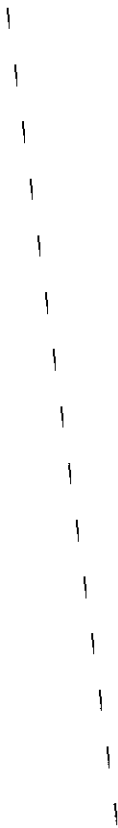
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SCHEDULE



GOVERNMENT OF ZAMBIA

ACT

No. 15 of 2010

Date of Assent: 13th April, 2010

ENTITLED

An Act to establish the Patents and Companies Registration Agency; provide for the functions of the Agency; transfer from the Government to the Agency the functions and the powers of the offices of the Registrar of Companies, Registrar of Registered Business Names, Registrar of Patents, Registrar of Trade Marks and Registrar of Registered Designs; and provide for matters connected with, or incidental to, the foregoing.

[16th April, 2010

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY

1. This Act may be cited as the Patents and Companies Registration Agency Act, 2010, and shall come into operation on such date as the Minister may, by statutory instrument, appoint.

Short title
and
commencement

2. (1) In this Act, unless the context otherwise requires—

Interpretation

“Agency” means the Patents and Companies Registration Agency established under section *three*;

- “appointed date” means such date as the Minister may appoint under section *one*;
- “Assistant Registrar” means a person appointed as Assistant Registrar under section *fifteen*;
- “Board” means the Board of the Agency constituted under section *six*;
- “Chairperson” means the person appointed as Chairperson under section *six*;
- “Department” means the offices of the Registrar of Companies, Registrar of Registered Business Names, Registrar of Patents, Registrar of Trade Marks and Registrar of Registered Designs;
- Cap. 30 “legal practitioner” has the meaning assigned to it in the Legal Practitioners Act;
- “Registrar” means the person appointed as Registrar under section *fourteen*; and
- “Vice-Chairperson” means the person appointed as Vice-Chairperson under section *six*.

PART II

THE PATENTS AND COMPANIES REGISTRATION AGENCY

Establishment
of Agency

3. There is hereby established the Patents and Companies Registration Agency which shall be 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 such acts and things as a body corporate may, by law, do or perform.

Seal of
Agency

4. (1) The seal of the Agency shall be such device as may be determined by the Agency and shall be kept by the Registrar.

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Registrar or one other person authorised in that behalf by a resolution of the Board:

Provided that where the Agency is registering industrial property rights or registering or incorporating any company, firm or business entity, the affixing of the seal shall be authenticated by the Registrar.

(3) Any 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 Registrar or any other person generally or specifically authorised by the Board in that behalf.

(4) Any 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 executed or issued, as the case may be, without any further proof, unless the contrary is proved.

(5) On the commencement of this Act, any impression of a seal made for the purposes of the Acts administered by the Agency under section *five* before the commencement of this Act shall be deemed to be an impression of the seal of the Agency.

5. (1) The functions of the Agency are to—

- (a) administer the Companies Act, the Registration of Business Names Act, the Patents Act, the Trade Marks Act, the Registered Designs Act, and the Companies (Certificates Validation) Act;
- (b) receive and investigate any complaint of alleged or suspected breach of this Act or the Acts referred to in paragraph (a) and, subject to the directives of the Director of Public Prosecutions, prosecute offences under those Acts;
- (c) collect, collate and disseminate information on the law relating to the Acts referred to in paragraph (a);
- (d) advise Government on all matters pertaining to the Acts referred to in paragraph (a); and
- (e) do all such other things as are necessary or incidental to the performance of its functions under this Act.

Functions of
Agency
Cap. 388
Cap. 389
Cap. 400
Cap. 401
Cap. 402
Cap. 414

(2) The Agency may—

- (a) determine and levy fees that the Agency considers necessary to finance its activities under this Act; and
- (b) determine what portion of any fee is payable in respect of any part of a year and the date on which the fee or portion thereof is payable.

6. (1) There is hereby constituted the Board of the Agency which shall be the governing body of the Agency and shall exercise and perform the powers and functions of the Agency.

Board of
Agency

(2) The Board shall consist of the following part-time members appointed by the Minister:

- (a) a representative of the Ministry responsible for commerce;
- (b) a representative of the Attorney- General;
- (c) an accountant registered with the Zambia Institute of Chartered Accountants;
- (d) a representative of the Zambia Association of Chambers of Commerce and Industry;

(e) one person with expertise in matters of intellectual property;
and

(f) two other persons.

(3) The Minister shall appoint the Chairperson and the Vice-Chairperson from among the members.

(4) 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 written law;

(b) is under any written law, adjudged or otherwise declared to be of unsound mind; or

(c) is adjudged or declared bankrupt under any written law.

Tenure of
office and
vacancy

7. (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 re-appointed for a further like period.

(2) Subject to the other provisions of this Act, a member shall, on the expiration of the period for which the member is appointed, continue to hold office until another member is appointed to succeed that member.

(3) The office of a member becomes vacant—

(a) upon the member's death;

(b) if the member is adjudged bankrupt;

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

(d) upon the expiry of one month's notice of the member's notice to resign from office, given by the member in writing to the Board;

(e) if the member becomes mentally or physically incapable of performing the duties of a member of the Board;

(f) if the member is removed by the Minister;

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

(h) if the member is convicted of an offence under this Act or any other law.

(4) The Minister shall, where the office of a member becomes vacant, appoint another member in place of the member who vacates office, and such member shall hold office for the remainder of the term.

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

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

Proceedings
of
Board

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

(3) Upon giving notice of not less than fourteen days, a meeting of the Board may be called by the Chairperson and shall be called if not less than one third of the members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon a shorter notice being given by three members of the Board.

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

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

(a) the Chairperson;

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

(c) in the absence of both the Chairperson and the Vice-Chairperson, such member as 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 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 person from the same organisation to attend such meeting in that member's stead and such person shall be deemed 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 a meeting of the Board but such 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 proceedings.

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

Committees
of
Board

9. (1) The Board may, for the purpose of performing its functions under this Act, constitute any committee and delegate to any such committee such of its functions as it thinks fit.

(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 such persons shall hold office for such period as the Board may determine.

(3) A committee of the Board may regulate its own procedure.

Allowances
of
members

10. There shall be paid to members of the Board or any committee of the Board such allowances as the Board may, with the approval of the Minister, determine.

Disclosure of
interest

11. (1) If a member or person is present at a meeting of the Board or a committee of the Board at which any matter, in which that person or any member of the person's immediate family, is directly or indirectly interested in a private capacity, is the subject of consideration, that person or member 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 of, or vote on any question relating to, that matter.

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

Prohibition of
publication
of, or
disclosure of
information
to
unauthorised
persons

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

(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.

(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, 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.

13. 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, or purported exercise or performance, of any of the powers, functions or duties conferred under this Act. Immunity of members of Board and staff of Agency
14. (1) The Board shall appoint, on such terms and conditions as it may, with the approval of the Minister, determine, a Registrar who shall be the chief executive officer of the Agency. Registrar
- (2) The Registrar shall be an *ex-officio* member of the Board.
- (3) The Registrar shall have all the powers as are provided for, and exercised under, the Companies Act, the Companies (Certificates Validation) Act, the Registration of Business Names Act, the Patents Act, the Trade Marks Act and the Registered Designs Act. Cap. 388
Cap. 414
Cap. 389
Cap. 400
Cap. 401
- (4) A person shall not be appointed as Registrar unless the person is a legal practitioner with five years legal experience. Cap. 402
15. The Board may appoint, on such terms and conditions as it may, with the approval of the Minister, determine, Assistant Registrars and such other staff as it considers necessary for the performance of its functions under this Act. Assistant Registrars and other staff

PART III

FINANCIAL PROVISIONS

16. (1) The funds of the Agency shall consist of such moneys as may – Funds of Agency
- (a) be appropriated to the Agency by Parliament for the purposes of the Agency;
- (b) be paid to the Agency by way of fees, loans, grants or donations; and
- (c) otherwise vest in or accrue to the Agency.
- (2) The Agency may—
- (a) subject to the approval of the Minister, accept moneys by way of grants or donations from any source within or outside Zambia;
- (b) subject to the approval of the Minister, raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions; and
- (c) charge and collect fees for services provided by the Agency.

(3) There shall be paid from the funds of the Agency—

(a) the salaries, allowances, loans, gratuities and pensions of the staff of the Agency and other payments for the recruitment and retention of the staff;

(b) such reasonable travelling, subsistence and other allowances for members of the Board or any committee of the Board when engaged on the business of the Agency at such rates as the Board may, with the approval of the Minister, determine; and

(c) any other expenses incurred by the Board in the performance of the Board's functions under this Act.

(4) The Board may, with the approval of the Minister, invest in such manner as it considers appropriate such funds of the Agency as it does not immediately require for the discharge of its functions.

Financial
year

17. The financial year of the Agency shall be the period of twelve months ending on 31st December of each year.

Accounts

18. (1) The Agency shall cause to be kept proper books of account and other records relating to its accounts.

(2) The accounts of the Agency shall be audited annually by the Auditor-General or such independent auditors as the Auditor-General may approve.

(3) The auditor's fees shall be paid by the Agency.

Annual
report

19. (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Agency shall submit to the 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 balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as 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 subsection (1), lay the report before the National Assembly.

PART V

GENERAL PROVISIONS

20. The Minister may, by statutory instrument, on the recommendation of the Agency, make regulations for the better carrying out of the provisions of this Act.

Regulations

21. The Schedule applies in relation to the savings and transitional provisions.

Savings and
transitional
provisions

SCHEDULE

(Section 21)

SAVINGS AND TRANSITIONAL PROVISIONS

1. The Department constituted pursuant to section *three hundred and sixty-six* of the Companies Act, section *two* of the Registration of Registered Business Names Act, section *three* of the Patents Act, section *three* of the Trade Marks Act and section *three* of the Registered Designs Act respectively, shall stand dissolved on the appointed date.

Dissolution
of
Department
Cap. 388
Cap. 389
Cap. 400
Cap. 401
Cap. 402

2. (1) For the avoidance of doubt, a person who, before the commencement of this Act, was an officer or employee of the Department, shall continue to be an officer or employee of the Agency, as the case may be, as if appointed or employed under this Act.

Staff of
Department

(2) The service of the persons referred to in subparagraph (1) shall be treated as continuous service.

(3) Nothing in this Act affects the rights and liabilities of any person employed or appointed by the Department before the appointed date.

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

Vesting of
assets and
liabilities

(a) the affairs of the Department; and

(b) subject to this Act, all property, rights and obligations which immediately before the appointed date were the property, rights and obligations of the Department.

(2) Except as provided in this Act, every deed, bond and agreement, other than an agreement for personnel service, to which

the Government was a party immediately before the appointed date, whether or not of such a nature that rights, liabilities and obligations could be assigned, shall, unless its subject matter or terms make it impossible that it should have effect as modified, as provided under this paragraph, have effect as if —

- (a) the Agency had been party to it;
- (b) for any reference to the Government there was substituted, with respect to anything falling to be done on or after the commencement of this Act, a reference to the Agency; or
- (c) for any reference to any officer of the Department, not being a party to it and beneficially interested, there were substituted, as respects anything falling to be done on or after the commencement of this Act, a reference to such officer of the Agency as the Agency shall designate.

(3) Where under this Act, any assets, rights, liabilities and obligations of the Government are deemed to be 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 registration authority for registration of the transfer.

(4) The registration authority, referred to in subparagraph (3), shall make such 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 necessary amendments to the register and shall endorse the deeds relating to the title, right or obligation concerned and no registration fees or other duties shall be payable in respect of the transaction.

Legal
proceedings

4. (1) Any legal proceedings or application of the Government pending immediately before the appointed date by or against the Government may be continued by or against the Agency.

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