

Zambia

## Patents and Companies Registration Agency Act, 2020

Act 4 of 2020

Legislation as at 26 October 2020

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## Zambia

# Patents and Companies Registration Agency Act, 2020

## Act 4 of 2020

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Assented to on 23 October 2020

Commenced on 23 April 2021 by Patents and Companies Registration Agency Act (Commencement) Order, 2021

*[This is the version of this document from 26 October 2020.]*

**An Act to continue the existence of the Patents and Companies Registration Agency and re-define its functions; re-constitute the Board of the Agency and provide for its functions; repeal and replace the Patents and Companies Registration Agency Act, 2010; and provide for matters connected with, or incidental to the foregoing.**

ENACTED by the Parliament of Zambia.

### Part I – Preliminary provisions

#### 1. Short title and commencement

This Act may be cited as the Patents and Companies Registration Agency Act, 2020, and shall come into operation on the date appointed by the Minister by statutory instrument.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**Agency**" means the Patents and Companies Registration Agency continued under [section 3](#);

"**associate**" has the meaning assigned to the word in the Anti-Corruption Act;

*[Act No. 3 of 2012]*

"**Board**" means the Board of the Agency established under [section 6](#);

"**Chairperson**" means the Chairperson of the Board appointed under [section 6](#);

"**Deputy Registrar**" means a person appointed as Deputy Registrar under [section 17](#);

"**emoluments**" has the meaning assigned to the word in the Constitution;

*[Cap. 1]*

"**Emoluments Commission**" means the Emoluments Commission established under the Constitution;

*[Cap. 1]*

"**legally disqualified**" means the absence of legal capacity as provided in section 4 of the Mental Health Act;

*[Act No. 6 of 2019]*

"**Registrar**" means the person appointed as Registrar under [section 16](#);

"**relative**" has the meaning assigned to the word in the Anti-Corruption Act;

*[Act No. 3 of 2012]*

"**repealed Act**" means the Patents and Companies Registration Agency Act; and

"**Vice-Chairperson**" means the Vice-Chairperson of the Board elected under [section 6](#).

[Act [No. 15 of 2010](#)]

## Part II – The Patents and Companies Registration Agency

### 3. Continuation of Agency

- (1) The Patents and Companies Registration Agency established under the repealed Act shall continue to exist as if established under this Act.
- (2) The Agency 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 the acts and things that a body corporate may, by law, do or perform.

### 4. Seal of Agency

- (1) The seal of the Agency shall be a device that may be determined by the Board 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 any other person authorised in that behalf by a resolution of the Board, except that where the Agency is registering intellectual property rights, registering or incorporating a company, firm or business, the affixing of the seal shall be authenticated by the Registrar.
- (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 a seal on behalf of the Agency by the Registrar or any other person generally or specifically authorised by the Board in that behalf.
- (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 deemed to be so executed or issued, without further proof, unless the contrary is proved.

### 5. Functions of Agency

- (1) The functions of the Agency are to—
  - (a) administer the Trade Marks Act, the Copyright and Performance Rights Act, the Companies (Certificates Validation) Act, the Registration of Business Names Act, the Moveable Property (Security Interests) Act, the Layout-designs of Integrated Circuits Act, the Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore Act, the Industrial Designs Act, 2016, the Patents Act, the Corporate Insolvency Act, and the Companies Act; [\[Cap. 401; Cap. 406; Cap. 414; Act No. 16 of 2011; Act No. 3 of 2016; Act No. 6 of 2016; Act No. 16 of 2016; Act No. 22 of 2016; Act No. 40 of 2016; Act No. 9 of 2017; Act No. 10 of 2017\]](#)
  - (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); and
  - (d) advise Government on all matters pertaining to the Acts referred to in paragraph (a).
- (2) The Agency may determine and levy fees that are payable to the Agency for the purposes of this Act.

## 6. Board of Agency

- (1) There is constituted the Board of the Agency which consists 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;
  - (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 persons with experience and knowledge in matters relevant to this Act.
- (2) The Registrar, is an *ex-officio* member of the Board.
- (3) The Minister shall appoint the Chairperson of the Board from among the members, except the members referred to under subsection (1)(a) and (b).
- (4) The members of the Board shall elect the Vice-Chairperson from among themselves.
- (5) A person shall not be nominated or appointed as a member of the Board if that person—
  - (a) is not a citizen of Zambia;
  - (b) is an undischarged bankrupt;
  - (c) is legally disqualified from performing the functions of a member; or
  - (d) is convicted of an offence under this Act or any other law and sentenced to imprisonment for a period exceeding six months without the option of a fine within five years preceding the appointment or nomination.

## 7. Functions of Board

- (1) Subject to the other provisions of this Act, the Board shall provide strategic policy direction to the Agency.
- (2) Despite the generality of subsection (1), the functions of the Board are to—
  - (a) promote good governance of the Agency;
  - (b) formulate the policies, programmes and strategies of the Agency;
  - (c) approve the annual work plan and activity reports of the Agency;
  - (d) approve the annual budget estimates and financial statements of the Agency; and
  - (e) monitor and evaluate the performance of the Agency against budgets and plans.
- (3) The Minister shall enter into a performance contract with the Board for a specified period, which shall be consistent with the provisions of this Act.

## 8. Delegation of functions and directions

- (1) The Board may, subject to any conditions imposed and guidelines issued by it, delegate any of its functions to the Registrar.
- (2) The Minister may give to the Board general or specific directions, relating to the performance of its functions and the Board shall give effect to those directions to the extent that they are not inconsistent with this Act.

## 9. Tenure of office and vacancy

- (1) 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 one further period of three years.
- (2) A member may resign on giving one month's notice, in writing, to the Minister.
- (3) The office of a member becomes vacant if that member—
  - (a) dies;
  - (b) resigns;
  - (c) is absent, without reasonable excuse or prior approval of the Board, from three consecutive meetings of the Board of which the member has had notice;
  - (d) is adjudged bankrupt;
  - (e) is legally disqualified from performing the functions of a member;
  - (f) ceases to be a member of the organisation which nominated that member; or
  - (g) is convicted of an offence under this Act or any other law and sentenced to imprisonment for a period exceeding six months without the option of a fine.
- (4) A member shall, on the expiration of the period for which the member is appointed, continue to hold office until a successor is appointed, but in no case shall the further period exceed four months.
- (5) The Minister shall, where the office of a member becomes vacant, appoint another member in place of the member who vacates office, and that member shall hold office as a member for the unexpired part of the term of the Board.

## 10. Proceedings of Board

- (1) Subject to 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 a place and time that the Board may determine.
- (3) The Chairperson shall, on giving notice of not less than seven days call a meeting of the Board if one-third or more of the members so request in writing, except that if the urgency of a particular matter does not permit the giving of the notice, a special meeting may be called on giving a shorter notice.
- (4) The quorum at a meeting of the Board is five.
- (5) There shall preside at any meeting of the Board—
  - (a) the Chairperson;
  - (b) in the absence of the Chairperson, the Vice-Chairperson; or
  - (c) in the absence of both the Chairperson and the Vice-Chairperson, a member that the members present may elect from among 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 a casting vote in addition to that person's deliberative vote.
- (7) A member appointed under [section 6\(1\)\(a\)](#), (b) and (d) who is, for any reason unable to attend a meeting of the Board may, in writing, nominate another person from the same organisation to attend the meeting in that member's stead and that 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 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 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.

#### **11. Committees of Board**

- (1) The Board may, for the purpose of performing its functions under this Act, establish committees that it considers necessary and delegate to any of those committees functions that it may determine.
- (2) The Board may appoint as members of a committee, persons who are or are not members, except that at least one member of a committee shall be a member of the Board.
- (3) A person serving as a member of a committee shall hold office for a period that the Board may determine.
- (4) Subject to any specific or general direction of the Board, a committee may regulate its own procedure.

#### **12. Allowances**

A member of the Board or any committee of the Board shall be paid allowances that the Emoluments Commission may, on the recommendation of the Minister, determine.

#### **13. Disclosure of interest**

- (1) A person who is present at a meeting of the Board or a committee of the Board at which any matter is the subject of consideration, and in which matter that person or that person's relative or associate is directly or indirectly interested in a private capacity shall, as soon as is practicable after the commencement of the meeting, declare that interest and shall not, unless the Board or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question relating to, that matter.
- (2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.
- (3) 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.

#### **14. Prohibition of publication or disclosure of information to unauthorised persons**

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

### 15. Immunity of members of Board and staff of Agency

An action or other proceedings 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.

### 16. Registrar

- (1) The Board shall appoint the Registrar of the Agency, who shall be the chief executive officer of the Agency and responsible, under the direction of the Board, for the day-to-day administration of the Agency.
- (2) A person qualifies for appointment as Registrar if that person is a legal practitioner of at least ten years experience.
- (3) The Registrar shall exercise the powers vested in the Registrar under the Trade Marks Act, the Copyright and Performance Rights Act, the Companies (Certificates Validation) Act, the Registration of Business Names Act, the Moveable Property (Security Interests) Act, the Layout-designs of Integrated Circuits Act, the Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore Act, the Industrial Designs Act, the Patents Act, the Corporate Insolvency Act, and the Companies Act.

*[Cap. 401; Cap. 406; Cap. 414; Act No. 16 of 2011; Act No. 3 of 2016; Act No. 6 of 2016; Act No. 16 of 2016; Act No. 22 of 2016; Act No. 40 of 2016; Act No. 9 of 2017; Act No. 10 of 2017]*

### 17. Deputy Registrar, Secretary and other staff

- (1) The Board may appoint a Deputy Registrar, Secretary and other staff that the Board considers necessary for the performance of its functions under this Act.
- (2) The Secretary shall perform corporate secretarial duties for the Board and other functions that the Board may determine, under the direction of the Board and the Registrar.

### 18. Emoluments and other conditions of service of Registrar, Deputy Registrar, Secretary and other staff

- (1) The Emoluments Commission shall, on the recommendation of the Board, determine the emoluments of the Registrar, Deputy Registrar, Secretary and other staff of the Agency.
- (2) The Board shall determine the conditions of service, other than the emoluments, of the Registrar, Deputy Registrar, Secretary and other staff of the Agency.

## Part III – Financial provisions

### 19. Funds of Agency

- (1) The funds of the Agency consist of monies that may—
  - (a) be appropriated by Parliament;
  - (b) be paid to the Agency by way of grants or donations; or
  - (c) vest in, or accrue to the Agency.

- (2) The Agency may, subject to the approval of the Minister—
  - (a) accept monies by way of grants or donations from a source within the Republic, and from a source outside the Republic;
  - (b) raise by way of loans or otherwise, monies that it may require for the discharge of its functions; or
  - (c) in accordance with regulations made under this Act of the Acts administered by the Agency under [section 5\(1\)\(a\)](#), charge and collect fees for services provided by the Agency.
- (3) There shall be paid from the funds of the Agency—
  - (a) the emoluments of the members and staff of the Agency;
  - (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 the rates approved by the Emoluments Commission; and
  - (c) any other expenses incurred by the Agency in the performance of its functions under this Act.
- (5) The Board may, with the approval of the Minister, invest in a manner that the Board considers appropriate, funds of the Agency that the Agency does not immediately require for the discharge of its functions.

*[Please note: numbering as in original.]*

## 20. Financial year

The financial year of the Agency is a period of twelve months ending on 31st December in each year.

## 21. Accounts and audit

- (1) The Agency shall cause to be kept proper books of accounts and other records relating to its accounts.
- (2) The accounts of the Agency shall be audited annually by the Auditor-General or an auditor appointed by the Auditor-General.
- (3) The Auditor-General's fees shall be paid by the Agency.

## 22. Annual report

- (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 that report—
  - (a) an audited statement of financial position;
  - (b) an audited statement of comprehensive income;
  - (c) a statement relating to the annual performance of the Agency; and
  - (d) 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 subsection (1), lay the report before the National Assembly.

## Part IV – General provisions

### 23. Immunity from execution of judgments

Where a judgment order is obtained against the Agency, execution, attachment or process of any nature shall not be issued against the Agency or against any property of the Agency, but the Agency shall cause to be paid out of its revenues an amount that may, by the judgment or order, be awarded against the Agency to the person entitled to that amount.

### 24. Regulations

The Minister may, in consultation with the Agency, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.

### 25. Repeal of Act No. 15 of 2010

- (1) The Patents and Companies Registration Act, is repealed.
- (2) Despite subsection (1), the Schedule applies to the savings and transitional arrangement.

## Schedule (Section 25(2))

### Savings and transitional provisions

#### 1. Interpretation

For the purposes of this Schedule "former Agency" means the Patents and Companies Registration Agency established under the repealed Act.

#### 2. Staff of former Agency

- (1) A person who, before the commencement of this Act was an employee of the former Agency, shall be transferred to the service of the Agency as an employee of the Agency under this Act.
- (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 former Agency before the commencement of this Act.

#### 3. Transfer of assets and liabilities

- (1) On or after the commencement of this Act, there shall be transferred to, vest in, and subsist against the Agency by virtue of this Act and without further assurance, assets, rights, liabilities and obligations that the Minister may determine which immediately before that date were the assets, rights, liabilities and obligations of the former Agency which are necessary for the performance of the Agency's functions under this Act.
- (2) Subject to subparagraph (1), every deed, bond and agreement, other than an agreement for personnel service, to which the former Agency was a party immediately before the commencement of this Act, whether or not of 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 subparagraph, have effect as if—
  - (a) the Agency, had been party to it;
  - (b) for any reference to the former Agency 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 former Agency, 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 that officer of the Agency, that it shall designate.
  - (3) Where under this Act, any assets, rights, liabilities and obligations of the former Agency 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 entries in the appropriate register that 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.
4. **Legal proceedings**
- (1) Any legal proceedings or application to the former Agency pending immediately before the commencement of this Act by or against the former Agency may be continued by or against the Agency.
  - (2) After the commencement of this Act, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred or suffered by the former Agency, may be instituted by or against the Agency.