

# BUSINESS REGISTRATION ACT, 2012

(Act No 12 of 2012)

## ARRANGEMENT OF SECTIONS

### SECTION

#### PART I – PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Application and scope of this Act

#### PART II – THE REGISTRAR OF BUSINESSES

4. Registrar of Businesses
5. Powers of the Registrar

#### PART III – THE MALAWI BUSINESS REGISTRATION DATABASE

6. Establishment of the Malawi Business Registration Database
7. Use of technology and e-communications
8. Use of business registration number
9. Search of the Database

#### PART IV – REGISTRATION OF BUSINESSES

10. Duty to be registered
11. Form and particulars of registration
12. Registration of business and business name
13. Use of Business names
14. Registration of changes in particulars
15. Cessation or transfer of business
16. Copy of business certificate

#### PART V – MISCELLANEOUS PROVISIONS

17. Immunity
18. Persons carrying on unlawful business
19. Compounding offences
20. Enforcement of duty to file returns
21. General offence and penalty
22. Regulations
23. Repeal and savings
24. Transitional provisions

An Act to provide for the registration of persons carrying on business in Malawi and of their business names, the allocation of a single business registration number; and for matters connected therewith and incidental thereto.

ENACTED by the Parliament of Malawi as follows-

#### PART I – PRELIMINARY

Short title and commencement

1. This Act may be cited as the Business Registration Act, 2011 and shall come into operation on such date as the Minister shall appoint by notice published in the Gazette.

Interpretation

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

“authorized officer” means an officer duly authorized in writing by the Registrar;

“business” includes every form of trade, commerce or manufacture, craftsmanship, calling, profession, vocation or occupation or any other activity carried on by a person for the purposes of gain or profit;

“business name” means the name or style under which a person carries on business;

“business registration number” means the unique identification number allocated by the Registrar under section 12(1);

“certificate” means a certificate of business registration issued under section 12(2);

“electronic communication” means a communication transmitted, whether from one person to another person, from one device to another device, or from a person to a device or vice versa by-

(a) means of a telecommunication system within the meaning of the Communications Act; or

(b) any other means in an electronic form;

“company” means a company incorporated under the Companies Act;

Cap. 68:03

Cap. 46:03

“electronic signature” means anything in electronic form as-

- (a) is incorporated into or otherwise logically associated with any electronic communication or electronic data; and
- (b) purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the communication or data, the integrity of the communication or data, or both.

Cap.46:03

“Database” means the Malawi Business Registration Database established by section 6;

“firm” means an unincorporated body consisting of two or more individuals, or one or more corporations, having constituted a partnership with a view to carrying on business;

Cap. 22:01

“local authority” has the same meaning as in the Local Government Act;

Cap. 46:03 “Malawi Investment and Trade Centre” means the Malawi Investment and Trade Centre incorporated under the Companies Act on 2<sup>nd</sup> December 2010;

Cap. 39:07 “Malawi Revenue Authority” means the Malawi Revenue Authority established under the Malawi Revenue Authority Act;

Cap.27:01 “National Statistical Office” means the National Statistical Office referred to in the Statistics Act;

“person” includes any company or association or body of persons, corporate or unincorporate;

“person responsible for the management of a business” includes every officer, individual, secretary, agent or employee who is at any time in charge, either solely or to a substantial extent, of the management of the business;

“public sector agency” includes any Ministry, Government Department, local authority or statutory body;

“Registrar” means the Registrar of businesses under this Act; and

“relevant permit” includes any licence, approval or other written formal authorization required from a public sector agency under any written law.

(2) A person who has a place of business in Malawi shall be deemed to be carrying on business in Malawi for the purposes of this Act.

#### Application and scope of this Act

3.- (1) The provisions of this Act shall apply to registration of the following businesses-

- (a) sole proprietors; and
- (b) partnerships.

(2) This Act shall not exempt a person registered under this Act from complying with any other written law relating to businesses of a specific type.

(3) This Act shall not apply to-

(a) any person carrying on business for the purpose of his livelihood with a turnover below the amount prescribed by the Minister; and

(b) any office or employment of a person.

(4) Where a person carrying on business is required under this Act or any other Act or regulation to do any act, any person responsible for the management of the business for or on behalf of the first-mentioned person shall also be held liable for the doing of, or omission to do, that act.

## PART II – THE REGISTRAR OF BUSINESSES

Registrar of  
Businesses

4.- (1) The Registrar of Companies or such other person as the Minister may appoint shall be the Registrar, of Businesses (hereinafter referred to as “Registrar”), who shall be responsible for the effective administration and application of this Act.

(2) Anything in this Act authorized or required to be done by the Registrar or to be signed by the Registrar, may be done by or signed by the Deputy Registrar or Assistant Registrar and shall be valid and effectual as if done by or signed by the Registrar.

(3) The Registrar shall have a seal and such seal shall bear the words “Registrar of Businesses, Malawi”.

(4) In the performance of the Registrar’s duties under this Act, the Registrar shall be subject to-

(a) the general and special directions of the Minister, not inconsistent with the provisions of this Act; and

(b) for avoidance of doubt, the provisions of the Public Service Act.

Cap. 1:03

Powers of the Registrar

5.- (1) The Registrar or any authorized officer shall, for the purposes of ensuring compliance with this Act, have power at all reasonable times to inspect any premises at which the Registrar has reason to believe that business is being carried on in breach of this Act.

(2) When exercising the power under subsection (1), the Registrar or any authorized officer shall declare his office and shall produce a written authority to any person affected by the exercise of such power.

(3) Where the Registrar has reasonable cause to believe that any person registered under this Act is not carrying on business, he may send by registered post to the person a notice to the effect that if an answer showing cause to the contrary is not received within one (1) month from the date thereof, the registration of the person and his certificate may be cancelled and the name under which the person carries on business removed from the Database.

(4) Where the Registrar has reasonable cause to believe that a person may be adversely affected by matters contained in subsection (3), the Registrar may send the address of such person as listed in the application documents and deemed to be the address for some of that person by registered post to the person a copy of the notice referred to in subsection (3).

(5) The Registrar shall have power at all times to-

- (a) rectify any mistake in order to bring the entry in the Database relating to any person into conformity with the documents relating to the person furnished under this Act; and
- (b) issue a new certificate to the person accordingly.

(6) The Registrar shall, by notification in the Gazette, publish such particulars as the Registrar thinks fit in respect of a person whose registration and certificate have been cancelled under this Act.

(7) Where the registration of a person is cancelled under this Act, the certificate issued to that person shall be deemed to have been cancelled.

### PART III-THE MALAWI BUSINESS REGISTRATION DATABASE

Establishment of  
the Malawi  
Business  
Registration  
Database

6.- (1) There is established for the purposes of this Act a central business registration Database, which shall be known as the Malawi Business Registration Database (hereinafter referred to as the “Database”).

(2) The Registrar shall be the repository of the information entered into the Database.

(3) The Registrar shall manage the operation of the Database.

(4) The Database shall consist of registered information on all persons entered into the registry including all entries, required to be entered under this Act, kept on electronic means on computer or other approved electronic device.

(5) Any Person may, upon payment of such fees and on such conditions as may be prescribed by the Registrar have access to the Database and obtain copies of any entry made or documents kept therein.

Cap. 46:03

(6) Subject to the Companies Act, the Registrar shall give, at all times, for the purposes of business facilitation, online access to the Database to-

(a) the Malawi Investment and Trade Centre;

(b) the Malawi Revenue Authority;

- (c) the National Statistical Office;
- (d) any local authority; and
- (e) such other institution or authority as the Minister may designate by order published in the Gazette.

Use of technology and  
e-communications

7.- (1) Notwithstanding anything to the contrary in this Act,  
the Registrar may authorize-

- (a) any application or notification required under this Act;
- (b) the payment of any registration fee or other fee;  
and
- (c) the performance of any other act or thing which is required to be done under this Act,

to be made, notified or done electronically in such manner and through such computer system as may be approved by the Registrar.

(2) With effect from such date as may be specified in the Gazette, the Registrar may direct that any matter, act or thing referred to in subsection (1) be made, notified or done electronically.

(3) The Minister may make regulations for the better carrying out of this section including provisions as to the electronic form to be taken by any electronic communication or electronic storage to the Registrar and the use of electronic signatures.

(4) For the purposes of this Act, an electronic signature incorporated into or associated with a particular electronic communication or particular electronic data is certified by any person if that person, whether before or after the making of the communication, has made a statement confirming that-

- (a) the signature;
- (b) a means of producing communicating or verifying the signature; or
- (c) a procedure applied to the signature.

(5) In any legal proceedings-

- (a) an electronic signature incorporated into or logically associated with a particular electronic communication or particular electronic data; and
- (b) the certification by any person of such a signature, shall each be admissible in evidence in relation to any question as to the authenticity of the communication or data or as to the integrity of the communication or data.

Use of business  
registration  
number

8.- (1) Notwithstanding any written law, every person registered under this Act shall, in respect of every transaction he makes, use and indicate on any document, whether electronically or otherwise-

- (a) his business registration number; and
- (b) where the person with whom the transaction is made is registered under this Act, the business registration number of that person.

(2) A public sector agency shall not issue any permit, approval or authorization to any person who is required to be registered under this Act unless the person holds a certificate.

(3) Every public sector agency shall, in its dealings with a person who is required to be registered under this Act and in respect of whom a record is required to be kept under this Act, use and indicate in its records, whether electronically or otherwise, the business registration number of the person.

(4) For the purposes of this section, any person or public sector agency may, in reasonable circumstances and for the purposes of ascertaining the identity of another person who is required to be registered under this Act, request the other person to produce his certificate.

(5) Any person who fails to comply with subsection (1) commits an offence and is liable to a fine of five hundred thousand kwacha (K500,000.)

Search of the  
Database

9.- (1) A person may, upon payment of the prescribed fee, search the Database, and obtain a printed search result, in accordance with this Act.

(2) The Database may be searched only by reference to the following criteria-

- (a) the name and national identification number;
- (b) the business name;
- (c) any international standard industry code;
- (d) the general nature of the business;
- (e) the principal place of business and any other place where the business is carried on;
- (f) the date or proposed date of commencement of the business; and
- (g) such other information or particulars as may be prescribed.

(3) A search of the Database may be carried out by any person for any lawful purpose.

(4) Information in the Database shall have the same legal value as the information in the forms and documents submitted to the Registrar.

#### PART IV – REGISTRATION OF BUSINESSES

Duty to be registered

10.- (1) Subject to the provisions of this Act, a person shall not carry out any business in Malawi unless that person is registered under this Act.

(2) A person who is required to be registered under subsection (1) shall make an application to the Registrar for registration of his business and of his business name, including any name different from a name of an individual in cases of a partnership.

(3) Where a person makes an application under subsection (2), he shall, at the same time, pay such registration fee as may be prescribed by the Registrar.

(4) Where a person carries on business as a sole proprietor at more than one place of business or carries on two or more different commercial activities as a sole proprietor he shall register his business with the registry only once.

(5) Any person who fails to comply with subsection (1) commits an offence and is liable to a fine of one hundred thousand kwacha (K100,000.)

Form and  
particulars of  
registration

11.- (1) An application to register a business shall be made in such form as may be prescribed by the Registrar and shall include-

- (a) the full name and national identification number of the applicant;
- (b) the business name of the applicant, if any;
- (c) any international standard industry code;
- (d) the general nature of the business;
- (e) the principal place of business and any other place where the business is carried on;
- (f) the date or proposed date of commencement of business; and

- (g) such other information or particulars as may be required in the application form.

Registration of  
business and  
business name

12.- (1) Where the Registrar is satisfied with the particulars of registration provided under section 10, he shall, subject to the other provisions of this Act-

- (a) register the business and business name of the applicant in the Database; and
- (b) allocate a business registration number to the applicant.

(2) Upon the registration of a person in accordance with subsection (1)(a), the Registrar shall issue to the person a certificate.

(3) Every certificate shall-

- (a) bear-
  - (i) the business registration number;
  - (ii) the full name of the person;

- (iii) the business name of the person, if any;
  - (iv) any international standard industry code;
  - (v) a concise description of the general nature of the business; and
  - (vi) the address of business and any other place where the business is to be carried on;
- (b) distinctly indicate its date of issue or renewal;  
and
- (c) be signed by the Registrar.

(4) A person registered under this section shall not have more than one business registration number or more than one certificate in respect of the same business.

(5) A person registered under this Act who, for any reason, has been allocated more than one business registration number or has been issued with more than one certificate in respect of the same business shall immediately notify the Registrar in writing and return

the certificates to enable the Registrar to take the actions set out under subsection (6).

(6) On receipt of a notification under subsection (5), the Registrar shall-

- (a) cancel the returned certificates;
- (b) allocate a new business registration number to the person mentioned in subsection (5);
- (c) issue to the person mentioned in subsection (5) a new certificate; and
- (d) amend the Database accordingly.

(7) Subject to the other provisions of this Act, any registration under subsection (1)(a) and any certificate issued under subsection (2) shall be valid for a period of three (3) years and shall be renewable for unlimited further periods of three (3) years each.

(8) On receipt of an application for the renewal of registration and certificate of Business Registration, the Registrar may

require the applicant to furnish additional particulars or other information for the purposes of the renewal.

(9) Nothing in this section shall be construed to require the Registrar to register any person or issue a certificate or renew the registration of a person or the certificate if the Registrar is not satisfied with the particulars or other information furnished under this Act.

(10) The registration of a person or the issuance of a certificate, or the renewal of the registration of a person or the certificate, shall not be deemed to imply that the requirements of any enactment in relation to any business carried on by that person have been complied with.

(11) A holder of a certificate shall display in a conspicuous place at the principal place of business and at every other place where the person carries on business a certified copy of the business certificate of Business Registration in force.

Use of business  
names

13.- (1) A person who is registered under this Act shall not carry on business under a business name which has not been registered with the Registrar under section 12.

(2) The registration of a business name under this Act is prohibited where apart from such registration, the use of the name is prohibited under any other written law.

(3) Except with the written consent of the Minister and subject to any other written law, a person shall not be registered under a business name which includes-

- (a) the word “Authority”, “Corporation”, “Government”, “Malawi”, “National”, “President”, “Presidential”, “Regional”, “Republic”, “State”, or any other word which is likely to suggest, that it enjoys the patronage of the Government or of a statutory corporation or of the Government of any other State; or
- (b) the words “City”, “Municipality” or “Council” or any other word which is likely to suggest, connection with a local authority in Malawi or elsewhere.

(4) Where the Registrar is satisfied that a person registered under this Act carries on business, or any person applying for registration under this Act intends to carry on business, under a business name which-

- (a) is identical in writing to, or so nearly resembles, the name of any other person or company carrying on business or the business name or trademark under which another person carries on business;

the Registrar may cancel the registration or refuse to register the person, as the case may be, unless the person changes the business name to a name which may be registered under this section, within thirty (30) days from the date the Registrar requests the person to do so.

(5) Any person aggrieved by a decision of the Registrar under subsection (4) may, within thirty (30) days from the date of the notice of cancellation or refusal, appeal in writing to the Minister.

(6) A person who contravenes subsection (1) commits an offence and is liable to a fine of fifty thousand kwacha (K50,000.)

Registration of  
changes in  
particulars

14.- (1) Where a change is made, or occurs, in any of the particulars registered under this Act in respect of any person, the person shall, within fourteen (14) days from the date he becomes aware of the change, notify the Registrar, in such medium and in such form as may be approved by the Registrar, of the nature and the date of the change.

(2) Where the change under subsection (1) requires a change in the certificate of a person, the person shall, at the same time, return his certificate and all copies thereof to the Registrar.

(3) On receipt of a notification under this section, the Registrar, upon being satisfied that the changes are according to the provisions of the current Act, shall-

- (a) cancel the returned certificate;
- (b) cause the Database to be amended accordingly;  
and
- (c) where necessary, issue a new certificate.

(4) The issuance of a new certificate shall be subject to payment of such fees as may be prescribed by the Registrar.

(5) Any person who fails to comply with subsection (1) commits an offence and is liable to a fine of fifty thousand kwacha (K50,000.)

Cessation or  
transfer of  
business

15.- (1) Where a person registered under this Act ceases to carry on business or sells or otherwise transfers his business, he shall, within fifteen (15) days from the date of cessation, sale or transfer, notify the Registrar in writing, in such medium and in such form as may be approved by the Registrar, of the date of the cessation, sale or transfer and the full name of the buyer or transferee, as the case may be, and at the same time return his certificate and all copies thereof.

(2) Where a person purchases or takes over a business, he shall notify the Registrar in writing, in such medium and in such form as may be approved by the Registrar, of the date of the purchase or take over and the full name of the seller or transferor, as the case may be, and at the same time return his certificate or Business Registration and all copies thereof, if any.

(3) On receipt of a notification under subsection (1) or (2), the Registrar, upon being satisfied with the information provided, shall-

- (a) cancel the returned certificate;
- (b) cause the Database to be amended accordingly;  
and
- (c) where necessary, issue a new certificate.

(4) A person who fails to comply with subsection (1) or (2) commits an offence and is liable to a fine of fifty thousand kwacha (K50,000.)

Copy of  
Certificate

16. A person registered under this Act may, upon payment of the prescribed fee, have a copy of his certificate duly certified by the Registrar.

#### PART V – MISCELLANEOUS PROVISIONS

Immunity

17.- (1) A person shall not bring an action against the Registrar or any officer in respect of any act done or omitted to be done by the Registrar or any of the Registrar's officers in the execution, in good faith, of functions under this Act;

(2) Where the Registrar furnishes, electronically or otherwise, information relating to a person registered under this Act to any other person, neither the Registrar nor any of the Registrar's officers who is involved in the furnishing of such information shall be liable for any loss or damage suffered by any person, by reason of any error or omission, of whatever nature or however caused, if the error or omission is made in good faith and in the ordinary course of the discharge of the duties of the Registrar or officer or authorized agent or has occurred or arisen as a result of any defect or breakdown in the service or in any of the equipment used for the service.

Persons carrying  
on unlawful  
business

18.- (1) Nothing in this Act shall be construed to require the Registrar to register a person who carries on any business which contravenes any written law.

(2) Where a person registered under this Act carries on any business which contravenes any written law, the Registrar may cancel the registration and the certificate of the person shall be deemed to have been cancelled.

(3) A person aggrieved by the decision of the Registrar under subsection (1) or (2) may make an application to the High Court for judicial review.

Compounding offences

19.- (1) The Registrar may, in his discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding-

- (a) one half of the amount of the maximum fine that is prescribed for the offence; or
- (b) seventy five thousand kwacha (K75,000),

whichever is the lower.

(2) On payment of the sum of money under subsection (1), no further proceedings shall be taken against that person in respect of the offence.

Enforcement of duty to file returns

20.- (1) Any person, who makes default in complying with-

- (a) any provision of this Act or of any other law which requires submitting or filing in any manner with the Registrar of any return, account or other document or the giving of notice to him of any matter; or

- (b) any request of the Registrar to amend or complete and resubmit any document or to submit a fresh document,

and fails to make good the default within fourteen (14) days after the service on the person of a notice requiring it to be done, shall be liable to a administrative penalty of five thousand kwacha (K5,000) for each default:

Provided that the maximum penalty shall not exceed one million kwacha (K1,000,000).

(2) A penalty under subsection (1) shall constitute a civil debt owed to the Government.

(3) Notwithstanding anything to the contrary in any written law, any person who owes a debt referred to in subsection (2) above shall bear all the costs of and incidental to the application for collection of the debt.

(4) Nothing in this section shall limit the operation of any other provision of this Act or any written law imposing penalties on that person.

General offence  
and penalty

21. A person who contravenes a provision of this Act for which no offence is specifically provided commits an offence and is liable to a fine of fifty thousand kwacha (K50,000).

Regulations

22.- (1) The Minister may, from time to time, make regulations for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the powers conferred by subsection (1), such regulations may prescribe-

- (a) the additional powers and duties of the Registrar;
- (b) the internal procedures for business registration;
- (c) the forms for the purposes of this Act, including the form of registers to be kept and the places at which the registers are to be kept;
- (d) the fees to be charged in respect of anything done under or by virtue of this Act, and the method of payment of such fees;

- (e) the persons or classes of persons who are to be exempted from the payment of any fee or part thereof;
- (f) the penalties for the late submission of documents;
- (g) the offences which may be compounded under section 20; and
- (h) all matters and things which are required or permitted to be prescribed under or for the purposes of this Act.

Cap. 1:01 (3) Notwithstanding the provisions of section 21 of the General Interpretation Act, a person who commits an offence against any provision of subsidiary legislation made under subsection (1) shall be liable to a fine not exceeding five hundred thousand kwacha (K500, 000) and to imprisonment not exceeding one (1) year.

Repeal and savings  
Cap. 46:02

23.- (1) The Business Names Registration Act is repealed.

Cap. 46:02

(2) Any subsidiary legislation made under the Business Names Registration Act repealed by subsection (1), in force immediately before the commencement of this Act-

(a) shall remain in force unless in conflict with this Act and be deemed to be subsidiary legislation made under this Act; and

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

Transitional provisions  
Cap. 46:02

24.- (1) All certificates granted under the Business Names Registration Act shall remain in force until the expiry of six (6) months from coming into force of this Act whereupon they shall lapse and holders thereof shall be required to obtain certificates in accordance with this Act.

(2) On the commencement of this Act, every company incorporated under the Companies Act or a body corporate registered under any written law shall, within six (6) months from the commencement of this Act, notify the Registrar, in the prescribed manner of-

(a) the business name of the company, if any;

- (b) the general nature of the business;
  - (c) the address of business and any other place where the business is carried on; and
  - (d) any other information as may be required.
- (3) The Registrar shall, subject to subsection (2)-
- (a) register the company or other body corporate registered under any written law, as the case may be, in the Database;
  - (b) allocate a business registration number to the company or other body corporate; and
  - (c) issue a Certificate.

