

PACRA and Business Registration in Zambia

**Presented at an AgriProFocus Zambia and Netherlands Export
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Discussion Topics

- **About PACRA**
- **Business Associations and Types of Companies**
- **Company Incorporation Formalities**
- **Post Incorporation Requirements**
- **Revision of the Companies Act**
- **Business Opportunities**

Legal Status and Presence

- **PACRA is a statutory body established under the Patents and Companies Registration Agency Act No. 15 of 2010**
- **Oversight by a Board**
- **Was until 2012, a self financing Agency under MCTI**
- **Physically present in all provincial capitals**

Services Rendered by PACRA

- **Registration of Business Names**
- **Incorporation of Companies**
- **Registration of Charges, Mortgages and Debentures**
- **Registration of Liquidators and Receivers**
- **Registration of Security Interests in Movable Property**
- **Registration of Trade Marks**
- **Registration of Industrial Designs**
- **Granting of Patents**

Newly Acquired Mandates

- **Registration of Security Interests in Movable Property**
- **Protection of Traditional Knowledge, Expressions of Folklore and Genetic Resources**
- **Registration of Layout Designs of Integrated Circuits**
- **Administration of Copyright**

Other Developments at PACRA

- **On-Line Registration**
- **Call Center**
- **Digitization of Business Records**
- **One-Stop-Shop Intergradation Systems (OSSIS) and adoption of International Standards for Classification of Legal Economic Activities (ISIC)**
- **Corporate Law reform and revision of Industrial Property laws**
- **Establishment of Collateral Registry**

Types of Business Associations Available in Zambia

- **Trusts under the Lands (Perpetual Succession) Act**
- **Cooperatives under the Cooperatives Act**
- **Business names under the Business Names Act No. 16 of 2011**
- **Partnership under Partnership Act of 1890**
- **Companies under the Companies Act Cap 388 as amended by (Amendment) Act No. 15 pf 2015**

Business Name

- A business name is defined as *'the name or style under which any business is carried on, whether in partnership or otherwise, other than the true names of an individual'*.
- The Registration of Business Names Act makes mandatory for every **individual or firm with a place of business in Zambia and carrying on business under a business name** to be registered with PACRA (s 4).
- The Act is supplemented by subsidiary legislation (Statutory Instruments) which stipulate fees, forms and detailed procedures
- The rationale for registration is to ensure orderly business

Persons Qualifying to register a Business Name

- Those qualifying to register a business name **include individuals or firms** with a place of business and carrying on business under a name which does not consist of their true surnames (Section 4)
- Failure to register a business name is an offence (section 4.2)
- **A firm is defined as** *‘an unincorporated body of two or more individuals or one or more individuals and one or more corporations, or two or more corporations who have entered into partnership with another with a view to carrying on business for profit’.*

Procedure for Registering Business Name

- Procedure stipulated under Statutory Instrument No. 3 of 2012 the Registration of Business Names Act No.
- Apply via Form XII
- Costs K 166

Concluding Remarks on Business Names

Business Names are the commonest form of business association. As such, a clear understanding of the relevant law is critical.

Categories of Companies

- Local Companies
- Foreign Companies

Types of Local Companies

- There are two (2) types of Companies: -
 - (i) Public Limited Company (PLC)
 - (ii) Private Limited Company which may be either:
 - (a) a private company limited by shares;
 - (b) a company limited by guarantee; or,
 - (c) an unlimited company

Public Limited Company

- A Public Company has share capital
- Has no limit on the number of shareholders
- Can invite the public to subscribe for its shares – usually through the stock exchange
e.g. Copperbelt Energy Corporation
- Ends with the letters PLC
 - (Refer to sections 14 - 15 of Act)

Private Company Limited by Shares

- Like public limited company, has share capital
- Mainly for profit
- Is not allowed to invite the public to subscribe for its shares – these are largely family businesses
- Can not have more than fifty (50) shareholders
- Should end with the word ‘Limited’(s 37).

Unlimited Liability Companies

- Have share capital i.e. amount agreed to be raised from subscribers divided into shares of a give amount
- Also generally for profit making purposes
- May be allowed to have more than fifty (50) shareholders
- The liability of shareholders is unlimited

Companies Limited by Guarantee

- Should not carry on business for the purpose of making profit for its members or anyone concerned in its promotion (s 19(5)).
- Has no share capital
- Members guarantee a specified amount – this is not paid upfront. Amount guaranteed is only paid when Company is wound up.

Foreign Company

- This is a branch of a company incorporated outside Zambia which is registered in Zambia. Applicants should fill in form 46 at a fee of **K4,166**
- A foreign company must at all times have at least one and not more than nine (9) individuals called 'local directors', empowered and authorized to conduct and manage all the affairs, properties, business and other operations of the company in Zambia.
- At least one local director of the company must be resident in Zambia, and if the company has more than two local directors, more than half of them should be resident in Zambia.

Procedure for Incorporation

- Stipulated in Statutory Instrument No. 79 of 2011, the Companies (Prescribed Forms)(Amendment) Regulations, 2011
- First do name search
- Application for incorporation to be accompanied by Forms 11 (Declaration of Compliance), Form 5 (Declaration of Consent to Act as Director/Secretary)
- Standard or own articles (No Memorandum of Association) – indicate whether company is limited in activities to undertake section 7(2) of Act

Minimum Requirements for Company Incorporation

- 2 shareholders of 18 years above and of sound mind
- 2 directors and a Company Secretary
- Forms must be Type Written
- Minimum of 2 Directors, Half of which are resident in Zambia
- Minimum Share Capital – K 15, 000
- Costs K 707 and K 750 for Limited by Guarantee

Shareholding and Directorship Requirements

- Minimum of 2 shareholders (s 6)
- Minimum of 2 directors (s 204)
- Half of the directors, including the managing director, should be resident in Zambia (s 208)

On-Line Registration

- Full on-line registration including filing of annual returns
- Transfer of shares and mortgages not yet operationalized
- Requires VISA enabled card
- Value Added Services: business verification, certificate and data retention

Post Registration Requirements

These are services that happen after the business is registered or incorporated such as:

- Changes in Directors
- Alteration in Share Capital
- Transfer of shares
- Return of allotment of shares
- Changes in Company name
- Changes in registered office and postal address
- Dissolution of companies
- Changes in email addresses and phone numbers.

Annual Return Fees

- Private Companies - K166.00
- Business Names - K83.00
- Failure to file annual returns may result in deregistration

Other Requirements Under the Companies Act

- Return of allotment of shares within one month(s 63)
- Issuance of share certificate within two months of allotment(s 66)
- Preparation of annual report (s 176)
- Maintenance of register of directors, debenture holders, shareholders, and charges(s 48, 92, 97, 224)

Requirements Under the Companies Act Cont'd

- Registration of charges within 21 days of creation(s 99)
- Maintenance of register of shares held by each director and secretary (s 225)
- Maintenance of records office (s 191)
- Publication of name of company at registered office(s 194)

Requirements Under the Companies Act Cont'd

- Maintaining a Common Seal (s 195)
- Preparation of annual report (s176)
- Ensure company has at least two directors (s 204), that half are resident in Zambia (s 208) and register changes in directors
- Maintaining record of accounts and for at least ten years after completion of transaction (s162)
- Filing annual returns within three months of financial year end(s184)

Review of the Companies Act: Historical Context

- ① At independence in 1964, Zambia inherited Companies Act of 1921

- ① 1921 Act was repealed and replaced by Companies Act of 1994 (Cap 388) which: -
 - (a) Dispensed with Memorandum of Association and replaced it with application for incorporation

 - (b) Thus attempted to do away with *ultra vires* doctrine and the implications of the objects clause

Amendment of Companies Act: Historical Context Cont'd

Companies Act 1994 was amended by Companies (Amendment Act) No. 24 of 2011 which: -

- (a) mainly dealt with Part XIII of the Act
- (b) introduced professional qualifications and accreditation (registration) for receivers and liquidators with PACRA
- (c) Introduced measures to enhance transparency in receiverships and liquidations as well as control and accountability of receivers and liquidators

Objectives of Companies Act Review

- Strengthen corporate governance
- Align corporate law with other relevant law
- Provide for modernisation of registry
- Strengthen rescue of troubled businesses

Proposed Amendments to Companies Act

- Separating Part XIII and placing it into a separate Insolvency Act
- Abandonment of par value of shares
- Broadened duties and responsibilities of directors and introduction of duties and responsibilities for company secretaries

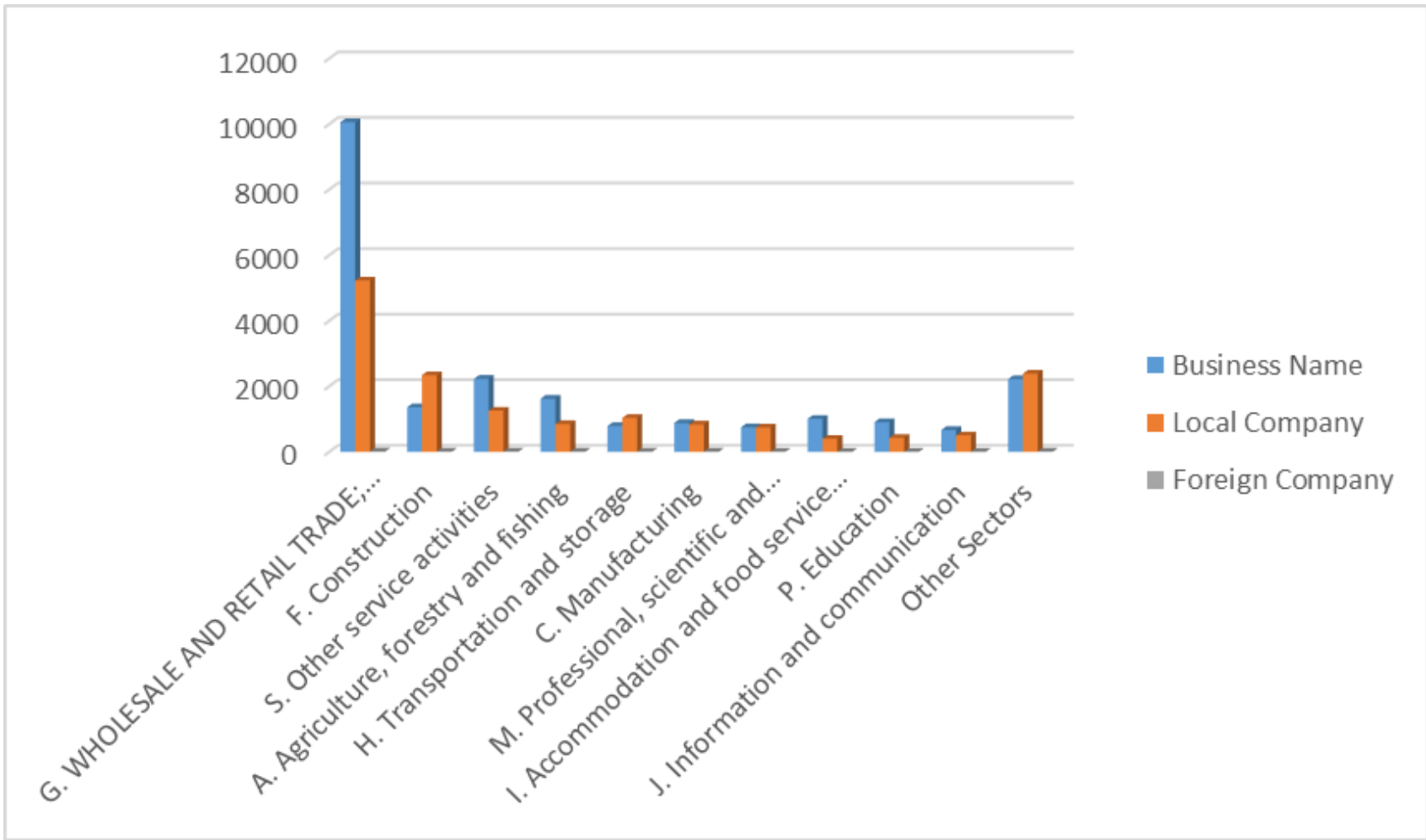
Proposed Amendments to Companies Act Cont'd

- Introduction of professional qualifications for company secretaries (one should be a legal practitioner, a chartered accountant or a member of the chartered institute of secretaries) for large companies
- Small companies may appoint a non professional as company secretary

Proposed Amendments to Companies Act Cont'd

- Annual financial statements to include amount paid to directors and loans to officers
- Financial statements to contain information as required by accounting standards
- Auditor's report to be presented to shareholder meeting
- Small companies may not appoint auditor

SECTOR	BUSINESS NAME	LOCAL COMPANY	FOREIGN COMPANY	TOTAL
G. WHOLESALE AND RETAIL TRADE; REPAIR OF MOTOR VEHICLES AND MOTORCYCLES	10,053	5,228	13	15,294
F. CONSTRUCTION	1,362	2,339	11	3,712
S. OTHER SERVICE ACTIVITIES	2,229	1257	10	3,496
A. AGRICULTURE, FORESTRY AND FISHING	1,621	848	7	2,476
H. TRANSPORTATION AND STORAGE	788	1037	9	1,834
C. MANUFACTURING	880	834	7	1,721
M. PROFESSIONAL, SCIENTIFIC AND TECHNICAL ACTIVITIES	748	743	5	1,496
I. ACCOMMODATION AND FOOD SERVICE ACTIVITIES	1,008	398	1	1,407
P. EDUCATION	906	428	1	1,335
J. INFORMATION AND COMMUNICATION	668	502	1	1,171
OTHER SECTORS	2,220	2,385	12	4,617



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Thank you