

A.148

COMPANIES AND INTELLECTUAL PROPERTY AUTHORITY ACT, 2011

No. 14



of 2011

ARRANGEMENT OF SECTIONS

SECTION

PART I – Preliminary

1. Short title and commencement
2. Interpretation

PART II – Establishment, Functions and Powers of Authority

3. Establishment of Authority
4. Seal of Authority
5. Functions and powers of Authority
6. Principles of operation

PART III – The Board

7. Establishment of Board
8. Functions and duties of Board
9. Appointment of members of Board
10. Appointment of Secretary of Board
11. Tenure of office of members
12. Disqualification from appointment as member
13. Vacation of office and filling of vacancies
14. Remuneration of members

PART IV – Meetings and Proceedings of Board

15. Meetings of Board
16. Committees of Authority
17. Co-opted members
18. Disclosure of interest

PART V – Various Offices within Authority

19. Offices within Authority
20. Companies and Business Names Office
21. Industrial Property Office
22. Copyright Office

PART VI – *Registrar General and Staff of Authority*

23. Registrar General
24. Duties of Registrar General
25. Appointment of Registrars, Deputy Registrars and Assistant Registrars
26. Appointment of other staff

PART VII – *Financial Provisions*

27. Funds of Authority
28. Borrowing powers of Authority
29. Provision of information
30. Financial year
31. Accounts
32. Audit
33. Annual Report
34. Business plan
35. Pension and other funds

PART VIII – *Miscellaneous Provisions*

36. Indemnity
37. Regulations
38. Transitional arrangements

An Act to establish the Companies and Intellectual Property Authority; to provide for its powers and functions; the establishment of a Board of the Authority; three Offices within the Authority, namely, the Companies and Business Names Office, the Industrial Property Office and the Copyright Office; and for matters connected or incidental thereto.

Date of Assent: 20.09.2011

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I – *Preliminary*

Short title and commencement

1. This Act may be cited as the Companies and Intellectual Property Authority Act, 2011, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —
 “Authority” means the Companies and Intellectual Property Authority established under section 3;
 “Board” means the Board of the Authority established under section 7;
 “Chairperson” means the Chairperson of the Board appointed under section 9 (1) (a);
 “member” means a member of the Board appointed under section 9;
 “Registrar General” means the chief executive officer of the Authority appointed under section 23; and
 “Secretary” means the Secretary of the Board appointed under section 10 (1).

PART II – *Establishment, Functions and Powers of Authority*

3. There is hereby established an Authority to be known as the Companies and Intellectual Property Authority which shall be a body corporate with a common seal, capable of suing and being sued and, subject to the provisions of this Act, of performing such acts as bodies corporate may, by law, perform.

Establishment
of Authority

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

Seal of
Authority

(2) The affixing of the seal shall be authenticated by the Chairperson or Vice-Chairperson and the Registrar General, or any other person authorised on that behalf by a resolution of the Board.

(3) The Chairperson or Vice-Chairperson of the Board may, in writing, delegate to another officer of the Authority, their power to authenticate the seal.

(4) A document issued by the Authority and sealed with the seal of the Authority, which seal is authenticated in the manner approved by this section, shall be received and taken to be a true instrument without further proof unless the contrary is shown.

5. The Authority shall —

Functions and
powers of
Authority

- (a) promote and enable the full protection of the rights of investors and right-holders, obtained under the Companies Act, Registration of Business Names Act, Industrial Property Act and Copyright and Neighbouring Rights Act;
- (b) advise Government and its agencies on all matters pertaining to companies, business names and intellectual property;
- (c) be responsible for the overall implementation and administration of —
 - (i) the registration of companies under the Companies Act,
 - (ii) the registration of business names under the Registration of Business Names Act,
 - (iii) the registration of industrial property rights under the Industrial Property Act, and
 - (vi) copyright and neighbouring rights under the Copyright and Neighbouring Rights Act;
- (d) provide advanced information systems;
- (e) organise outreach and awareness creation programmes to inform, educate and sensitise the public on matters relating to companies, business names and intellectual property; and
- (f) advise the Minister on matters relating to the administration and registration of companies, business names, industrial property rights, and copyright and neighbouring rights.

Cap. 42:01,
Cap. 42:05,
Act No. 8 of
2010 and
Cap. 68:02

6. The Authority shall perform its functions in accordance with sound commercial and financial principles and shall ensure, as far as possible, that its revenue is sufficient to meet the expenditure properly chargeable to its revenue.

Principles of
operation

PART III – *The Board*Establishment
of Board

7. There shall be a Board of the Authority, comprised of eight members, which shall be the governing body of the Authority.

Functions
and duties of
Board

8. The Board shall be responsible for the general control of the performance, management undertakings and affairs of the Authority, and without derogating from the generality of this provision, the Board shall —

- (a) determine the general performance of the Authority;
- (b) approve business plans of the Authority;
- (c) determine and approve estimates of income and expenditure of the Authority;
- (d) review the performance of top management officers of the Authority;
- (e) monitor the deployment and utilisation of the movable and immovable property of the Authority; and
- (f) do such other things as are provided by this Act or as may be necessary for the proper implementation of this Act.

Appointment
of members of
Board

9. (1) The Minister shall appoint the following persons to be members —

- (a) a Chairperson of the Board from the private sector;
- (b) representative of the ministry responsible for trade and industry;
- (c) an Attorney from the private sector admitted to practise in the courts of Botswana;
- (d) a person qualified in the field of accounting from the private sector;
- (e) an expert in the field of information communications technology;
- (f) an expert in the field of intellectual property; and
- (g) a person from the private business sector.

(2) A Vice-Chairperson of the Board shall be elected by the members from among their number.

(3) The Registrar General, appointed under section 23, shall be an *ex-officio* member.

Appointment
of Secretary
of Board

(4) The Minister shall cause the appointments of the members to be published, by notice, in the *Gazette*.

10. (1) The Board shall, with the approval of the Minister, appoint a Secretary, who shall be suitably qualified and experienced.

- (2) The Secretary shall be responsible for —
- (a) taking the minutes of the meetings of the Board;
 - (b) keeping the records of all decisions of the Board; and
 - (c) keeping records of legal transactions of the Authority.

(3) The Secretary of the Board shall be accountable to the Registrar General and to the Board for his or her functions and responsibilities.

(4) The conditions of service, including the remuneration package of the Secretary, shall be set by the Board with the approval of the Minister.

(5) The Board may, in the absence of the Secretary, appoint another official of the Authority to perform the functions of the Secretary until the Secretary resumes office or the vacancy is filled, as the case may be.

A.152

11. (1) Subject to the provisions of this section, each member, with the exception of the *ex-officio* member, shall hold and vacate office in accordance with the terms of his or her appointment.

Tenure of office of members

(2) A person shall not be appointed to be a member for more than five years at a time, but shall be eligible for re-appointment for an aggregate period not exceeding ten years.

(3) Any member may at any time resign from his or her office by giving three months notice, in writing, to the Minister.

12. A person shall not qualify for appointment as a member if he or she —

Disqualification from appointment as member

(a) has in terms of any law in force in any country —

(i) been adjudged or otherwise declared bankrupt or insolvent, and has not been rehabilitated or discharged, or

(ii) made an assignment to, or arrangement or composition with, his or her creditors, which has not been rescinded or set aside;

(b) has within a period of ten years immediately preceding the date of his or her appointment been convicted —

(i) in Botswana, of a criminal offence, or

(ii) outside Botswana, of an offence which, if committed in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon;

(c) is of unsound mind;

(d) being a holder of a professional qualification, has been suspended or barred from practising the profession within or outside Botswana; or

(e) is an employee of the Authority.

13. (1) A member shall vacate his or her office —

Vacation of office and filling of vacancies

(a) upon the member's death;

(b) if the member becomes disqualified, under section 12, to hold office as a member;

(c) if the member's appointment is terminated in terms of subsection (4);

(d) upon giving three months written notice to the Minister of his or her intention to resign from office.

(2) As soon as possible after a vacancy occurs in the membership of the Board, the Chairperson shall notify the Minister, in writing, not later than two weeks of the vacancy occurring.

(3) If a member ceases to hold office for any reason, the Minister may, within three months of receiving the notice under subsection (2) appoint another person to take the place of the member, and the person so appointed shall hold office for the remainder of the term of office of the member in whose place he or she was appointed and shall be eligible for reappointment.

- Remuneration of members
- (4) The Minister may terminate the appointment of a member —
- (a) if the member conducts himself or herself in a manner that is detrimental to the efficient and proper performance of the functions of the Board;
 - (b) if the member has been found to be physically or mentally incapable of performing his or her duties efficiently, and the member's medical doctor has issued a certificate to that effect; or
 - (c) if the member is absent from three consecutive meetings of the Board without the prior permission of the Chairperson or, if in any given year, attends less than half of the meetings of the Board.
- 14.** (1) A member shall be paid out of the funds of the Authority such remuneration or allowances as the Minister may determine.
- (2) Any other person not being an employee of the Authority, invited to attend a meeting of the Board, may be paid out of the funds of the Authority such remuneration or allowances as the Minister may determine.

PART IV – Meetings and Proceedings of Board

- Meetings of Board
- 15.** (1) Subject to the provisions of this Act, the Board shall regulate its own procedure for meetings.
- (2) The Board shall meet as often as it is necessary or expedient for the discharge of its functions, and such meetings shall be held at such places and times and on such days as the Chairperson may determine.
- (3) Notwithstanding subsection (2), there shall be at least one ordinary meeting in each quarter of the year.
- (4) A meeting of the Board shall be called by the Chairperson giving at least 14 days' notice of such meeting, unless all members consent to a shorter notice period.
- (5) The Chairperson shall provide to each member the agenda for the meeting and any materials which support each agenda item at the time when the notice for the meeting is issued.
- (6) The Chairperson shall call a special meeting of the Board within seven days of receipt of a request, in writing, of at least three members for such special meeting to be held.
- (7) Four members shall form a quorum.
- (8) At any meeting of the Board, the Chairperson shall preside, and in his or her absence, the Vice-Chairperson and in the absence of both the Chairperson and the Vice-Chairperson, the members present shall elect from among their number, a Chairperson for the purposes of that meeting.
- (9) The decisions of the Board shall be by a majority of votes, and in the event of an equality of votes, the Chairperson, or the Vice-Chairperson, or such other person presiding at the meeting, shall have a casting vote in addition to his or her deliberative vote.
- (10) A decision or act of the Board shall not be invalid by reason only of the fact that a disqualified member acted as a member of the Council.

A.154

16. (1) The Authority may appoint such committees as it considers appropriate, consisting of its members or other suitably qualified persons. Committees of Authority

(2) The Authority may delegate any of its powers, functions or duties under this Act, to a committee appointed under subsection (1).

17. Subject to section 9, the Board may invite any person, not being a present member, to attend any Board meeting or otherwise assist it with its deliberations, and any person so invited shall not have any voting rights on the Board. Co-opted members

18. (1) Where a member is present at a meeting of the Board or any committee, at which meeting a matter which is the subject of consideration is one in which he or she is directly or indirectly interested in a private capacity, the member shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on any question touching upon, such matter. Disclosure of interest

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting at which it was made.

(3) Where a member fails to disclose his or her interest in accordance with subsection (1) and a decision by the Board is made benefiting such member, such decision shall be null and void.

(4) A member who contravenes subsection (1) commits an offence and is liable to a fine of P10, 000.00 or imprisonment for a term not exceeding one year.

PART V – Various Offices within Authority

19. The Authority shall comprise the following offices — Offices within Authority

(a) the Companies and Business Names Office;

(b) the Industrial Property Office; and

(c) the Copyright Office.

20. The Companies and Business Names Office shall — Companies and Business Names Office

(a) process applications made in terms of the Companies Act and Registration of Business Names Act;

(b) keep a register of registered business names in a prescribed form in which shall be entered such particulars as are required by the Registration of Business Names Act;

(c) take charge of, and be responsible for the safe custody of, all documents lodged with the Companies and Business Names Office under the Companies Act;

(d) examine and register all returns and other documents lodged with the Companies and Business Names Office;

(e) prescribe fees and conditions under which a person may consult, inspect or make a copy of, or obtain an extract from a document lodged and kept in the Companies and Business Names Office; and

(f) exercise any other powers —

(i) conferred on it by this Act or any other Act, or

(ii) which the Minister may by regulations prescribe.

Industrial
Property
Office

- 21.** (1) The Industrial Property Office shall —
- (a) process all applications made in terms of the Industrial Property Act;
 - (b) grant patents and utility model certificates;
 - (c) register industrial designs, marks and collective marks;
 - (d) register geographical indications, layout designs of integrated circuits, acts of unfair competition, traditional knowledge and handicrafts;
 - (e) administer granted patents and utility model certificates and registered industrial designs, marks and collective marks;
 - (f) establish and maintain a journal of industrial property in which the Industrial Property Office shall publish all matters that are required to be published under Industrial Property Act;
 - (g) maintain separate registers for patents, utility model certificates, industrial designs and marks and shall, in a section of the register of marks created for that purpose, also register collective marks; and
 - (h) exercise any other powers —
 - (i) conferred on it by this Act or any other Act, or
 - (ii) which the Minister may by regulations prescribe.

(2) The Registrar shall enter in the registers under subsection (1) (g) such particulars as are required by the Industrial Property Act or other particulars that the Minister may prescribe under the Industrial Property Act.

(3) Any person may, upon payment of the prescribed fee, and in accordance with any conditions which may be prescribed, consult, inspect or make a copy of, or obtain an extract from, any register established and maintained under subsection (1) (g).

Copyright
Office

- 22.** The Copyright Office shall —
- (a) be responsible for all matters affecting copyright in Botswana;
 - (b) supervise the activities of the Copyright Society as provided for under section 36A of the Copyright and Neighbouring Rights Act;
 - (c) maintain an effective database on copyright matters and on authors and their works;
 - (d) maintain a register of works published in Botswana;
 - (e) issue a licence, prescribed by the Minister, for the operation of the Copyright Society;
 - (f) design and issue the security device under section 35A of the Copyright and Neighbouring Rights Act;
 - (g) administer the fund established under section 35G (2) of the Copyright and Neighbouring Rights Act;
 - (h) be responsible for such matters related to copyright, as the Minister may direct for the better carrying out of the purposes and provisions of the Copyright and Neighbouring Act and this Act; and
 - (i) exercise any other powers —
 - (i) conferred on it by this Act or any other Act, or
 - (ii) which the Minister may by regulations prescribe.

PART VI – Registrar General and Staff of Authority

- 23.** (1) There shall be a Registrar General who shall be —
- (a) the chief executive officer of the Authority; and
 - (b) appointed by the Minister, on the recommendation of the Board, on such terms and conditions as may be specified in the instrument of appointment.
- (2) The Registrar General shall be a person with knowledge and experience in company law or intellectual property law and who has such other qualifications and experience or proven ability in other fields as the Board and the Minister may consider relevant.
- (3) The Registrar General shall be accountable to the Board.
- (4) The Registrar General shall not, while in the employment of the Authority, engage in paid employment outside the duties of his or her office in the Authority.
- 24.** (1) The Registrar General shall, subject to the control of the Board on matters of policy, be responsible for —
- (a) the supervision of the day-to-day affairs of the Authority and ensuring that the Authority is carrying out the functions and duties placed upon it in terms of this Act;
 - (b) the effective administration and implementation of the registration of companies, business names and intellectual property;
 - (c) controlling the resources and operations of all the Offices within the Authority;
 - (d) submitting business plans and estimates of income and expenditure to the Board for its approval;
 - (e) implementing the decisions of the Board; and
 - (f) carrying out any duty that may be conferred on him or her by the Minister or the Board.
- (2) In the performance of his or her duties, the Registrar General shall keep the Board fully informed of the affairs of the Authority and shall consult the Board as may be necessary.
- (3) The Registrar General may delegate to any other senior officer of the Authority, as he or she considers appropriate, the exercise of any powers which the Registrar General is authorised to exercise under this Act.
- 25.** (1) The Board shall appoint, on the recommendation of the Registrar General —
- (a) a Registrar of Companies and Business Names who shall be the head of the Companies and Business Names Office;
 - (b) a Registrar of Industrial Property who shall be the head of the Industrial Property Office; and
 - (c) a Copyright Administrator who shall be the head of the Copyright Office.
- (2) The Registrar General shall appoint —
- (a) Deputy Registrar of Companies and Business Names;
 - (b) a Deputy Registrar of Industrial Property;
 - (c) a Deputy Copyright Administrator; and
 - (d) such number of Assistant Registrars as it may be considered necessary to appoint.

Registrar
GeneralDuties of
Registrar
GeneralAppointment
of Registrars,
Deputy
Registrars and
Assistant
Registrars

- (3) The Registrar of Companies and Business Names shall —
- (a) be responsible for the administration of the Companies Act and the Registration of Business Names Act; and
 - (b) execute the functions of the Companies and Business Names Office under section 20.
- (4) The Registrar of Industrial Property shall —
- (a) be responsible for the administration of the Industrial Property Act; and
 - (b) execute the functions of the Industrial Property Office under section 21.
- (5) The Copyright Administrator shall —
- (a) be responsible for the administration of the Copyright and Neighbouring Rights Act; and
 - (b) execute the functions of the Copyright Office under section 22.
- (6) A Registrar or Copyright Administrator appointed under this section shall perform such functions and exercise such powers as may be conferred on him or her by this Act or any other enactment.
- (7) A Deputy Registrar, Deputy Copyright Administrator, Assistant Registrar or Assistant Copyright Administrator, appointed under this section shall perform such functions and exercise such powers as a Registrar or Copyright Administrator may lawfully perform or exercise under this Act or any enactment.

Appointment
of other staff

26. (1) The Authority shall consist of such other officers and supporting staff as the Board may determine.

(2) The Registrar General shall appoint the officers and supporting staff referred to in subsection (1).

(3) The terms and conditions of employment of the officers and supporting staff of the Authority shall be as determined by the Board in their respective contracts of employment which contracts of employment may make provision for the payment to such officers and supporting staff such benefits, gratuities or other allowances as the Board may determine, and such benefits, gratuities and allowances shall be paid from the Authority's revenues.

(4) All officers and supporting staff of the Authority shall be subject to a disciplinary procedure which shall be implemented by the Board.

PART VII – *Financial Provisions*

Funds of
Authority

27. The funds of the Authority shall consist of —

- (a) such monies as may be appropriated by Parliament for the purposes of the Authority;
- (b) grants and loans as may be approved by the Government from any body or organisation;
- (c) interest on savings made by the Authority;
- (d) such money as may accrue to the Authority in the discharge of its functions; and
- (e) such monies from any other source as may be approved by the Minister.

A.158

28. (1) The Authority may, with the written approval of the Minister, borrow funds required for meeting its obligations and for carrying out its functions.

Borrowing
powers of
Authority

(2) The Authority may borrow temporarily, by way of overdraft or otherwise, sums of monies to be paid within a short period, for any urgent requirements of the Authority in the discharge of its functions.

(3) The Authority may raise funds for the discharge of its functions by the issuing of stock, and any interest payable on any stock issued under this subsection shall be a charge upon all property, undertaking and revenue of the Authority.

(4) The Authority may, for purposes of paying any loan under this section and any interest on that loan —

- (a) charge the assets, undertakings and revenue of the Authority;
- (b) issue debentures and other types of bonds; and
- (c) do any other thing necessary to enable the Authority to meet its obligations under that loan.

(5) The Minister for the time being responsible for finance shall prescribe the maximum sum that may be borrowed under this section.

29. The Authority shall provide to the Minister such information concerning the operations, plans and financial accounts of the Authority as the Minister may require.

Provision of
information

30. The financial year of the Authority shall be a period of twelve months commencing on the 1st April in each year and ending on the 31st March of the following year.

Financial year

31. (1) The Authority shall keep proper books of accounts of all its income and expenditure and proper records in relation to those accounts, in accordance with international standards on auditing.

Accounts

(2) The Authority shall cause to be prepared in respect of each financial year and not later than four months after the end of that financial year, a statement of accounts which shall include —

- (a) a balance sheet, an audited statement of income and expenditure and a statement of surplus and deficit; and
- (b) any other information in respect of the financial affairs of the Authority as the Minister for the time being responsible for finance may require.

32. (1) The accounts of the Authority in respect of each financial year shall, within four months or such extended time after the end thereof as the Minister may direct, be audited by an auditor appointed by the Authority (hereinafter referred to as “appointed auditor”), in accordance with international standards on auditing.

Audit

(2) The auditor shall report in respect of the accounts for each financial year, in addition to any other matter on which the Authority deems it pertinent to comment, whether or not —

- (a) the auditor has received all the information and explanations which, to the best of his or her knowledge and belief, were necessary for the performance of his or her duties as auditor;

- (b) the accounts and related records of the Authority have been properly kept;
- (c) the Authority has complied with all the financial provisions of this Act with which it is the duty of the Authority to comply; and
- (d) the statement of accounts prepared by the Authority was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the Authority.

(3) The auditor shall have access to all books of accounts, vouchers and other financial records of the Authority and be entitled to have any information and explanation required by him or her in relation to those records.

(4) The report of the auditor and a copy of the audited accounts shall, within seven days of the completion thereof, be forwarded to the Minister and to the Board.

(5) The Minister shall, within 30 days of receiving the report and a copy of the audited accounts, lay such report and accounts before the National Assembly.

Annual Report

33. (1) The Authority shall, no later than six months after the end of each financial year, prepare an Annual Report on the performance of its functions during that year which report shall include —

- (a) an audited financial statement and a report of the auditor on that statement; and
- (b) a record of any directions received from the Minister in the course of the year.

(2) The Annual Report referred to in subsection (1) shall be presented to the Minister, who shall, within 30 days of receipt thereof, lay it before the National Assembly.

Business plan

34. (1) The Authority shall produce a five-year business plan to be prepared by the Registrar General, and thereafter a subsequent business plan shall be prepared by him or her at least 12 months before the expiry of the current business plan.

(2) When preparing the business plan under subsection (1), the Registrar General shall consider —

- (a) the objectives and policies of the Government known to the Authority and their expressed purposes;
- (b) any directions given by the Minister;
- (c) any payments to be made by the Government to the Authority and their expressed purposes;
- (d) the need to maintain the extent of the Government's equity in the Authority;
- (e) the need to maintain a reasonable level of reserves having regard to estimated future infrastructure requirements;
- (f) the need to earn a reasonable rate of return on the Authority's assets other than assets wholly or principally used in the implementation of the Authority's functions;

A.160

- (g) the expectation of the Government that the Authority will pay a reasonable dividend as other needs of the Authority permit;
- (h) any contributions to international bodies connected with company law or intellectual property; and
- (i) any other commercial consideration that the Registrar General considers appropriate.

(3) The business plan under subsection (1) shall contain financial targets and performance targets for the Authority and shall be submitted to the Minister after approval by the Board.

(4) The Board shall submit the business plan to the Minister at least four months prior to the commencement of a new financial year, and the Minister shall submit any comments he or she may have on it not later than two months after its receipt.

(5) The Authority shall provide to the Minister an estimate of any subsidy funding required to maintain operations during the coming financial year which estimate shall identify specific uses to which the funds will be put, why the service is required, and what actions are being taken to reduce the amount of any subsidy required, at least four months prior to the commencement of the financial year in question.

35. (1) The Authority may, out of its revenues, establish and maintain such pension, superannuation, provident or other funds as it may consider desirable or necessary for the payment of benefits or other allowances on the death, sickness, injury, superannuation, resignation, retirement or discharge of its staff and may make rules providing for the payment of money out of its revenues to such funds and providing contributions for such funds by itself.

Pension and other funds

(2) The Authority may contract with insurance companies or such other bodies as may be appropriate for the maintenance and administration of the funds authorised under subsection (1).

PART VIII – Miscellaneous Provisions

36. No matter or thing done or omitted to be done by a member or staff of the Authority shall, if the matter or thing is done or omitted to be done *bona fide* in the course of the operations of the Authority, render a member or staff personally liable to an action, claim or demand.

Indemnity

37. The Minister, on the recommendation of the Authority, may make regulations —

Regulations

- (a) for anything which may be prescribed; or
- (b) for the better carrying out of the provisions of this Act.

38. (1) Any properties, assets, rights, debts, liabilities and obligations of the Government and the benefit and burden of all contracts made by or on behalf of the Government which are part of or concern or relate to the Registrar of Companies and Intellectual Property Department, may with the consent of the Board be transferred to and vest in the Authority as hereinafter provided on terms and conditions agreed to by the Board.

Transitional arrangements

(2) Every contract in respect of any matter, being a contract between the Registrar of Companies and Intellectual Property Department and any other party immediately before the commencement of this Act shall thereafter continue to subsist between the Authority and such other party.

(3) On and after the coming into operation of this Act, all actions, suits or legal proceedings by or against the Government pending in respect of the Registrar of Companies and Intellectual Property Department shall be carried out on or instituted by or against the Authority and no such suit, action or legal proceedings shall abate or be affected by the coming into operation of this Act.

(4) Any lawful act performed, made, executed, issued or passed by the —

- (a) Registrar of Companies under the Companies Act;
- (b) Registrar of Business Names under the Registration of Business Names Act;
- (c) Registrar of Marks, Patents and Designs under the Industrial Property Act; and
- (d) Copyright Administrator under the Copyright and Neighbouring Rights Act,

immediately before the commencement of this Act shall have effect as if performed, made, executed, issued or passed by the Registrar of Companies and Business Names, the Registrar of Industrial Property and the Copyright Administrator.

(5) Any person who is an officer or employee of the Registrar of Companies and Intellectual Property Department immediately before the coming into operation of this Act shall be deemed to be on secondment to the Authority for a period not exceeding 12 months from the coming into operation of this Act.

(6) A person seconded to the Authority under subsection (5) who, within 12 months from the coming into operation of this Act —

- (a) has been offered and has accepted to enter into a written contract of service with the Authority, shall be deemed to have terminated his or her service with the Government without right to severance of pay but without prejudice to all other remunerations and benefits payable upon termination; or
- (b) has not been offered, or has not accepted to enter into a written contract of service with the Authority shall be redeployed by the Government.

(7) A person engaged in terms of subsection (6) (a) shall be employed on such terms and conditions as may be offered by the Authority and agreed to by the Authority and the person.

A.162

(8) A person referred to in subsection (7) who is transferred from the Civil Service shall be permitted to continue the contribution to the Pensions Act or Pensions and Provident Funds Act or any other enactment in terms of which they are contributing towards a pension immediately before the transfer, subject to such terms and conditions as the Board, with the approval of the Minister, may determine.

Cap. 27:01
Cap. 27:03

PASSED by the National Assembly this 26th day of July, 2011.

BARBARA N. DITHAPO,
Clerk of the National Assembly.