

## GOVERNMENT OF ZAMBIA

**ACT**

No. 19 of 2005

Date of Assent: 28th September, 2005

**An Act to amend the Legal Aid Act**

[ 7th October, 2005

ENACTED by the Parliament of Zambia.

Enactment

1. (1) This Act may be cited as the Legal Aid (Amendment) Act, 2005, and shall be read as one with the Legal Aid Act, in this Act referred to as the principal Act.

Short title and commencement

(2) This Act shall come into operation on such date as the Minister may, by statutory instrument, appoint.

Cap. 34

2. The long title to the principal Act is amended by the insertion of the words “ to establish the Legal Aid Board and define its functions; to constitute the Secretariat of the Board; to establish the legal Aid Fund; ” after the words “ An Act ”.

Amendment of long title

3. Section *two* of the principal Act is amended —

Amendment of section 2

(a) by the deletion of the definitions “ Board ”, “ Director ”, “ Directorate ” and “ Fund ”; and

(b) by the insertion in the appropriate places of the following new definitions:

“ Board ” means the Legal Aid Board established under section *three A*;

“ Chairperson ” means the person appointed as Chairperson of the Board under section *three B*;

“ committee ” means a committee of the Board established under paragraph 5 of the Schedule;

“ Director ” means a person appointed as Director of the Board under section *four A*;

“ Fund ” means the Legal Aid Fund continued by section *seven A*;

“ member ” means a member of the Board appointed under section *three B*; and

“ Secretariat ” means the Secretariat of the Board constituted under section *four*.

4. The principal Act is amended by the insertion immediately after section *three* of the following new Part:

Insertion of new Part IA

PART IA  
THE LEGAL AID BOARD

Establish-  
ment of  
Board

3A. (1) There is hereby established the Legal Aid Board which shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may by law do or perform.

(2) The provisions of the Schedule shall apply to the Board.

Composition  
of Board

3B. (1) The Board shall consist of the following part-time members appointed by the Minister:

- (a) a person qualified to be a judge of the High Court who shall be the Chairperson;
- (b) the Permanent Secretary in the Ministry responsible for justice;
- (c) a representative of the Law Association of Zambia;
- (d) a representative of the Ministry responsible for home affairs;
- (e) a representative of the Ministry responsible for finance and national planning;
- (f) a representative of the Ministry responsible for community development and social welfare;
- (g) a representative of the Ministry responsible for labour;
- (h) a representative of a non-governmental organisation active in the promotion of human rights;
- (i) a representative of the Ministry responsible for sport, youth and child development; and
- (j) one other person.

(2) The members referred to in subsection (1) shall be nominated by their respective organisations or ministries.

(3) The person referred to in paragraph (j) of subsection (1) shall be a person who has expertise in the administration of justice or law.

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

(5) A person shall not be appointed as a member of the Board if the person —

- (a) is an undischarged bankrupt;
- (b) has been convicted of an offence involving fraud or dishonesty; or
- (c) has been convicted of an offence under any other written law and sentenced to a term of imprisonment of not less than six months, without the option of a fine.

3C. (1) The functions of the Board shall be to —

Functions of Board

- (a) administer and manage the Legal Aid Fund;
- (b) facilitate the representation of persons granted legal aid under this Act;
- (c) assign practitioners to persons granted legal aid under this Act;
- (d) advise the Minister on policies relating to the provision of legal aid and implement Government policies relating to the same; and
- (e) undertake such other activities relating to the provision of legal aid and which are conducive or incidental to the performance of its functions under this Act.

(2) Notwithstanding subsection (1), the Board may, by direction in writing and subject to such conditions as it considers fit, delegate to any member, committee or the Director any of its functions under this Act.

5. Part II of the principal Act is amended by the deletion of the Heading “Directorate of Legal Aid ” and the substitution there for of the heading “ Legal Aid Secretariat ”.

Amendment of Part II

6. The principal Act is amended by the repeal of section *four* and the substitution therefor of the following new section:

Repeal and replacement of section 4

Establishment  
of Secretariat  
and definition  
of its  
functions

4. (1) There is hereby established the Secretariat of the Board which shall have the function of implementing the decisions of the Board.

(2) Without prejudice to the generality of subsection (1) the Secretariat shall —

- (a) undertake the representation of persons granted legal aid under this Act;
- (b) be responsible for the day to day administration of the Board;
- (c) subject to the general or special direction of the Board, manage and disburse funds from the Fund for the purposes of this Act; and
- (d) perform such other functions as may be assigned to it by the Board.

(3) Subject to section *thirteen*, where the Board or the court grants legal aid to a person under this Act, the Director shall, unless the Director allocates a matter in question to a practitioner under section *six* provide that person with such of the services included in legal aid as the person may require.

Director,  
Secretary  
and other  
staff

4A. (1) The Board shall, with the approval of the Minister, appoint a Director on such terms and conditions as it may, with the approval of the Minister, determine, who shall be the Chief Executive Officer of the Board and who shall, subject to the control of the Board, be responsible for the day to day administration of the Board.

(2) The Director shall attend the meetings of the Board and any committee of the Board and may address such meetings, but shall have no vote.

(3) The Director shall be the Secretary to the Board.

(4) The Board may appoint a Deputy Director who shall —

- (a) assist the Director in the performance of the Director's duties under this Act; or
- (b) discharge the functions of the Director if the Director is absent or is for any other reason unable to discharge the functions of the Director's office.

(5) The Board may, on such terms and conditions as it may with the approval of the Minister determine, appoint such legal aid counsel, legal aid assistants and other staff for the Board as it considers necessary for the performance of its functions under this Act.

7. The principal Act is amended by the repeal of Part IIA and the substitution thereof of the following new Part: Repeal and replacement of Part IIA

**PART IIA**  
**THE LEGAL AID FUND**

7A. (1) There is hereby continued the Legal Aid Fund established under section *seven* A of the Legal Aid (Amendment) Act, 2000. Continuation of Legal Aid Fund Act No. 17 of 2000

(2) The Fund shall consist of such monies as—

- (a) may be appropriated by Parliament for the purposes of the Fund;
- (b) may be paid to the Fund by way of fees, contributions, costs, loans, grants or donations; and
- (c) vest in or accrue to the Fund.

(3) The Board may—

- (a) accept moneys by way of grants or donations from any source in Zambia and subject to the approval of the Minister from any source outside Zambia; and
- (b) accept moneys by way of contributions from persons granted legal aid under this Act.

7B. The Board shall maintain a separate bank account into which shall be paid all moneys payable to the Fund. Bank account

7C. The Board shall apply the moneys of the Fund for — Application of moneys of Fund

- (a) purposes of securing the representation of persons granted legal aid in accordance with this Act;
- (b) the remuneration of practitioners for services provided in accordance with this Act; and
- (c) such expenses incurred by a practitioner while representing a legally aided person and are properly attributable to time spent or work done by the practitioner in representing the person except for a practitioner providing legal aid under Practitioners Act:

Provided that the remuneration to be paid to a Legal practitioner under this Act shall be as determined by the Board, with the approval of the Minister.

Insertion of new section 24B to 24F  
Reference to Director

8. The principal Act is amended by the insertion immediately after section *twenty-four* A of the following new sections:

24B. On or after the appointed date, reference in any written law or any other legal document to the Director of Legal Aid shall be read and construed as reference to the Director appointed under section *four* A of this Act.

Vesting of assets of Directorate of Legal Aid

24C. (1) On or after the appointed date, there shall be transferred to, and vest in, or subsist against, the Board by virtue of this Act and without further assurance —

- (a) the affairs of the Directorate of Legal Aid and
- (b) subject to this Act, all property, rights and obligations which immediately before the appointed date were the property, rights and obligations of the Directorate of Legal Aid.

(2) Except as provided in this Act, every deed, bond and agreement (other than an agreement for personal service) to which the Government was a party immediately before the commencement of this Act in respect of the Directorate of Legal Aid, whether in writing or not, and whether or not of such a nature that rights, liabilities and obligations thereunder could be assigned, shall, unless its subject-matter or terms make it impossible that it should have effect as modified in the manner provided by this subsection, have effect as from the date of the assignment thereof, as if —

- (a) the Board had been a party thereto;
- (b) for any reference to the Government there were substituted, as respects anything falling to be done on or after the appointed date, a reference to the Board; and
- (c) for any reference to any officer of the Directorate of Legal Aid not being a party thereto and beneficially interested therein there were substituted, as respects anything falling to be done on or after the commencement of this Act, a reference to such officer of the Board as the Board shall designate.

(3) Subject to the provisions of subsection (2), documents, other than those referred to therein, which refer specifically or generally to the Directorate of Legal Aid shall be construed in accordance with subsection (2) as far as applicable.

24D. (1) Where under this Act, any property, rights, liabilities and obligations of the Government through the Directorate of Legal Aid are deemed transferred to the Board in respect of which transfer a written law provides for registration, the Board shall make an application in writing to the appropriate authority for registration of the transfer

Registration of property to be transferred by Government

(2) The registration authority referred to in subsection (1) shall make such entries in the appropriate register as shall give effect to such 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, as the case may be, and shall make endorsement on the deeds relating to the title, right or obligation concerned, and no registration fees, stamp duty or other duties shall be payable in respect thereof.

24E. (1) Without prejudice to the other provisions of this Act, where any right, liability or obligation vests in the Board by virtue of this Act, the Board and all other persons shall, as from the commencement of this Act, have the same rights, powers and remedies (and in particular the same rights as to the instituting or defending of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting that right, liability or obligation as they would have had if it had at all times been a right, liability or obligation of the Board.

Legal proceedings

(2) Any legal proceedings or application of any authority pending immediately before the commencement of this Act by or against the Government in respect of the Directorate of Legal Aid may be continued by or against the Board.

(3) 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 Government in respect of the Directorate of Legal Aid may be instituted by or against the Board.

24F. (1) On or after the appointed date, the Board shall on such terms and conditions as it may, with the approval of the Minister, determine appoint as officers of the Board such public officers from the Directorate of Legal Aid as may be necessary for the performance of the functions of the Board.

Staff of Directorate of Legal Aid

(2) Where an officer from the Public Service is appointed to the service of the Board —

(a) the terms and conditions of service with the Board shall not be less favourable than those the officer enjoyed in the Public Service; and

(b) the officer shall be deemed to have retired under section *thirty-nine* of the Public Service Pensions Act.

Act No. 35 of 1996

(3) On or after the appointed date public officers from the Directorate of Legal Aid who are not engaged by the Board under subsection (2) shall be retained by the Government and shall —

(a) be redeployed in the service of the Government; or

(b) be retired under section *thirty-nine* of the Public Service Pensions Act.

Act No. 35 of 1996

Repeal and replacement of Schedule

9. The principal Act is amended by the repeal of the Schedule and the substitution therefor of the new Schedule set out in the Appendix to this Act.

## APPENDIX

### (Section 9)

## FIRST SCHEDULE

### (Section 3A)

## PART I

### ADMINISTRATION OF BOARD

Seal of Board 1. (1) The seal of the Board shall be such device as may be determined by the Board and shall be kept by the Secretary.

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

(3) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Board by the Secretary or any other person generally or specifically authorised by the Board in that behalf.

(4) Any document purporting to be a document under the seal of the Board shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

2. (1) Subject to the other provisions of this Act, a member of the Board shall hold office for a period of three years from the date of appointment and shall be eligible for re-appointment for one further term of three years.

Tenure of  
office  
and vacancy

- (2) The office of the member shall become vacant —
- (a) upon the member's death;
  - (b) if the member is absent without reasonable excuse from three consecutive meetings of the Board of which the member has had notice;
  - (c) on ceasing to be a representative of the organisation which nominated the member;
  - (d) if the member becomes mentally or physically incapable of performing the duties of a member of the Board;
  - (e) if the member is declared bankrupt;
  - (f) if the member is convicted of an offence involving fraud or dishonesty; or
  - (g) if the member is convicted of an offence against any other written law and is sentenced to a term of imprisonment of not less than six months without the option of a fine.

(3) On the expiration of the period for which a member is appointed the member shall continue to hold office until a successor has been appointed but in no case shall the further period exceed three months.

3. Whenever the office of a member becomes vacant before the expiry of the term of office, the Minister may appoint another member in place of the member who vacates office but that member shall hold office only for the unexpired part of the term.

Filling of  
casual  
vacancy

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

Proceedings  
of  
Board

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

(3) The Chairperson may, upon giving notice of not less than fourteen days, call a meeting of the Board and shall call a special meeting to be held within fourteen days of receipt of a written request to the Chairperson by at least five members of the Board.

(4) If the urgency of any particular matter does not permit the giving of such notice as is required under subsection (3), a special meeting may be called by the Chairperson, upon giving a shorter notice.

(5) Five members of the Board shall form a quorum at any meeting of the Board.

(6) 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 the Chairperson and the Vice-Chairperson, such member as the members present may elect for the purpose of that meeting.

(7) A decision of the Board on any question shall be by a majority 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 the deliberative vote.

(8) The Board may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meeting of the Board but such person shall have no vote.

(9) The validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled to do so took part in the proceedings.

Committees  
of Board

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

(2) The Board may appoint as members of a committee, persons who are, or are not, members of the Board, 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 such period as the Board may determine.

(4) Subject to any specific or general directions of the Board, a committee may regulate its own procedure.

6. The members of the Board or any committee shall be paid such allowances as the Board may, with the approval of the Minister, determine. Allowances of members

7. (1) If a member or person is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration and in which matter the member or person or the member or person's spouse is directly or indirectly interested in a private capacity, the member or person shall as soon as is practicable after the commencement of the meeting, declare such 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 touching that matter. Disclosure of interest

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

8. No action or other proceedings shall lie or be instituted against any member or a member of a committee for or in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of that member or committee member's functions under this Act. Immunity of members

9. (1) A person shall not without the consent in writing given by, or on behalf of, the Board, publish or disclose to any person other than in the course of duties, the contents of any document, communication, or information which relates to, and which has come to the person's knowledge in the course of the person's duties under this Act. Prohibition of publication or disclosure

(2) Any person who knowingly contravenes the provisions of subsection (1) commits an offence and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding three months, or to both.

## PART II

### FINANCIAL PROVISIONS

10. (1) The funds of the Board shall consist of — Funds of Board
- (a) such money as may be appropriated by Parliament for the purposes of the Board;
  - (b) such money as may be paid to the Board by way of loans, grants or donations;
  - (c) such percentage of the contributions paid to the Board as the Board may, with the approval of the Minister, determine; and
  - (d) such money as may vest in or accrue to the Board.
- (2) The Board may —
- (a) subject of the approval of the Minister, accept moneys by way of grants or donations from any source in Zambia; and

(b) subject to the approval of the Minister, raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions.

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

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

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

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

Investment  
of funds

11. The Board may, with the approval of the Minister, invest in such manner as it considers necessary any of the Board's funds which it does not immediately require for the performance of the Board's functions.

Financial  
year

12. The financial year of the Board shall be the period of twelve months ending on 31st December in each year.

Accounts

13. (1) The Board shall cause to be kept proper books of the accounts and other records relating to the Board's accounts.

Accounts

(2) The accounts of the Board shall be audited annually by independent auditors appointed by the Board subject to the approval of the Minister.

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

Annual  
report

14. (1) As soon as is practicable, but not later than ninety days after the end of the financial year, the Board shall submit to the Minister a report concerning its activities during such financial year.

(2) The report referred to in subparagraph (1) shall include information on the financial affairs of the Board and there shall be appended to the report —

(a) an audited balance sheet;

(b) an audited statement of income and expenditure;

(c) an audited statement of income and expenditure of the Fund; and

(d) such other information as the Minister may require.

(4) 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 it before the National Assembly.

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