

THE COMPENSATION FUND BILL, 2016

MEMORANDUM

The objects of this Bill are to—

- (a) provide for the administration and management of the Compensation Fund established under Article 209 of the Constitution;
- (b) establish the Compensation Fund Committee and provide for its composition and functions;
- (c) provide for the accounting and audit of the Fund; and
- (d) provide for matters connected with, or incidental to, the foregoing.

A. MWANSA,
Solicitor-General

N.A.B. 29, 2016
2nd May, 2016

THE COMPENSATION FUND BILL, 2016

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY PROVISIONS

Section

1. Short title
2. Interpretation
3. Principles for payment of compensation

PART II

THE COMPENSATION FUND COMMITTEE

4. Compensation Fund Committee
5. Tenure of office and vacancy
6. Filling of casual vacancy
7. Proceeding of Committee
8. Sub-committees
9. Disclosure of interest
10. Prohibition of publication or disclosure of information to unauthorised persons
11. Immunity
12. Allowances

PART III

THE COMPENSATION FUND

13. Compensation Fund
14. Accounts and audit
15. Fund account
16. Disbursement from Fund

PART IV

PROCESSING AND PAYMENT OF CLAIMS

17. Claims against Fund
18. Determination of applications
19. Power of Committee in respect of claims
20. Authority to pay claimant
21. Apportioning of claim when monies insufficient

PART V

GENERAL PROVISIONS

22. Annual report
23. Regulations

A BILL

ENTITLED

An Act to provide for the administration and management of the Compensation Fund established under the Constitution; establish the Compensation Fund Committee and provide for its composition and functions; provide for the accounting and audit of the Fund; and provide for matters connected with, or incidental to, the foregoing.

ENACTED by the Parliament of Zambia

Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Compensation Fund Act, Short title
5 2016.
2. In this Act, unless the context otherwise requires— Interpretation
“associate” means—
- (a) a person who is a nominee or an employee of a member;
 - 10 (b) a conjugal partner or former spouse of a member;
 - (c) a firm of which a member, or the member’s nominee, is a partner or a person in charge or in control of its business or affairs;
 - 15 (d) a company in which a member or the member’s nominee, is a director or is in charge or in control of its business or affairs, or in which a member,

N.A.B. 29, 2016

alone or together with the member's nominee, holds a controlling interest or shares amounting to more than thirty percent of the total share capital; or

(e) the trustee of a trust, where— 5

(i) the trust has been created by a member; or

(ii) the total value of the assets contributed by a member before or after the creation of the trust, amounts at any time, to not less than twenty percent of the total value of 10 the assets of the trust;

“claimant” means a person legally entitled to make a claim in respect of the Fund;

“Committee” means the Compensation Fund Committee established under section five; 15

“Chief State Advocate” means the person in charge of civil litigation in the Ministry responsible for justice;

“compensation” means the damages or award by a court or other competent body legally authorised to award compensation to a person as a result of a default of the 20 State;

“Controlling officer” has the meaning assigned to it in the Public Finance Act, 2004;

Act No. 15 of
2004

“Emoluments Commission” means the Emoluments Commission established under the Constitution; 25

Cap. 1

“Fund” means the Compensation Fund established under Article 209 of the Constitution;

Cap. 1

“legal obligation” includes an obligation arising under a contract, quasi contract or under a trust, including a constructive trust; 30

“member” means a member of the Committee;

“Permanent Secretary” means the Permanent Secretary in charge of legal matters in the Ministry responsible for justice;

“Principal State Advocate” means the person appointed as 35 such for the Department in charge of civil litigation in the Ministry responsible for justice;

“relative” means—

(a) a member's son, daughter, brother, sister, nephew, niece, parent, uncle, aunt, grandparent or cousin; and

5 (b) a member's spouse or the spouse of any of the persons mentioned in paragraph (a); and

"representative" means a legal representative of a claimant or a person lawfully responsible for making a claim against the Fund or on behalf of a claimant.

10 3. The payment of compensation shall be made in accordance with the following guiding principles:

Principles for payment of compensation

(a) transparency;

(b) accountability; and

(c) equity.

PART II

15 THE COMPENSATION FUND COMMITTEE

4. (1) There is established the Compensation Fund Committee that shall administer and manage the Fund.

Compensation Fund Committee

(2) The Committee consists of the following part-time members appointed by the Minister:

20 (a) the Permanent Secretary, as Chairperson;

(b) the Chief State Advocate, as Vice-Chairperson;

(c) the Head of Accounting in the Ministry responsible for justice;

(d) a representative of the Accountant-General;

25 (e) a representative of the Ministry responsible for finance;

(f) a representative of the Zambia Institute of Auditors; and

(g) a representative of the Law Association of Zambia.

(3) The Principal State Advocate shall be the Secretary to the Committee.

30 5. (1) Subject to the other provisions of this Act, a member of the Committee, other than the members referred to in paragraphs (a) to (c) of subsection (2) of section four, shall hold office for a term of three years from the date of appointment and may be re-appointed for a further term of three years.

Tenure of office and vacancy

35 (2) A member shall, on the expiration of the term for which the member is appointed, continue to hold office until another member is appointed, but in no case shall an extension of the period exceed three months.

- (3) The office of a member becomes vacant—
- (a) on the member's death;
 - (b) if the member is adjudged bankrupt;
 - (c) if the member is absent, without reasonable excuse, from three consecutive meetings of the Committee of which the member had notice, without the prior approval of the Chairperson; 5
 - (d) upon the expiry of one month's notice of the member's intention to resign, given by the member, in writing, to the Minister; 10
 - (e) if the member becomes mentally or physically incapable of performing duties as a member;
 - (f) if the member is convicted of an offence under this Act or any other written law and sentenced to imprisonment for a period exceeding six months without the option of a fine; 15
 - (g) in case of a member referred to in paragraph (f) of subsection (2) of section *four*, that member ceases to practice as an auditor on disciplinary grounds confirmed by the Zambia Institute of Internal Auditors; and 20
 - (h) in case of a member referred to in paragraph (g) of subsection (2) of section *four*, that member ceases to practice as a legal practitioner on disciplinary grounds confirmed by the Law Association of Zambia.

Filling of
casual
vacancy

6. The Minister may, where the office of a member becomes vacant before the expiry of the term of office, appoint another member in place of a member who vacates office, but that member shall hold office for the unexpired part of the term. 25

Proceedings
of
Committee

7. (1) Subject to the other provisions of this Act, the Committee may regulate its own procedure. 30

(2) The Committee shall meet for the transaction of its business at such places and times as the Chairperson may determine.

(3) Five members shall form a quorum at a meeting of the Committee.

(4) There shall preside at a meeting of the Committee— 35

(a) the Chairperson; and

(b) in the absence of the Chairperson, the Vice-Chairperson.

5 (5) A decision of the Committee 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 that person's deliberative vote.

(6) The Committee may invite a person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meeting of the Committee, but that person shall have no vote.

10 (7) The validity of any proceedings, acts or decisions of the Committee shall not be affected by any vacancy in the membership of the Committee 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.

15 (8) The Committee shall cause minutes to be kept of the proceedings of its meetings.

20 8. (1) The Committee may, for the purpose of performing its functions under this Act, establish such sub-committees as it considers necessary and delegate to any of those sub-committees such of its functions as it considers fit.

Sub-committees

(2) The Committee may appoint as members of a sub-committee persons who are or are not members, except that at least one member shall be a member of a sub-committee.

25 (3) A person serving as a member of a sub-committee shall hold office for such period as the Committee may determine.

(4) Subject to any specific or general direction of the Committee, a sub-committee may regulate its own procedure.

(5) A sub-committee shall keep minutes of its meetings and shall keep the Committee informed of its activities.

30 (6) Meetings of a sub-committee shall be held at such times as the Committee may determine or as the Committee shall direct.

35 9. (1) A person who is present at a meeting of the Committee or any sub-committee at which any matter is the subject of consideration and in which matter that person or that person's relative or associate is directly or indirectly interested in a private capacity shall, as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Committee or the sub-committee otherwise directs, take part in any consideration or discussion of, or vote on any question relating to
40 that matter.

Disclosure of interest

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

(3) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both. 5

Prohibition
of
publication
or disclosure
of
information
to
unauthorised
person

10. (1) A person shall not, without the consent, in writing, given by or on behalf of the Committee, publish or disclose to an unauthorised person, otherwise than in the course of duties of that person, the contents of a document, communication or information whatsoever, which relates to or which has come to the knowledge of that person in the course of that person's duties under this Act. 10

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both. 15

(3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates the information to another person, commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both. 20

Immunity

11. An action or other proceeding shall not lie or be instituted against a member of the Committee or a member of a sub-committee in respect of an act or thing done or omitted to be done in good faith in the exercise or performance, of any of the powers, functions or duties conferred under this Act. 25

Allowances

12. The members shall be paid such allowances as the Emoluments Commission may determine. 30

PART III THE COMPENSATION FUND

Compensation
Fund
Cap. 1

13. (1) The Compensation Fund shall, in addition to the purpose for which it is established under the Constitution, be held and applied for the purpose of compensating persons who suffer loss or damage from any default committed by the State or by any representative, agent or employee of the State. 35

(2) The Fund shall consist of—

(a) such monies as may be appropriated by Parliament for the purposes of the Fund;

- (b) monies collected from such fees and levies as the Minister responsible for finance may prescribe, in consultation with the Minister;
- 5 (c) such monies as may be received by the Fund from donations and grants from any source, with the approval of the Minister;
- (d) such other monies as may vest in or accrue to the Fund; and
- 10 (e) such other monies as may, by or under any other law, be payable to the Fund.
14. (1) The Committee shall ensure that prudent controls are established for the Fund relating to—
- Accounts and audit
- (a) fiscal controls and accounting procedures governing the Fund;
- 15 (b) reporting procedures for matters relating to the Fund; and
- (c) investment of the monies of the Fund.
- (2) The Committee shall cause to be kept proper books of account and other records relating to the accounts of the Fund.
- (3) The Fund shall be audited annually by the Auditor-General.
- 20 (4) The Auditor-General's fees shall be paid by the Ministry responsible for justice.
15. The Committee shall open and operate an account for purposes of the Fund at such commercial bank as the Committee may determine, in which the money received for the purposes of
- Fund account
- 25 the Fund shall be deposited and kept.
16. (1) There shall be paid from the Fund—
- Disbursement from Fund
- (a) the amount of claims, including costs, allowed by the Committee; and
- 30 (b) the legal and other expenses incurred in relation to the Fund or in the exercise by the Committee of the rights, powers and authority vested in it under this Act in relation to the Fund.
- (2) The Fund shall not be used for debts, accrued personal emoluments or for any purpose other than to satisfy awards of
- 35 compensation to claimants arising from the default of the State or as authorised under this Act.
- (3) The total amount of compensation payable out of the Fund under this Act to a person who is entitled to compensation shall not exceed an amount lawfully adjudged to be due to the claimant.

PART IV
PROCESSING AND PAYMENT OF CLAIMS

Claims
against Fund

Cap. 71

17. (1) Subject to the other provisions of this Act, a person who receives an award of compensation by a court, tribunal or under an agreement shall be paid compensation from the Fund 5 subject to—

(a) the Attorney-General submitting the necessary documents relating to the award to the Committee; and

(b) the approval of the Committee.

(3) In addition to any compensation payable under this Act, 10 interest from the date of judgement or agreement shall be payable out of the Fund on the amount of the compensation, less any amount attributed to costs and disbursements, calculated in accordance with the State Proceedings Act.

Determination
of
applications

18. (1) The Committee shall, within thirty days of receipt of 15 a request from the Attorney-General, determine the claim.

(2) The Committee shall, when deciding an application take into account

(a) whether the amount claimed is in accordance with the judgment; 20

(b) whether the amount claimed is a subject of an appeal or continuing litigation;

(c) whether the amount being claimed may be disbursed as a lump sum or in instalments; and

(d) any other matter necessary to give effect to the provisions 25 of this Act.

(3) The Permanent Secretary shall submit a report of the proceedings of a meeting of the Committee to the Attorney-General within fourteen days of the meeting.

Power of
Committee
in respect of
claims

19. (1) The Committee shall, where it is satisfied with a claim 30 for compensation under this Act, approve the payment of the claim.

(2) The Committee shall, if—

(a) it is not satisfied with the propriety of a claim for compensation, refuse the payment of the claim; or

(b) it is satisfied with the propriety of part of a claim, approve 35 the payment of the claim regarding that part.

(3) The Committee shall, where it does not approve a payment of the claim for compensation from the Fund in accordance with subsection (2), notify the Attorney-General stating grounds for not approving the payment of the claim.

5 (4) The Committee shall where it allows a claim, transmit its determination and supporting documentation in the prescribed form to the controlling officer for payment.

20. (1) The determination of a claim by the Committee is sufficient authority to pay the claimant the amount allowed.

Authority to pay claimant

(2) The Controlling officer shall, where a claim has been 10 determined, effect payment in the prescribed manner and form.

21. Where the amount at credit in the Fund is insufficient to pay the whole amount of the claims against it which have been allowed, the amount at credit in the Fund shall be apportioned among the claimants in such manner as the Committee considers equitable, 15 and any claim that is unpaid shall be charged against future receipts of the Fund and paid out of the Fund when monies are available.

Apportioning of claims when monies insufficient

PART V

GENERAL PROVISIONS

22. (1) The Committee shall, but not later than ninety days 20 after the end of the financial year, submit to the Minister a report concerning its activities during the financial year.

Annual report

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

- 25 (a) an audited statement of financial position;
 (b) an audited statement of comprehensive income; and
 (c) such other information as the Minister may require.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report 30 referred to in subsection (1), lay the report before the National Assembly.

23. The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.

Regulations