

**THE NATIONAL PROSECUTION AUTHORITY
(AMENDMENT) BILL, 2023**

MEMORANDUM

The object of this Bill is to amend the National Prosecution Authority Act, 2010, so as to—

- (a) revise the composition of the Board and provide for its functions;
- (b) provide for matters connected with, or incidental to, the foregoing.

M. D. KABESHA,
Attorney-General

N.A.B. 7, 2023
21st March, 2023

A BILL

ENTITLED

An Act to amend the National Prosecution Authority Act, 2010.

ENACTED by the Parliament of Zambia.

Enactment

1. This Act may be cited as the National Prosecution Authority (Amendment) Act, 2023, and shall be read as one with the National Prosecution Authority Act, 2010, in this Act referred to as the principal Act.

Short title
Act No. 34 of
2010

2. Section 2 of the principal Act is amended by the—

Amendment
of section 2

(a) deletion of the definition of “Secretary”; and

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

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

Cap. 1

“Law Association of Zambia” means the Law Association of Zambia established under the Law Association of Zambia Act;

Cap. 31

15 “Legal Aid Board” means the Legal Aid Board established under the Legal Aid Act, 2021;

Act No. 1 of
2021

“legally disqualified” means the absence of legal capacity as provided under section 4 of the Mental Health Act, 2019;

Act No. 6 of
2019

20 “superior court” has the meaning assigned to the words in the Constitution;

Cap.1

“Zambia Institute of Chartered Accountants” means the Zambia Institute of Chartered Accountants established under the Accountants Act, 2008; and

Act No. 13 of
2008

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Act No. 3 of 2022	“Zambia Institute of Human Resource Management” means the Zambia Institute of Human Resource Management established under the Zambia Institute of Human Resource Management Act, 2022.	
Repeal and replacement of section 7 Board of Authority	<p>3. The principal Act is amended by the repeal of section 7 and the substitution therefor of the following:</p> <p>7. (1) There is constituted the Board of the Authority consisting of the following part time members appointed by the Minister:</p> <p>(a) the Chairperson;</p> <p>(b) a representative of the ministry responsible for home affairs;</p> <p>(c) a representative of the Attorney-General;</p> <p>(d) a representative of the Legal Aid Board;</p> <p>(e) a representative of the Zambia Institute of Human Resource Management;</p> <p>(f) a representative of the Zambia Institute of Chartered Accountants;</p> <p>(g) a representative of a civil society organisation that provides legal aid services;</p> <p>(h) two persons with relevant knowledge and experience in prosecutorial matters; and</p> <p>(i) the Director of Public Prosecutions, as an <i>ex-officio</i> member.</p> <p>(2) A person qualifies for appointment as Chairperson if that person has held, or is qualified to hold, the office of a judge of the superior court.</p> <p>(3) The members under subsection (1) shall be nominated by their respective ministries, organisations or institutions for appointment by the Minister.</p> <p>(4) The members of the Board shall elect the Vice-Chairperson from among themselves.</p> <p>(5) A person shall not be nominated or appointed as a member of the Board if that person is—</p> <p>(a) not a citizen of the Republic;</p> <p>(b) legally disqualified from performing the functions of a member;</p> <p>(c) an undischarged bankrupt;</p>	5 5 10 15 20 25 30 35

- (d) convicted of an offence under any other written law and sentenced to imprisonment for a term exceeding six months without the option of a fine; or
- 5 (e) convicted of an offence involving fraud or dishonesty under any written law.
- (6) The First Schedule applies to the Board.
4. The principal Act is amended by the insertion of the following new section immediately after section 7: Insertion of section 7A
- 10 7A. (1) Subject to the other provisions of this Act, the Board shall provide strategic policy direction to the Authority. Functions of Board
- (2) Despite the generality of subsection (1), the functions of the Board are to—
- 15 (a) approve the policies, programmes and strategies of the Authority;
- (b) approve the annual work plan, action plans and activity reports of the Authority;
- (c) approve the annual budget estimates and financial statements of the Authority; and
- 20 (d) promote effective corporate governance of the Authority.
- (3) The Board may, by direction in writing and on conditions that the Board considers necessary, delegate to the Director of Public Prosecutions any of the Board's functions under this Act.
- 25 (4) A delegation made under subsection (3) shall not prevent the Board from performing the function so delegated.
- 30 5. The First Schedule to the principal Act is amended by the deletion of Part I and the substitution therefor of the following: Amendment of First Schedule

PART I

ADMINISTRATION OF AUTHORITY

Tenure of office and vacancy of member	<p>1. (1) A member shall, subject to the other provisions of this Act, hold office for a term of three years and may be reappointed for a further and final term of three years.</p> <p>(2) A member shall, on the expiration of the period for which that member is appointed, continue to hold office until a successor is appointed, but in no case shall the further period exceed three months.</p> <p>(3) The office of a member becomes vacant if that member—</p> <p>(a) dies;</p> <p>(b) is adjudged bankrupt;</p> <p>(c) is absent from three consecutive meetings of the Board of which the member has had notice, without the prior approval of the Board;</p> <p>(d) resigns, on giving one month’s notice, in writing, to the Minister;</p> <p>(e) is legally disqualified from performing the functions of a member;</p> <p>(f) ceases to be a member of the ministry, institution or organisation which nominated the member; or</p> <p>(g) is convicted of an offence under any other written law and sentenced to imprisonment for a term exceeding six months without the option of a fine.</p> <p>(4) The Minister shall, where the office of a member becomes vacant before the expiry of the term of office, appoint another member in place of that member, but that member shall hold office as a member only for the unexpired part of the term of the Board.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p>
Proceedings of Board	<p>2. (1) Subject to the provisions of this Act, the Board may regulate its own procedure.</p> <p>(2) The Board shall meet for the transaction of business at least once in every three months at a place and time that the Chairperson may determine.</p> <p>(3) The Chairperson shall, on giving notice of not less than seven days, call for a meeting of the Board, or where one third or more of the members so request, in writing, except that if the urgency of a particular matter does not permit the giving of a notice, a special meeting may be called on giving a shorter notice.</p> <p>(4) Five members shall form a quorum at a meeting of the Board.</p>	<p>30</p> <p>35</p>

(5) There shall preside at a meeting of the Board—

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson; or

5 (c) in the absence of the Chairperson and the Vice-Chairperson, a member that the members present may elect from among themselves for the purpose of that meeting.

10 (6) A decision of the Board on any question shall be by a majority of votes 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.

15 (7) A member may, where the member is for any reason unable to attend a meeting of the Board, nominate another person, in writing, from the same ministry, institution or organisation to attend a meeting of the Board in that member's stead and that person shall be deemed to be a member for the purpose of that meeting.

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

(9) The Board shall cause to be kept minutes of the proceedings of every meeting of the Board and any committee established by the Board.

25 **3.** (1) The Board may, for the purpose of performing its functions under this Act, constitute a committee and delegate any of its functions to the committee as it considers necessary.

Committees
of Board

30 (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 the Board shall be a member of a committee.

(3) A committee shall have the power to invite any person whose presence is, in its opinion, desirable to attend and participate in the deliberations of the meeting of the committee but that person shall have no vote.

35 (4) A member of a committee shall hold office for a period that the Board may determine.

(5) Subject to any specific or general direction of the Board, a committee constituted under this section may regulate its own procedure.

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Disclosure of interest	<p>4. (1) A person who is present at a meeting of the Board or a committee of the Board 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 practicable after the commencement of the meeting, declare the 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 relating to that matter.</p> <p>(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which the disclosure is made.</p>	5 10
Allowances	<p>5. A member of the Board or any committee of the Board shall be paid allowances that the Emoluments Commission may, on the recommendation of the Minister, determine.</p>	
Immunity	<p>6. An action or other proceedings shall not lie or be instituted against a member of the Board, a member of a committee of the Board or a member of staff of the Authority, for or, 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.</p>	15 20
