

SIMEZA | SANGWA & ASSOCIATES NEWSLETTER

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Government Approves National Decentralisation Policy

The government has approved the implementation of the National Decentralisation Policy which provides for the devolution of functions from the national government to the local authorities in line with Article 147 of the Constitution. Some functions earmarked for devolution are vehicle licensing, cultural affairs, district health services and veterinary services.

The Controlled Substances Act No. 2 Of 2023

Parliament has enacted the Controlled Substances Act No. 2 of 2023 (the "Act") which repeals and replaces the Dangerous Drugs Act of 1967.

The Act shall provide for the granting of licenses to deal in the manufacture, import, and export of controlled substances which it defines as narcotic drugs and psychotropic substances which do not include distilled spirits, wine, malt beverages or tobacco.

The Act shall further regulate the use, dispensing, manufacture, supply,

sale, distribution, and possession of controlled substances.

The Act has also continued the existence of the Zambia Medicines and Regulatory Authority which shall be responsible for implementing the provisions of the Act.

The Examinations Council Of Zambia Act No. 3 Of 2023

Parliament has enacted the Examinations Council of Zambia Act No.3 of 2023 (the "The Act") which replaces the Examinations Council of Zambia Act of 1983.

The Act shall provide for the administration of primary and secondary school examinations and the continued existence of the Examinations Council of Zambia ("ECZ") albeit with redefined functions.

Notably, the Act maintains ECZ's status as a body corporate with perpetual succession capable of suing and being sued in its name

The Rural Electrification Act No.5 Of 2023

Parliament has enacted the Rural Electrification Act No. 5 of 2023

(the "Act") which replaces the Rural Electrification Act of 2003.

The Act is intended to promote and enhance rural electrification and shall continue the existence of the Rural Electrification Authority (the "Authority") albeit redefining its functions. Of note is that section 28 of the Act prohibits the execution of judgment against the Authority or any property of the Authority

Anti-Terrorism And Non-Proliferation (Amendment) Act No. 6 Of 2023

Parliament has enacted the Anti-Terrorism and Non-Proliferation (Amendment) Act (the "Amendment Act") to amend the Anti-Terrorism and Non-Proliferation Act of 2018 (the "Principal Act").

The Amendment Act shall be read as one with the Principal Act which continues the existence of the National Anti-Terrorism Center as a department under the Ministry of Defence. The Amendment Act further prescribes crimes relating to terrorism financing, proliferation and training.



Fostering Growth Through Capital Markets: The Securities (Amendment) Act No.21 of 2022 and The Capital Markets Master Plan 2022

by *Chimwemwe Tchongwe*

In a bid to make Zambia a more attractive investment destination, and to harness the nation's growth potential, the government has advanced its focus on capital markets as a potential solution.

Before the promulgation of the Securities (Amendment) Act No. 21 of 2022 (the "Amendment Act"), the full potential of capital markets as an economic driving force was not fully exploited, owing to an insufficient regulatory framework.

With the coming of the Amendment Act,

there is now a more pronounced attempt by the government to establish a robust regulatory framework for the adequate administration of capital markets.

For example, the Act seeks to enhance coordination and bridge administrative gaps between the Securities and Exchange Commission ("SEC") and other regulators and stakeholders such as the Bank of Zambia ("BoZ") and the Lusaka Stock Exchange ("LuSE").

To complement the Act's objectives, the government has also sought to improve governing policy surrounding capital markets by passing the 8th National Development Plan and the Capital Markets Master Plan (the "Plan").

The Plan particularly identifies pitfalls and shortcomings of previous policies. One of the stand-out defects of previous policies was their inability to address disjointed collaboration between SEC and other Stakeholders, which led to a misappropriation and uneven

distribution of resources.

To address this problem, the Plan provides for the Capital Markets Master Plan Steering Committee ("CMMP Steering Committee"), a high-level forum comprising various government and industry stakeholders, whose mandate is to facilitate the implementation of the Plan and to further facilitate effective communication between key stakeholders.

Capital Markets possess the potential to significantly contribute to the growth of the economy, yet our frail regulatory framework has hindered the fruition of this potential. However, the recent statutory and policy developments are a step in the right direction.

With that being said, it is up to SEC and other key stakeholders to ensure the full realisation of the potential benefits of well-regulated capital markets.



The Extent Of An Employer's Liability For Damage Caused By An Independent Contractor—David Mwitumwa V Airtel Networks Zambia Plc & Anor

by Twaambo Mukuni

An independent contractor is a person or entity contracted to perform work or provide services to another entity outside the traditional employee/ employer relationship.

The prevalence of this practice in modern commerce is due to its perceived benefits which include timesaving for the employer/ hirer, flexibility, budget certainty and access to specialist skills for project work.

Despite not being an employee, an independent contractor performs a service for and on behalf of the employer/ hirer and is, therefore, subject to the law of the agency.

This being the case, there may be times when the employer/ hirer is held liable for damage caused by the independent contractor. The Court of Appeal in

the case *David Mwitumwa v Airtel Networks Zambia Plc & Anor* recently had occasion to discuss and rehash the position of the law regarding the extent of an employer's liability for damage caused by an independent contractor.

The general position of the law as stated by the Court is that an employer/ hirer of an independent contractor is not liable for the negligence or other torts committed by the contractor in the course of the contractor's work.

According to the Court, where an independent contractor is employed to do a lawful act, and in the course of the work, the contractor's workers or agents commit a wrong or negligent act, the employer cannot be held liable.

As would be expected, there are, however, exceptions to this general rule. According to the Court, where an employer/hirer is negligent in selecting or retaining the independent contractor; or if the employer is in breach of a duty which is non-delegable; or an independent contractor's work is ultra-hazardous or inherently dangerous, the employer can be held liable for damage caused by the independent contractor.

In addition, if it can be demonstrated that the employer/ hirer retains the right to control how the independent contractor

performs his duties, then the employer/ hirer can also be held liable for damage caused by the independent contractor.

In the *David Mwitumwa* case, the independent contractor and hirer/ employer were jointly sued for trespass because the independent contractor cut down trees and graded stretches of private land without the landowner's approval.

The Court, however, concluded that the circumstances of the case did not compel a departure from the general rule as the employer/ hirer had no power to and did not control the manner in which the independent contractor executed its work.

Bearing in mind the general rule and its exceptions, it is important for employers/ hirers to ensure that they hire suitable and competent contractors and to further scrutinise the nature of the work involved and the contractor's degree of independence to fully determine and as much as possible limit any possible liability and exposure.

Meet the Team – Associates



Chawezi Ngoma

Chawezi is a highly accomplished legal professional with an impressive educational background and a strong commitment to excellence. He obtained his Bachelor of Laws degree with distinction from the University of Lusaka and later earned a Master of Laws Degree in international trade and investment law. Chawezi is also an esteemed member of the Chartered Institute of Arbitrators and an active member of the Young International Arbitration Group affiliated with the London Court of International Arbitration. Chawezi has established himself as a highly regarded Associate at Simeza Sangwa & Associates where he continues to develop his nuanced understanding of global trade and investment.



Mandela Nkunika

Mandela holds a Bachelor of Laws degree and a Master's degree in Commercial Law from the prestigious University of Zambia which he obtained in 2017 and 2020 respectively. In 2019, Mandela was admitted to the Zambian Bar as an advocate and has since established himself as an invaluable member of our dispute resolution team. His expertise in commercial law allows him to navigate the intricate dynamics of the business world and to provide valuable insights to his clients. Mandela has a deep affinity for academia and scholarly pursuits. He possesses a keen intellect and an insatiable curiosity, which fuels his love for reading and writing academic literature.



Zikhalo Mubanga Sampa

Zikhalo acquired his Bachelor of Laws degree from the University of Lusaka in 2018 and was called to the Bar in June 2020. While at Simeza, Sangwa and Associates, he has gained several years of experience in resolving commercial, contract, family and tort-related disputes. Zikhalo is an avid reader who finds solace and inspiration within the pages of a book. Zikhalo believes that continuous learning is crucial to maintaining a well-rounded perspective. In addition to his intellectual pursuits, Zikhalo also finds rejuvenation through regular running sessions and his love for the track which he embraces with passionate enthusiasm.

SSA Giving Back : Lusaka Eagles Football Academy and Simeza Sangwa and Associates Join Forces

Simeza Sangwa & Associates has joined hands with Lusaka Eagles Football Academy (LEFA) in their quest to transform and uplift the local community through football. LEFA, a newly established football academy in the Bauleni area of Lusaka, aims to provide comprehensive support, nurture talent, and promote education through a holistic approach encompassing football development, nutritional aid, and mentorship.



As part of this collaboration, SSA will contribute its legal expertise by providing pro-bono legal services. At SSA, we recognise that football serves as a powerful catalyst for social and economic development. It also provides a platform through which young athletes can learn essential qualities such as discipline, teamwork, and resilience, all of which are invaluable for their personal growth.

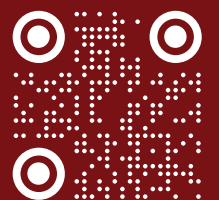
By joining hands with LEFA, SSA aims to make a positive and lasting impact on our community by utilising the transformative power of football to empower individuals and to further promote their overall well-being.



Simeza | Sangwa

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