


# SIMEZA | SANGWA

# NEWSLETTER

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# Legal Updates

## Bank of Zambia Directives on E-Money

The Directives revoke and replace the National Payment Systems Directives on Electronic Money Issuance, 2018. The Directives prescribe the safeguards and control measures required to mitigate the risks associated with e-money business and consequently enhance consumer protection. The requirements for application of a certificate of designation of now include: a board resolution, contacts for external auditors, holding account agreements, standard agency agreements, customer redress mechanisms. Additionally, the Directives introduce the aspect of a pool account where funds received from customers and agents (representing the outstanding e-money liabilities) are to be held.

The Directives also enlarge the scope of distribution of e-money which will not only be conducted through agents but also through ATMs & other infrastructure authorised by the Bank of Zambia. We hasten to add that the directives still cover the processes of outsourcing, the safeguarding of customer funds, prohibitions and restrictions on e-money businesses, customer transactions and protection and the retention of records and returns.

## Zambia Institute of Marketing Bill

This bill has been assented by the President. This Bill prohibits engaging a person who is not registered as a marketer with the Zambia Institute of Marketing ("Institute"). On enactment of the bill employers will be mandated to employ or engage a marketer who is duly registered with the Institute.

The bill also establishes an Advertising Standards Board which shall be responsible for regulating advertising standards in the country.

According to the bill the Institute has the authority to issue guidelines.

Companies will have to adhere to any marketing guidelines issued by the Institute, as guidelines shall be binding on the category of person targeted in a guideline.

## Cabinet Approves Review of The Cyber Security and Cyber Crimes Act No.2 of 2021 23

The Zambia Law Development Commission (ZLDC) is set to begin its review of the Cyber Security and Cyber Crimes Act No.2 of 2021 (the Act). Following its enactment in 2021, the Act has been subject to public outcry which has affected its implementation, citing lack of consultation before its implementation as well as stakeholders challenging its constitutionality.

Cabinet has since approved, in principle, the amendment of the Act to enhance mechanisms and align the Act to the Constitution as well as International and Regional Instruments

## The Public – Private Partnerships Bill

The Public- Private Partnership Bill (the Bill) is currently at its first reading before the National Assembly. This Bill seeks to regulate Public – Private Partnerships in the Republic. It seeks to promote and encourage the participation of the private sector through such partnerships.

The Bill further seeks to establish the Public- Private Office which will be the office mandated with the authority to regulate, oversee and implement the Bill. The Bill will also establish the Public-Private Partnership Project Development Support Fund which will be a source of funding for Public- Private Projects and systems.

## The Public

## Procurement (Amendment) Bill 2023

The Public Procurement (Amendment) Bill (the Bill) is at the First Reading Stage before the National Assembly. This proposed amendment is to be read as one with the Public Procurement Act 2020 (the Act).

This Bill seeks to revise the period for conducting a procurement process as well as extending subcontracting to local bidders.

## The National Prosecution Authority (Amendment) No.7 Of 2023

Parliament has enacted the National Prosecution Authority (Amendment) Act No.7 of 2023 (The Amendment Act) to amend the National Prosecution Authority Act, 2010 (the Principal Act). The Amendment Act shall be read as one with the Principal Act which continues the existence of the Board of Authority but extends what members constitute the Board of Authority. The Amendment Act further prescribes the functions of the Board of Authority as well as its administration

## Football Association of Zambia Decentralizes

The Football Association of Zambia (FAZ) has officially launched the Zambian Premier League (ZPL). The ZPL will operate independently and take over management rights of domestic football clubs while FAZ retains its supervisory duty as the main authority. The FAZ President commended this move as it aims at professionalizing and commercializing the league as well as elevating Zambian Football administration





## Abolition of the Death Penalty: A Temporal Measure?

by Yaiman Bande

The death penalty has been the subject of discussion with divergent views emerging both from scholars and judges alike and indeed the general public. In 2022, the national assembly through an amendment of the Penal Code (the “Code”) abolished capital punishment for all offences. Although this step is progressive from a human rights perspective, it must be taken with a grain of salt. This is because the Constitution of the Republic of Zambia the sovereign law of the land does allow for a person’s life to be deprived under circumstances permissible by law. Under Article 12 (1) of the Constitution, Chapter 1 of the Laws of Zambia, a person may be deprived of his life in ‘execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.’

Since the Constitution has not been amended, the longevity of (Amendment) Act No.23 of 2022 is questionable.

Whereas it may be politically expedient to amend the Penal Code to abolish the death penalty, it is contended that these legislative amendments can easily and swiftly be reversed by a subsequent government. A referendum will entail a vote in which all the people in a country to decide on the amendment of Article 12.

Article 12 forms part of Part III of the Constitution of Zambia and according to Article 79, this part can only be amended if the same is subjected to a referendum. Notably, Zambia has still not ratified the second additional protocol to the Second Optional Protocol to International Covenant on Civil and Political Rights (ICCPR) which provides for abolishment of the death penalty. Although, as the circumstances permit, a person cannot be sentenced to death under the Penal Code Act, the amendment needs both constitutional and official international backing.

Human Rights advocacy requires thoroughness in enforcement. Hence, in order to realize the true benefits of abolishment of capital punishment, Zambia may consider ratifying ICCPR and commence constitutional

amendments. The viability of the latter being a rather expensive venture thus leaving one to wonder how effective the abolition of the death penalty is.

“Grit is that ‘extra something’ that separates the most successful people from the rest. It’s the passion, perseverance, and stamina that we must channel in order to stick with our dreams until they become a reality.”

-Travis Bradberry





## The New Land Administration System in Zambia

by *Lauren Hall & Chewe Mweshi*

Land is one of the most important resources in an economy and is considered to be one of the largest and significant investments in Zambia. Land availability and accessibility are crucial for human security and economic development. In May 2023, the Ministry of Land and Natural Resources introduced Zambia's Integrated Land Administration System (ZILAS) to enhance land management and administration. ZILAS replaced the old administration system; the Zambia Integrated Land Management Information system (ZILMIS), with the objective of enhancing the digitization of land administration in Zambia.

The deployment of ZILAS was in line with the Government's intention to integrate all systems provided by Government institutions. Consequently, the services offered by the Ministry of Lands can now be accessed online on the ZamPortal by holders of a ZamPass account. As a means of progressive intervention, the digitalization initiative is to enhance the efficiency, effectiveness, productivity, accountability, and transparency of land administration in Zambia. ZILAS addresses ZILMIS's deficiencies by transitioning to e-services.

ZILAS stands out by incorporating several key features such as the introduction of online payments through mobile money,

online internet banking and ZANACO bill muster. Moreover, customers can now electronically submit and receive documents via ZILAS, which integrates with the Government Service Bus to verify NRCs with the Ministry of Home Affairs and access company profiles from PACRA with a single retrieval. This innovative system allows users to track transactions within their ZamPass account, consisting of three sub-systems: Lands Information, Lands and Deeds Information, and Survey Information, each offering distinct services.

Nevertheless, ZILAS is not without its teething challenges. For instance, access to the system has proven to be difficult, response times have been slow contrary to the promised benefit to reduce processing times which has been discouraging and concerning for various stakeholders. The system's complexity is also presenting difficulties for many users particularly those with limited technological proficiency, forcing them to depend on Ministry Staff for assistance. Regrettably, the Ministry staff also appear to be facing challenges with the system and are yet to master it. In this regard, it is imperative for the Government in making its vision of a SMART and Value Centered Public Service a reality, to sensitize not only the general public but indeed the Ministry staff which will in turn realise and put to good use the full potential of ZILAS.

In summary, the implementation of the ZILAS system marks a significant stride in the right direction and if utilized effectively and efficiently is a beaming light on the promises to enhance efficiency and increase productivity of land administration in Zambia



## Medical Treatment: Know Your Rights

by *Nkole Kasonde & Gloria Makanga*

*Brenda Kachasu (Suing as the Administrator of the Estate of the Late Paul Kachasu) v Mwelwa Manda (Sued as Administrator of Estate of the Late Dr Francis Manda) And 2 Others Appeal No.163 of 2021*

The respect for patient autonomy is cardinal in medical practice makes informed decisions about their medical care. On this premise, a medical practitioner can be held liable for his/her inability to respect the decision of a competent patient's entitlement to accept or refuse the medical treatment plans administered.

The Court of Appeal in the case of *Brenda Kachasu (Suing as the Administrator of the Estate of the late Paul Kachasu) v Mwelwa Manda (Sued as Administrator of Estate of the late Dr Francis Manda) and 2 Others Appeal No.163 of 2021* recently had occasion to discuss the position of the law regarding the administering of medical treatment against a patient's will.

According to the Court, there was no precedent in the Zambian jurisdiction relating to administration of medical treatment to a patient despite their refusal to treatment giving rise to a tortious claim of trespass to the person. However, common law

cases were a useful tool in the determination of the matter.

The court took the general position that every person's body is inviolate and interference however slight, with a person's elementary civil right to security of the person and self-determination in relation to his own body, constitutes trespass to the person. In that regard, it is not a valid defence for a medical practitioner that the patient benefitted from the treatment administered without the patients consent.

A patient's autonomy is embraced by the constitutional right to personal liberty as well as the protection of freedom of conscience. As a primary matter, all patients have the constitutional right to accept, or refuse medical treatment prescribed to the patients by a medical practitioner.

Considering this case, doctors can provide medical treatment without the patient's consent despite having a genuine and valid belief that the treatment is necessary. This is because consent to treatment is widely regarded as the cornerstone of the doctor-patient relationship, and the lack thereof could give rise to tortious or criminal liability.

# 2023 Absa Marathon

Our SSA team recently conquered the ABSA Marathon, showcasing their determination and unity.

Months of rigorous preparation and unwavering commitment led to race day success.

Race Day:

Team spirit soared as we navigated challenges, celebrating resilience and camaraderie.

Triumph:

We overcame adversity, achieving personal and team goals.

Power of Teamwork:

The marathon underscored the importance of collaboration and unity.

Conclusion:

Our SSA team's ABSA Marathon triumph exemplifies our shared values of determination and collaboration. Congratulations to all participants!





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