



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS

ON THE

BANKING AND FINANCIAL SERVICES (AMENDMENT) BILL, N.A.B NO. 7 OF 2020

FOR THE

FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

Printed by the National Assembly of Zambia

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REPORT OF THE COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS ON THE BANKING AND FINANCIAL SERVICES (AMENDMENT) BILL, N.A.B NO. 7 OF 2020 FOR THE FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

1.0 Membership of the Committee

The Committee consists of Dr S Musokotwane, MP (Chairperson); Ms M Miti MP, (Vice-Chairperson); Mr G G Nkombo, MP; Mr E M Mwila, MP; Mr C Chali, MP; Mr D Chisopa, MP; Dr S C Kopulande, MP; Mr D Livune, MP; Mr E Kamondo, MP; and Mr M Mubika, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir

The Committee has the honour to present its Report on the consideration of the Banking and Financial Services (Amendment) Bill, N.A.B No. 7 of 2020.

2.0 MEETINGS OF THE COMMITTEE

The Committee held eight meetings to consider the Banking and Financial Services (Amendment) Bill, N.A.B No. 7 of 2020.

3.0 PROCEDURE ADOPTED BY THE COMMITTEE

The Committee requested written submissions from various stakeholders. The stakeholders were further requested to appear before the Committee to orally brief it on the contents of their written memoranda, and to clarify issues that arose from the presentations. The witnesses who appeared before the Committee are listed at Appendix II of this Report.

4.0 BACKGROUND OF THE BILL

In 2017, the *Banking and Financial Services Act No. 7 of 2017* (hereinafter referred to as “the principal Act”) was enacted to, among others, provide for a licensing system for the conduct of banking and financial business and provision of financial services, and to provide for the regulation and supervision of banking and financial services.

Following the enactment of the Act, it has become necessary to enhance the provisions for licensing, regulation and supervision of banking and financial services and service providers.

5.0 OBJECT OF THE BILL

The object of the Bill was to amend the Banking and Financial Services Act so as to:

- (a) provide for the repayment of funds collected by an unlicensed person;
- (b) revise the jurisdiction of the tribunal;
- (c) revise the priority of payment to depositors; and
- (d) provide for matters connected with, or incidental to, the foregoing.

6.0 SALIENT PROVISIONS OF THE BILL

Clause 1 – Short Title

This Clause provided for the short title of the Bill which should be cross-referenced and read together with the principal Act.

Clause 2 – Amendment of Section 2

This Clause sought to re-define the word “insolvency”.

Clause 3 – Repeal and replacement of Section 6

This Clause provided for the repeal and replacement of section 6 of the principal Act so as to prohibit the collection of funds by a person purporting to conduct a banking business, financial service or financial business. Further, the Clause also sought to provide for the repayment of any funds collected by an unlicensed banking business, financial service or financial business.

Clause 4 – Amendment of Section 21

This Clause sought to amend section 21(2) of the principal Act so as to provide for the inspection of the register during normal working hours of the Bank. Further, the clause sought to include a provision to empower the Bank to maintain a Register in electronic form as the Bank may determine.

Clause 5 – Repeal and replacement of heading

This Clause provided for the repeal and replacement of the heading immediately after section 51 so as to broaden the scope of regulation to combating money laundering and financing of terrorism and proliferation in line with the Financial Action Task Force recommendations.

Clause 6 – Insertion of Section 62A

This Clause provided a new section immediately after section 62 which gave the Bank discretion to exercise its authority over a financial service provider for purposes of prevention and combating money laundering and financing of terrorism and proliferation.

Clause 7 – Repeal of Section 72

This Clause sought to repeal section 72 of the principal Act so as to harmonise sections 72, 73 and 74 of the Act relating to the taking of possession of a financial service provider by the Bank.

Clause 8 – Repeal and replacement of Section 73

This Clause provided for the repeal and replacement of section 73 which provided for the possession of financial service provider by the Bank.

Clause 9 – Repeal of Section 74

This Clause repealed section 74 of the principal Act.

Clause 10 – Repeal and replacement of Section 75

This Clause provided for the repeal and replacement of section 75 of the principal Act so as to allow an aggrieved person to petition the Minister to establish a tribunal to inquire into the decision of the Bank to take possession of the financial service provider as opposed to directly instituting proceedings in Court.

Clause 11 – Amendment of Section 82

This Clause sought to amend section 82 (2) of the principal Act so as to provide for promulgation of instances when the total value of a grant, credit facility and guarantee under the Act exceeded 25 per cent of the regulatory capital.

Clause 12 – Amendment of Section 132

This Clause sought to amend section 132 (1) of the principal Act so as to revise the priority of payment to depositors.

Clause 13 –Amendment of Section 137

This Clause amended section 137 (3) of the principal Act by the deletion of the words “or set aside by tribunal on appeal or by the Court”.

Clause 14 – Amendment of Section 140

This Clause sought to amend section 140 (1) of the principal Act so as to provide for the hearing and determination of an appeal and the timeframe thereof.

Clause 15 –Repeal and replacement of Section 141

This Clause sought to repeal and replace section 141 of the principal Act so as to revise the powers of the Tribunal.

Clause 16 – Amendment of Section 160

This Clause sought to amend section 160 (1) (b) so as to capture only financial service providers not listed or quoted on an exchange regulated under the Securities Act, No. 41 of 2016.

7.0 CONCERNS BY STAKEHOLDERS

All the stakeholders who appeared before the Committee supported the Bill and stated that the enactment of the Banking and Financial Services (Amendment) Bill, N.A.B No. 7 of 2020 was necessary to enhance the provisions for licensing, regulation and supervision of banking and financial services and service providers. However, they raised some concerns as set out below.

Clause 2 – Amendment of Section 2

- i. Under Clause 2 (c), some stakeholders welcomed the proposed definition of the term “insolvency” while other stakeholders were of the view that insolvency did not necessarily require the regulatory capital to be at zero but to be insufficient to meet certain obligations. They proposed that Clause 2(c) be recast to read: “has capital which is insufficient to meet the regulatory capital requirement.”

- ii. Stakeholders acknowledged that Clause 2(c) did not pose a risk to the broader financial system on account of section 64(1)(c)(iii) of the principal Act which allowed the Bank of Zambia to take supervisory action against the financial service provider in an instance where a financial institution had regulatory capital equal to zero or lower. However, they expressed concern that the provision under Clause 2(c) allowed a financial service provider to continue to be considered solvent even when it was in breach of the regulatory capital prescribed minimum.

Clause 3 – Repeal and replacement of Section 6

- i. Under Clause 3(4), stakeholders were of the view that rather than the use of the phrase “A person who contravenes subsections (1), (2) and (3)”, the Clause should be amended to read as “A person who contravenes subsections (1), (2), (3) or any combination of these” in order to ensure that would-be offenders did not use the omission of exclusion.
- ii. Stakeholders noted that one of the objectives of the Bill was to provide for the repayment of funds collected by an unlicensed person, and the particular provision was addressed under Clause 3 of the Bill. However, they noted with concern that the Bill was unclear on how unpaid funds were to be recovered by the Bank. While noting that this level of detail was likely to be provided for in other supporting regulations, stakeholders were of the view that modalities of such an operation should be thought through in order to avoid unnecessary complications when enforcing the Act.
- iii. Stakeholders noted that Clause 3(4) provided for sanctions after a conviction while it appeared that the provision in Clause 3(5) would be implemented administratively and Clause 3(6) recognised that there could be difficulties in enforcing Clause 3 (5). Stakeholders were of the view that the decision to recover the funds obtained by an unlicensed person should be made by the courts as part of the criminal proceedings instead of the regulator. This would ensure enforcement of the directive by the courts since failure to pay would become contempt of court, which had established channels of address.

Clause 4 – Amendment of Section 21

While some stakeholders supported the provision in Clause 4 as it was in line with the current times and technologies, other stakeholders expressed concern over the limitation for public inspection of the register to only during normal working hours, despite it being maintained electronically.

Further, stakeholders proposed the inclusion of a clearer requirement to maintain an electronic up-to-date register online by the Bank of Zambia.

Clause 6 – Insertion of Section 62A

Stakeholders noted that Clause 6 made provision for the Bank of Zambia to step in and supervise a financial institution engaged in any form of suspicious activity, such as money laundering financing of terrorism or any other serious offence without having to rely on other rules or justification such as those provided under Section 64(1) of the principal Act in order to take supervisory action under certain conditions. However, stakeholders proposed that in order to

augment the Clause, the Bill should provide a clear reference to the *Prohibition and Prevention of Money Laundering Act, No. 44 of 2010* and terrorist financing legislation.

Clause 8 – Repeal and replacement of Section 73

- i. Stakeholders expressed concern over the use of the term “bridge bank” in Clause 8 (1) (d). They submitted that a more precise terminology for “bridge bank” in the Bill should be used and they proposed the term “bridge institution” which would capture both bank and non-bank financial institutions. Stakeholders further proposed that with respect to the definition of bridge institution, the Bill should incorporate a scenario of joint ownership by one or more public bodies.
- ii. Under Clause 8 (3) which repeals and replaces Section 73 by providing for possession of financial service providers by the Bank of Zambia, stakeholders noted that the Bill did not provide a time frame within which the Bank should provide a statement of the assets and liabilities. While some stakeholders were of the view that the Bill should provide for ninety days from the date of taking possession as the period within which to prepare the statement, similar to the provision of Section 72 in the current Act, other stakeholders were of the view that the Bank should prepare the statement in a period shorter than the current ninety days, especially if the intention was to make the statement of affairs of the financial provider known to the public almost immediately.

Clause 10 – Repeal and replacement of Section 75

- i. Under Clause 10, stakeholders noted that the power to make an enquiry into the decision of the Bank was removed from the court to a tribunal. They expressed concern, however, that the amendment created the risk of unnecessary political interference in the appeal process.
- ii. Stakeholders expressed concern that the Bill was silent on what would happen in an event that the Minister declined the request by a financial provider or any person acting on behalf of the financial provider to establish a tribunal. Furthermore, in the event that the Bank’s taking possession of the financial service provider was with ill intent, leaving the decision to the discretion of the Minister would somewhat disadvantage the aggrieved financial service provider. Some stakeholders proposed that in order to maintain neutrality, the process of setting up a tribunal, and/or the determination of whether the course of action undertaken by the Bank was justified should be determined by the court. On the other hand, other stakeholders proposed that the Bill should be amended to include a provision for petitioners to commence proceedings in court or appeal to the court if not satisfied with the decision of the Tribunal.
- iii. Some stakeholders noted that Clause 10 of the Bill only allowed the interested person to act on behalf of the financial services provider, but was silent on whether such a person could act on behalf of the depositor as well. They proposed that the Bill should make a provision to allow interested persons to act on behalf of the depositor as well.

Clause 12 – Amendment of Section 132

- i. Under Clause 12(1) (a), stakeholders noted that the Bill made reference to the deposit protection scheme. While there was the possibility of such a scheme being provided by private insurance, the Deposit Insurance Bill was non-existent and, therefore, the provision was unclear. In this vein, stakeholders proposed that the Bill should reflect the current situation in terms of available legislation.
- ii. Under clause 12 (1)(b), some stakeholders supported the provision under the Clause for reasons that the provision would enable the deposit protection scheme to recoup all payments made whenever a financial service provider failed. This would enhance the sustainability of the deposit protection scheme. They added that the provision would instil confidence in depositors covered by the deposit protection scheme.

On the contrary, some stakeholders were of the view that splitting claims into depositors covered by a deposit protection scheme and those not covered by the scheme, with priority given to the depositors under the deposit protection scheme, would expose the most vulnerable group of depositors who were not covered by the scheme.

- iii. Stakeholders noted that under Clause 12(1) (d), the Bill made provision for the exclusion of executive employees, senior management and other categories that the Bank of Zambia determined from the priority list under the Clause from being considered for payment of salaries and wages. Some stakeholders were of the view that the provision created a certain level of accountability on the executive and management of the financial service provider to ensure that the organisation remained solvent. However, some stakeholders, while supporting the provision, expressed concern that the Bill was not clear on whether the executive employees and senior management were not entitled to payment or would be considered after considering the priority list and all other debts. They proposed that the Bill must explicitly state if this class of employees was not entitled to such payments or at what stage they would be paid.

Clause 13 –Amendment of Section 137

- i. Stakeholders noted that the amendment of sub-section 137(3) of the principal Act by Clause 13 appeared to create a lacuna in the case where the decision of the Bank was subject to a reversal. They expressed concern that the Clause offered complete power to the Bank, thus disadvantaging the financial service provider in the event that the decision made by the Bank was in any way malicious.
- ii. Other stakeholders were of the opinion that the provision was adequate as it allowed for the matter to be administratively concluded within the Bank process.
- iii. Further, some stakeholders were of the view that the words “*or set aside by a tribunal on appeal or by the court*” must be retained to emphasise that a decision of the Bank would no longer be in force once it was set aside by a tribunal or the court and to ensure that the financial service providers were not in any way disadvantaged.

Clause 14 – Amendment of Section 140

Stakeholders noted that the provision in Clause 14 (1) placed responsibility on the Bank of Zambia to ensure that it used its regulatory power with caution. However, they expressed concern that where the Bank was found to have acted contrary to the provision or any other written law, it was unclear what would happen to the decision made by the Bank. Taking into account the provisions of Section 137 (3) of the principal Act and the amendments in Clauses 13 and 14(1) of the Bill, neither a tribunal nor a court could overturn the decision of the Bank save for the Bank of Zambia itself.

Clause 15 –Repeal and replacement of Section 141

Under Clause 15(2) which provided that an appeal against a decision of a tribunal on a point of law shall lie to the Court of Appeal, stakeholders expressed concern that the Bill restricted the grounds of appeal only to a “point of law”. They, however, noted that the provision would make opportunities for recourse quite narrow to both depositors and financial institutions. Appeal would only be limited to “a point of law” when there could also be appeals based on points of fact.

7.1 OTHER CONCERNS

Some stakeholders were of the view that at the rate at which the concept of village banking was emerging, savings for members belonging to these groups were at risk since they were not being regulated. In relation to this, stakeholders also expressed concern on the way the mobile money sector was being regulated. They stated that the concept of mobile money was similar to that of formal banking, but the majority of mobile money businesses, were operated by mobile network operators and licenced under the *Payments Systems Act, No. 1 of 2017*. Therefore, regulation of village banking groups and enhanced regulation of mobile money players was required, especially that the principal Act was being amended.

8.0 COMMITTEE’S OBSERVATIONS AND RECOMMENDATIONS

Following the interaction with stakeholders, the Committee makes its observations and recommendations as outlined below.

- i. Under Clause 2 (c), which provides for the definition of the term “insolvency”, the Committee is of the view that the amendment provides an avenue to resolve a troubled financial service provider without necessarily declaring it insolvent when its regulatory capital falls below the prescribed minimum.

In light of this, the Committee strongly recommends that Clause 2(c) of the Bill must be maintained.

- ii. The Committee notes that Clause 3, which repeals and replaces section 6 of the principal Act, has the potential to be misinterpreted.

The Committee recommends that rather than the use of the phrase “A person who contravenes subsections (1), (2) and (3)”, the Clause should be amended to read as “A

person who contravenes subsections (1), (2), (3), or any combination of these” in order to ensure that would-be offenders do not take advantage of the gap in the Bill.

- iii. While the Committee notes that one of the objectives of the Bill is to provide for the repayment of funds collected by an unlicensed person, Clause 3 of the Bill is silent on how the funds are to be recovered.

The Committee, therefore, recommends that a provision must be made prescribing how such funds are to be recovered by the Bank of Zambia to avoid ambiguity in enforcing the legislation.

- iv. The Committee observes that the Bill, in Clause 4, makes provision to maintain an electronic register which shall be open to inspection by the public during normal working hours. The Committee is, however, concerned that limiting the time of inspection defeats the whole purpose of having the register maintained electronically.

In light of this, the Committee strongly recommends that the provision be amended so as to ensure that public inspection of the electronic register is possible at all times. Further, the Committee recommends that the Clause must be amended to provide for the requirement for the Bank of Zambia to maintain an up-to-date electronic register.

- v. Under Clause 6 which provides for anti-money laundering and counter financing of terrorism (CFT), the Committee recommends that the Clause should cross reference with the *Prohibition and Prevention of Money Laundering Act, No. 44 of 2010* and CFT legislation to avoid enforcement challenges.
- vi. The Committee expresses concern that the Bill, in Clause 8 (3), does not provide a specific timeline in which the Bank of Zambia, upon possession of a financial service provider, is required to prepare a statement of affairs showing the financial position of the service provider as the case is in Section 72 of the principal legislation.

The Committee, therefore, recommends that the Bill be amended by retaining the 90 days provided in Section 72 within which the Bank of Zambia must prepare a statement of affairs of the financial service provider.

- vii. The Committee observes that in amending section 75 of the principal Act, the power to make an enquiry into the decision of the Bank has been removed from the court to a tribunal through the provision in Clause 10. While noting that the tribunal may determine its own procedures, the Committee is, however, concerned that the provision in Clause 10 can be subjective and amenable to political influence since the responsibility to establish a tribunal lies with the Minister who is a political appointee. In addition, the Committee observes that the Bill is silent on what further course of action the aggrieved financial institution can undertake in an event that the Minister declines the request to establish a tribunal.

In this regard, the Committee strongly recommends that in order to eliminate political influence and not disadvantage the aggrieved financial service provider in an event where the Minister has an improper interest, the process of setting up a tribunal, and/or the determination of whether or not the course of action taken by the Bank was justified, should be a preserve of the court. The Committee further recommends that the Bill should make provision for the aggrieved party to apply to the court to set up a tribunal.

- viii. While noting the intention of the Clause, the Committee observes that Clause 12 (1) (d) excludes payment of salaries and wages to executive employees and senior management from the priority list in an event that a financial service provider is wound up or dissolved. However, the Committee expresses concern that the Bill is silent on whether these individuals would eventually be paid after the order of priority has been exhausted.

In this vein, the Committee strongly recommends that the Bill should be amended so as to explicitly state whether the executive employees and senior management shall be paid after all other expenses and claims have been taken care of, or they are completely eliminated from the line of payments.

- ix. The Committee observes that Clause 13, which amends Section 137 (3) by the deletion of the words *“or set aside by a tribunal on appeal or by the court,”* provides for a decision made by the Bank of Zambia to remain in force unless otherwise reversed by the Bank. While the Committee notes that the provision allows for the matters to be administratively concluded within the Bank of Zambia’s internal processes, it is, however, concerned that the Bill has not provided a time frame during which such a decision should remain in force.

In light of this, the Committee recommends that the Bill must explicitly provide for a time frame within which such a decision shall be in force before being reversed so as to avoid delays in the reversal process.

- x. The Committee observes that while the provision in Clause 15 (1) places the onus on the Bank of Zambia to ensure that it uses its regulatory power with caution, there is no provision in the Bill to address a situation where the Bank is found to have acted contrary to the provision or any other written law. The Bill is also silent on what would happen to the decision of the Bank in such a circumstance.

While noting that the matter of compensation to the financial service provider has been provided for, the Committee strongly recommends that the Bill should explicitly provide that a decision by the Bank of Zambia which is contrary to the law must be reversed by the tribunal.

- xi. The Committee observes with concern that Clause 15(2) restricts the reasons for appeal against a decision of a tribunal to a point of law. The Committee is cognisant that appeals could also be based on facts.

Therefore, the Committee strongly recommends that the Bill should be amended by making provision for other grounds of appeal against the decision of a tribunal such as points of fact.

- xii. The Committee notes that the emergence of village banking groups has widely provided easy and affordable financing to many individuals and households. While noting the advantages that come with this initiative, and the measures that some established financial institutions have put in place to extend financial products such as village banking accounts, the Committee is extremely concerned about the lack of a formal regulatory system of this sector.

In light of this, the Committee strongly recommends that, in an effort to increase financial inclusion through village banking, regulatory framework must be put in place in order to protect individuals who opt to use village banking to save and borrow money. This will instill confidence in the people using this facility, and mitigate any challenges that may arise.

9.0 CONCLUSION

The Banking and Financial Services (Amendment) Bill N.A.B No 7 of 2020 offers valuable amendments to the Banking and Financial Services Act No.7 of 2017. These amendments adequately achieve the three objects of the Bill.

The Committee is optimistic that once enacted, the amendments in the Bill will further enhance the regulatory mandate and role of the Bank of Zambia in ensuring that financial service providers are adequately supervised in a manner that contributes to the promotion of safe, sound and efficient operations and development of the financial system in the country.

The Committee, therefore, supports the Bill subject to its concerns expressed in this Report.

The Committee expresses its gratitude to all stakeholders for their oral and written submissions on the Bill. The Committee further thanks the Office of Clerk of the National for the services rendered to it during the consideration of the Bill.

Dr S Musokotwane, MP;
(Chairperson)

Ms M Miti, MP;
(Vice - Chairperson)

Mr G G Nkombo, MP;
(Member)

Mr D Livune, MP;

(Member)

Mr E M Mwila, MP;
(Member)

Dr S C Kopulande, MP;
(Member)

Mr C Chali, MP;
(Member)

Mr E Kamondo, MP;
(Member)

Mr D Chisopa, MP; and
(Member)

Mr M Mubika, MP.
(Member)

September, 2020
LUSAKA

APPENDIX I - National Assembly Officials

Ms C Musonda, Principal Clerk of Committees
Mr H Mulenga, Deputy Principal Clerk of Committees (FC)
Mr F Nabulyato, Deputy Principal Clerk of Committees (SC)
Mr J Sianyabo, Deputy Parliamentary Legal Counsel
Mrs C K Mumba, Senior Committee Clerk (FC)
Mrs E K Zgambo, Committee Clerk
Mr S C Samuwika, Committee Clerk
Mrs G Chikwenya, Typist
Mr M Chikome, Committee Assistant
Mr S Kantumoya, Parliamentary Messenger

Appendix II – The Witnesses

- i. The Minister of Finance
- ii. Ministry of Finance
- iii. Ministry of Justice
- iv. Bank of Zambia
 - v. Centre for Trade Policy and Development
 - vi. Zambia Institute for Policy Analysis and Research
- vii. Competition and Consumer Protection Commission
- viii. Consumer Unity Trust Society
 - ix. Development Bank of Zambia
 - x. Bankers Association of Zambia
 - xi. Madison Finance Company Limited
 - xii. Bayport Financial Services Limited
 - xiii. National Savings and Credit Bank
 - xiv. Credit Reference Bureau Company Limited