



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON DELEGATED LEGISLATION

ON THE

COMPANIES (AMENDMENT) BILL, N.A.B NUMBER 12 OF 2020

FOR THE

FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

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REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION ON THE COMPANIES (AMENDMENT) BILL, N.A.B. NO. 12 OF 2020, FOR THE FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

1.0 COMPOSITION OF THE COMMITTEE

The Committee consisted of Mr A B Malama, MP (Chairperson); Ms C C Kasanda, MP (Vice Chairperson); Mr A Mandumbwa, MP; Mr S Miti, MP; Mr J Siwale, MP; Mr R C Mutale, MP; Mr O M Sililo, MP; Mr M Mubika, MP; Mr B Kambita, MP; and Mr J Chishala, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

The Committee has the honour to present its Report on the Companies (Amendment) Bill, N.A.B. No. 12 of 2020 for the Fifth Session of the Twelfth National Assembly referred to it by the House on 20th October, 2020

2.0 FUNCTIONS OF THE COMMITTEE

The functions of the Committee are set out in Standing Order 157 (2). Among the functions, the Committee is mandated to consider any Bills that may be referred to it by the House.

3.0 MEETINGS OF THE COMMITTEE

The Committee held six meetings to consider the Companies (Amendment) Bill, N.A.B. No. 12 of 2020.

4.0 PROCEDURE ADOPTED BY THE COMMITTEE

In order to acquaint itself with the ramifications of the Bill, the Committee sought both written and oral submissions from the stakeholders listed in Appendix II.

5.0 OBJECTS OF THE BILL

The object of the Bill is to amend the Companies Act, No. 10 of 2017, so as to revise the definition of beneficial ownership and provide for the definitions of substantial economic benefit and substantial interest.

6.0 BACKGROUND

The Committee was informed that Zambia was a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), a regional Financial Action Task Force (FATF). As an inter-governmental body, FATF developed and promoted policies to protect the global financial system against money laundering, terrorism financing and proliferation financing. As a member of ESAAMLG, Zambia had consented to uphold and maintain standards set by FATF. In this regard, amendments had been proposed to the Financial Intelligence Act in order to meet the standards set by FATF.

The aforementioned amendments to the Companies Act were consequential to the Financial Intelligence Centre (Amendment) Bill, No. 11 of 2020. The amendments are necessary in order to ensure compliance with the FATF recommendations aimed at combating money laundering, financing of terrorism or proliferation or any other serious offences.

7.0 SALIENT PROVISIONS OF THE BILL

Clause 1 – Short Title

This clause provided for the short title of the Bill.

Clause 2 – Amendment of section 3

This clause amended section 3 of the Act by revising the definition of “beneficial owner” to include a natural person on whose behalf a transaction was conducted to provide information which would assist in combating money laundering, financing of terrorism or proliferation or any other serious offence. The proposed definition read as follows: “beneficial owner means a natural person who, directly or indirectly, through any contract, arrangement, understanding, relationship or any other means ultimately owned, controlled, exercised substantial interest in or received substantial economic benefit from a corporate.”

Further, the words “substantial economic benefit” and “substantial interest” had been included so as to make the law clear on what would amount to a substantial economic benefit and substantial interest because these terms had been mentioned in the definition of “beneficial owner”. The term “substantial economic benefit” had thus been defined as the benefit realised by a natural person from a body corporate legally or equitably, of at least five percent of the distribution of dividends or proceeds of a transaction and “substantial interest” meant at least five percent ownership of shares of a body corporate by a natural person, legally or equitably.

8.0 STAKEHOLDERS’ SUBMISSIONS AND CONCERNS

All the stakeholders welcomed the proposed amendments to the *Companies Act* and were pleased to note that the amendments would enhance transparency and disclosure of the real persons behind a corporate. However, they proposed some changes as set out below.

- (i) Some stakeholders observed that clause 2 of the Bill had erroneously referred to the amendment of section 2 of the Principal Act, instead of section 3 which was the interpretation section of the Act. They also noted a typographical error in clause 2

(b) of the Bill, with regard to the word “controls” which should have read as “control.” They submitted in this regard that the necessary corrections should be made as aforementioned.

- (ii) With regard to the definitions of the terms “substantial economic interest” and “substantial interest” stakeholders observed that a minimum threshold of ownership of five percent had been set. However, this was not the case in the definition of the term “beneficial owner,” despite the fact that beneficial ownership declarations were required under the Principal Act, pursuant to sections 12(3)(e), 21(3), 123 and 124 for local companies, and section 299(2)(c) for foreign companies registered in Zambia. To this end, it was proposed that the definition of the term “beneficial owner” should read as follows:

“beneficial owner” means a natural person who –

- (a) *Directly or indirectly, through any contract, arrangement, understanding, relationship or any other means ultimately owns five percent or more of a corporate, or controls, exercises substantial interest in, or receives substantial economic benefit from a corporate.*
- (iii) Some stakeholders submitted that there was no definition of the term “ultimate and effective control” under clause 2(b) of the Bill. It was submitted that this was a material term in the definition of beneficial owner whose absence would lead to varied interpretations, which may create uncertainty. It was therefore, recommended that the term “ultimate and effective control” should be defined to avoid uncertainty.
- (iv) Some stakeholders also noted that the term “equitably” as used under clause 2 under the definitions of “substantial economic benefit” and “substantial interest”, was ambiguous. To this end, it was proposed that the term be defined to avoid any ambiguity in interpretation.
- (v) Stakeholders welcomed the use of the word “corporate” in the definition of “beneficial owner” because the term “corporate” as defined in the principal Act encompassed companies incorporated in Zambia and entities incorporated under any written law. It was however, observed that under the definitions for “substantial economic benefit” and “substantial interest” the term “body corporate” was instead used, which effectively narrowed the area of beneficial ownership to entities outside the ambit of the *Companies Act*. It was submitted that the use of “body corporate” alone excluded companies incorporated in Zambia. Stakeholders therefore, recommended that the definition be expanded to include “corporate” to capture indirect interests held through *Zambian Companies Act*.
- (vi) Other stakeholders were of the view that there were variances between the proposed definition of “beneficial owner” and other definitions sitting across other pieces of legislations. Notable among these were: The *Securities Act No. 41 of 2016*, which defined beneficial owner as:

“the ultimate owner of securities held in a securities account, excluding a nominee;

Another one was the *Banking and Financial Services Act number 7 of 2017*, which stated that:

“beneficial owner” means an individual who exercises control over a financial service provider, legal person or arrangement; or owns or controls a customer or the person on whose behalf a transaction is conducted and, where two or more persons are associated through the beneficial ownership of shares in the same company, each person shall be a beneficial owner of the aggregate number of shares of the company.”

In view of the foregoing, it was proposed that there was need to harmonise the use of the term ‘beneficial owner’ across the various pieces of legislation in order to avoid regulatory inconsistencies and cost of compliance for regulated entities that were overseen by multiple supervisory authorities. This would be in tandem with international best practice of consolidated supervision rather than stand-alone supervision.

9.0 COMMITTEE’S OBSERVATIONS AND RECOMMENDATIONS

The Committee supports the Bill and agrees with the stakeholders’ observations as outlined above. The committee, therefore, makes the following recommendations:

- (i) The Committee recommends that the minor typographical errors with respect to the word “controls” and reference to section 2 and not 3 of the principal Act, be attended to.
- (ii) The Committee observes that with regard to the definitions of the terms “substantial economic interest” and “substantial interest” a minimum threshold of ownership of five percent had been set. However, this was not the case in the definition of the term “beneficial owner,” the Committee, therefore, recommends that this should be aligned as proposed above.
- (iii) The Committee observes that the Bill does not define the terms “ultimate and effective control” and “equitably” under clause 2(b). The Committee therefore, recommends that the terms “ultimate and effective control” as well as “equitably” should be defined to avoid uncertainty.
- (iv) With regard to the use of the term “ body corporate” under the definition of substantial economic interest and substantial interest, the committee observes that the amendment should also include the term “corporate”, which is more encompassing as it included companies incorporated under the *Companies Act* as well as entities incorporated under any other written law. This would ensure that the spirit of the proposed amendment was fully realised.
- (v) With regard to the varied definitions of the term “beneficial owner” in different statutes, the committee recommends that amendments and realignments of the different statutory provisions be embarked upon urgently so as to avoid inconsistencies and ambiguities.

10.0 CONCLUSION

The Committee wishes to profoundly thank all the stakeholders who appeared before it and rendered both written and oral submissions. The Committee also wishes to thank you, Mr Speaker and the Clerk of the National Assembly for the guidance and support services rendered to it during its deliberations.

We have the honour to be, Sir, the Committee on Delegated Legislation mandated to consider the Companies (Amendment) Bill, N.A.B. No. 12 of 2020.

Mr A B Malama, MP
(Chairperson)

Ms C C Kasanda, MP
(Vice Chairperson)

Mr M Mubika, MP
(Member)

Mr B Kambita, MP
(Member)

Mr A Mandumbwa, MP
(Member)

Mr J Siwale, MP
(Member)

Mr R C Mutale, MP
(Member)

Mr S Miti, MP
(Member)

Mr O M Sililo, MP
(Member)

Mr J Chishala, MP
(Member)

November 2020
LUSAKA

APPENDIX I – NATIONAL ASSEMBLY OFFICIALS

Ms C Musonda, Principal Clerk of Committees
Mr H Mulenga Deputy Principal Clerk of Committees (FC)
Mrs C K Mumba, Senior Committee Clerk (FC)
Mr G Zulu, Committee Clerk
Mrs C Kabika, Typist
Mr D Lupiya, Committee Assistant

APPENDIX II - THE WITNESSES

Ministry of Justice

Mr L Banda, Parliamentary Counsel

Ministry of Commerce, Trade and Industry

Mr M Mulenga, Permanent Secretary

Mrs M Chikuba, Senior Planner

Patents and Companies Registration Agency (PACRA)

Mrs B M Siankume, Acting Registrar and CEO

Mr D Kamfwa, Legal officer

Mr L Musonda, Inspector

Law Association of Zambia (LAZ)

Mr W Luabelwa, Member

Zambia Revenue Authority (ZRA)

Mr K Chanda, Commissioner General

Mr M Mukwasa, Director – Legal Services

Securities and Exchange Commission (SEC)

Mr P K Chitalu, Chief Executive officer

Mrs D Sichone, Commission Secretary and Director Enforcement and Legal Services

Corpus Legal Practitioners

Ms J Jhala, Partner

Ms S Clayton, Associate

Zambia Institute of Chartered Accountants (ZICA)

Mr S Olinian, Acting Director – Membership and Corporate Services

Ms V Akapelwa, Practice Review Manager

Mr F Chilingwe, Technical officer

Zambia Chamber of Commerce and Industry (ZACCI)

Mr K Shula, Researcher

Mr A Chitalu, Researcher