REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS

ON THE

RATIFICATION OF THE INTERNATIONAL AGREEMENT FOR THE ESTABLISHMENT OF THE AFRICA FINANCE CORPORATION AND IT'S CONSTITUTIVE INSTRUMENTS, NAMELY: THE CHARTER; THE ESTABLISHMENT AGREEMENT; AND THE HEADQUARTERS AGREEMENT

FOR THE

THIRD SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

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FOREWORD

Honourable Madam Speaker, the Committee on National Economy, Trade and Labour Matters has the honour to present its Report on the consideration of the Ratification of the International Agreement for the Establishment of the Africa Finance Corporation and its Constitutive Instruments namely: The Charter; the Establishment Agreement; and the Headquarters Agreement for the Third Session of the Thirteenth National Assembly. The functions of the Committee are set out under Standing Orders 197(d) and 198of the National Assembly of Zambia Standing Orders, 2021. Specifically, Standing Order 198(f) provides that a Portfolio Committee shall consider International Agreements, Conventions and Treaties referred to it by the Speaker or a resolution of the House.

The Committee held ten meetings to consider submissions from stakeholders. In order to acquaint itself with the ramifications of the International Agreement for the Establishment of the Africa Finance Corporation and its Constitutive Instruments, the Committee sought both written and oral submissions from various stakeholders. The list of stakeholders is at Appendix II of the Report. The Report is organised in three parts. Part I provides the background and summary of the provisions of the Agreement, Part II presents the summary of submissions from stakeholders, while Part III constitutes the Committee's observations and recommendations.

The Committee is grateful to the stakeholders who tendered both written and oral submissions. It further wishes to thank you, Madam Speaker, for affording it the opportunity to scrutinise the Agreement and its Constitutive Instruments. The Committee's appreciation is further extended to the Clerk of the National Assembly for the support and guidance rendered throughout its deliberations.

Ms Sibeso K Sefulo, MP
CHAIRPERSON

March, 2024
LUSAKA

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1.0 MEMBERSHIP OF THE COMMITTEE

The Committee consisted of Ms Sibeso K Sefulo, MP (Chairperson); Mr Joel Chibuye, MP (Vice-Chairperson); Mr Gift S Sialubalo, MP; Mr Kabwe T Chewe, MP; Mr Davison Mungôandu, MP; Mr Derricky Chilundika, MP; Dr Simon Mwale, MP; Mr Ronald Chitotela, MP; Mr Walusa Mulaliki, MP; and Mr Wesley Kolala, MP.

PART I

2.0 BACKGROUND OF THE AFRICA FINANCE CORPORATION

The Africa Finance Corporation (AFC) was a multilateral development finance institution established on 28thMay, 2007 and based in Lagos, Nigeria. The AFC was established to foster economic growth and industrial development in Africa. This was to be achieved through the provision of development finance to meet the infrastructure, trade and industrial financing needs of Africa. The AFC operated within the following sectors:

(a) Power and Renewables (Generation, Transmission, Distribution);
(b) Transport and Logistics (Ports, Rail, Roads, Integrated industrial Zones, Warehouses, Aviation, Logistics and others);
(c) Heavy Industry (Manufacturing, Minerals Beneficiation, Gas Processing and Distribution);
(d) Natural Resources (Precious Metals Mining, Midstream and Upstream Oil and Gas Exploration, Production and Processing); and
(e) Telecoms/ Technology (Mobile Network & Tower Operators, Digital Services).

The AFC had forty-two African countries, as members, which included Zambia and six other countries in the Southern African Development Community (SADC) region, namely: Angola, Democratic Republic of Congo, Madagascar, Malawi, Mauritius, Namibia, and Zimbabwe. Of the forty-two countries, the Government of Togo, the Central Bank of Nigeria, and the Central Bank of Guinea owned shares in the AFC. Other shareholders included the African Development Bank, the Arab Bank for Economic Development in Africa (BADEA), the African Reinsurance Corporation, commercial banks, and pension and investment funds, among others.

Whilst Zambia was a signatory to the Agreement for the Establishment of the Africa Finance Corporation, it had not ratified the Agreement. Therefore, the Government of the Republic of Zambia proposed to ratify the Agreement and its Constitutive Instruments.

3.0 OBJECTIVES OF THE AFRICA FINANCE CORPORATION

The Committee was informed that the general objective of the AFC, as a Development Financial Institution, was to advance infrastructure financing in Africa through a range of services, including debt, equity, project development, financial advisory, and treasury management. The corporation aimed to address Africa's significant infrastructure gap by financing projects that had substantial developmental impact and contributed to economic growth. With a mission to support the industrial development of African nations whilst ensuring competitive returns for its shareholders, the AFC focused on investing in key infrastructure sectors such as power, natural resources (oil/gas and mining), transport, heavy

industry, and telecommunications, which were fundamental to the continent's economic progress.

4.0 THE SPECIFIC OBJECTIVES WERE TO:

(a) grant loans and extend credit guarantee by commercial documents, sovereign instruments, and credit instruments, which also included refinancing or by any other form of security. The lending rates were commercial; however, they could still be competitive for Member States compared to non-member states;

(b) own, hold, purchase, sell, withdraw, endorse, discount and carry out any operation with promissory notes, bills of exchange, option certificates for acquisition of shares and any other securities or credit instruments in any Member Country or country approved by the Board of Directors;

(c) provide equity financing on such terms as may be approved by the Board of Directors;

(d) provide technical assistance for the preparation, financing and execution of development projects/programmes, including the formulation of specific project proposals.;

(e) meet requests from African countries to assist them in coordination of their development policies and plans to achieve better utilisation of their resources, making their economies more complementary, and promoting the orderly expansion of their foreign trade and in particular, inter-regional trade; and

(f) co-operate in such a manner as the Corporation may deem appropriate, within the terms of the AFC Agreement, with the United Nations, its organs and subsidiary bodies and with other public and private international organisations and other international institutions, as well as national entities whether public or private, which were concerned with the investment of development funds in Africa, and to interest such institutions and entities in new opportunities for investment and assistance.

5.0 SALIENT PROVISIONS OF THE AGREEMENT

The salient provisions of the Agreement were as set out hereunder.

5.1 AGREEMENT FOR THE ESTABLISHMENT OF THE AFRICA FINANCE CORPORATION

Article 2 – Legal Status

The Article made it obligatory for a Member Country to immediately upon becoming a signatory, do all such things and take all necessary legislative and administrative actions to secure and reinforce the legal status of the AFC within its territory.

Article 5 – Membership

This Article stated that there were two levels of membership namely:

(a) Membership only: by signing the Instrument of Adherence and ratifying its Constitutive Instruments, namely the AFC Establishment Agreement through its cognitive/constituent authority; and

(b) Membership and Shareholding: Member Countries elected to make financial commitment or investment and became shareholders through their designated entities such as Central Banks, Ministry of Finance, Sovereign Wealth Funds, and State Pension Funds or development banks at any time convenient to the Member Country.

Article 7– Immunities, Exemptions, Privileges, Facilities and Concessions
This Article provided that each Member State was required to take legislative action under its national law and all administrative measures, as was necessary to effectively fulfil its purpose and carry out the functions entrusted to it. Each Member State was to accord to the Corporation, in its territory, the status, immunities, exemptions, privileges, facilities, and concessions set forth in the Agreement and was expected to promptly inform the Corporation of the specific action it had taken for this purpose.

Article 10– Freedom of Property, Asset and Operations from Restrictions
This Article stated that each Member State should waive, and refrain from imposing, any administrative, financial or other regulatory restrictions that were likely to hinder, in any manner, the smooth functioning of the Corporation or impair its operations.

Article 15 (1)) – Exemption from Taxation
This Article stated that the Corporation and all its assets, income, operations, transactions, including its dividends, capital, profits and moneys of any kind were all exempted from all forms of taxation and Member States were required to take all necessary action to enforce the exemption from tax.

4.2 CHARTER OF THE AFRICA FINANCE CORPORATION

Article 4–Headquarters and Branch Offices
The Article provided that the permanent headquarters of the AFC would be housed in Lagos, Nigeria. It further stated that the AFC may, in the discharge of its functions establish branches or representative offices in other Member States selected by the Board of Directors.

Article 13- Borrowing
This article stated that the Corporation may source and borrow funds from any capital or financial market, as the Board of Directors deemed necessary for the performance of its functions.

Article 9: Payment of Shares
This article provided that payment for the shares subscribed to in the capital of the Corporation shall be made upon subscription or as soon as may otherwise be specified by the promoters or the Board of Directors.

PART II

6.0 SUMMARY OF STAKEHOLDERS SUBMISSIONS

The Committee was informed that the proposal for Zambia to ratify the International Agreement for the Establishment of the Africa Finance Corporation and the Constitutive Instruments and its pursuit to advance infrastructure financing in Africa was welcome. This was because it was anticipated that the Corporation would help to address Africaôs significant infrastructural gap by financing projects that had substantial developmental impact and contributed to economic growth. Stakeholders, therefore, submitted on specific issues as outlined below.

6.1 Merits of the Ratification

The Committee was informed that there were a number of benefits of ratifying the International Agreement for the Establishment of the Africa Finance Corporation and its Constitutive Instruments. The stakeholders highlighted the benefits set out below.

(a) Ratification of the AFC and its Constitutive Instruments would allow Zambia, through both the public and private sectors to have access to competitive financing, especially for the private sector. This was because of the ñPreferred Creditor Statusò conferred by the AFC, which removed the need for political risk insurance, thereby allowing for competitive financing terms. For instance, the AFC was acting as a lead arranger for the Lobito Corridor Project, for which a Memorandum of Understanding was signed in October, 2023 with the African Development Bank, the United States Government, the European Union in support of Angola, the Democratic Republic of Congo, and Zambia.

(b) Membership to the AFC could enable Zambia gain access to direct loans, credit extensions, and lines of credit guaranteed by the Corporation. This was crucial in seeking financial support for development projects and economic initiatives. The Corporation guaranteed transactions made by reputable financial institutions, providing stability to the financial sector, and enhancing investor confidence. By acting as an international financial agent, the AFC would represent the interests of the country in global financial matters, potentially giving the country a stronger voice in international financial institutions and negotiations. This may benefit Zambia through equity financing provided by the AFC. Access to equity financing would also benefit the country's private sector and infrastructure projects.

(c) Stakeholders submitted that ratification of the AFC provided opportunities for technical assistance and capacity-building initiatives. Through participation in AFC-sponsored programmes and workshops, Zambian stakeholders would be given an opportunity to enhance their skills and knowledge in infrastructure development, project management, and policy formulation.

6.2 Demerits of the Ratification

Some stakeholders submitted that although ratifying the Constitutive Agreement could introduce another multilateral financial institution offering competitive financing to the Zambian economy, it was important to note that the lending terms would remain commercial. Considering that the existing International Monetary Fund Programme might limit the

Governmentôs access to commercial borrowing, there were possibilities that only the private sector would have access to the financing.

PART III

7.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

In supporting the ratification of the Africa Financing Corporation and its Constitutive Instruments, the Committee makes observations and recommendations set out hereunder.

(a) The Committee observes that each Member State must amend its laws to provide preferential treatment to the AFC whilst waiving all taxes, levies, fees, guaranteed income streams and all manner of regulatory oversight over the activities of the AFC for the promise of support for industrial development from the AFC.

In this regard, the Committee recommends that a benchmarking exercise be undertaken to other supranational corporations, and a Cost Benefit Analysis be conducted to determine whether or not Zambia will obtain greater benefits from ratifying the International Agreement for the Establishment of the Africa Finance Corporation and its Constitutive Instruments that outweigh the loss of taxation and other potential revenue streams.

Additionally, the Committee recommends that the Government should seek clarity with regard to the exemptions that the AFC will enjoy in order to avoid the practice of Financial Institutions externalising the profits at the expense of Zambiaôs benefit.

Further, the Committee recommends that the immunities that will be granted to the AFC should not be in conflict with existing laws that are currently prevailing in Zambia.

(b) The Committee notes that the Agreement does not expressly stipulate how much capital is to be assigned to Member States when that Member Stateôs Central Bank or any designated entity joins the AFC on behalf of the Government. Further, according to Article 5 (2) of the Agreement, the conditions governing eligibility for membership are to be determined by the General Meeting of Shareholders of the AFC, but have not been prescribed in the Agreement.

In this regard, the Committee recommends that due diligence on how much share capital is to be allocated to newly joined Member States must be conducted. This will also provide an opportunity to establish any challenges that may arise as a result of AFCôs unique governance structure that contains a diverse shareholding of countries, private companies and natural persons.

Additionally, the Committee recommends that the Government should establish, to what extent the country will have influence in terms of decision making as a result of buying shares in the AFC to enable the Country reap maximum benefits from the Agreement.

(c) The Committee observes that ratifying the Agreements may increase Zambia's dependency on external financing sources, exposing the country to risks associated with fluctuating global financial markets and changing donor priorities.

In this regard, the Committee recommends that Zambia should reduce its reliance on external financing by diversifying its revenue sources. This may involve boosting domestic revenue through tax reforms, increasing non-tax revenue streams, and promoting economic activities that generate sustainable income, domestically.

(d) The Committee also observes that accessing financing from financial institutions like the AFC may contribute to Zambia's debt burden, raising concerns about debt sustainability and long-term fiscal stability.

In this regard, the Committee recommends that the Government should set limits on the amount of debt that can be contracted, relative to the Gross Domestic Product and ensure that borrowing is used for productive investments with clear economic returns.

8.0 CONCLUSION

The Committee is of the considered view that becoming a member of the Africa Finance Corporation (AFC) offers both opportunities and obstacles. To optimise the advantages and address the challenges, it is recommended that the country implements a systematic process for conducting thorough due diligence and risk assessments for projects financed, and loans obtained through the AFC, given their private nature.

Additionally, it is prudent to establish mechanisms for continuous monitoring and evaluation of the benefits that accrue to members who become signatories.

In conclusion, the Committee is in support of the International Agreement for the Establishment of the Africa Finance Corporation and its Constitutive Instruments and recommends that it be ratified.

We have the honour to be, Madam, the Committee on National Economy, Trade and Labour Matters, mandated to consider the ratification of the International Agreement for the Establishment of the Africa Finance Corporation and its Constitutive Instruments and its Constitutive Instruments.

Ms Sibeso K Sefulo, MP
CHAIRPERSON

March, 2024
LUSAKA

APPENDIX I-NATIONAL ASSEMBLY OFFICIALS

Mr Stephen Chiwota, Director ï Financial Committees
Mrs Angela M Banda, Deputy Director ï Financial Committees
Ms Chitalu R Mulenga, Senior Committee Clerk
Mr Emmanuel Bwalya, Committee Clerk
Mr Innocent Mweemba, Intern
Ms Inutu Mwiya, Administrative Assistant
Mr Daniel Lupiya, Committee Assistant
Mr Muyembi Kantumoya, Parliamentary Messenger

APPENDIX II-LIST OF WITNESSES

Africa GreenCo
Bank of Zambia
Centre for Trade and Policy Development
Industrial Development Commission
Ministry of Commerce, Trade and Industry
Ministry of Energy
Ministry of Finance and National Planning
Ministry of Foreign Affairs and International Cooperation
Ministry of Green Economy and Environment
Ministry of Infrastructure, Housing and Urban Development
Parliamentary Budget Office
Securities and Exchange Commission
Zambia National Commercial Bank (ZANACO)
Ministry of Justice