



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS

ON THE

PATENTS AND COMPANIES REGISTRATION AGENCY BILL, N.A.B NO. 3 OF 2020

FOR THE

FOURTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

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REPORT OF THE COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS ON THE PATENTS AND COMPANIES REGISTRATION AGENCY BILL, N.A.B NO. 3 OF 2020 FOR THE FOURTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

1.0 Membership of the Committee

The Committee consisted 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 Patents and Companies Registration Agency Bill, N.A.B No. 3 of 2020.

2.0 MEETINGS OF THE COMMITTEE

The Committee held eight meetings to consider the Patents and Companies Registration Agency Bill, N.A.B No. 3 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 list of witnesses who appeared before the Committee is at Appendix II of this Report.

4.0 BACKGROUND OF THE BILL

The Patents and Companies Registration Agency (PACRA) is an executive agency of the Ministry of Commerce, Trade and Industry (MCTI) established under the *Patents and Companies Registration Agency Act, No. 15 of 2010*. The Agency's core mandate is to regulate businesses and operate a registry for intellectual property for business entities such as companies and business names. Thus, it serves as a depository of business and intellectual property information.

In 2016, PACRA acquired the mandate of registering security interests in movable property, as well as administration of copyright. In addition, the Agency was mandated through the *Business Regulatory Act, No. 3 of 2014* to establish regulatory service centres (formerly One-Stop-Shops.)

The following mandates were also acquired under the newly enacted industrial property legislation: protection of traditional knowledge; expressions of folklore and genetic resources, and protection of layout designs of integrated circuits. Registration of service marks and protection of geographical indications were also expected once the *Trademarks Act* was repealed and replaced.

5.0 OBJECTS OF THE BILL

The objects of the Bill were to:

- a) continue the existence of the Patents and Companies Registration Agency;
- b) re-constitute the Board of the Agency and provide for its functions;
- c) repeal and replace the Patents and Companies Registration Agency Act, 2010; and
- d) provide for matters connected with, or incidental to, the foregoing.

6.0 SALIENT PROVISIONS OF THE BILL

PART 1

PRELIMINARY PROVISIONS

Clause 1 – Short title and Commencement

This Clause provided for the short title of the Bill and the date on which the Bill would come into operation.

Clause 2 - Interpretation

This Clause provided for the definitions of key terms used throughout the Bill.

PART II

PATENTS AND COMPANIES REGISTRATION AGENCY

Clause 3- Continuation of Agency

This Clause continued the existence of the Patents and Companies Registration Agency.

Clause 4 – Seal of Agency

This Clause provided for the seal of the Agency as a device determined by the Board and kept by the Registrar.

Clause 5 – Functions of Agency

This Clause defined the functions of the Agency. Some of which included administering the *Trade Marks Act*, the *Copyright and Performance Rights Act*, the *Companies (Certificates of Validation) Act*, *Registration of Business Names Act*, *Movable Popery (Security Interests) Act*, *Layout-designs of Integrated Circuits Act*, *Protection of Traditional Knowledge Act*, *Patents Act*, *Industrial Designs Act*, *Genetic Resources and Expressions of Folklore Act*, *Corporate Insolvency Act* and the *Companies Act, 2017*.

Clause 6- Board of Agency

This Clause constitutes the Board of the Agency and provides for appointment and qualification of the members of the Board.

Clause 7- Functions of Board

This Clause provided for the functions of the Board, which included to promote good governance of the Agency, formulate the policies, programmes and strategies of the Agency and to approve the annual work plan and activity reports of the Agency.

Clause 8 – Delegation of Functions and Directions

This Clause empowered the Board to delegate its functions to the Registrar. It further gave the Minister power to give special and general directions to the Board which were not inconsistent to the Act.

Clause 9 – Tenure of office and vacancy

This Clause provided for the period within which a member could hold office and the circumstances under which the office of a member would become vacant.

Clause 10 – Proceedings of Board

This Clause provided for the proceedings of the Board.

Clause 11 – Committees of Board

This Clause empowered the Board to establish a committee and delegate to the committee functions that it may determine.

Clause 12 - Allowances

This Clause gave the Emoluments Commission, on the recommendation of the Minister, the mandate to pay a member of the Board or any committee allowances.

Clause 13 – Disclosure of interest

This Clause mandated a person present at a meeting of the Board or a committee of the Board to disclose any interest which that person may have on the matter which was a subject of consideration.

Clause 14 – Prohibition of Publication or disclosure of information to unauthorised persons

This Clause prohibited and made it an offence to disclose to any person the contents of a document or communication of information, without the consent of the Agency.

Clause 15 – Immunity of members of Board and staff of Agency

This Clause gave immunity to a member of the Board, committee of the Board, or a member of staff of the Agency in respect of an act done or omitted to be done in good faith in the exercise or performance of any functions.

Clause 16 - Registrar

This Clause empowered the Board to appoint a Registrar as the Chief Executive Officer of the Agency.

Clause 17 – Deputy Registrar, Secretary and other staff

This Clause empowered the Board to appoint a Deputy Registrar, Secretary and other staff for purposes of performing its functions under this Act.

Clause 18 – Emoluments and other conditions of service of Registrar; Deputy Registrar; Secretary and other staff

This Clause gave the Emoluments Commission, on the recommendation of the Board, the power to determine the emoluments of the Registrar, Deputy Registrar Secretary and other staff of the Agency.

PART III

FINANCIAL PROVISIONS

Clause 19 – Funds of Agency

This Clause constituted the funds of the Agency.

Clause 20 – Financial Year

This Clause provided for the financial year of the Agency, which was a period of twelve months ending on 31st December in each year.

Clause 20 – Accounts and Audit

This Clause placed a duty on the Agency to keep proper books of accounts. It further provided that the accounts of the Agency could either be audited by the Auditor-General or an auditor appointed by the Auditor-General.

Clause 22- Annual Report

This Clause placed a responsibility on the Agency to submit a report concerning its activities during the financial year not later than ninety days after the end of the financial year to the Minister.

PART IV

GENERAL PROVISIONS

Clause 23- Immunity from execution of Judgements

This Clause provided immunity for the Agency where execution, attachment or process of any nature was issued against the Agency or against any property of the Agency where a judgment order was obtained.

Clause 24- Regulations

This Clause empowered the Minister, in consultation with the Agency, to make regulations for the better carrying out of the provisions of the Act.

Clause 25- Repeal of Act No. 15 of 2010

This Clause repealed the *Patents and Companies Registration Act, No. 15 2010*.

7.0 CONCERNS BY STAKEHOLDERS

All the stakeholders who appeared before the Committee supported the Bill and stated that the enactment of the *Patents and Companies Registration Agency Bill, N.A.B No. 3 of 2020* was necessary following the expanded functions of the Agency. However, they raised concerns as set out below.

PART II

Clause 5 – Functions of Agency

- i. Stakeholders noted that both Clauses 5 and 16 (3) specifically mentioned all the statutes that PACRA was implementing by name. They contended that in the event of an amendment or repeal or change in name of any of these statutes, the PACRA legislation would also have to be amended. They proposed that reference to the statutes should be made to their functions and not their names.
- ii. Under Clause 5 of the Bill, stakeholders noted that the Bill limited the functions of the Agency to only those listed under the clause. Stakeholders were of the view that a function that would allow the Agency to perform other functions that may be incidental to the functions of the Agency should be included as the case was in the current *Patents and Companies Registration Agency Act, No .15 of 2010*. They proposed that this provision should be retained to provide legal support for functions such as research, monitoring and evaluation, policy advocacy and other functions that may be incidental to the performance of the functions of the Agency as outlined in the Bill.

Clause 6- Board of Agency

- i. Under Clause 6(1), stakeholders noted that while some effort had been made to broaden the composition of the Board, the Board was not well structured and diversified enough to deal with the evolving nature of the matters that the Bill intended to address. Stakeholders further noted that the appointment of other Board members without specifying the required skills was ambiguous, and may give rise to the appointment of individuals without the skills and expertise relevant to the functions of the Board and the Agency. In this regard, they proposed that the Bill should explicitly state the expertise and knowledge required of these Board members.
- ii. Under Clause 6(1) which made provision for composition of the Board, stakeholders proposed that that the Board should include a representative from the ministry responsible for finance. Such representation would ensure that the Board was consistently furnished with information and expert opinion on the dynamics of Government funding.
- iii. Clause 6 (1) (c) – Stakeholders proposed that the accountant should be a representative of the Zambia Institute of Chartered Accountants as this would be more representative and in line with the drafting style in most statutes.

- iv. Under Clause 6 (3), while some stakeholders supported the provision for the Minister to appoint the Board Chairperson, other stakeholders expressed concern that having the Minister appoint the Chairperson would affect the independence of the Board. They were of the view that the Board Chairperson should be elected by Board members from amongst themselves as opposed to the Minister appointing the chairperson from among the members.

Further, other stakeholders were of the view that just like the qualifications of the Registrar were specified in Clause 16 (2), the Bill should be more prescriptive on the qualifications of the Board Chairperson.

Furthermore, some stakeholders appreciated the exclusion of representatives of the ministry responsible for commerce and the Attorney General from being appointed Board Chairperson. They interpreted this as an attempt to provide the Board with increased autonomy, relative to the situation that would exist if the Chairperson was from the Government.

However, stakeholders noted that an Accountant was not disqualified from nomination as Chairperson. Therefore, in the same spirit of increased autonomy of the Board, stakeholders were of the view that the Bill should make a provision to disqualify the Accountant from nomination if the individual came from a Government institution. Alternatively, it should be stipulated in the Bill that the Accountant should come from the private sector.

- v. Clause 6 (5) – Stakeholders noted that the Bill gave authority to the Minister to appoint a member to the Board but did not give the Minister power to remove a Board member. Stakeholders proposed that a provision must be included to give power to the Minister to remove a Board member at any time, if the Minister was satisfied that the continuation in office of that member was prejudicial to the interests of the Institution.
- vi. Clause 6 (5) (a) – Stakeholders expressed concern over the provision which restricted the nationality of the Registrar to a Zambian citizen. They contended that nationality should not be a pre-requisite but rather experience and value addition to the Institution.

Clause 7- Functions of Board

Clause 7 (3) – The Bill prescribed that the Minister shall enter into a performance contract with the Board for a specific period. Whereas the Bill intended to create a mechanism for performance management, stakeholders noted that the provision was limiting as there could be various other tools that the Minister could use to measure performance. Therefore, the specific mention of one tool would limit the scope of application of other tools for performance management.

Clause 8 – Delegation of Functions and Directions

- i. Clause 8 (1) - Stakeholders were opposed to the provision for delegation of any of the functions by the Board to the Registrar. To avoid ambiguity, stakeholders proposed that the Bill should be more specific as to the nature of the roles that could be delegated to the Registrar.
- ii. Clause 8 (2) – Stakeholders expressed concern on the provision which gave the Minister power to give general or specific directions to the Board relating to its functions under the Bill. They submitted that the provision would adversely impact the independence of Board in performing its statutory role. They proposed that a new clause relating to the delegation of functions to a committee of the Board should be included in the Bill, and consequently, the words “and directions” on the side note should be deleted.

Clause 9 – Tenure of office and vacancy

- i. Under Clause 9 (1), stakeholders noted that given that the functions of PACRA were technical, experience showed that it took time and training for Board members to get acquainted to the operations of institutions such as PACRA. Therefore, they were of the view that three years was not sufficient for the Board to gain adequate experience to enable it effectively perform the operations of such an institution. Stakeholders, therefore, proposed that the tenure of the board must be extended to five years.
- ii. Under Clause 9(4) which provided for expiration of tenure of office, stakeholders expressed concern that this provision had the potential to encourage inefficiency in the process of appointing board members. They were of the view that the appointment of Board members should be done efficiently, taking into consideration the expiration period for the contracts of all board members. Therefore, stakeholders proposed that the transitional period should be reduced to two months as opposed to the proposed four months.
- iii. Further, some stakeholders expressed concern that while Clause 9(5) of the Bill made reference to the term of the Board, the Bill did not make provision for the term of office for the Board but only made reference to the term of office for each member of the Board in Clause 9 (1).

Stakeholders further noted that the two Clauses, 9(1) and 9(4), were at variance and proposed that the term of the new member whom the Minister may appoint to replace the vacating member should be consistent with Clause 9(1) of the Bill which already provided for the term of office of a member. Further, for good corporate governance and practice, stakeholders were of the view that the tenures of members of the board should expire at different times in order to ensure continuity and institutional memory.

Clause 10 – Proceedings of Board

- i. Clause 10(7) - stakeholders appreciated the rationale behind the provision to nominating other persons to attend Board meetings in the absence of the members referred to under Clause 6(1) (a), (b) and (d). However, in order to have institutional memory and to avoid different people attending meetings of the Board, they proposed that the number of proxies should not exceed one.
- ii. Under Clause 10 (3) which made provision for the Chairperson of the Board to call for a meeting of the Board if one-third or more of the members requested for it in writing, stakeholders were of the view that the Bill should make a provision for the Chairperson to call for a meeting of the Board without necessarily only having to do so upon requisition of one-third of the members of the Board.

Other stakeholders were of the view that the Chairperson should consult the Board Secretary when calling for such a meeting and, therefore, recommended that the clause should be amended to read “*The Chairperson shall, in consultation with the Board Secretary...*”

Clause 14 – Prohibition of Publication or disclosure of information to unauthorised persons

Clause 14(1) – Stakeholders expressed concern that the clause seemed to prohibit disclosure of information only ‘in the course of a person’s duties’ which meant that the person would be at liberty to disclose the same information, though unauthorised, if done outside the person’s duties. Stakeholders noted that true intention should be to prohibit unauthorised disclosure both in and outside the course of a person’s duties. Therefore, stakeholders recommended for the deletion of the words ‘in the course of that person’s duty’ so as to eliminate the ambiguity.

Clause 16 – Registrar

- i. Clause 16 (1) – stakeholders noted that the Bill did not indicate the tenure of office of the Registrar and, therefore, proposed that the tenure of office for the Registrar should clearly be specified under the clause.
- ii. Under Clause 16 (2), the Bill made provision for the qualification of the Registrar to be a legal practitioner with at least ten years experience. While some stakeholders supported the provision for reasons that the Registrar sat as a chairperson of the tribunal on patents to handle litigation pertaining to intellectual property, some stakeholders expressed concern that the provision disqualified other citizens capable of running the Office of the Registrar. They were of the view that restricting the position of Registrar to a legal practitioner was limiting, especially that appointment of a company secretary with legal expertise had been provided for. Stakeholders submitted that other jurisdictions, such as Kenya, had opened up the position to professions such as science, information technology, and business administration, among others, relevant to business registration, innovations and intellectual property protection.

Clause 17 – Deputy Registrar, Secretary and other staff

Under Clause 17(1), stakeholders noted that the clause seemed to suggest that the Agency would only have one Deputy by the provision which stated “a Deputy Registrar”. Stakeholders were of the view that in an event that there was need to appoint more than one Deputy Registrar, especially that the Agency currently had two Vice-Registrars, the legislation would have to be amended. Stakeholders therefore, proposed that the words “a Deputy Registrar” be replaced with the words “Deputy Registrars”.

Clause 18 – Emoluments and other conditions of service of Registrar; Deputy Registrar; Secretary and other staff

With regard to Clause 18(1), stakeholders noted that the Bill provided that the Emoluments Commission shall, on the recommendation of the Board, to determine the emoluments of the Registrar, Deputy Registrar, Secretary and other staff of the Agency and yet the Commission does not exist. They proposed that the Commission must be effected in order to safeguard public funds.

PART III

FINANCIAL PROVISIONS

Clause 19 – Funds of Agency

Some Stakeholders submitted that while the Bill empowered the Agency to charge fees for the services provided by the Agency in Clause 19 (2) (c), Clause 19(1) of the Bill, it did not expressly include fees as part of the funds of the Agency. Stakeholders expressed concern that the omission implied that the Agency would not have express authority to use fees collected for the roles set out in Clause 19 (3) which included the payment of expenses incurred by the Agency in the performance of its functions.

Clause 21 – Accounts and Audit

Clause 21(3) - Stakeholders expressed concern on the clause that prescribed that the Auditor General’s fees must be paid by the Agency. They noted that the Office of the Auditor General was a statutory body which must not attract additional audit fees, as that office was already funded by the Government to discharge its mandate. They proposed that the clause should be amended and maintain the provision in Clause 18(3) of the *Patents and Companies Registration Agency Act, No. 15 of 2010* which provided that the Agency shall pay audit fees to accommodate a scenario where the audit was done by an independent auditor.

Clause 22- Annual Report

Clause 22(2) (b) – Stakeholders noted with concern that the Bill required the annual report to include information on the financial affairs of the Agency, and to report on audited statement of comprehensive income without requiring an audited statement of expenditure to be appended to

the annual report. Stakeholders submitted that this provision was at variance with the *Patents and Companies Registration Agency Act, No. 15 of 2010* which required that the annual reports of the Agency must include an audited statement of both the income and expenditure. They proposed that the clause be amended to include an audited statement of expenditure as one of the requirements.

PART IV

GENERAL PROVISIONS

Clause 23- Immunity from execution of Judgements

While some stakeholders supported the provision which introduced immunity from execution of judgments against the Agency's property in order to allow the Agency to be able to provide its services without or with minimum disruption, other stakeholders opposed the provision. They were of the view that the Bill needed to be amended so as to remove the corporate veil, and to hold the Board and Management accountable for actions that would intentionally jeopardise the Agency.

7.1 OTHER CONCERNS

Change of name of the Agency

- i. Stakeholders noted that the Bill maintained the name of the Agency as PACRA. While some stakeholders were of the view that the name did not reflect the general core functions of the Agency and should be amended to one reflecting the added functions, other stakeholders were of the view that changing the nomenclature to reflect the new roles was not substantive, as long as the new roles that the Agency would be undertaking were reflected in the Bill.

Collaboration with other stakeholders

- ii. Stakeholders noted that the Minister of Finance in the 2020 National Budget Speech indicated that the Government planned to introduce a number of administrative measures to strengthen the enforcement and efficiency of tax collection. This would require enhancing data analytics and bulk data matching with third party institutions such as PACRA, Ministry of Lands and Natural Resources, and the Zambia Public Procurement Authority, among others. However, the Bill did not give an indication of how PACRA would work with other third party institutions to improve efficiency. Stakeholders proposed that the Bill must provide for a mechanism that would mandate the Agency to work with third party institutions.

Intellectual property development and company registration

- iii. Stakeholders noted that Clause 5(1) clearly outlined the functions of the Agency. However, making a comparison with Kenya and South Africa, stakeholders noted that there was a gap related to the promotion of intellectual property development.

Stakeholders further noted that it was a responsibility of the Agency to pursue the activity of company registration through company inspections, among others, to promote formalisation of the private sector. It was the considered view of the stakeholders that these functions should be explicitly stated in the Bill in order to make it compulsory for the Agency to carry out activities that promoted the development of intellectual property and company registration in addition to administering the Acts that fell under the mandate of the Agency.

Dissemination of information

- iv. Stakeholders noted that Clause 5 (1) (c) which made provision for the Agency to collect, collate and disseminate information of the Acts mentioned in Clause 5(1) limited the Agency to only disseminate legal information on the Acts that they administered. Stakeholders proposed that the Bill should explicitly place responsibility on the Agency to publicly disseminate analytical or research information on the performance of intellectual property development and protection, company registration, survival and de-registration among others. They held the view that just like in jurisdictions such as Kenya and South Africa, this function must be explicitly stated in the Bill because leaving the Bill in its current form would allow the Agency to publish this information at its own discretion.

Companies Tribunal

- v. Stakeholders noted that the Bill did not make provision for the establishment of an independent tribunal, as was the case in other jurisdictions namely Kenya and South Africa, to adjudicate any disputes that may arise under the legislation governing companies and intellectual property, including ownership of intellectual property or actions of the Agency itself. Stakeholders further noted that the appeal process in the case of Zambia was provided for under various pieces of legislation administered by PACRA. Ultimately, all appeals lay to the Registrar of Companies and Patents. In effect, this meant that the impartiality of the appeal process was not guaranteed, since the aggrieved party had to appeal against an act of the Agency to the Registrar of the Agency itself. They proposed that the Bill should be amended so as to establish an independent tribunal to hear appeals arising from the acts of the Agency.

8.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

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

- i. The Committee observes that Clause 6 (5) provides for the appointment of a Board member by the Minister but does not give the Minister authority to remove a Board member in an event that a member's existence on the Board is prejudicial to the interests of the Agency. In light of this, the Committee recommends that the Bill must be amended by providing for the Minister to remove a Member from the Board when deemed fit.

- ii. The Committee notes with concern, that Clauses 5 and 16(3) specifically make reference to all the statutes that PACRA administers. The Committee is of the view that the Bill should only refer to the functions of these statutes to avoid the need to amend the legislation in an event of change of name or repeal of any of these statutes.
- iii. The Committee observes that the functions of the Agency in Clause 5 omit the possibility of the Agency to perform other functions that may be incidental to the functions of the Agency. The Committee notes that this is one of the functions explicitly stated in the current *Patents and Companies Registration Agency Act, No .15 of 2010*.

In light of this, the Committee recommends that in addition to the functions stated in Clause (5), the Agency must be able to perform other functions that may be incidental to its functions and, therefore, the Bill should be amended accordingly.

- iv. Under Clause 6(1) which provides for the composition of the Board, the Committee observes that the expertise for candidates in Clauses 6(1) (e) and (f) have been explicitly specified in the Bill while expertise of the other candidates have not been specified. The Committee expresses concern that not specifying the required skills relevant to the functions of the Board and the Agency leaves room for the appointing authority to appoint individuals without the relevant expertise.

In this regard, the Committee recommends that the Bill should explicitly state the specific expertise for candidates in Clause (6) (a), (b) and (c) in order for individuals to have skills relevant to the work of the Board.

- v. The Committee observes that Clause 6 (1) makes reference to part time members and yet the Bill has not defined the term part-time. In this regard, the Committee recommends that the Bill should explicitly define the term “part time”.
- vi. The Committee notes that the Bill makes provision for the Minister to appoint Board members under Clause 6(1) and also provides for the Minister to appoint a chairperson from among the Board members appointed by the Minister in Clause 6(3). The Committee observes that the selection of the Board Chairperson by the Minister is likely to impact negatively on the independence and decisions of the Board.

In light of this, the Committee recommends that in order for the Board to be independent in its decision making processes, the Bill must be amended to provide for the Board to shortlist or propose possible candidates for the position of the Chairperson to the Minister for consideration.

- vii. The Committee observes that clause 6 limits the position of the Board Chairperson to candidates under Clause 6 (c) (d) (e) and (f). The Committee notes that the accountant under Clause 6(c) who is a possible candidate for a Board Chairperson may also come from a Government institution and this may compromise the independence of the Board in an event that the individual is selected as Chairperson.

In light of this, the Committee recommends that the Bill should either explicitly state that the accountant should come from the private sector or disqualify the accountant from being a potential candidate for the position of the Board chairperson if they come from a Government institution. The Committee further recommends that the provision for an accountant should be enhanced to specifically provide for a representative of the Zambia Institute of Chartered Accountants

- viii. The Committee notes with great concern that the provision in Clause 9(4) would promote inefficiency in the process of appointing new Board members where there is a delay in renewing their membership or in replacing the members beyond the four months. Further, the Committee is of the view that the four months transition period is too long for renewal of a contract of a board member, or making a new appointment, as the case may be.

Therefore, the Committee recommends that the expiration date for membership of the Board must be taken into account before the term comes to an end to improve efficiency. The Committee further recommends that the transition period must be reduced to two months from the proposed four months.

- ix. The Committee expresses concern over the provision in Clause 10(7) for an alternate member from the same institution to attend a Board meeting in the absence of a substantive member. In noting the intention of Clause 6(1), and taking into account the unique mandate of the Agency, the Committee stresses the importance of ensuring that the Board has the requisite skills and representation from relevant institutions to execute its functions stipulated in Clause 6(7). The Committee notes that, in its current form, the Bill leaves room for any representative to attend a Board meeting for as long as they come from the same institution.

In light of this, the Committee recommends that the Bill should explicitly state that other than belonging to the same institution, a person nominated to represent a Board member should have similar expertise to the expertise of the substantive member in order to make their representation relevant to the Board. The Committee further recommends that in order to have institutional memory and to avoid different people attending meetings of the Board, the number of proxies per Board Member should not exceed one.

- x. The Committee observes that Clause 19 (2) (b), which makes provision for the Agency to acquire loans, has the potential to be abused as it does not make it a requirement for the loans to be acquired in line with the *Public finance Management Act, No. 1 of 2018*

In light of this, the Committee strongly recommends that the Bill should be amended by making a provision that the loans should be acquired subject to approval by the Minister of Finance, and in line with the *Public finance Management Act, No. 1 of 2018*.

- xi. The Committee expresses concern over Clause 14 (1) which provides for prohibition of publication or disclosure of information to unauthorised persons. The Committee notes that the Bill only prohibits disclosure of information to unauthorised persons only in “the

course of a person's duties" and appears to allow this disclosure when an individual is not in the course of duty.

In light of this, the Committee recommends that the Bill should be amended by deletion of the phrase "in the course of a person's duties" so as to completely prohibit disclosure of information both in and outside the course of a person's duties.

- xii. The Committee observes that while Clause 16(1) makes provision for appointment of the Registrar, the Bill makes no provision for the tenure of office for the Registrar.

In this regard, the Committee recommends that the Bill should provide for term of office for the Chief Executive Officer of the Agency.

- xiii. The Committee observes that the provision in Clause 16 (2) limits the qualification of the Registrar to a legal practitioner with at least ten years experience. The Committee notes that while the Registrar is the Chairperson of the tribunal on patents to handle litigation pertaining to intellectual property, the Committee is of the view that not every intellectual property expert is a legal practitioner or vice-versa.

In light of this, the Committee strongly recommends that the qualification of a Registrar must be expanded in order to widen the pool of professionals who can take up this role with relevant expertise and knowledge of business that can be highly beneficial to the Agency.

- xiv. The Committee observes with great concern that Clause 21(3), which provides that the Auditor General's fees must be paid by the Agency, is ambiguous and may compromise the audit process. The Committee notes that the Auditor General's Office is a public institution whose activities are funded by the Treasury.

In light of this, the Committee recommends that the clause be amended by maintaining the provision in Clause 18(3) of the *Patents and Companies Registration Agency Act of 2010* which provides that the Agency shall pay audit fees to accommodate a scenario where the audit is done by an independent auditor.

- xv. The Committee observes that Clause 22 (2) only provides for the Agency to append to the annual report, among other things, an audited statement of comprehensive income without also requiring an audited statement of expenditure to be appended like the case is in the current Act.

In light of this, the Committee recommends that the Bill should provide a requirement for the Agency to report on financial affairs and append an audited statement of expenditure in addition to the documents stated in Clause 22(2).

- xvi. With regard to Clause 23, while the Committee acknowledges the disruption encountered when litigation is enforced against an institution, the Committee observes that the clause would ring-fence misconduct in a public institution that could lead the

institution into liquidation. The Committee observes that PACRA holds other corporations' shareholders or directors personally liable for liability or non-compliance, and therefore PACRA should not be exempted from execution of judgements.

In light of this, the Committee strongly recommends that the Bill should be amended by deletion of the clause so as to enforce responsibility, and allow the Institution to only acquire obligations they are able to fulfil.

- xvii. The Committee observes that the Agency has maintained the PACRA name in the Bill but has however broadened its mandate. The Committee notes that the current name gives an impression that PACRA only deals with matters relating to patents and registration.

In light of this, the Committee strongly recommends that the name of the institution must be changed to one that reflects the new mandate.

- xvii The Committee observes that the Bill has not provided for the establishment of an independent tribunal, as is the case in other jurisdictions such as Kenya and South Africa, to adjudicate any disputes that may arise under the legislation governing companies and intellectual property, including ownership of intellectual property or actions of the Agency itself. In the case for Zambia, the Committee notes that the appeal process is provided for under various pieces of legislation that are administered by PACRA and ultimately, all appeals lay to the Registrar of Companies and Patents. In effect, this means that the impartiality of the appeal process is not guaranteed, since the aggrieved party has to appeal against an act of the Agency to the Registrar of the Agency itself.

In light of this, the Committee strongly recommends that that the Bill should be amended in order to establish an independent tribunal to hear appeals arising from the acts of the Agency.

9.0 CONCLUSION

The Committee notes that the Patents and Companies Registration Agency Bill, N.A.B No. 3 of 2020 is a necessary and important document as far as the registration and regulation of business, and the development and protection of intellectual property rights in Zambia are concerned. The Committee is confident that the Bill, once passed into law, will greatly enhance the corporate governance of the PACRA, a critical institution in the economic development of the nation by facilitating development of a thriving commercial enterprise sector. The Committee, therefore, supports the Bill subject to its concerns expressed in this Report.

The Committee expresses its gratitude to you, Mr Speaker, for the opportunity to scrutinise the Patents and Companies Registration Agency Bill, N.A.B No. 3 of 2020. The Committee also wishes to thank all stakeholders for their oral and written submissions on the Bill. The Committee further thanks the Clerk of the National Assembly and her staff 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)

June, 2020
LUSAKA

APPENDIX I - List of 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)
Mrs E K Zgambo, Committee Clerk
Mrs G Chikwenya, Typist
Mr M Chikome, Committee Assistant
Mr D Lupiya, Committee Assistant
Mr S Kantumoya, Parliamentary Messenger

Appendix II - List of Witnesses

- i. The Minister of Commerce, Trade and Industry
- ii. Ministry of Justice
- iii. Ministry of Finance
- iv. Ministry of Commerce, Trade and Industry
- v. Bank of Zambia
- vi. Patents and Companies Registration Agency
- vii. Zambia Development Agency
- viii. Zambia Institute for Policy Analysis and Research
- ix. Competition and Consumer Protection Commission
- x. Zambia Chamber of Commerce and Industry
- xi. Institute of Directors (Written submission only)
- xii. Citizens Economic Empowerment Commission (Written submission only)
- xiii. Securities and Exchange Commission
- xiv. Consumer Unit Trust Society