

**REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, GOVERNANCE, HUMAN RIGHTS AND GENDER MATTERS ON THE PROHIBITION AND PREVENTION OF MONEY LAUNDERING (AMENDMENT) BILL, N.A.B. NO. 38 OF 2010 FOR THE FIFTH SESSION OF THE TENTH NATIONAL ASSEMBLY APPOINTED ON 23 SEPTEMBER, 2010**

Consisting of:

Mr J J Mwiimbu, MP (Chairperson); Mr B E Chimbaka, MP; Mr B Sikazwe, MP; Mr K Kakusa, MP; Mr L H Chota, MP; Mrs S T Masebo, MP; Rev V M Sampa-Bredt, MP; and Mr L P M'sichili, MP.

The Honourable Mr Speaker  
National Assembly  
Parliament Buildings  
**LUSAKA**

Sir

Your Committee has the honour to present its Report on the Prohibition and Prevention of Money Laundering (Amendment) Bill, N.A.B. No. 38 of 2010 referred to it by the House on 24 September, 2010.

**Functions of the Committee**

2. In addition to any other duties conferred upon them by the Honourable Mr Speaker, or any order of the House, your Committee may consider any Bills referred to them by the House.

**Meetings of the Committee**

3. Your Committee held eleven (11) meetings to consider the Prohibition and Prevention of Money Laundering (Amendment) Bill, N.A.B. No. 38 of 2010.

**Procedure Adopted by the Committee**

4. Your Committee, in considering the Bill, requested written submissions from various stakeholders who also appeared before them and made oral submissions.

**Objects of the Bill**

5. The objects of the Prohibition and Prevention of Money Laundering (Amendment) Bill are to:

- (a) repeal the provisions relating to the disclosure of information of suspicion of money laundering by supervisory authorities and reporting entities;
- (b) re-define the functions of the Anti-Money Laundering Investigations Unit; and
- (c) provide for matters connected with, or incidental to the foregoing.

# **CONSIDERATION OF THE PROHIBITION AND PREVENTION OF MONEY LAUNDERING (AMENDMENT) BILL, N.A.B. NO. 38 OF 2010**

## **Background**

6. Following the recent enactment of various pieces of legislation such as the Forfeiture of the Proceeds of Crime Act, the Public Interest Disclosure (Protection of Whistleblowers) Act and the proposed Financial Intelligence Centre Bill, 2010, it had become necessary to amend the Prohibition and Prevention of Money Laundering in order to, inter alia, focus the Anti-Money Laundering Unit on the investigation of financial and other business transactions suspected to be part of money laundering offences and to eliminate the overlaps in oversight institutional jurisdiction.

## **7. SPECIFIC PROVISIONS OF THE BILL**

### **Clause 2 - Amendment of long title**

This clause amends the long title of the principal Act by the deletion of the words "to provide for the disclosure of information on suspicion of money laundering activities by supervisory authorities and reporting entities".

### **Clause 3 - Amendment of section two**

This clause amends section two of the principal Act by the deletion of the definitions 'regulated institution' and 'supervisory authority' and the insertion of the following new definitions:

"centre" means the Financial Intelligence Centre established under the Financial Intelligence Centre Act, 2010;

"crime" means an act or omission which constitutes an offence under any written law in Zambia or any other country; and

"reporting entity" has the meaning assigned to it in the Financial Intelligence Centre Bill, 2010.

This clause also redefines money laundering, proceeds of crime and property so as to adhere to international standards as follows:

"money laundering" means, where a reasonable inference may be drawn, having regard to the objective factual circumstances, any activity by a person-

- (a) who knows or has reason to believe that the property is the proceeds of a crime; or
- (b) without reasonable excuse, fails to take reasonable steps to ascertain whether or not the property is proceeds of a crime; where the person -
  - (i) engages, directly or indirectly, in a transaction that involves proceeds of a crime;
  - (ii) acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes, uses, removes from or brings into Zambia proceeds of a crime; or
  - (iii) conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any illegal activity;

"proceeds of crime" means property or benefit that is-

- (a) wholly or partly derived or realised directly or indirectly, by any person from the commission of a crime;
- (b) wholly or partly derived or realised from disposal or other dealing with proceeds of crime;
- (c) wholly or partly acquired proceeds of crime and includes, on a proportional basis, property into which any property derived or realised directly from the illegal activity is later converted, transformed or intermingled, and any income, capital or other economic gains derived or realised from the property at any time after the crime; or
- (d) any property that is derived or realised, directly or indirectly, by any person from any act or omission that occurred outside Zambia and would, if the act or omission had occurred in Zambia, have constituted a crime; and

"property" includes any real or personal property, money, things in action or other intangible or incorporeal property, whether located in Zambia or elsewhere and includes property of corresponding value in the absence of the original illegally acquired property whose value has been determined.

#### **Clause 4 - Amendment of section 6**

This clause amends subsection (1) of section six of the principal Act by the deletion of paragraph (a) and the substitution therefor of the following new paragraph:

- “(a) to investigate financial and other business transactions suspected to be part of money laundering offences;”

This clause further deletes paragraph (d) and (e) of subsection (1) of section six of the principal Act which provided for regulated institutions and supervisory authorities as these are to be provided for under the proposed Financial Intelligence Centre Act.

#### **4. Clause 5 - Repeal and Replacement of Part V**

This clause amends the principal Act by the repeal and replacement of part V which provides for the prevention of money laundering.

### **ISSUES AND CONCERNS RAISED BY STAKEHOLDERS**

The various stakeholders who appeared before your Committee supported the amendments to the Prohibition and Prevention of Money Laundering Act. They, however, raised the issues and concerns summarised hereunder.

- (a) While it was commendable that the Government had decided to amend the Prohibition and Prevention of Money Laundering Act in order to address some of its shortcomings, there was need for a comprehensive as opposed to piecemeal review of the Act in order to modernise it.
- (b) In Clause 3(b) (a), the Bill refers to proceeds of crime. However, the definition of proceeds of crime was not harmonised with the definition in the Forfeiture of Proceeds of

Crime Act.

- (c) At Clause 3(b) (iii), the Bill refers to proceeds of illegal activity. The international best practice was to link money laundering to serious offences. The Forfeiture of Proceeds of Crime Act had a definition of serious offences that met minimum international standards which could be substituted in the Prohibition and Prevention of Money Laundering Act.
- (d) The Bill did not include amendments to extend the extra-territorial jurisdiction of the Prohibition and Prevention of Money Laundering Act with respect to foreign nationals. Currently the Act only extended to crimes committed by a foreigner on an aircraft or ship registered in Zambia. The implication of this limitation was that Zambian authorities would not be able to prosecute a foreigner in Zambia who committed, outside Zambia, an act that would constitute a money laundering offence in Zambia. In this regard, Zambia would inadvertently become a safe haven for fugitives of justice from other countries.
- (e) There was concern that the definition of “authorised officer” in Clause 2 did not include a police officer despite the Zambia Police Force being the lead law enforcement agency on behalf of the state.

#### **8. COMMITTEE’S OBSERVATIONS AND RECOMMENDATIONS**

- (a) Your Committee recommend that the Government urgently and comprehensively review the Prohibition and Prevention of Money Laundering Act in order to modernise it and bring it in line with minimum international standards.
- (b) Your Committee recommend that the definition of proceeds of crime in the Forfeiture of Proceeds of Crime Act be adopted.
- (c) Your Committee recommend that the term “serious offence” be adopted in the Prohibition and Prevention of Money Laundering Act and be defined in the same manner that it has been defined in the Forfeiture of Proceeds of Crime Act.
- (d) Your Committee recommend that an appropriate provision be made in the Prohibition and Prevention of Money Laundering Act to extend the extra-territorial jurisdiction of the Act.
- (e) Your Committee recommend that there be an inclusion of a police officer of or above the rank of Inspector in the definition of “authorised officer”.

#### **CONCLUSION**

9. Your Committee wish to put on record their gratitude to you, Mr Speaker, for appointing them to serve on your Committee, and for affording them an opportunity to scrutinise the Prohibition and Prevention of Money Laundering (Amendment) Bill, NAB 38 of 2010. Your Committee also wish to thank the Office of the Clerk of the National Assembly for the support and advice rendered to them throughout their deliberations. They are, too, indebted to all the witnesses who appeared before them for their cooperation in providing the necessary submissions despite the short notice given to them.

We have the honour to be, Sir, your Committee on Legal Affairs, Governance, Human Rights and Gender Matters mandated to scrutinise the Prohibition and Prevention of Money Laundering (Amendment) Bill, NAB 38 of 2010.

Mr J J Mwiimbu, MP  
(Chairperson);

Mr B E Chimbaka, MP  
(Member);

Mr B Sikazwe, MP  
(Member);

Mr L H Chota, MP  
(Member);

Rev V M Sampa-Bredt, MP  
(Member); and

Mr K Kakusa, MP  
(Member);

Mrs S T Masebo, MP  
(Member);

Mr L P M'sichili, MP  
(Member).

October, 2010  
**LUSAKA**

J J Mwiimbu, MP  
**CHAIRPERSON**

**LIST OF OFFICIALS**

Mr S M Kateule, Principal Clerk of Committees  
Mr G Lungu, Deputy Principal Clerk of Committees  
Mr S C Kawimbe, Committee Clerk (SC)  
Ms C Musonda, Assistant Committee Clerk  
Mrs C K Mumba, Assistant Committee Clerk  
Mrs F M Mwanza, Senior Personal Secretary  
Ms C Mtonga, Typist  
Ms H Namuchimba, Typist  
Mr R Mumba, Committee Assistant  
Mr C Bulaya, Committee Assistant  
Mr S M Likunyendo, Parliamentary Messenger

**PERMANENT WITNESSES**

**Ministry of Justice**

Mrs A M Sitali, Permanent Secretary  
Mrs P D Jere, Chief Parliamentary Counsel  
Mr A Nkunika, Senior Parliamentary Counsel

**WITNESSES**

**Bank of Zambia**

Dr T Kankasa-Mabula, Deputy Governor  
J Munyoro, Senior Inspector

**Ministry of Finance and National Planning**

A Undi, Permanent Secretary  
M Siamoongwa, Head  
D S Bowasi, Director (Human Resources and Administration)

**Council of Churches in Zambia**

Rev M Gondwe, Programme Chairman (SEJ)  
J Ilunga, Programme Officer (SEJ)  
Rev S Matala, General Secretary  
E M Banda, Communications Officer  
C Nsama, Programme Assistant (SEJ)  
G Chibwana, Emergency Officer  
E Siangompa, Administration Assistant

**Transparency International Zambia**

R Lifuka, President  
F Mwale, Programme Officer/Legal Officer

**Drug Enforcement Commission**

A Zulu, Commissioner  
M C Sikazwe, Senior Assistant Commissioner  
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S Lungu, President  
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