



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS

ON THE

ZAMBIA DEVELOPMENT AGENCY BILL, N.A.B. NO. 19 OF 2022

FOR THE

SECOND SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

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REPORT OF THE COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS ON THE CONSIDERATION OF THE ZAMBIA DEVELOPMENT AGENCY BILL, N.A.B. NO. 19 OF 2022, FOR THE SECOND SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

1.0 MEMBERSHIP OF THE COMMITTEE

The Committee consisted of: Mr Mutotwe Kafwaya, MP, (Chairperson); Ms Sibeso K Sefulo, MP, (Vice Chairperson); Mr Binwell Mpundu, MP; Mr Ronald K Chitotela, MP; Mr Gift S Sialubalo, MP; Mr Davies Chisopa, MP; Mr David Mabumba, MP; Mr Eliot Kamondo, MP; and Mr Mubika Mubika, MP.

The Honourable Madam Speaker
National Assembly
Parliament Buildings
P O Box 31299
LUSAKA

Madam

The Committee has the honour to present its Report on the Zambia Development Agency Bill, N.A.B. No. 19 of 2022, referred to it by the House on Thursday, 15th September, 2022.

2.0 FUNCTIONS OF THE COMMITTEE

In accordance with Standing Order number 198 (j) of the National Assembly of Zambia Standing Orders, 2021 the Committee is mandated to scrutinise Bills referred to it by the House.

3.0 MEETINGS OF THE COMMITTEE

The Committee held ten meetings to consider the Zambia Development Agency Bill, N.A.B. No. 19 of 2022.

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 different stakeholders and examined in detail all submissions presented to it. The list of witnesses who submitted comments and appeared before the Committee is at Appendix II of this Report.

5.0 BACKGROUND

The *Zambia Development Agency Act, No. 11 of 2006*, was enacted to promote trade and investment in Zambia through an efficient, effective and coordinated private sector-led economic development strategy. As part of the investment promotion strategy, the Act established the Zambia Development Agency (ZDA). The Agency was set up in order to improve service

delivery by operationalising the concept of a "One-Stop-Shop" that would attract inward and after care investment. To achieve this, the Agency was empowered to enter into Investment Promotion and Protection Agreements (IPPAs) with prospective investors, guaranteeing and providing support to their investment projects.

A number of weaknesses were observed in the implementation of the Zambia Development Agency's mandate. These included, but not limited to the lack of specialised focus on Small and Medium Enterprises (SMEs) and a perceived lack of marketing of Zambian products. The Agency also had low visibility and needed to enhance access to regional markets for Zambian enterprises. It was against this background that the Government came up with the Zambia Development Agency Bill, No 19 of 2022, with the main aim being to redefine the functions and strengthen the regulatory role of the Agency.

6.0 OBJECTS OF THE BILL

The objects of this Bill were to

- (a) continue the existence of the Zambia Development Agency and redefine its functions;
- (b) re-constitute the Board of the Agency and provide for its functions;
- (c) repeal and replace the Zambia Development Agency Act, 2006; and
- (d) provide for matters connected with, and incidental to, the foregoing.

7.0 SALIENT PROVISIONS OF THE BILL

The salient provisions of the Zambia Development Agency Bill, N.A.B, No. 19 of 2022, were as set out hereunder.

Part I: Clauses 1 to 2: Preliminary Provisions

This part provided for the short title, which was essentially the name of the Act and when the Act shall come into operation. The part also provided for the interpretation of terms used in the Bill.

Part II: Clauses 3 to 13: The Zambia Development Agency

This Part provided for the continuation of the Zambia Development Agency and its administrative functions. It also outlined the functions of the Agency; the composition of the Board of the Agency; and the functions of the Board.

Part III: Clauses: 14 to 17: Financial Provisions

This part outlined the sources of funds of the Agency, including the raising of loans to aid in the discharge of functions.

Part IV: Clauses 18 to 23: General Provisions

This part provided for standard operative provisions including immunities, and prohibited disclosure of information to unauthorised persons among others. Clause 20, for instance protected the Agency from execution of any judgment or court order. Where a judgment or court order was made against the Agency, the Agency was at liberty to use part of its funds to satisfy the judgment sum.

Schedule: Savings and Transitional Provisions

This part provided for continuation of service by members of staff who are currently engaged as employees of the Agency and all current assets and liabilities of the Agency once the Bill was enacted. The part also repealed the *Zambia Development Agency Act, No. 11 of 2006*.

8.0 SUMMARY OF SUBMISSIONS BY STAKEHOLDERS

All the stakeholders who made submissions were in support of the Bill. They were of the opinion that investment was critical to growth and sustainable development as it enhanced job creation; income growth; contributed to increasing and diversifying exports; technology and innovation transfer; as well as skills development.

The Committee was informed that there was global competition among countries for scarce capital. The Organisation for Economic Cooperation and Development (OECD), in a 2018 Report, titled, *“Mapping of Investment Promotion Agencies in OECD Countries,”* noted that investment promotion agencies could help in removing market failures by carrying out a range of services aimed at marketing their countries; their competitive business environment; industries and firms; and by facilitating business establishment and operations.

The Committee learnt that trade statistics from the Zambia Statistics Agency showed that copper constituted over seventy percent of export earnings, which was clearly, a case of very limited diversification in the composition of export products. In addition, in terms of Foreign Direct Investment (FDI), the mining and quarrying sector, at 56.2 percent, dominated the liability stock. Therefore, more needed to be done to diversify the export portfolio, as well as attract investment in other sectors of the economy.

In this vein, the stakeholders considered the role played by ZDA critical to the country's development agenda. Having an efficient and effective ZDA, which the Bill sought to achieve, would contribute to higher investment flows into the country and to value addition activities and in turn contribute to the diversification of the export base.

9.0 CONCERNS RAISED BY STAKEHOLDERS

While welcoming the enactment of the Zambia Development Agency Bill, N.A.B. No. 19 of 2022, the stakeholders raised the concerns set out below.

Clause 2 – Interpretation

Some stakeholders observed that it may be useful to define the terms *Associate*, *Business* and *Relative* used in the Bill, particularly when cross-referencing the with other laws that may, in the view of the users, not seem to have any apparent relationship with the proposed Act, such as, *the Anti-Corruption Act, No. 3 of 2012* and *Business Regulatory Act, No. 3 of 2014*.

Clause 5- Functions of the Agency

Clause 5(1) Some stakeholders noted that this clause mandated the ZDA to facilitate the privatisation of State-Owned Enterprises (SOEs), which might include those under the Industrial Development Corporation, (IDC). In this regard, they contended that this provision should exclude companies under the IDC Group of Companies. This was in order to avoid duplication or roles and conflict of interest. They further contended that Article 20 of the Constitution, already provided for the Minister responsible for Finance, as shareholder in SOEs to carry out such functions through the IDC.

Clause 5(2) (d): Some stakeholders were of the view that in the form it was presented, this clause seemed to exclude local investors. In this regard, they proposed that it should be explicitly stated that the requirements from a State institution for purposes of establishing or operating a business, applied to both local and foreign investors. This was to ensure that there was awareness among local businesses that this service was available.

Clause 5(3) (c): Some stakeholders contended that the proposed function for ZDA to facilitate adjustments to structural changes in the economy and the avoidance of social and economic hardships arising from those changes, was way beyond the ambit of the Agency. They expressed the view that the tasks were too broad and that the interventions needed to facilitate structural adjustments, economic development, and averting social hardships were the preserve of the Central Government. In this regard, they proposed that this function be removed from the Bill.

Clause 5(3) (f): Some stakeholders held the view that in line with best practices, pertaining to the integration of investment promotion activities in the Governance structure, this function stretched beyond the mandate of the Agency. They contended that the Ministry of Foreign Affairs and International Cooperation, in collaboration with the Ministry of Commerce, Trade and Industry, as well as the Ministry of Finance and National Planning, were better placed to deal with this broad macroeconomic goal. Therefore, they recommended that this function should not fall under ZDA.

Clause 5(3) (g): Some stakeholders observed that the provision on maintaining consistency, coherence, and mutually reinforcing measures was not clear. In this regard, they proposed that more detail should be provided on how this would be executed.

Other stakeholders observed that whereas the Investment, Trade and Business Development Bill, N.A.B. No. 20, had, at clauses 33 and 34 provided for the ZDA to determine the compliance levels of investors to the conditions set in the permits and recommend appropriate actions, either

as sanctions or incentives, there was no such provision in the functions of the Agency. In this regard, they recommended that this mandate should explicitly be provided for.

Clause 6 – Board of the Agency

Clause 6(1): While supporting the proposed composition of the Board, the witness noted that the Board was broad enough to enhance corporate governance and would provide the appropriate oversight and strategic guidance. Some stakeholders were of the view that considering that the Zambia Development Agency and the Zambia Revenue Authority (ZRA) had several complementary roles, it would be ideal to have a representative of the ZRA as a member on the ZDA Board.

Further, owing to the synergies that ought to exist between ZDA and the Zambia Environmental Management Agency (ZEMA), in the quest for economic and social development, there was need to have a ZEMA representation on the ZDA Board. This would forestall situations where projects approved by ZDA could not pass the Environmental Impact Assessment (EIA).

Stakeholders observed, further, that whereas section 6(1) of the Act, included representation from the Zambia Chamber of Commerce and Industry (ZACCI), the Bill did not do so. In this regard, they recommended that ZACCI should have representation on the ZDA Board. They contended that ZACCI was the umbrella organisation representing businesses across the country and across all sectors of the economy.

Minister's Response

In his response to the concern relating to the Board the Minister indicated that the Act in its present state proposed for repeal provided for sixteen members of the Board, which made it very expensive to sustain. In this vein the Bill had endeavoured to reduce the number to eight. He contended that most of the institutions being proposed for inclusion, were well represented by other institutions, such as the Ministry of Finance and National Planning, representing ZRA. He added that the institutions that were being proposed for inclusion would be co-opted in the committees that would be constituted by the Board in the execution of its functions.

Clause 6(e): The stakeholders contended that the reference to *'most representative'* in this provision to refer to the private sector association from which a person would be nominated to sit on the Board of Directors, was not prescriptive enough and may be subject to different interpretations. For example, it would mean the most representative in terms of members or sectoral distribution. Alternatively, this could mean the most active private sector association. For clarity, the stakeholders proposed that the criteria to be used to identify representatives of the private sector associations be explicitly stated.

Other stakeholders went further to note that there was no effort to engender gender parity in the Board. They contended that it had been established that gender parity led to improved business outcomes. They, therefore, proposed the inclusion of a clause to achieve gender representativeness on the Board. In this regard, they proposed addition of the following requirements when constituting the Board, *"the Minister shall, when making appointments,*

ensure that fifty percent of each gender is nominated and appointed as members, unless it is not practicable to do so”.

Clause 6 (2) (g): Some stakeholders noted that the provision regarding the appointment to the Board of the Agency of two persons with experience and knowledge in trade and investment, did not include the nominating institution. In this regard, they proposed that the Bank proposed that the Bill should state the nominating institution, as was the case with the other members.

Clause 14 – Funds of the Agency

Clause 14 (1) (b): The stakeholders observed that allowing ZDA to accept monies by way of grants or donations from any source in the Republic and subject to the approval of the Minister, from any source outside of the Republic, as the clause suggested, may lead to conflict of interest as ZDA may receive donations from private sector players whom it was expected to exercise impartial judgement on, in the award of certificates and licences.

In this regard, they recommended that the ZDA be limited to receiving grants and/or donations from official development partners and Non-Governmental Organisations and not from private sector actors who could be ZDA regulated entities.

Clause 14(2) provided for the raising of loans to aid in the discharge of the functions of the Agency. Stakeholders observed that section 26 of *the Public Finance Management Act, No 1 of 2018*, required that prior approval of the Secretary to the Treasury must be obtained before an institution procured a loan that would bind that institution to a future financial commitment. In this regard, they recommended that clause 14 (2) (b) be amended to read as follows:

(2) *The Agency may-*

(b) *subject to the Public Finance Management Act, 2018, and with the approval of the Minister responsible for finance, raise loans or otherwise, monies that the Agency may require for the discharge of the Agency’s functions.”*

10.0 COMMITTEE’S OBSERVATIONS AND RECOMMENDATIONS

Following the interaction with stakeholders, the Committee observes that the Zambia Development Agency Bill, N.A.B. No 19 of 2022 seeks to repeal and replaces the Zambia Development Agency Act, No. 11 of 2006. The Committee observes that most of the provisions that relate to the core functions of the Agency, such as the promotion of economic growth and development; promotion of economic diversification through the growth of exports; facilitation; protection and monitoring of domestic and foreign investors, have been provided for in a separate Bill called the Investment, Trade and Business Development Bill, No. 20 of 2022.

The Committee notes that the enactment of the Zambia Development Agency Bill, 2022, will ensure that the various challenges currently being faced by the Agency are addressed, as the functions of the institution have been specified which will in turn help the Agency to operate

efficiently. In this regard, the Committee supports the enactment of the Zambia Development Agency Bill, N.A.B. No. 19 of 2022, into law.

In supporting the Bill, the Committee makes its observations and recommendations below.

i. ***Clause 2 – Interpretation***

The Committee observes that the terms *Associate*, *Business* and *Relative* used in the Bill have not been defined. The Committee recommends that these terms be defined, especially where there is cross-referencing with other laws, that may, in the view of the users, not seem to have any apparent relationship with the Bill, such as *the Anti-Corruption Act, No. 3 of 2012* and *Business Regulatory Act, No. 3 of 2014*.

ii. ***Clause 5 (1)- Functions of the Agency***

The Committee observes that this clause mandates the ZDA to facilitate the privatisation of SOEs, which might include those under the IDC. The Committee notes that this provision is a recipe for duplication of roles and conflict of interest, considering that Article 20 of the Constitution already provides for the Minister responsible for finance, as shareholder in SOEs, to carry out such functions through the IDC.

The Committee, therefore, recommends that the Bill should clearly state how SOEs under the IDC will be handled, should the need to privatise them arise.

iii. ***Clause 5(2) (d)- Functions of the Agency***

The Committee agrees with the stakeholders who held the view that in its current form, this clause seems to exclude local investors.

In this regard, the Committee recommends that in order to ensure that there is awareness among local businesses that this service is available, the provision should explicitly state that the function that relates to assistance in securing permission; exemption; authorisation; a license; bonded status; land; and any other thing required from a State institution for purposes of establishing or operating a business, applies to both local and foreign investors.

iv. ***Clause 5 (3) (c): Functions of the Agency***

The Committee observes that the proposed function of ZDA in the Bill to facilitate adjustments to structural changes in the economy and the avoidance of social and economic hardships arising from those changes, is far beyond the jurisdiction of the Agency. The Committee notes that the tasks in this clause are much broader and should be the preserve of the Central Government. In this regard, the Committee recommends that this function be removed from the Bill.

v. ***Clause 5 (3) (f): Functions of the Agency***

As with *Clause 5 (3) (c)* above, the Committee observes that with regard to the integration of investment promotion activities in the Governance structure, this function goes beyond the mandate of the Agency, as this is the responsibility of the Ministry of Foreign Affairs and International Cooperation, in collaboration with the Ministry of Commerce, Trade and Industry, as well as the Ministry of Finance and National Planning.

In this vein the committee recommends that this function should not fall under ZDA.

vi. ***Clause 5(3) (g): Functions of the Agency***

The Committee notes that whereas the Investment, Trade and Business Development Bill, N.A.B. No. 20, has, at clauses 33 and 34 provided for the ZDA to determine the compliance levels of investors to the conditions set in the permits and recommend appropriate actions, either as sanctions or incentives, there is no such provision in the functions of the Agency.

In this regard, the Committee recommends that this mandate should be explicitly provided for.

vii. ***Clause 6(1) – Board of the Agency***

The Committee notes the conspicuous absence of key institutions such as; the ZRA; the ZEMA; and ZACCI. The Committee, shares the view that considering that the Zambia Development Agency and the ZRA have several complementary roles, it would be ideal to have a representative of the ZRA as a member of the ZDA Board. Further, owing to the synergies that ought to exist between ZDA and ZEMA, in the quest for economic and social development and to forestall situations where projects approved by ZDA failed to pass the EIA, ZEMA should be represented on the Board. Further, the Committee notes that ZACCI is the umbrella organisation representing businesses across the country and across all sectors of the economy.

In this vein the Committee recommends that the three institutions, namely: ZRA; ZEMA; and ZACCI, be included on the ZDA Board to possibly fill the places of 6 (1) (e) and 6 (1) (g).

viii. ***Clause 14 – Funds of the Agency***

The Committee notes that Clause 14 (1) (b) allows ZDA to accept monies by way of grants or donations from any source in the Republic and subject to the approval of the Minister, from any source outside of the Republic. The Committee observes that this may lead to conflict of interest as ZDA may receive donations from private sector players on whom it is expected to exercise impartial judgement in the award of certificates and licences.

In this regard, the Committee recommends that ZDA be limited to receiving grants and/or donations from official development partners and Non-Governmental Organisations and not from private sector actors, who could turn out to be ZDA regulated entities.

ix. **Clause 14 (2)-Funds of the Agency**

The Committee observes that this clause, which provides for the raising of loans to aid in the discharge of the functions of the Agency, is in contravention with Section 26 of *the Public Finance Management Act, No. 1 of 2018*, which requires that prior approval of the Secretary to the Treasury must be obtained before an institution procures a loan that would bind that institution to a future financial commitment.

In this regard, the Committee recommends that clause 14 (2) (b) be amended to read as follows:

(2) *The Agency may-*

(b) *subject to the Public Finance Management Act, 2018, and the Public Debt Management Act, No. 15 of 2022, and with the approval of the Minister responsible for finance, raise loans or otherwise, monies that the Agency may require for the discharge of the Agency's functions."*

11.0 CONCLUSION

The enactment of the Zambia Development Agency Bill, 2022, will help in addressing the various challenges currently being faced by the Agency, as it has streamlined the functions by hiving some off, for effective operation and assigning them to the Investment, Trade and Business Development Bill, N.A.B. No. 20 of 2022.

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

We have the honour to be, Madam, the Committee on National Economy, Trade and Labour Matters, mandated to scrutinise the Zambia Development Agency Bill, N.A.B. No. 19 of 2022.

Mr Mutotwe Kafwaya, MP
CHAIRPERSON

October, 2022
LUSAKA

Appendix I

List of National Assembly Officials

Mr Charles Haambote, Principal Clerk of Committees (FC)
Mrs Doreen N C Mukwanka, Deputy Principal Clerk of Committees (FC)
Mr Charles Chishimba, Senior Committee Clerk (FC)
Mrs Grace Chikwenya, Administrative Assistant
Mr Morgan Chikome, Committee Assistant
Mr Daniel Lupiya, Committee Assistant
Mr Sean Kantumoya, Parliamentary Messenger
Mr Stanford Mwiinde, Intern

Appendix II - List of Witnesses

Minister of Commerce, Trade and Industry
Ministry of Justice
Ministry of Small and Medium Enterprise Development
Ministry of Finance and National Planning
Law Association of Zambia
Citizens Economic Empowerment Commission
Ministry of Commerce, Trade and Industry ó Permanent Secretary
Bankers Association of Zambia
Industrial Development Corporation
University of Zambia
Zambia Development Agency
Zambia Environmental Management Agency
Centre for Trade Policy and Development
Zambia Association of Manufacturers
National Economic Advisory Council
Development Bank of Zambia
Common Market for Eastern and Southern Africa
Bank of Zambia
Zambia Institute for Policy Analysis and Research
Zambia Chamber of Commerce and Industry
Zambia Revenue Authority
Zambia Institute of Chartered Accounts