



REPUBLIC OF ZAMBIA

REPORT

OF THE

PLANNING AND BUDGETING COMMITTEE

ON THE

PUBLIC DEBT MANAGEMENT BILL, N.A.B NO. 7 OF 2022

FOR THE

FIRST SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

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TABLE OF CONTENTS	PAGE NO
1. Composition of the Committee	1
2. Functions of the Committee	1
3. Meetings of the Committee	1
4. Procedure adopted by the Committee	1
5. Background	2
6. Objects of the Bill	2
7. Salient Provisions of the Bill	2
8. Concerns by Stakeholders	11
9. Committee's observations and Recommendations	18
10. Conclusion	22
APPENDIX I – List of National Assembly Officials	23
APPENDIX II – List of Witnesses	24

REPORT OF THE PLANNING AND BUDGETING COMMITTEE ON THE PUBLIC DEBT MANAGEMENT BILL, NAB NO. 7 OF 2022, FOR THE FIRST SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

1. COMPOSITION OF THE COMMITTEE

The Committee consisted of:

Mr Fred C Chaatila, MP, (Chairperson); Ms Jean C Chisenga, MP (Vice-Chairperson); Mr Miles B E Sampa, MP; Mr Machila Jamba, MP; Amb. Robert K Kalimi, MP; Mr Koonwa Simunji, MP; Mr Brian Kambita, MP; Mr Gystave Chonde, MP; Mr Davison Mung'andu, MP; and Ms Mirriam C Chonya, 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 Public Debt Management Bill, N.A.B No. 7 of 2022, referred to it by the House on Thursday, 7th July, 2022.

2. FUNCTIONS OF THE COMMITTEE

In line with Standing Order No 195 of the National Assembly Standing Orders 2021, in addition to any other duties conferred upon it by the Honourable Madam Speaker, the Committee is mandated to examine bills referred to it by the House.

3. MEETINGS OF THE COMMITTEE

The Committee held eight meetings to consider the Public Debt Management Bill, N.A.B No. 7 of 2022.

4. 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. The list of witnesses who made comments and appeared before the Committee is at Appendix II.

5. BACKGROUND

Public debt management had in recent years become a priority for many developing nations. This was especially important for Zambia whose public debt had reached unsustainable levels. Unsustainable public debt did not only affect economic and fiscal stability at macro level but also affected Government's ability to finance its social and economic development agenda. It was, therefore, Government's priority to restore public debt to sustainable levels in order to mitigate its impacts and ensure that mechanisms are put in place to avoid a recurrence of a debt crisis in future. The repeal and replacement of the *Loans and Guarantees (Authorisation) Act, 1969* and the *General Loan and Stock Act, 1931* were among the measures that were being implemented to achieve this objective.

Therefore, the Public Debt Management Bill, N.A.B No.7 of 2022 once enacted will strengthen the legal framework for public debt contraction and management as well as consolidate the contraction and management of grants and issuance and management of sovereign guarantees.

6. OBJECTS OF THE BILL

The objects of the Public Debt Management Bill, N.A.B No. 7 of 2022 were to provide for—

- a) the raising of loans and grants;
- b) the issuing of guarantees;
- c) the approval of loans by the National Assembly;
- d) the issuing of loans by, or on behalf of, the Government;
- e) the establishment of sinking funds;
- f) the establishment of the Debt Management Office and provide for its functions;
- g) the repeal of the *Loans and Guarantees (Authorisation) Act, 1969*, and the *General Loan and Stock Act, 1931*; and
- h) matters connected with, or incidental to, the foregoing.

7. SALIENT PROVISIONS OF THE BILL

The salient provisions of the Public Debt Management Bill, N.A.B No. 7 of 2022, were as set out hereunder.

Clause 1 – Short title

The clause provided for the short title of the Act.

Clause 2 – Interpretation

The clause defined key words and phrases used in the Bill in order to make the law easier to understand by the citizens and those tasked to implement the law.

Clause 3 – Government debt management Objectives

The clause set out the Government debt management objectives which included, among others, minimising the borrowing costs in accordance with a prudent degree of risk.

Clause 4 – Medium Term Debt Strategy

The clause mandated the Minister to cause the preparation of a Medium-Term Debt Strategy for the management of Government debt which was to be approved by Cabinet. The clause further provided the factors that the Medium-Term Debt Strategy would take into account which included, among others, the risk embedded in the current Government debt portfolio and the future borrowing requirements of the Government. The clause also mandated the Minister to update the Medium-Term Debt Strategy, at least once a year on a rolling basis.

Clause 5 – Establishment of Debt Management Office

The clause established the Debt Management Office within the ministry responsible for finance which was responsible for public debt management.

Clause 6 – Functions of Debt Management Office

The clause set out the functions of the Debt Management Office which included, among others:

- a) conducting debt management operations of the Government;
- b) conducting credit risk assessment of Government guarantees and loans issued out of the Consolidated Fund;
- c) preparing an annual borrowing plan; and
- d) negotiating a loan, other debt contracts or a guarantee contract on behalf of the Government.

Clause 7 – Director and other staff

The clause empowered the Civil Service Commission to appoint the Director as a public officer, who would be responsible for the day-to-day administration of the Debt Management Office. The clause further mandated the Civil Service Commission

to appoint other staff that the Civil Service Commission considered necessary for the performance of the functions of the Debt Management Office.

Clause 8- Annual borrowing plan

The clause mandated the Debt Management Office to prepare and submit to the Minister an annual borrowing plan. The clause further set out the factors that the annual borrowing plan would take into account and what it would contain.

The clause further empowered the National Assembly, by a resolution of the Members of Parliament, to approve the annual borrowing plan for the next financial year and provided that such approval would constitute an approval of the loans in that financial year.

Clause 9- Review of annual borrowing plan

The clause empowered the Minister to review the annual borrowing plan where the Minister considered it necessary and required the Minister to submit the revised annual borrowing plan for approval by the National Assembly.

Clause 10- Update on implementation of annual borrowing plan

The clause mandated the Minister to submit, on a bi-annual basis, an update on the implementation of the annual borrowing plan to the National Assembly.

Clause 11 - Power to raise loans

The clause empowered the Minister, as the sole authority, to raise loans within or outside the Republic, on behalf of the Republic. The clause further set out parameters within which the powers were to be exercised by the Minister. The clause provided that where the office of the Minister was vacant by reason of the dissolution of Parliament, the President could obtain a loan on behalf of the Republic or by direction in writing, delegate to the Secretary to the Treasury the power to obtain a loan on behalf of the Republic.

Clause 12- Purpose of loans

The clause set out the purposes for which the Minister could raise loans which, among others, were to finance Government budget deficit and to maintain a credit balance on the Treasury at a level determined by the Minister.

Clause 13- Methods of raising loans

The clause set out the methods of raising a loan which included the issuance of a bond or stock or a treasury bill.

Clause 14 – Suspension of approval by National Assembly in state of emergency

The clause provided for the suspension of obtaining approval of a loan by the National Assembly where a state of public emergency, war or threatened state of public emergency was declared by the President in accordance with the Constitution. The clause further mandated the Minister to submit a report to the National Assembly after the cessation of public emergency, war or threatened state of public emergency, for a loan that was issued without the approval of the National Assembly.

Clause 15- Establishment of Special Deposit Account

The clause established the Special Deposit Account for the purpose of administering loans.

Clause 16- Application and deposit of loan proceeds

The clause required a loan which arose under the Act for a period exceeding one year to be paid into the Consolidated Fund or other public fund or public account, except where a loan was raised under a bond issued by the Bank of Zambia, whose proceeds were to be paid into the Special Deposit Account. The clause further required a loan raised under the Act for a period not exceeding one year to be paid into the Special Deposit Account.

Clause 17- Supplier's credit, export credit, and finance lease agreement

The clause empowered the Minister to enter into a supplier's credit agreement, export credit agreement or finance lease agreement on behalf of the Republic. The clause further provided that a supplier's credit agreement, export credit agreement or finance lease agreement would constitute Government debt.

Clause 18- Repayment, conversion and consolidation of loans

The clause empowered the Minister, with the consent of the lender and on terms and conditions that the Minister determined, to, among others, repay a loan prior to the redemption date of that loan and extend the loan availability period. The clause further mandated the Minister to comply with the debt management objectives in exercising the aforementioned powers.

Clause 19- Debt Charge

The clause provided that a debt charge arising from the raising of a loan under the Act would be a charge on the Consolidated Fund. The clause further required the repayment or amortisation of a loan raised for a period not exceeding one year to be paid out of the Special Deposit Account. Additionally, the clause mandated the Minister to include in the financial report prepared in a financial year, a statement showing the particulars of a debt charge paid in that financial year relating to a loan raised under the Act or any other written law.

Clause 20- Agents to issue or raise bonds, stock or treasury bills

The clause mandated the Bank of Zambia to act as the agent of the Minister in the case of a loan raised under the Act relating to the issue of bonds, stock or treasury bills. The clause further empowered the Minister to appoint other agents to issue or raise bonds.

Clause 21- Power to grant loans out of Consolidated Fund

The clause prohibited a loan from being granted out of the Consolidated Fund except in accordance with the clause or any other written law. The clause further empowered the Minister as the sole authority to grant loans out of the Consolidated Fund on behalf of the Republic, subject to the provisions of the Constitution.

Clause 22- Borrowing by public body

The clause prohibited a public body from raising a loan or issuing a guarantee, without the written authority of the Secretary to the Treasury and sanctioned a public body that contravened the provision. The clause further mandated a public body to be liable for the debt and obligations of that public body without recourse to the Government except where the debt or obligation was expressly guaranteed by Government.

Clause 23- Loans by public body requiring National Assembly approval

The clause prohibited a public body from raising a loan from a source outside the Republic without the approval of the National Assembly. The clause further set out the procedure for obtaining approval for the raising of a loan from a source outside the Republic.

Clause 24- Reporting requirements for public body

The clause mandated a public body, not later than twenty working days after the end of each quarter, to submit to the Minister a statement of the total outstanding debt and borrowing operations of a public body and any other information relating to the public body's debt, that the Minister would determine.

Clause 25- Establishment of sinking funds for redemption of bonds or stock

The clause mandated the Minister to establish a sinking fund for the purpose of redeeming bonds or stock issued in respect of a loan raised under the Act for a period exceeding ten years. The clause further exempted the application of a bond raised through the Bank of Zambia from the provisions of the clause.

Clause 26- Establishment of sinking funds in other cases

The clause empowered the Minister to establish a sinking fund for the purpose of redeeming a loan raised by agreement, in writing, under the Act or under any other written law.

Clause 27- Contribution to sinking fund

The clause provided that where a sinking fund was established, the rate of contribution towards that sinking fund would be an amount sufficient to provide for the repayment, on the redemption date of that loan, of not less than seventy-five percent of the principal loan.

Clause 28- Withdrawal of money from sinking fund

The clause prohibited the withdrawal of money from a sinking fund for any other purpose except for the redemption of a loan.

Clause 29- Deficiency in sinking fund to be charged on Consolidated Fund

The clause provided that where a sinking fund established under this Part was insufficient for purposes of repayment of a loan at the time fixed for repayment of that loan, the deficiency would be a charge on, and paid from, the Consolidated Fund.

Clause 30- Regulations for sinking funds

The clause empowered the Minister to prescribe, by statutory instrument, the manner of establishing, managing and controlling of a sinking fund.

Clause 31- Power to give guarantees

The clause empowered the Minister on terms and conditions that the National Assembly would approve, to guarantee the repayment of a loan or portion of that loan to a person ordinarily resident within or outside the Republic, borrowed from that person by a body specified, or belonging to a class specified, in the First Schedule. The clause further empowered the Minister to guarantee the performance of any contractual obligation relating to the payment of money in favour of a person ordinarily resident within or outside the Republic, by a beneficiary. The clause, in addition, provided the conditions on which the Minister would issue a guarantee.

Clause 32- Approval of guarantee by National Assembly

The clause mandated the Minister to seek approval from the National Assembly before the Minister issued a guarantee to a person ordinarily resident within or outside the Republic.

Clause 33- Payment of guarantee fee

The clause mandated a beneficiary to pay an upfront amount to the Government in Zambian Kwacha of between zero point five percent and two percent of the guaranteed loan amount based on the credit risk assessment of the beneficiary, where a guarantee was issued to that beneficiary. The clause further empowered the Minister to exempt, by statutory instrument, a loan or a contract from the payment of a guarantee fee or defer the payment of the guarantee fee on specified terms and conditions.

Clause 34- Maximum amount of guarantees

The clause provided that the total contingent liability for guarantees issued under the Act would not exceed ten percent of the Gross Domestic Product at current market prices computed for the immediate past financial year. The clause further provided the condition on which a guarantee issued under clause 31 was valid.

Clause 35- Beneficiary to reimburse all costs

The clause mandated a beneficiary to reimburse the Government for the guarantee given including the expenses incurred by the Government relating to the guarantee, where the beneficiary defaults and the Government was required to honour the guarantee. The clause further provided that an amount paid by a beneficiary relating to a guarantee or a portion of a guarantee would be paid into the Consolidated Fund.

Clause 36- Indemnities

The clause empowered the Minister, by agreement in writing and subject to the terms and conditions of the agreement, to indemnify a person against a claim from an act or omission on the part of a person or that person's servant or agent in the performance by that person or that person's servant or agent of an agreement between that person and the Government.

Clause 37- Guarantees and indemnities to be paid out of Consolidated Fund

The clause mandated the Minister to pay out of the Consolidated Fund a sum required for discharging the liability incurred by the Government on a guarantee or indemnity given in accordance with the Act. The clause further prohibited the Minister from paying out of the Consolidated Fund an indemnity under the Act, without the approval of the National Assembly.

Clause 38- Power to raise grants

The clause empowered the Minister to raise in the Republic or elsewhere, on behalf of the Republic or a public body, a grant that the Minister considered necessary. The clause further empowered the Minister, by direction in writing, to delegate the power to raise a grant to the Secretary to the Treasury or a public officer. The clause also required a grant raised to be deposited into the Consolidated Fund or any other public fund or public account.

Clause 39- Purpose of grants

The clause set out the purposes of obtaining a grant, which included, among others, the advancement of national development and technical assistance or cooperation.

Clause 40- Debt sustainability analysis

The clause mandated the Minister to cause a debt sustainability analysis to be conducted on an annual basis. The clause further mandated the Minister to cause to be published, in a manner that the Minister considered necessary, a debt sustainability analysis report by the end of the first quarter of the following year.

Clause 41- Debt statistical bulletin

The clause mandated the Minister to cause to be prepared a debt statistical bulletin once every quarter. The clause further required the debt statistical bulletin to be published on the official website of the ministry responsible for finance and in any other manner the Minister would determine.

Clause 42- Annual public debt, guarantees and grants execution report

The clause mandated the Minister, within three months after the end of each financial year to cause to be prepared an annual public debt, guarantees and grants execution report for submission to the National Assembly.

Clause 43-General restriction on raising of loans

The clause prohibited the raising of a loan for or on behalf of the Republic or a public body, except under the authority of the Act or any other written law which specifically authorised the raising of a loan. The clause further prohibited the Government or a public body from being bound by a lending contract, a guarantee, indemnity, security or other transaction where a loan was raised in contravention of the clause.

Clause 44 - Minister and other person not responsible for fulfilment of trusts attaching to bonds, stocks or treasury bills

The clause prohibited the Minister or a person appointed to perform a function under the Act from being obliged to fulfil a trust, whether expressed, implied or constructive, to which a bond, stock or treasury bill issued under the Act could be subject, despite the Minister or the person appointed to perform a function having had notice that the bond, stock or treasury bill was held subject to a trust.

Clause 45- Minister may delegate functions to public officer

The clause empowered the Minister, by statutory order, to delegate to a public officer any function conferred on the Minister under the Act as may be specified in that order, except the function to raise a loan under Part IV.

Clause 46- Financial misconduct by public officer or controlling body

The clause provided that a public officer to whom a power or duty was assigned under the Act, committed an act of financial misconduct if that public officer willfully or negligently caused or permitted an unauthorised, irregular or wasteful misapplication of funds, or willfully or negligently failed to exercise that power or perform the duty. The clause further provided sanctions to a public officer that was found guilty of financial misconduct.

Clause 47- Disciplinary proceedings

The clause provided that a charge of financial misconduct against a public officer would be investigated, heard and determined in accordance with the statutory or other conditions of appointment or employment applicable to that public officer.

Clause 48- Offences by principal officer shareholder or partner of body corporate or unincorporate body

The clause provided that where an offence under the Act was committed by a body corporate or unincorporated body, with the knowledge, consent or connivance of the director, manager, shareholder or partner, that director, manager, shareholder or partner of the body corporate or unincorporate body commits an offence. The clause further provided that, a person convicted of an offence under this section would be liable on conviction to a penalty specified for that offence.

Clause 49- Regulations

The clause empowered the Minister, to make regulations for the better carrying out of the provisions of the Act.

Clause 50- Repeal of Cap. 366 and Cap. 350 and savings and transitional arrangements

The clause provided for the repeal of the *Loans and Guarantees (Authorisation) Act, Chapter 366 of the Laws of Zambia* and the *General Loan and Stock Act, Chapter 350 of the Laws of Zambia*. This clause further provided for savings and transitional provisions.

8. CONCERNS BY STAKEHOLDERS

All the stakeholders who appeared before the Committee supported the Bill and stated that the enactment of the Public Debt Management Act would strengthen the legal framework for public debt contraction and management as well as consolidate the contraction and management of grants and issuance and management of sovereign guarantees. However, they raised concerns as set out below.

Clause 2 – Interpretation

Stakeholders noted that it was not clear whether or not the definition of public debt in Part 1 of the Bill, extended to contingent liabilities such as debt arising from the privatisation of State-Owned Enterprise's (SOEs) or funds used for solving problems of the bankruptcy of credit institutions like Development Bank of Zambia and the Credit Guarantee Scheme, or the expenses for environmental remediation.

Clause 3 – Government debt management Objectives

Stakeholders expressed concern that while the Bill provided for debt management objectives under clause 3, it did not explicitly provide for broad overarching principles including fiscal responsibility principles, such as public participation,

transparency, accountability, sustainable debt management. To this effect, they proposed that the Bill should be consistent with Article 198 of the Constitution of Zambia (Amendment) Act, No. 1 of 2016, on guiding public finance principles.

Clause 4 – Medium Term Debt Strategy

- i. Under clause 4 (2)(a), stakeholders proposed the inclusion of ‘cost’ so that the sentence should read as “the cost and risk embedded in the current Government debt portfolio”. This would enable the fiscal authorities to capture the cost aspect of the current Government debt portfolio, as well as the risk facet.
- ii. Stakeholders observed that clause 4 of the Bill referred to the Medium Term Debt Strategy, which was defined as a three-to-five-years period in clause 2. They noted that some of the borrowing would exceed the stated period of three to five years. They proposed that a long-term debt strategy and plan, which considered the period beyond five years should be included in the Bill.

Part II – Annual Borrowing Plan

Clause 5 – Establishment of Debt Management Office

Most stakeholders found clause 5 (1) which provided for the establishment of the Debt Management Office progressive and in line with good international practice. However, some stakeholders were of the view that the Debt Management Office must be an autonomous body, whose director must be ratified by the National Assembly. Others were of the strong view that the Office must be within the Ministry structure in order to adequately provide technical advice to the Minister on matters relating to debt.

Clause 7 – Director and other staff

- i. Stakeholders noted that clause 7 did not specify the qualifications of key staff in the Debt Management Office. In this regard, they proposed that the person overseeing the department should be an economist, accountant or risk management professional with the requisite knowledge, skills, and experience to execute the functions effectively. Further, appropriate support from a legal perspective should also be a requirement.

Other Stakeholders proposed that a Debt Management Committee should be set up to provide oversight on the operations of the Debt Management Office, in particular the vetting of loans. The Debt Management Committee

should be composed of appropriate technical institutions or personnel that should support the Permanent Secretary.

Further, some stakeholders were of the view that the appointment of the Director of the Debt Management Office should be done in a more transparent and non-partisan approach. In particular, they proposed that it should be done by a Board set up to provide oversight on the Debt Management Office.

Clause 8- Annual borrowing plan

- i. Under clause 8 (3) which provided for the content of the Annual Borrowing Plan, stakeholders noted the absence of the mechanisms of repaying the loan. They proposed the inclusion of strategies on how the proposed loans would be paid back.
- ii. Further, other stakeholders proposed that annual borrowing plans should include loans to be contracted for defence and security expenditure for completeness and adherence to the principal objective of this Bill. A structure could be created to scrutinise defence and security loans in a secure manner given their sensitive nature.
- iii. Clause 8 (4), stakeholders noted that the Bill made it possible for the National Assembly to begin to debate the national Budget without knowing the details of borrowing in that financial year. Further, while appreciating the intention of the clause, they noted that the Bill did not stipulate any measures to deal with breach of this provision. Therefore, they recommended that the clause should be revised to require the Minister to present the national budget alongside the annual borrowing plan.
- iv. Under clause 8 (3) (g), stakeholders noted that the requirement for the annual borrowing plan to consider the overall net increase or decrease in the public debt was insufficient. They proposed that the plan should indicate the source of the net reduction or increase in public debt for the National Assembly to have a more complete picture of the debt position when approving.

Clause 9- Review of annual borrowing plan

Under clause 9, which provided for the review of the annual borrowing plan when considered necessary by the Minister, stakeholders expressed concern that the Bill gave a lot of discretion to the Minister to adjust the annual borrowing plan. They feared that the provision had the potential to promote imprudent utilisation of

resources. In this regard, they proposed that the clause should be amended to include circumstances that would necessitate the review of the annual borrowing plan.

Clause 11 - Power to raise loans

- v. Although clauses 11 (2) and 34 (1) provided more clarity on debt ceilings, stakeholders noted that the suggested unsustainable thresholds posed a threat to fiscal consolidation, macroeconomic stability and economic recovery. They expressed concern that the ceiling provided was way beyond the sustainable threshold of 35 per cent of Gross Domestic Product (GDP) for weak policy performers as prescribed by the joint World Bank-IMF Debt Sustainability Framework (DSF) for Low Income Countries. They proposed that the threshold should be aligned to the sustainability benchmarks. Further, noting that the debt level and debt service commitments significantly exceeded the defined debt thresholds other stakeholders were of the view that a transition plan would be required to outline how the country would move from being in breach of the defined thresholds to being in line.
- vi. Most stakeholders noted that the provision under clause 11(4) which provided for circumstances under which the Minister could contract loans without complying with clause 11(2) and (3) was unusual and feared that it would present an opportunity for abuse.
- vii. Similarly, some stakeholders did not support the provision in clause 11 (5) which gave discretion to the President to obtain a loan on behalf of the state, in an event that the office of the Minister was vacant. They submitted that the provision was recipe for circumventing oversight.

Clause 20- Agents to issue or raise bonds, stock or treasury bills

Under clause 20, stakeholders noted that it was not categorical that the Bank of Zambia shall fiscally perform this function. This was in view of clause 20 (2), which empowered the Minister to designate any entities as deemed fit to take up the fiscal agency role. Further, it was not clear under what conditions the designation of any entity would happen. For transparency and proper accountability, stakeholders proposed that the conditions under which the appointment of other agents to issue or raise bonds must be specified.

PART V – BORROWING BY PUBLIC BODIES

Clause 22- Borrowing by public body

Stakeholders generally welcomed the provision under clause 22 (2), which allowed a public body to raise a loan or issue a guarantee after an assessment of its financial capacity to repay the loan by the Debt Management Office. However, they proposed that the assessment should be subjected to vetting by the Debt Management Committee, which in turn should advise the Secretary to the Treasury or the Minister.

Clause 23- Loans by public body requiring National Assembly approval

- i. Stakeholders observed that clause 23 (1) and (2) which provided for subjecting of only loans obtained from outside the country by a public body to parliamentary approval was a threat to debt management efforts. They proposed that all loans regardless of jurisdiction undergo parliamentary approval.
- ii. On the other hand, other stakeholders noted that the requirement for loans obtained from outside the country, by a public body, to be approved by the National Assembly could inhibit the ability of the corporate entity to make critical financing decisions, given the competitive environment in which some parastatals operated in. They contended that the need for National Assembly approval should be required only in the event that a Government guarantee was required and not where the borrowing was purely on a commercial basis where the lender would have no recourse to the funds of the Government of the Republic of Zambia to service or repay the debt.

PART VI – SINKING FUNDS

Clause 25- Establishment of sinking funds for redemption of bonds or stock

Stakeholder appreciated the establishment of a sinking fund as it would be a critical tool for debt sustainability. However, they proposed that the tenure for a bond or stock requiring a sinking fund, outside the discretion of the Minister, should be reduced to 7years.

Clause 29- Deficiency in sinking fund to be charged on Consolidated Fund

Under clause 29, stakeholders expressed concern on the possibility of drawing from the Consolidated Fund in an event that the Sinking Fund was insufficient to provide for the full repayment of the loan by the redemption date of the loan. They contended that drawing funds from the Consolidated Fund for loan repayment was not a good

practice. Further, the provision would give room to contraction of debt without adequate plans for debt repayment a situation which made Zambia to be highly indebted.

PART VII - GUARANTEES AND INDEMNITIES

Clause 33- Payment of guarantee fee

Clause 33, provided for payment of guarantee fee, stakeholders expressed concern on stating the proportion of guarantee fee in the Bill. Given that the loans involved were commercial, embedding the percentages in the law may cause challenges where deviation to a higher level was required. They proposed that an applicable percentage be placed in the Statutory Instrument or separate pricing guidelines that would be reviewed from time to time.

PART VIII - POWER TO RAISE GRANTS

Clause 42 - Annual public debt, guarantees and grants execution report

Stakeholders noted that clause 41, posed a potential obstacle in the dissemination of information, especially with regard to inclusivity. While welcoming quarterly updates, they proposed that the Bill should be specific on the means of publication that would be used, as opposed to leaving it at the Minister's discretion.

PART IX – REPORTS

Clause 40 – Debt sustainability analysis report

Stakeholders proposed that the clause should be amended to enable easy access of the Debt Sustainability Analysis Report to make it a public document published on the website of the Ministry.

Clause 41- Debt statistical bulletin

Stakeholders they were of the view that in addition to the amounts outstanding, the Bill should provide that the bulletin should highlight the associated terms and encumbrances occasioned by the borrowing, in order to fully understand the potential implications of borrowing transactions. Particularly, they proposed the following inclusions:

- a) encumbrances imposed by the debt agreements entered into on assets owned by the country or borrower in the case of a public body;
- b) collateral pledged against the borrowing;

- c) any covenants in place whose breach may result in a fundamental change in the terms of the debt agreement such as the right to demand early repayment. Focus may be on those covenants that had been breached or were likely to be breached before the debt was due for repayment; and
- d) any debts that were overdue for payment irrespective of whether waivers from lenders had been obtained.

Clause 50- Repeal of Cap. 366 and Cap. 350 and savings and transitional arrangements

Stakeholders found the application of clauses 11(2) and 34(1) only after a period of five years too long and unjustifiable. They feared that the clause may contribute to accumulation of more debt. They proposed that the period must be reduced.

General Concerns

- i. Stakeholders noted that the Bill did not provide any enforcement mechanisms or procedures of holding the Government accountable for debt related actions or omissions which were in contravention with the proposed Bill. In light of this gap, they proposed that the Bill should empower citizens to institute judicial review proceedings where the acts, omissions, and decisions of the Minister exceeded the mandate given to them.
- ii. Stakeholders submitted that debt management should ensure consistency between fiscal and monetary policy. They contended that in other jurisdictions such as Kenya, the legal framework mandated the Central Bank to assess the possibility of crowding out effects on the private sector, arising from Government borrowing whenever raising Government securities. Therefore, they proposed that a similar provision should be provided for in the Bill.
- iii. Stakeholders noted that the role of Cabinet in debt contraction was unclear in the Bill. They proposed that it should be clearly set out.
- iv. Some stakeholders observed that the Bill did not specify the process for contracting loans. They were of the strong view that guidelines to specify the process for contracting, redeeming and converting loans were necessary.

9. COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

From the outset, the Committee supports the Public Debt Management Bill, N.A.B No. 7 of 2022 as its enactment into law will contribute to a robust public finance management framework, enhance the oversight role of the National Assembly in debt contraction pursuant to Article 63(2) (d) of *the Constitution of Zambia (Amendment) Act, No. 2 of 2016*, and strengthen macroeconomic stability.

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

- i. While welcoming the provision under clause 4(4), on the publication of the Medium Term Debt Strategy by second Friday of July in each year, the Committee expresses concern on the wide discretion given to the Minister to publish the Plan in a manner considered necessary by the Minister. The Committee is of the view that this provision may limit access to the Plan by citizens.

In order to improve transparency and accountability and in line with Article 198 of the *Constitution of Zambia (Amendment) Act, No. 2 of 2016* which provides for the guiding principles of public finance, the Committee recommends that the Bill should indicate where such publication must be made available to the public. This will increase access of the Plan by all sections of society.

- ii. The Committee observes that the absence of the cost of debt portfolio in the Medium Term Debt Strategy in clause 4 (2)(a) is a serious oversight. To adequately determine the debt portfolio, the Committee strongly recommends that the Bill should take into consideration both the cost and the risk aspect of the current Government debt portfolio.
- iii. The Committee notes the limitation of the Bill to only the Medium Term Debt Strategy which the Bill has defined as a period between three to five years in clause 2. Cognisant that debt may go beyond a five year period, the Committee wonders how the Strategy will account for such scenarios.

In this regard, the Committee strongly recommends that the Bill should make provision for a Long-Term Debt Strategy, which will consider debt to be settled beyond a five-year period.

- iv. The Committee welcomes the establishment of the Debt Management Office whose functions as provided in clause 6 will be key in debt management. However, the Committee finds the provision in clause 7 (i) where the

Director of the Debt Management Office shall be required to report to the Permanent Secretary misplaced.

Considering the mandate of the office and to avoid bureaucracies, the Committee strongly recommends that the Director of the Debt Management Office must report to the Secretary to the Treasury.

- v. The Committee appreciates that clause 8(2) provides for consistency between the Annual Borrowing Plan and the Debt Management Strategy. However, in view of the fact that individual loans shall not be brought to the National Assembly before being contracted following the approval of the Annual Borrowing Plan in clause 6, the Committee expresses concern that in the absence of detailed information, the oversight role of the National Assembly in approving public debt may be compromised.

Therefore, the Committee strongly recommends that in addition to the items in clause 8(2), the Annual Borrowing Plan should provide relevant detailed information, such as mechanism of repaying the debt, the indicative costs of the loans or the Annual Borrowing Plan and the source of the net reduction or increase in public debt, among others, which will be adequate for the National Assembly to analyse before approving the Borrowing Plan. The Committee further recommends that the annual borrowing plan should include loans to be contracted for defence and security expenditure for completeness and adherence to the principal objective of the Bill. However, caution should be undertaken in the manner in which loans relating to the security wings are scrutinised given the sensitivity of these Government wings.

- vi. The Committee observes that while Clause 8 (4) clearly provides the timeline for the Annual Borrowing Plan to be submitted to the National Assembly, it is unclear whether the Plan must be presented alongside the national Budget.

Given the limited time for the National Assembly to approve the Estimates of Revenue and Expenditure, the Committee strongly recommends that the Annual Borrowing Plan must precede the presentation of the Estimates of Revenue and Expenditure for the next financial year. This will enable the House to effectively scrutinise the Plan.

- vii. The Committee expresses concern on clause 9 which allows the Minister to review the annual Borrowing Plan when deemed necessary. Particularly, the Committee fears that this provision poses a risk to debt management initiatives

In this regard, the Committee recommends that individual loans to be contracted outside the approved Annual Borrowing Plan should be brought to National Assembly for scrutiny. Further, the Bill should spell out circumstances under which the Minister may review the Annual Borrowing Plan.

- viii. The Committee applauds the Government for the Commitment to manage public debt by the inclusion of debt ceiling in clauses 11 (2) (a) and (b) in the Bill. While appreciating the fact that the Bill provides more clarity on debt ceilings, the Committee is concerned that the proposed 65 percent threshold is higher than the recommended sustainable IMF recommended threshold of 35 percent for weak policy makers and the 60 percent macro economic convergence target of the SADC Protocol on Finance and Investment. As such, it may pose a threat in meeting debt sustainable levels and attaining fiscal consolidation.

Cognisant of the current debt situation the country is in, the Committee strongly recommends that debt ceiling must be aligned with established benchmarks for debt sustainability.

- ix. Further to the observation of the high debt threshold in the Bill, the Committee notes with concern the provisions in the Second Schedule relating to savings and transitional period. In particular, the Committee observes that the period of five years for clauses 11 (2) and 34 (1) to take effect is too long and will present practical difficulties to reduce the current debt burden to 65 percent of GDP, especially that the five years provided spans beyond the current electoral term.

While acknowledging that the clause largely depends on the success of the ongoing debt restructuring processes, the Committee strongly recommends that the period must be reduced to three years. It further urges the Government to consider developing a transition plan which must outline Government targets and strategies aimed at bringing the current debt levels to 65 percent and below.

- x. The Committee strongly opposes the provision under clause 11 (5) which gives mandate to the President to obtain a loan on behalf of the State, in an event that the office of the Minister is vacant, as it perpetuates the major weakness of the Loans and Guarantees (Authorisation) Act of 1969. The Committee does not understand why the President would not convene Parliament using the powers conferred on the Presidency in Article 81 (10) of the *Constitution of Zambia (Amendment) Act, No.2 of 2016*. The Committee

further notes that the Bill is silent on adherence to the Annual Borrowing Plan and the set debt ceiling threshold by the President when raising a loan.

In this regard, the Committee strongly recommends that the Bill must be amended and clearly state that the President must exercise the provision of Article 81 (10) of the Constitution to convene Parliament, in an event that there is need to borrow and Parliament has been dissolved.

- xi. The Committee notes that while clause 20 provides for the Bank of Zambia to raise a loan in form of stock, bonds and treasury bills, the Bill in clause 20(2) also empowers the Minister to appoint others agents to raise or issue bonds.

To avoid ambiguity and promote transparency and accountability, the Committee strongly recommends that the Bill must clearly spell out conditions under which other the agents may be appointed to issue or raise bonds.

- xii. While the Committee appreciates the provision in clause 22(1) relating to borrowing by a public body, it is of the view that the restriction of assessment to the ability to pay when granting authority to a public body to acquire a loan within the country is insufficient.

Therefore, the recommends that the Bill should extend the analysis to borrowing for investment purposes as well as take into account the distribution of loans and amounts involved across various parastatal bodies.

- xiii. Whereas the Committee acknowledges the rationale of subjecting loans acquired from outside the Country to approval by the National Assembly under clause 23, the Committee is alive to the fact that the business environment in which certain parastatals operate is competitive. As such the National Assembly approval processes may delay timely response in the market.

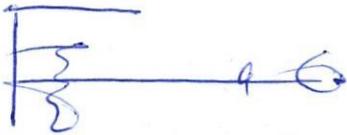
For loans that do not require a Government guarantee, and depending on the purpose of the loan, the Committee recommends that consideration must be given for the Debt Management Office to recommend for approval to the Secretary to the Treasury after a debt assessment, while adhering to the 10 per cent threshold provided in the Bill.

10. CONCLUSION

The repeal and replacement of the Loans and Guarantees (Authorisation) Act, 1969 and the General Loan and Stock Act, 1931 is relevant and long overdue. In the management of debt to sustainable levels, sound debt management and transparency remain important in the short to medium term. The Committee is confident that the enactment of this Bill will strengthen the management of public debt, grants and guarantees as well as enhance transparency, accountability, efficiency, and value for money. The Committee supports the Bill subject to the Executive addressing concerns expressed in its Report.

The Committee wishes to pay tribute to all stakeholders who appeared before it and tendered both oral and written submissions. It also wishes to thank you, Madam Speaker and the Office of the Clerk of the National Assembly for the guidance and support rendered during its deliberations.

We have the honour to be, Madam, the Planning and Budgeting Committee mandated to consider the Public Debt Management Bill, N.A.B No. 7 of 2022.

A handwritten signature in blue ink, appearing to read 'Fred C. Chaatila', with a horizontal line extending to the right and a small circular flourish at the end.

Mr Fred C Chaatila, MP
CHAIRPERSON

July, 2022
LUSAKA

APPENDIX I – List of National Assembly Officials

Mr Charles Haambote, Principal Clerk of Committees (FC)
Mr Francis Nabulyato, Principal Clerk of Committees (SC)
Mr Fitzgerald Kateshi, Principal Clerk – Parliamentary Budget Office
Mrs Doreen C Mukwanka, Acting Deputy Principal Clerk of Committees (FC)
Mr Charles Chishimba, Senior Committee Clerk (FC)
Mrs Edna K Zgambo, Committee Clerk
Mr Darius Kunda, Committee Clerk
Ms Luyando Chilala, Acting Administrative Assistant
Mr Daniel Lupiya, Committee Assistant
Mr Morgan Chikone, Committee Assistant
Mr Muyembi Kantumoya, Parliamentary Messenger

APPENDIX II – LIST OF WITNESSES

Minister of Finance and National Planning
Ministry of Finance and National Planning
Ministry of Justice
Bank of Zambia
Zambia Revenue Authority
Zambia Institute for Policy Analysis and Research
National Breweries
National Economic Advisory Council
Economics Association of Zambia
ActionAid Zambia
Civil Society Organisation Debt Alliance
Consumer Unity and Trust Society International
Policy Monitoring and Research Centre
Transparency International Zambia
PriceWaterhouse Coopers