



NATIONAL ASSEMBLY OF ZAMBIA

REPORT

OF THE

PLANNING AND BUDGETING COMMITTEE

ON THE

ZAMBIA INSTITUTE OF BANKING AND FINANCIAL SERVICES BILL, N.A.B. NO. 22

OF 2022

FOR THE

SECOND SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

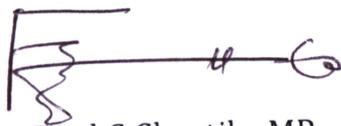
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FOREWORD

Honourable Madam Speaker the Planning and Budgeting Committee has the honour to present its Report on the Banking and Financial Services Bill, N.A.B No. 22 of 2022. The functions of the Committee are stipulated in Standing Order 195, of the National Assembly Standing Orders, 2021.

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 which is at Appendix II of the Report. The Committee highlights a summary of submissions from stakeholders, concerns raised by stakeholders and the observations and concerns made by the Committee.

Madam Speaker, the Committee is grateful to the stakeholders who tendered both written and oral submissions. It also wishes to thank you, for affording it an opportunity to scrutinise the Banking and Financial Services Bill, N.A.B No. 22 of 2022. Gratitude further goes to the Clerk of the National Assembly and his staff for their assistance and advice throughout the Committee's deliberations.



Mr Fred C Chaatila, MP
CHAIRPERSON

November, 2022
LUSAKA

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1.0 COMPOSITION OF THE COMMITTEE

The Committee consisted of:

Mr Fred C Chaatila, MP, (Chairperson); Ms Jean C Chisenga, MP (Vice-Chairperson); 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; Mr Peter Phiri, MP; and Mr Lloyd Lubozha, MP.

2.0 BACKGROUND

The Zambia Institute of Banking and Financial Services (ZIBFS) was registered in 1992 as an autonomous training Institute in banking, financial services and business-related courses. The objective of the Institute was to impart superior financial services knowledge and enhance professionalism in the banking and financial services sector. Despite its important role, the Institute was registered under the *Societies Act, Chapter 119 of the Laws of Zambia* as a society and as such lacked continuity, among other things.

The *Banking and Financial Services Act No. 7 of 2017* mandated the Bank of Zambia to be the regulator of the industry. However, it only regulated banking and financial service providers and not the practitioners in the industry. Thus, the Institute, unlike other professional bodies, did not have any law exclusively regulating the practice and professional conduct of members of the banking and financial Service industry.

It was against that background that the Government introduced the Zambia Institute of Banking and Financial Services Bill, N.A.B No. 22 of 2022, in order to actualise the registration and regulation of practitioners in the industry, among other things.

3.0 OBJECTS OF THE BILL

The objects of the Bill were to:

- a) provide for the registration of banking and financial service practitioners and regulate their practice and professional conduct;
- b) continue the existence of the Zambia Institute of Banking and Financial Services and provide for its functions;
- c) promote the banking and financial services profession; and
- d) provide for matters connected with, or incidental to, the foregoing.

4.0 SALIENT PROVISIONS OF THE BILL

PART II- THE ZAMBIA INSTITUTE OF BANKING AND FINANCIAL SERVICES

This part provided for the continuation of the Zambia Institute of Banking and Financial Services as a body corporate, with perpetual succession. It further provided for the functions of the Institute. This part further contained provisions that constituted the Council of the Institute and its composition.

PART III- REGISTRATION OF PRACTITIONERS AND ISSUANCE OF PRACTISING CERTIFICATES

This part contained provisions relating to the prohibition of persons from practising or being employed as practitioners without being registered under the Act. It also provided for the grounds on which registration of a practitioner could be suspended or cancelled.

The part further contained provisions relating to keeping of registers of members, practitioners, students and holders of practising certificates. These registers would be public documents, and members of the public would be at liberty to inspect them.

PART IV – DISCIPLINARY MATTERS

This Part provided for, inter alia, the adoption and publishing of a code of ethics, what constituted professional misconduct, how to initiate a disciplinary action and the sanctions for professional misconduct. Additionally, the Part provided for the Disciplinary Committee, its functions, powers and that the Chief Justice would make rules relating to disciplinary proceedings.

This part provided for the complaint procedure and constituted the Professional Conduct Committee which should have a presence in every province. The Professional Conduct Committee would play an investigatory role, in that, before a matter could be referred to the Disciplinary Committee, it would be sent to the Professional Conduct Committee for investigation.

This part further contains provisions relating to the constitution of the Disciplinary Committee, its composition, criteria for appointment to the Committee, vacancy of office and disciplinary proceedings.

PART V – INSPECTORATE

The Part provided for the appointment of inspectors, whose principal task would be to ensure compliance with the Act. The inspectors would be clothed with certain powers which would enable the Institute to adequately regulate the profession and ensure professionalism among its membership.

PART VI – GENERAL PROVISIONS

The Part provided for general provisions, such as those relating to payment of professional fees, appeals, regulations and guidelines.

It also provided for the appeal procedure where a person was dissatisfied with a decision of a particular body.

FIRST SCHEDULE

The First Schedule provided for all matters relating to the administration of the Institute. This included the tenure of office for Council members of the Institute, how the Council would conduct its meetings and the constitution of committees of the Council.

SECOND SCHEDULE

The Second Schedule provided for Savings and Transitional provisions. This referred to matters such as those relating to how existing staff and assets will be treated.

5.0 SUMMARY OF SUBMISSIONS BY STAKEHOLDERS

Stakeholders noted that in the last thirty years the ZIBFS had trained numerous members and awarded several banking and finance qualifications, namely, Professional Diploma and Advanced Professional Diploma in Banking and Financial Services; Executive Diploma in Small and Medium Enterprise, Relationship Management; Academic Certificate and Diploma in Banking; and Finance and post graduate certificates in specialised areas such as retail banking, credit management, and risk management. The Institute had also helped graduates to sustain their professionalism through Continuing Professional Development (CPD) programmes. In that regard, the ZIBFS had a critical role to play in the country's development agenda.

Further, stakeholders submitted that an efficient and effective Institute would contribute to higher education levels and professionalism in the banking and financial sector and by so doing help the financial sector to play a more meaningful role in unlocking the growth potential and economic development of the country.

Stakeholders were of the view that it was in the best interest of the public that the ZIBFS is transformed into a premier training institution for practitioners in the sector and be able to provide appropriate financial and human capital support. Furthermore, due to technological advances banking as a business continued to undergo changes in order to adequately provide essential services. As such, practitioners themselves had to constantly up-skill themselves and the range of skills needed by the industry was quite vast.

In terms of the functions of the Institute, some stakeholders submitted that the regulatory function was long overdue as other professional associations such as the Zambia Institute of Chartered Accountants, Law Association of Zambia and Engineering Institute of Zambia, among others had the same provisions and were enjoying regulatory backing making it easier for them to operate and enforce standards amongst the practitioners.

6.0 CONCERNS BY STAKEHOLDERS

The Zambia Institute of Banking and Financial Services Bill, N.A.B No. 22 of 2022 received mixed views from stakeholders that the Planning and Budgeting Committee interacted with. While some stakeholders fully supported the Bill, other stakeholders supported the Bill with reservations. Those who supported the Bill submitted that the Bill presented a key opportunity for the Institute to be established under an Act of Parliament and enable it to continue promoting the banking and financial services qualifications that would be recognised by the Higher Education Authority. It was also envisaged that the Bill would enhance professionalism and service delivery in banking sector.

On the contrary, most stakeholders strongly opposed certain provisions in the Bill. Particularly the provisions relating to regulation of practitioners' professional conduct. They submitted that the definition of practitioners captured most individuals working in the banking and financial sector, majority of whom were already regulated by other professional bodies. Further the banking and financial services sector was already heavily regulated by the Bank of Zambia and many other law enforcement agencies. Therefore, regulation of practitioners by the ZIBFS would serve as a burden to employers and officers especially those already regulated practitioners.

Stakeholders submitted the following specific concerns.

i. Objects of the Bill

Stakeholders noted that objective (a) of the Bill appeared to be a duplication of the functions of other regulators already supervising the activities of practitioners in financial services. Particularly, the Bank of Zambia had placed various regulations regarding registration of staff such as dealers in Treasury functions or their back-office staff, making specific qualifications mandatory as well as imposing professional association memberships on certain categories of banking staff.

They proposed that that the Institute should focus on promoting professional and ethical standards, registration of professionals and promote the development of the banking and financial services professions, among others.

ii. Clause 2 – Interpretation

- a) Whereas stakeholders welcomed the Bill, they expressed concern that the Bill did not recognise the Higher Education Authority as an accrediting institution for the Institute’s training programmes, despite providing for its definition. As such, it was unclear whether the Zambia Institute of Banking and Financial Services would continue to offer such training in collaboration with higher education institutions or it would independently provide specialised training.
- b) Stakeholders noted that the definition of the term “practitioner” was too wide especially in view of the definition of the phrase “core banking and financial service operation” whose practical effect captured almost everyone who worked in a bank including already regulated professions such as lawyers, accountants, marketers and human resource practitioners, among others. They noted with concern that in the form it was proposed, there was a strong risk of jurisdiction overlap or contradiction, which would not be easily resolved using the tools of statutory interpretation. In this regard, they proposed the amendments highlighted below.
 - a) The Bill should not extend to other regulated professionals, and the definition of practitioner should be amended accordingly for purposes of clarity.
 - b) Consideration should be made to align the meaning of practitioner with the meaning of banking under the *Banking and Financial Services Act, No. 7 of 2017* which referred to licensed financial service providers and not one who was a professional.
 - c) If the intention was for some employees in the bank to be regulated, stakeholders proposed that the definition be restricted to only represent and or regulate a recognised community of expert practitioners in the mainstream banking functions. Further, instead of using the term practitioner, a specific term relevant to banking and financial services profession such as the phrase-chartered banker or financial services professional could be adopted.

iii. Clause 4 - Functions of Institute

With regard to the functions of the Institute provided under clause 4 (b), stakeholders expressed concern on the mandate of the Institute to register and regulate practitioners as it was at variance with its vision and mission which were centred on providing appropriate education for the financial services sector. Further, given that the meaning of “financial services” in the Bill was as defined by the *Banking and*

Financial Services Act of 2017, stakeholders were of the considered view that the Bill would add to the regulatory burden for financial service providers by introducing the aspect of regulation of practitioners. Stakeholders noted that the Bank of Zambia was already regulating activities of treasury officers following the subsidiary regulations issued in 2020. They proposed that the Institute should focus on transforming into one of the leading training institutions for practitioners in the sector and provide appropriate financial and human capital.

- a) Under clause 4 (d), stakeholders found the provision unclear and wondered whether the registration of students referred to those enrolled in banking and finance training programmes at all higher learning institutions or those specifically enrolled in training programmes offered by the Zambia Institute of Banking and Financial Services.
- b) Stakeholders expressed concern that the mandatory requirement for registration of students could increase the cost of entry into the profession. Further, the meaning of “students of banking and financial services” was unclear as majority of individuals joined the banking and financial sector based on the skills they possessed which usually cut across diverse professions. They proposed that the clause be amended to read “register students of banking and financial services who wished to become members of the Institute.”
- c) Under clause 4 (j), stakeholders noted that the provision to enforce CPD requirements for practitioners would be a duplication as most professionals in the banking and financial sector were already required by their respective qualifying institutions to undergo CPD in order to maintain their membership.

iv. Clause 6 - President and Vice President of Institute

Stakeholders found the provision for electing the President and Vice President under clause 6 contradicting with clause 8(2) (b) which explicitly provided for the Vice President to be a representative of the Bank of Zambia. As such, they proposed that the provisions should be reconciled. On the contrary, other stakeholders were of the view that the representative from the Bank of Zambia should be an Ex Officio to the Council and not necessarily take up the position of Vice-President. In line with best practice, the Vice-President position should be open for contest.

v. Clause 8 - Council of Institute

- a) Stakeholders observed that the composition of the Council under clause 8 (2) excluded representation from the academia, while clause 4 (k) of the Bill proposed collaboration of the Institute with higher education institutions,

among others, in order to improve the quality of the banking and financial services profession. Therefore, stakeholders proposed that the Bill should include representation from the academia. The stakeholders further proposed that the criteria to be used to nominate the five members in clause 8(2) (g) should be stated explicitly.

- b) Similarly, stakeholders were against leaving the representation from a bank under clause 8 (2) (d) especially in the absence of a criteria for representation from the banking sector. In order to promote unity in the sector, it was proposed that representation should come from the Bankers Association of Zambia.
- c) Under clause 8 (3) (a), stakeholders acknowledged that staff in financial services were drawn from a variety of professional disciplines who could be subject to the regulation of other regulatory bodies. As such a person could be found guilty of professional misconduct under another Act other than the Zambia Institute of Banking and Financial Services legislation. Therefore, they proposed the that the clause should be recast as follows:

“Is found guilty of professional misconduct under this or any other Act within a period of one year preceding the election as a member;”

- d) Further, stakeholders proposed that the number of years to disqualify an ineligible candidate on the basis of a record of misconduct under clause 8 (3)(a) should be increased from one year to five years. They were of the view that after being found guilty of professional misconduct, one year was inadequate for “reformation”.

vi. Clause 9 - Functions of Institute

Under clause 9(1) which provided for functions of the Council, stakeholders expressed concern that the Council would perform executive functions of the Institute while clause 9(2) provided specific functions which were not executive functions. In this regard, stakeholders proposed that the Bill must provide clarity on the roles of the Council with regard to oversight functions while clearly maintaining separate governance structures of the executive and management functions of the Institute.

vii. Clause 11 – Registrar and other staff

- a) Stakeholders noted with concern that clause 11(2) which limited the position of Registrar to a registered practitioner of banking and financial had potential to eliminate capable members of other professions from

anchoring the position. They proposed that the Registrar must be appointed based on competency rather than membership to the Institute.

- b) Under clause 11(3), stakeholders proposed that determination of salaries for the Registrar and other staff should be undertaken by the Emoluments Commission and not by the Council as highlighted in the Bill.

viii. Clause 12- Prohibition of practising without registration

Under clause 12 which prohibited practising without registration and the provision of the fine for contravening, stakeholders expressed concern that the fees and procedure for licensing and renewal of practising certificates would create more financial challenges for individuals and employers. In this regard, they proposed that the Bill should identify and capture specific areas in mainstream banking and financial services where employment would be restricted to members registered with the Institute unlike applying a wide restriction without due regard to other regulated professionals working for banks or financial services providers.

Further, stakeholders held the view that it should not be mandatory for one to register with the Institute as a practitioner in order to be employed in the banking and financial services sector as the proposal would add to the cost of professional membership, which, for most practitioners, may already be considered high. As already observed, practitioners in financial services already belong to various professional associations and are required to pay membership fees.

ix. Clause 13 - Application for registration as practitioner

Under clause 13 (3), stakeholder noted that the timeline of 14 days within which the Institute should consider an application for registration as a practitioner was too optimistic to review. This was in view of the provisions in section 3 (2) of the First Schedule which provided for the Council to meet at least once in every 3 months. It was therefore proposed that the timelines proposed be reviewed.

x. Clause 14 -Registration as practitioner

Stakeholders noted that provisions under clause 14 were unclear while some of them were subjective. To avoid ambiguity, they proposed that the Bill be amended as follows:

- a) that the conditions set under clause 14 (1) should be considered before an approval is granted under clause 13 (3);

- b) clause 14 (1) (a) should provide clarity between a member of the Institute and approval to be registered as a practitioner;
- c) clause 14 (1) (b) and (c) should be merged in line with the required qualifications for registration as practitioner; and
- d) provisions of clause 14 (1) (d) of the Bill should explicitly state the criteria that should be as objective as possible, that would be used in determining that an applicant for registration as a practitioner was of good character and good professional standing. They stated the provision would leave room for abuse by the registration authority. It was further proposed that the criteria should include bankruptcy, having a criminal record or having been deregistered by another professional body.

xi. Clause 18 - Suspension and cancellation of registration

- a) Under clause 18 (1) (c), stakeholders feared that the provision had a likelihood of being applied even to convictions that were not connected to the banking and financial services. They were of the view that regulation of profession should be restricted to what directly affected a particular profession. In particular, they proposed that the clause should be amended to specify that the conviction should be an offence involving fraud or dishonesty, or any offence under the ZIBFS legislation.
- b) Under clause 18(3), stakeholders noted that the Bill was silent on the period of suspension. In light of this, they proposed that the period of suspension should be limited or defined to avoid abuse of the process.

xii. Clause 19 - Re-registration

Stakeholders noted with concern that clauses 18(4) and 19 were at variance with regard to re-registration. There was an inherent conflict of interest in allowing the Institute to determine who to allow back into the profession. To avoid abuse, they proposed deletion of clause 18 (4) and subsequent amendment of clause 19 to provide that re-registration would be in accordance with conditions to be prescribed.

xiii. Clause 20 - Prohibition of practising without valid practising certificate

Some stakeholders observed that the Bill was unclear whether it intended to regulate individuals that were working in the banking and financial services sector or it would extend its mandate to the corporate entities working in the sector, the latter falling firmly within the mandate of the Bank of Zambia under the *Banking and Financial Services Act, No. 7 of 2017*. It was proposed that the Institute should focus on enhancing its mandate by exploring further developments of its research capacity,

financial technology and artificial intelligence, among others as opposed to proposing to regulate areas already under regulation.

xiv. Clause 24- Maintenance of non-practising practitioner on register

Stakeholders noted that clause 24 was unclear on whether the Institute would charge an individual whose name would be maintained in the non-practising register. They proposed that the Bill should be clear on the matter.

xv. Clause 34 - Professional Conduct Committee

- a) Stakeholders were opposed to the provision under clause 34 for an ad hoc Professional Conduct Committee (PCC) in each district and province. To promote objectivity, they proposed establishment of the Committee only at national level.
- b) Stakeholders noted the absence of the minimum period of experience to qualify to be a members of the PCC. Given that the PCC was the gateway to the Disciplinary Committee and had significant powers of its own under clause 38, they proposed that Committee members should have at least five years experience in their respective professions.

xvi. Clause 35 - Referring of matters to Professional Conduct Committee

Stakeholders observed that the provisions in clause 35 read together with clause 36 (2) and section 38 did not uphold the tenets of natural justice. They were of the view that a person being investigated should be heard before a sanction under section 38 could be meted out against the individual. In light of this, they proposed that the provisions relating to the procedural aspects in Part IV of the Bill be reviewed so that they adhere to the principles of natural justice.

xvii. Clause 38- Sanctions for practitioners by Professional Conduct Committee

With regard to clause 38 which provided sanctions that the PCC could impose, stakeholders expressed concern that the Bill did not contain any legal provision that gave the PCC the power to impose sanctions. They proposed for the insertion of an appropriate clause, similar to clause 42, that would address the issue to avoid potential legal challenges that may arise from the exercise of powers not specifically provided for in the law.

xviii. Clause 39 - Disciplinary Committee

Under clause 39, stakeholders noted that there was no provision for the legal practitioners to be nominated by the Law Association of Zambia. They submitted that the Bill suggested that the Council could randomly nominate any legal practitioner. Therefore, they proposed that a legal practitioner should be nominated by the Law Association of Zambia.

xix. Clause 44 - Reports by Disciplinary Committee

Regarding the period of completion of a hearing under clause 44, stakeholders were of the view that the Bill should be clear whether it referred to working days or calendar days.

xx. Clause 46 - Inspectors

Under clause 48, stakeholders expressed concern that the provision for inspectors employed by the Institute to enforce compliance was a duplication of the function of the Bank of Zambia which was undertaking the inspectorate function under the Bank Supervision Department to ensure compliance with various regulatory provisions. Stakeholders reiterated that the Institute should focus on its core mandate of developing human capital as well as professional and ethical standards.

xxi. Clause 47 - Power of entry, search and Inspectors

Some stakeholders expressed concern that clause 47 which granted authority to search premises to an extent of not giving prior notice was in conflict with provisions of Article 17 (1) of the *Constitution of Zambia (Amendment Act) Act, No. 2 of 2016*, which provided the right to privacy except when consent was granted by the owner of the premises. They were of the view that the provisions in clause 47 was not within the ambit of the exceptions provided in Article 17 (2). They proposed that the Bill should be reconciled with existing laws and procedures of such undertakings.

xxii. Clause 49 - Appeals

Stakeholders noted that the options of the appeal process in clause 49 seemed to be contradictory and the Bill was unclear whether the High Court was the last appeals court in the process. As such, it was proposed that the Bill should be amended to provide clarity. Stakeholders were also of the view that the Minister should not be part of the appeal process.

7.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

After interacting with various stakeholders, the Committee acknowledges that the Zambia Institute of Banking and Financial Services is a key player in providing credible professional qualifications in the banking and financial sector. The Committee recognises the central role that well qualified human capital plays in the delivery of banking and financial services that serve the needs of the economy. For the human capital to play its rightful role, the Committee underscores the need for a governance framework that provides and enforces high standards of professional and ethical behaviour.

However, the Committee notes that the financial sector is already regulated by the Bank of Zambia, Securities and Exchange Commission and the Pensions and Insurance Authority, whose mandate extends to setting standards of behaviour for the individual entities and the respective markets they supervise. Therefore, granting the Zambia Institute of Banking and Financial Services additional mandate to regulate professionals will cause unwarranted proliferation of regulation and overreach, especially in view of the wide application of the definition of practitioners and that of core banking services.

Cognisant of the reality that individuals working in the banking and financial services are exposed to the public's investments, pensions, savings, among others, thereby increasing the risk of financial crime, the Committee believes that public protection is adequately covered by the Central Bank under the Department of Bank Supervision and the Competition and Consumer Protection Commission. Further, strong collaboration with existing institutions such as the Drug Enforcement Commission, Financial Intelligence Centre and Anti-Corruption Commission will further guarantee depositors protection.

The Committee, therefore, does not support the Bill in its current state and makes its observations and recommendations as outlined below.

- i. While appreciating that the Bill presents an opportunity for accrediting training programmes provided by the Institute, the Committee observes that the Bill omits a necessary condition for accreditation by the Higher Education Authority (HEA). In particular the Bill has not explicitly made provisions that grant the Institute the mandate to provide specialised training in the banking and finance subject to accreditation by the Higher Education Authority in line with the *Higher Education Act, No. 4 2013*.

In light of this, the Committee recommends that the Bill should be amended by clearly spelling out that the training programmes shall be subject to

accreditation by the HEA. The Committee further recommends that the Bill should categorically grant the Institute the status of providing specialised training of professionals in the specified field of banking and finance.

- ii. The Committee finds the scope of the definition of practitioner too wide especially that of its definition is extended to other professionals providing core banking services some of which are already regulated by other professional bodies. The Committee is of the strong view that the definition risks posing regulatory overlap which may not be easily resolved using the tools of statutory interpretation.

In light of this, the Committee strongly recommends that the definition of practitioner be reviewed.

- iii. The Committee observes with concern the Bill intends to grant the Institute the mandate to regulate practitioners of banking and finance under clause 4(c). This may result in unwarranted proliferation, especially in the context of the wide coverage of the definition of practitioner, which by extension captures almost all professions in the sector including already regulated professionals. Given that the Bank of Zambia, Pensions and Insurance Authority, and Securities and Exchange Commission are the three key regulators of the financial sector, the Committee finds that allocation of the regulatory function to the Institute is a duplication of effort which is likely to cause conflict in the discharge of respective mandates among key players. In light of this, the Committee strongly recommends as follows:

- a) if the intention of the Bill is to strengthen regulation and address financial crime, the Committee strongly recommends that the Government should strengthen collaboration with already existing statutory bodies such as the Drug Enforcement Commission, Financial Intelligence Centre and Anti-Corruption Commission;
- b) the Bank of Zambia to ensure that key industry players such as banks play an essential role in developing, enforcing and maintaining high professional standards for those who work in the banking and financial sector; and
- c) the Institute should seize the opportunity and focus on transforming into a premier training institution for practitioners in the sector and providing specialised professional training and supplying relevant human capital.

- iv. The Committee notes that the Bill lacks clarity on which of the students it is targeting for registration under clause 4(d). The Committee recommends that

the Bill should be specific on whether it is targeting registration of students of banking and finance of the Institute or all students pursuing banking and finance regardless of the institution enrolled to.

- v. The Committee notes that clause 8 (b) designates the position of Vice-President of the Council to a representative of the Bank of Zambia while clause 6 subjects the position to an election in accordance with the Institute's constitution. In this regard, the Committee recommends that the two clauses must be reconciled.
- vi. Whereas clause 4 (1) (k) proposes collaboration of the Institute with higher education institutions, the Committee notes a serious omission of a representation from the academia on the composition of the Council in clause 8 (2).

The Committee is of the view that the Institute has a lot to benefit from academic institutions especially in the area of research. Therefore, the Committee strongly recommends that the Bill should be amended with the inclusion of representation from the academia. Further, in order to promote unity in the sector, the Committee recommends that clause 8 (2) (d) must specify that the proposed representation should be a nominee of the Bankers Association of Zambia.

- vii. The Committee notes that despite the specific corporate governance functions outlined in clause 9(2), the Bill gives the Council the mandate to perform executive functions under clause 9 (1). Being the board of the Institute, the Committee fears that performance of executive functions by the Council may compromise good corporate governance.

In light of this, the Committee strongly recommends deletion of clause 9(1) to remove the executive functions from Council is limited and be restricted to performing oversight strategic functions only.

- viii. The Committee expresses concern on the prescription that restricts the position of Registrar to a registered practitioner under clause 11(2) while clause 11 (1) makes it clear that the Registrar is an administrator of the Institute. The Committee is of the view that it is more important for the Registrar to be competent and possess relevant skills in management and administration rather than limiting the position to membership and practice.

In light of this, the Committee recommends that the requirements to the position of Registrar must be broadened in view of the administrative nature of the position.

- ix. Under clause 11(5) which provides for conditions of service and emoluments of the Registrar and staff of the Institute, the Committee recommends that determination of emoluments should be made in accordance with the *Emoluments Commission Act, No. 1 of 2022* and not by the Council, given that the Institute is a public institution.
- x. Under clause 12, the Committee expresses concern over the prohibition of practising without registration. The Committee fears that employers may take advantage of the provision and demand compliance to the provision in order to be employed in the banking and financial sector without due regard to other regulated professionals.

The Committee is of the view that membership of the Institute should be driven by the products and incentives offered by the Institute. Therefore, the Bill should be amended by making membership voluntary.

- xi. The Committee observes that the provisions in clauses 13 and 14 do not distinguish between a registration for membership of the Institute and approval for a practitioner. Further in the absence of the Bill prescribing a measure of good character and good professional standing which is a requirement for registration as a practitioner in clause 14(1) (d), the Committee wonders what criteria the Institute will use to determine whether the condition has been met before issuing a practising certificate to an applicant.

The Committee, therefore, recommends that clauses 13 and 14 should be harmonised. The Committee further recommends that the Bill should spell out what constitutes good character and professional standing to avoid subjective interpretations and abuse.

- xii. The Committee finds the grounds for administering re-registration of practitioners under clauses 18(4) and 19 in conflict. Whereas clause 18(4) proposes that the grounds shall be prescribed, clause 19 suggests that the Institute shall determine the terms for re-registration. In its current form, the Committee fears that the Bill may lead to an inconsistent application of terms upon which the re-registration may be considered.

In light of this, the Committee strongly recommends that the grounds of re-registration should be prescribed either in the Bill or subsidiary legislation and should not be determined by the Institute.

- xiii. Under clause 18(3), the Committee notes that the absence of the period of suspension for a practitioner is a serious omission that may cause inconvenience to professionals serving suspension. In this regard, the Committee recommends that the period of suspension should be limited or defined to avoid abuse of the process.
- xiv. The Committee finds clause 20(1) misplaced and wonders whether the Bill aims at regulating professionals working in the banking and financial sector or it will extend to corporate entities in the sector. Cognisant that the *Banking and Financial Services Act, No. 7 of 2017* gives mandate to the Bank of Zambia to regulate banking services through the Department of Bank Supervision, the Committee reiterates that the Institute should focus on strengthening its capacity in producing credible professionals. The Committee further recommends that clauses 13, 14 and 20 should be merged as they all relate to registration of practitioners.
- xv. While appreciating representation of two legal practitioners on the composition of the Disciplinary Committee under clause 39, the Committee notes that the omission of the provision for the legal practitioners to be nominated by the Law Association of Zambia may pose practical challenges on the selection criteria.

Therefore, the Committee is of the view that a legal practitioner should not be nominated by the Law Association of Zambia.

- xvi. Under clauses 47 and 49, the Committee observes with concern that the continuous trend in granting inspectorate mandate and power of entry and search, to an extent of not giving prior notice in certain circumstances, causes serious disruption in provision of services. The Committee is however of the view that the provisions in the proposed clause 47 are outside the ambit of the exceptions provided in Article 17 (2) of the Constitution which provide for derogations to the right to privacy.

The Committee strongly recommends that more appropriate ways of regulating professionals should be identified while inspectorate powers, to the extent of not giving prior notice, should be reserved for law enforcement agencies.

The Committee further observes that the wide scope of definition of a practitioner and its extension to providers of core banking services captures a pool of professionals in the banking and financial sector some of which are already regulated by other professional bodies. Further, the Bill is likely to pose serious operational challenges given the mandates of key regulators of the banking sector, insurance industry and capital market.

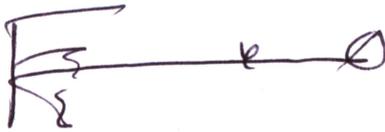
The Committee is convinced that some provisions of the Zambia Institute and Financial Services Bill, N.A.B No. 22 of 2022 are not in the best interest of the people. In light of this, the Committee strongly urges the Government to consider withdrawing or deferring the Bill for further public consultation.

8.0 CONCLUSION

The Committee notes that Zambia Institute of Banking and Financial Services Bill, N.A. B No. 22 of 2022 is aimed at, among other things, promoting the banking and financial services profession. The Bill presents an opportunity for the programmes at the Institute to be accredited by the Higher Education Authority, a process which has been unattainable for thirty years since the Institute was established in 1992 under the *Societies Act, Chapter 119 of the Laws of Zambia*.

Due to these reasons and the concerns raised by the stakeholders as well as the observations made by the Committee contained in its Report, the Committee does not support the Bill. It is the hope of the Committee that the Government will consider withdrawing or deferring the Bill for further public consultation.

We have the honour to be, Madam, the Planning and Budgeting Committee mandated to scrutinise the Zambia Institute of Banking and Financial Services Bill, N.A.B. No. 22 of 2022.



Mr Fred C Chaatila, MP
CHAIRPERSON

November, 2022
LUSAKA

APPENDIX I – List of National Assembly Officials

Mr Charles Haambote, Principal Clerk of Committees (FC)

Mrs Doreen C Mukwanka, Deputy Principal Clerk of Committees (FC)

Mr Charles Chishimba, Senior Committee Clerk (FC)

Mrs Edna K Zgambo, Budget Analyst

Mr Elijah I C Chilimboyi, Committee Clerk

Ms Luyando Chilala, Administrative Officer

Mr Daniel Lupiya, Committee Assistant

APPENDIX II – List of Witnesses

Minister of Finance and National Planning
Ministry of Justice
Ministry of Finance and National Planning
Bank of Zambia
Zambia Institute of Chartered Accountants
Zambia Centre for Accountancy Studies
Copperbelt University
Zambia Federation of Employers
Higher Education Authority
Bankers Association of Zambia
Zambia Chamber of Commerce and Industry
Zambia Institute for Policy Analysis and Research
Zambia Qualifications Authority
Zambia Institute of Banking and Financial Services