



REPUBLIC OF ZAMBIA

REPORT

OF THE

**COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS
ON THE**

**ZAMBIA INSTITUTE OF MARKETING BILL, N.A.B.2 OF 2022
FOR THE**

FIRST SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

Published by the National Assembly of Zambia

REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS

ON THE

ZAMBIA INSTITUTE OF MARKETING (AMENDMENT) BILL, N.A.B.2 OF 2022

FOR THE

FIRST SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

TABLE OF CONTENTS

1.0	MEMBERSHIP OF THE COMMITTEE	1
2.0	FUNCTIONS OF THE COMMITTEE.....	1
3.0	MEETINGS OF THE COMMITTEE	1
4.0	PROCEDURE ADOPTED BY THE COMMITTEE.....	1
5.0	BACKGROUND OF THE BILL	1
6.0	OBJECTS OF THE BILL	2
7.0	SPECIFIC PROVISIONS OF THE BILL.....	2
8.0	SUBMISSIONS FROM STAKEHOLDERS	3
9.0	COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS	7
10.0	CONCLUSION	8
	APPENDIX I - LIST OF NATIONAL ASSEMBLY OFFICIALS.....	10
	APPENDIX II - LIST OF WITNESSES.....	11

REPORT OF THE COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS ON THE ZAMBIA INSTITUTE OF MARKETING BILL, N.A.B. NO. 2 OF 2022 FOR THE FIRST SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

1.0 MEMBERSHIP OF THE COMMITTEE

The Committee consisted of:

Mr B Mpundu, MP (Chairperson); Ms S K Sefulo, MP (Vice Chairperson); Mr E Kamondo, MP; Mr D Chisopa, MP; Mr M Mubika MP; Mr R K Chitotela, MP; Mr D Mabumba, MP; Mr G S Sialubalo, MP; and Mr N Simutowe, MP.

The Honourable Madam Speaker
National Assembly
Parliament Buildings
LUSAKA

Madam,

The Committee has the honour to present its Report on the Zambia Institute of Marketing Bill, N.A.B. No. 2 of 2022.

2.0 FUNCTIONS OF THE COMMITTEE

The functions of the Committee are as set out under Standing Order No. 198 (j) of the National Assembly Standing Orders, 2021, pursuant to which the Committee is mandated to study and review Bills that may be referred to it by the House.

3.0 MEETINGS OF THE COMMITTEE

The Committee held ten (10) meetings to consider the Zambia Institute of Marketing Bill, N.A.B. No. 2 of 2022.

4.0 PROCEDURE ADOPTED BY THE COMMITTEE

The Committee requested written submissions from various stakeholders. The stakeholders made oral submissions before the Committee to clarify the contents of their written memoranda. The institutions that appeared before the Committee are listed at Appendix II of this Report.

5.0 BACKGROUND OF THE BILL

The *Zambia Institute of Marketing Act, No. 14 of 2003* was enacted to provide for the establishment of the Zambia Institute of Marketing (ZIM) and its functions. The Act also provided for the registration of members and for ZIM to accredit training programmes and qualifications for purposes of registration of its members.

ZIM was a membership-based organisation, which was created to regulate, promote, uphold and improve the standards of training, practice and professional competence of persons and

organisations engaged in marketing and advertising in Zambia. The *Zambia Institute of Marketing Act* governed the Institute.

During the implementation of the Act, several lacunas and challenges that negatively affected the effective promotion and supervision of the profession were identified. It was further realised that there were inadequate enforcement mechanisms in the Act.

It was against this background that the Government proposed the introduction of the *Zambia Institute of Marketing Bill of 2022* to, among others, repeal and replace the 2003 Act; provide for the registration of marketers; and regulate their practice and professional conduct. This was done taking into account the critical role that marketers and the Institute play in the business landscape in Zambia.

6.0 OBJECTS OF THE BILL

The *Zambia Institute of Marketing Bill*, N.A.B. No. 2 of 2022 sought to:

- i) continue the existence of the Zambia Institute of Marketing and redefine its powers and functions;
- ii) promote and enhance the marketing profession;
- iii) provide for the registration of marketers and regulate their practice and professional conduct;
- iv) repeal and replace the *Zambia Institute of Marketing Act, 2003*; and
- v) provide for matters connected with, or incidental to, the foregoing.

7.0 SPECIFIC PROVISIONS OF THE BILL

The specific provisions of the Bill were as set out below.

i) Part I: Preliminary Provisions

Part I provided the preliminary aspects of the Bill, such as the short title and commencement; and the interpretation section. Some new definitions had been introduced in the interpretation section. Notable among these was the comprehensive definition of the word marketing.

ii) Part II: The Zambia Institute of Marketing

Part II provided for the continuation of ZIM which was established under the *The Zambia Institute of Marketing Act, No. 14 of 2003* as a body corporate with perpetual succession and a common seal. The Institute was capable of suing and being sued in its corporate name and had power, subject to the provisions of the Act, to do all acts and things that a body corporate could, by law, do or perform.

Part II further provided for the Council of the Institute and its functions. It also provided for the Registrar of the Institute; other staff; and the constitution of the Institute.

iii) *Part III: Registration of Marketers and Issuance of Practising Certificates*

Part III provided for registration of marketers and issuance of practising certificates. It also established a Marketers' Registration Committee of the Council, which would be responsible for performing the registration functions of the Institute. Further, the Part provided for offences relating to registration.

iv) *Part IV: Advertising*

This part provided for the establishment of the Advertising Standards Board of the Institute and the proceeds that would regulate advertising in marketing in the Republic. The Board would consist of the part-time board members appointed by the Council.

v) *Part V: Disciplinary Matters*

Part V provided for the establishment of the Professional Conduct Committee and the Disciplinary Committee and their functions. It also provided for codes of ethics for marketers, which would bind marketers regulated under the Act.

vi) *Part VI: Inspectorate*

This Part provided for inspectors appointed by the Council to ensure compliance with the Act.

vii) *Part VI: General Provisions*

Part VII provided the general provisions, which included among others branches of the institute; professional fees; appeals; jurisdiction over acts committed outside the republic; administrative penalty; guidelines; and regulations.

viii) *First Schedule*

a) *Part I: Administration of the Institute*

Part I of the First Schedule provided for all matters relating to the administration of the Institute and how the Institute would raise funds.

b) *Part II: Financial Provisions*

Part II of the First Schedule provided for the funds of the Institute. These would consist of monies that could be paid to the Institute by way of fees, charges, grants, or donations accrued to the Institute. It also provided for accounts and audits as well as annual reports for the Institute.

ix) *Second Schedule*

The Second Schedule provided for the interpretation of "former Council" established under the *Zambia Institute of Marketing Act, No. 14 of 2003*. It also provided for registration and appointment under the 2003 Act; the Staff of the Institute; transfer of assets and liabilities; and legal proceedings.

8.0 SUBMISSIONS FROM STAKEHOLDERS

8.1 Submissions from Ministry of Commerce Trade and Industry and Zambia Institute of Marketing

The Committee was informed that during the implementation of the *Zambia Institute of Marketing Act No. 14 of 2003*, several lacunas and challenges were identified that had negatively

impacted the effective promotion and supervision of the marketing fraternity in Zambia. For example, the 2003 Act did not provide for adequate enforcement. This, therefore, necessitated the proposal to repeal and replace the Act, considering how essential and critical the Institute was to the business landscape in Zambia. The proposed Act would help to ensure that the law adequately covered all aspects of the marketing profession.

The Committee was informed that the Bill continued the existence of ZIM and redefined its powers and functions in order to promote and enhance the marketing profession. The continued existence of the Institute provided a platform for implementation of marketing strategies, improvement of business ethics and enhancement of professionalism in the marketing fraternity. Further, the Bill provided for mandatory registration of marketers and required that marketers were affiliated to ZIM. This would ensure that all practitioners were well qualified and adhered to the code of practice in the marketing fraternity in order to promote marketing excellence.

The Bill also promoted ethical conduct among practitioners and provided for adherence to global best practice by providing marketing knowledge development and interactive platforms for marketers.

The Committee was also informed that the intention of the Zambia Institute of Marketing Bill was to ensure that the regulatory framework for marketing was enforced. In this regard, it was imperative for all the major stakeholders in the marketing profession to work in close collaboration with the Institute to achieve a coordinated and harmonised implementation of marketing strategies. The Committee was informed that the institutions that had been identified as major stakeholders in the Bill included the Independent Broadcasting Authority (IBA); Zambia Information and Communications Technology Authority (ZICTA); Competition and Consumer Protection Commission (CCPC); Zambia Bureau of Standards (ZABS); local government; and private sector business associations.

The Committee was further informed that the marketing profession was very important to economic development because of its role in attracting both investment and tourism in the country through advertisement. In this regard, the Bill established the Advertising Standards Board that was mandated to regulate advertising in the country, which was fragmented due to lack of networking and coordination across different Government institutions.

With regard to the expected impact of the Bill once enacted into law, the Committee was informed that best practices in the marketing profession would be adhered to. The law would also protect consumers, customers and businesses, and this would ensure that qualified marketers practiced in the profession and upheld integrity and professionalism.

Further, it was expected that the implementation of the Bill would help ensure that priority was given to suitably qualified Zambians whenever marketing jobs were available. The new law would, therefore, promote job creation for Zambians.

8.2 Submissions from Other Stakeholders

The stakeholders who appeared before the Committee supported the Bill and informed the Committee that the enactment of a new ZIM law would address the challenges experienced in

the enforcement of the *Zambia Institute of Marketing Act, No. 14 of 2003*. It would also address any changes that had occurred in the marketing profession.

The views and concerns raised by stakeholders are laid out hereunder.

i) Clause 4 – Functions of the Institute

Stakeholders submitted that the functions of ZIM had been redefined and this would help the Institute to adequately focus on regulating the marketing profession. This would ensure that the gaps in the law regarding regulation of the profession were addressed.

ii) Clause 9 - Council of the Institute

The Committee was informed that the Bill provided that the Council would perform the executive functions of the Institute. This entailed that the Council would be charged with the responsibility of the actual management of the Institute.

Stakeholders expressed concern at this provision pointing out that the Council should not be involved in the management of ZIM as this was against the tenets of good corporate governance. These functions should be left to the Chief Executive Officer, being the Registrar appointed under clause 10. The power under clause 9(3) to delegate some of functions of the Council to the Registrar had the potential to create confusion with the functions of the Registrar as CEO and administrator under clause 10(1).

iii) Clause 11–Registration of Marketer

The Committee was informed that under clause 11, the Bill established a Marketers' Registration Committee, which would be continued from the 2003 Act.

Stakeholders expressed concern at clause 11(3)(d) which provided that an applicant would be required to pass a membership exam administered by ZIM, before they could be registered as a member. Stakeholders noted that clause 11(3)(c) required an applicant to hold a marketing qualification that was recognised and validated by the Zambia Qualifications Authority (ZAQA). They submitted that ZAQA validation was sufficient and in this regard the examination was unnecessary and should, therefore, be done away with. Stakeholders further submitted that the examination would result in increased costs for the applicant.

Stakeholders submitted that clause 11(3)(f) of the Bill introduced the requirement for a person wishing to be registered as a marketer to be a resident or have an office in Zambia. The Committee was informed that this was a progressive provision, as it would ensure that marketing jobs were prioritised for qualified Zambians and would additionally promote job creation. However, concern was raised at the fact that this had the potential to discriminate against Zambians resident outside the country.

iv) Clause 12 - Prohibition of Practising without Registration

Stakeholders submitted that the penalty for practising without registration had been increased from the twenty thousand penalty units or two years imprisonment prescribed in the 2003 Act, to five hundred thousand penalty units or five years imprisonment. The Committee was informed

that while this provision was aimed at protecting consumers, customers and businesses from the risk of interacting with unqualified persons, the five-year proposal term was too punitive.

v) *Clause 20 - Prohibition of Practising without a Valid Practising Certificate*

Stakeholders submitted that the mandatory requirement for a practising license was a new provision, also aimed at safeguarding the public from unscrupulous characters holding themselves out as marketers. This essentially entailed that in order for a person to be employed and practise as a marketer, that person must be registered and hold a practising certificate. While stakeholders welcomed the provision, they expressed concern that individuals who had a natural talent to market their goods and services would be subject to the provisions of the Act and could either face a fine of up to five hundred thousand penalty units, or up to five years imprisonment.

vi) *Clause 32- Establishment of Advertising Standards Board*

The Committee was informed that the Advertising Standards Board would regulate advertising standards in Zambia and would help to ensure that marketers who wished to advertise services for example, met certain set standards. Stakeholders expressed concern at the possibility of the Board over regulating the advertising sub sector and stifling growth. They also expressed concern over the composition of the Board, pointing out that advertising was not about Government supervision, but about inducing customers, especially in a free market economy. Stakeholders recommended rebalancing the Board by reducing the number of Government representatives as Government institutions could liaise amongst themselves.

vii) *Clause 33 - Proceedings of Board*

The Committee was informed that the provision in clause 33(8), did not allow for due process. The clause provided that the validity of any proceedings, acts or decisions of the Board would not be affected by a vacancy in the membership of the Board or by any defect in the appointment of a board member or by reason that a person not entitled to do so, took part in the proceedings. In an instance where conflict of interest arose, this provision would allow a decision of the Board to stand which could result in a miscarriage of justice. Stakeholders were of the view that the provision should be removed.

vii) *Clause 50- Power of Entry, Search and Inspection*

Stakeholders submitted that the powers of the inspectors appointed under clause 49 of the Bill were excessive and unfettered considering the mandate of ZIM. The Committee was informed that the marketing offenses proposed in the Bill were not of a life and death nature to justify such powers. Stakeholders wondered whether ZIM inspectors were Government law enforcement officers to warrant them having such powers.

viii) *Clause 54 – Appeals*

The Committee was informed that clause 54 provided for the appeal procedure, where a person was dissatisfied with a decision. However, the Bill did not provide for an appeal avenue from the Professional Conduct Committee.

9.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

Following the interaction with stakeholders, the Committee is hopeful that the enactment of the Bill into law will help control and regulate misconduct in the marketing profession and regulate board standards and language content in advertising. The Committee also expresses hope that this will raise the bar for practising marketers and make the field comparable to advanced economies.

The Committee makes the observations and recommendations below.

- i) The Committee observes that clauses 8, 9 and 10 of the Bill provide for the constitution of the Council and Registrar of the Institute. While clause 8 provides that the Council's responsibility is to manage and control the Institute, the Committee is of the view that the role of the Council should be strategic and supervisory in nature and should not be executive functions as is provided for under clause 9(1). Good corporate governance requires the separation of executive management and strategic management.

The Committee, therefore, recommends that all executive functions should be delegated to the Registrar and staff under clause 10 while the Council retains policy and strategic guidance to the Institute as provided for in clause 9(2)(a-j).

- ii) The Committee observes that the Zambia Institute of Marketing Bill is meant to regulate the work of marketers and promote the marketing profession. This is evident from the definitions of 'marketer' and 'marketing' under clause 2 which cover many aspects of marketing. The Bill proposes that marketing can only be undertaken by someone who holds a professional marketing qualification and is registered by ZIM. However, the Committee is concerned that unless one is registered with ZIM, one cannot practice. While it is appreciated that the profession wants to ensure that players in the profession are ethical, it discriminates against uneducated and naturally talented marketers. The Committee notes that the Bill is likely to disqualify Small and Medium Enterprises (SMEs) and Zambians selling in public markets.

The Committee, therefore, recommends that while ZIM is advocating mandatory registration, the Institute should ensure that mechanisms are put in place to support SMEs and marketers who are involved in marketing but do not have professional qualifications.

- iii) The Committee further observes that practising without registration and a practising license; and also employing someone without a valid practising certificate have been criminalised under clauses 12 and 20 of the Bill. The Committee is of the view that the penalties are unnecessarily stiff.

Although the Committee acknowledges the submission from the Honourable Minister of Commerce, Trade and Industry that the penalties would serve as a deterrent to wrongdoers, the Committee recommends that consideration should be made to lessen the severity of the penalties.

- iv) The Committee observes with concern that whereas marketing and advertising are business practices, which are private sector led, the composition of the Advertising Standards Board largely comprises representatives from the public sector.

In this regard, the Committee recommends that consideration should be made to have more private sector representation on the Board so as to avoid over regulation of the sector and have private sector led growth of this business sector.

- v) The Committee observes that the Bill makes it a mandatory requirement for marketers to be members of ZIM and is concerned that this may burden members with exorbitant costs of affiliation. The Committee is alive to the fact some marketers, such as students and unemployed marketers may struggle to meet registration fees.

In view of the above, the Committee strongly recommends that reasonableness should be applied in the setting of fees for the different categories of membership.

- vi) The Committee observes that clause 11(3)(d) provides that an applicant for registration is required to pass an entrance exam even when one has already had their qualification validated by ZAQA.

The Committee strongly recommends that this unfair provision should be removed as it will subject applicants to unnecessary costs and bar well-qualified marketers from being allowed to practice.

The Committee fully supports the enactment Zambia Institute of Marketing Bill, N.A.B No. 2 of 2022.

10.0 CONCLUSION

The repeal and replacement of the Zambia Institute of Marketing Act No. 14 of 2003 is in line with government's promise of ensuring professionalism in the different sectors. One such sector is marketing and ZIM is positioned to contribute to national development by ensuring that the standards of marketing are upheld. The Zambia Institute of Marketing Bill, N.A.B. No. 2 of 2022 is progressive and the Committee supports its enactment into law, subject to its recommendations made in this Report.

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 Speaker, the Committee on National Economy, Trade and Labour Matters mandated to consider the Zambia Institute of Marketing Bill, N.A.B. No. 2 of 2022 for the First Session of the Thirteenth National Assembly.

Mr B Mpundu, MP
(Chairperson)

Ms S K Sefulo, MP
(Vice Chairperson)

Mr E Kamondo, MP
(Member)

Mr D Chisopa, MP
(Member)

Mr M Mubika MP
(Member)

Mr R K Chitotela, MP
(Member)

Mr D Mabumba, MP
(Member)

Mr G S Sialubalo, MP
(Member)

Mr N Simutowe, MP
(Member)



Mr B Mpundu, MP
(Chairperson)

March 2022
LUSAKA

APPENDIX I - LIST OF NATIONAL ASSEMBLY OFFICIALS

Mr Charles Haambote, Acting Principal Clerk of Committees (FC)
Mr Francis Nabulyato, Acting Principal Clerk of Committees (SC)
Mrs Doreen N C Mukwanka, Acting Deputy Principal Clerk of Committees (FC)
Mrs Chitalu K Mumba, Acting Deputy Principal Clerk of Committees (SC)
Mrs Angela Banda, Senior Committee Clerk
Mr Charles Chishimba, Acting Senior Committee Clerk (FC)
Mrs Edna K Zgambo, Committee Clerk
Ms Rachael Mumba, Intern
Mrs Grace Chikwenya, Typist
Mr Morgan Chikome, Committee Assistant
Mr Daniel Lupiya, Committee Assistant
Mr Sean Kantumoya, Parliamentary Messenger

APPENDIX II - LIST OF WITNESSES

Ministry of Justice – Permanent Witness
Ministry Commerce Trade and Industry
Zambia Institute of Marketing
Higher Education Authority
Zambia Qualifications Authority
Zambia Federation of Employers
Institute of Directors
Public Service Management Division
Zambia Chamber of Commerce and Industry
Zambia Bureau of Standards
Competition and Consumer Protection Commission