JUBILEE-ZAMBIA

Debt Cancellation and Trade Justice Campaign

AN EVALUATION OF THE STRENGTHS AND WEAKNESSES OF PUBLIC DEBT MANAGEMENT IN ZAMBIA

AND

THE JCTR COMPREHENSIVE PUBLIC DEBT MANAGEMENT LEGAL REVIEW

JUBILEE-ZAMBIA
DEBT CANCELLATION AND TRADE JUSTICE CAMPAIGN
Hosted by the Jesuit Centre for Theological Reflection,
P.O Box 37774, 10101 Lusaka, Zambia

Phone: 260-211-290410 Fax: 260-211-290759
E-mail: debtjctr@jesuits.org.zm Web: www.jctr.org.zm

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ABBREVIATIONS AND ACRONYMS

ADB	- African Development Bank
ADF	- African Development Fund
BADEA	- Arab Bank for Economic Development in Africa
BoZ	- Bank of Zambia
CP	- Completion Point
CP's	- Cooperating Partners
DMO	- Debt Management Office
DRI	- Debt Relief International
DSA	- Debt Sustainability Analysis
FNDP	- Fifth National Development Plan
DSF	- Debt Sustainability Framework
DP	- Decision Point
EU	- European Union
EIB	- European Investment Bank
FDI	- Foreign Direct Investment
GDP	- Gross Domestic Product
HIPC	- Heavily Indebted Poor Countries
IDA	- International Development Association
IDM	- Investments and Debt Management
IFAD	- International Fund for Agriculture Development
JCTR	- Jesuit Centre for Theological Reflection
IMF	- International Monetary Fund
MDRI	- Multilateral Debt Relief Initiative
MDGs	- Millennium Development Goals
MoFNP	- Ministry of Finance and National Planning
MPSAs	- Ministries, Provinces and Spending Agencies
NDF	- Nordic Development Fund
NPV	- Net Present Value
ODA	- Official Development Assistance
OMO	- Open Market Operations
PRGF	- Poverty Reduction and Growth Facility
SDR	- Special Drawing Rights
SWAPS	- Sector Wide Approaches
WWII	- World War II

Foreword

Jubilee-Zambia has been campaigning for the cancellation of Zambia's external debts and monitoring the Government on economic and development issues to avoid the country going back into a debt crisis. With Zambia having reached the Highly Indebted Poor Countries (HIPC) Decision Point, Completion Point and Multilateral Debt Relief Initiative (MDRI), a large part of Zambia's debt has been cancelled. This has reduced external debt stock from about US$7.1 billion in 2004 to about US$1.5 billion in 2006.

However, the situation poses a number of big challenges for Zambia. The questions are; how does the country avoid reverting into a debt crisis and how does the country continue to put up public infrastructure that would assure both economic and human development without borrowing to unsustainable levels? Another challenge is how to effectively ensure the people of Zambia benefit from debt relief and overall debt resources arising from recent and future debts.

The accumulation of Zambia's external debt to unsustainable levels arose from an increase in the price of crude oil, reduction in the price of copper and a weak institutional, policy and legal framework for both debt and economic management. The Zambian government has no control as regards fluctuations in prices of crude oil or copper apart from only hedging against these issues. On the contrary, the Government has a high level of control over the weak institutional, policy and legal framework. It is with this in mind that Jubilee-Zambia has identified an urgent need for the Government to put in place mechanisms to carry out reforms of institutions charged with the management of debt, the legal framework governing debt management and policies to guide in the prudent management of debt as it relates to financing economic developments and the fiscal gap.

This research paper reviews the brief history of Zambia's debt crisis, institutional arrangements and practises and the laws that govern debt management.

From the research findings, it is clear that nothing much has changed starting from the period before the debt crisis and after the huge debt cancellation with regard to the following: the debt laws, the institutional arrangements among the executive, the legislature and the public. It therefore follows that nothing right now would stop the government to revert Zambia into a debt crisis. A high level of human capacity has been built within the government to manage debt, but they lack the powers to stop the politicians from high-jacking the situation.

Further, while there is a legal and administration framework for the management of national debt, there are some very serious weaknesses in debt management such as: Lack of high-level coordination; Lack of a central depository of original loan agreements; Lack of guidelines in terms of borrowing; Absence of permanent negotiation teams; Lack of public accountability; Centralization of borrowing powers in an individual; There is lack of a debt strategy and policy to guide the country in the sectors of borrowing, terms and amounts of borrowing in a particular financial year; Political interference; and poor data management resulting in uncontrolled debt and litigations.

Jubilee-Zambia is therefore proposing a new debt law, new debt practises, a lot more openness in the economic and financial management of public funds and a redefinition of the relationships between the different institutions that play a role in contracting loans in Zambia.

Muyatwa Sitali
Coordinator-Jubilee-Zambia
Hosted by the Jesuit Centre for Theological Reflection

Executive Summary

Zambia's external debt has had a number of effects on the Zambian economy. The HIPC debt agreement, coined in 1996 to help countries like Zambia faced with a huge debt problem and a high fiscal deficit resulted in Zambia qualifying for debt relief under the HIPC programme in December 2000 when the country reached the decision point.

On 11th April 2005, Zambia acceded to the HIPC Initiative and in June 2005 the Multilateral Debt Relief Initiative (MDRI), at which moment most of its debt had been written off by its Creditors. The debt that stood at US$7.1 billion at the end of 2004 was reduced by 36.1 percent to US$4.5 billion at the end of 2005. This was as a result of cancellation by most members of the Paris Club. As at the end of 2006 the stock of debt reduced further by 66.5 percent to US $1.5 billion from US $4.5 billion recorded in 2005.

Jubilee-Zambia having been in the forefront of debt campaigns put up this study that is aimed at formulating a basis for a comprehensive public debt management reform proposal for Zambia by reviewing the strengths and weaknesses of the prevailing policy, legal and institutional framework for debt management in Zambia. The aim is for Jubilee-Zambia to use the findings of this study to engage policy makers and government bureaucrats in meaningful advocacy for a strong, transparent, cost effective and accountable debt management in Zambia. Zambia's use of the IMF Debt Sustainability Framework (DSF) in managing its debt is not adequate as this does not take into account human development spending. For example it is detached from the expenditure for the attainment of Millennium Development Goals (MDGs) which is the justification for the HIPC and MDRI initiatives.

Current Legal Framework

External debt in Zambia is managed under authority of the Minister of Finance and National Planning (MoFNP) through powers vested in him by an Act of Parliament, Chapter 366 (hereafter referred to as Cap 366) of the Laws of Zambia. The Act provides for the raising of loans, the establishment of sinking funds, issuance of guarantees and indemnities and the granting of loans by or on behalf of the Government; and to provide for matters incidental thereto and connected therewith.

Cap 366 under Subsidiary Legislation provides for the limits of the amounts of loans raised both within and outside the country under Sections 3 and 15. Section 3 states that the Minister may raise from time to time, loans not exceeding an amount outstanding at any one time such amounts as he shall from time to time be authorized by resolution of the National Assembly to prescribe by statutory instrument. Section 15 authorises the Minister to guarantee the repayment to any person ordinarily resident in and outside Zambia of any loan or any portion of the loan. From 1988, the Minister's limit for foreign loans has been at K20 trillion (approximately US$5 billion) per year and at K5 trillion (US$1 billion) per year for domestic loans.

The Act provides for the establishment of institutional structures to carry out the day-to-day functions of borrowing and repayment of loans thereafter contracted. Under this provision, the country has two sites from where debt management is conducted, the Ministry of Finance and National Planning (MoFNP) and the Bank of Zambia (BOZ).

Current Institutional Arrangements

Administration of the debt function in Zambia is sited at two centres, namely, the Ministry of Finance and National Planning and the Bank of Zambia. The Ministry manages the country's external debt as it relates to public and publicly guaranteed debt. It is in charge for negotiating, contracting, guaranteeing, record keeping and debt servicing of external debt. In the area of domestic debt, the ministry is mainly in-charge of servicing of interest on government securities. It also maintains data on internal suppliers' credit, contingent liabilities of local government entities and state enterprises.

The Bank of Zambia is charged with the responsibility of monitoring, recording its own and private sector contracted short-term external debt, management of domestic debt, in particular government securities and effecting external debt service.

Current Policy Arrangements

Currently Zambia has no debt policy or strategy to guide the management of its debt. This is despite the fact that debt has been one single most problem that has held back the country's progress in terms of development. Zambia has over the years been using programme targets agreed with the Cooperating Partners (CPs). These have involved the limiting of borrowing to concessional terms only.

The lack of a debt strategy has left borrowing being done unguided. For example it should be a requirement under the debt strategy that a country should conduct periodic Debt Sustainability Analysis (DSAs). However, Zambia has never produced a public debt sustainability analysis report to guide policy makers in the borrowing process. As a result, borrowing is done at non-uniform and targeted terms. Further the Government has not been in a position to control and direct domestic borrowing resulting in huge accumulation of Domestic Debt arrears whose principal is currently being rolled over.

Current State of Data

The External debt database should provide in the successive economic reports and budget speeches, consistent data on external debt. The data is usually inconsistent and has moving figures in certain particular years. This point to the need for a comprehensive strategy to ensure data integrity.

Zambia does not have a centralized comprehensive domestic debt database. The data is fragmented in the Ministry of Finance, Bank of Zambia, Pension Fund and Government Spending Agencies. This has resulted in the lack of control and monitoring of the debt.

Best Practice

The establishment of an effective and efficient debt management system is now widely recognized as a major element of a sound economic management strategy, because of the crucial link with fiscal and monetary policies as well as overall macroeconomic economic management.

Generally, countries are moving towards reorganization of their debt offices particularly to centralize borrowing powers, strengthen the monitoring capacity of the debt stock and strengthening of the debt strategy and policy.

The best practice is to have in place a comprehensive debt strategy and policy that stipulates when to borrow, at what terms and for what purpose. This is guided by a clear policy on debt that would stipulate the fact that debt cannot finance recurrent expenditure but only capital expenditure due to the need to create sustainable debt repayments.

Some countries such as Nigeria have set up an Independent Debt Management Office, outside the Ministry of Finance, as a best practice. The aim is to retain specialised debt staff whose turnover and cost of training is very high and also ensure a separation in the operation of general fiscal policy from debt policy, which in most cases is not separated as the case is in Zambia currently.

The Current Debate

Currently, Parliament approves all expenditure activities of the budget except for those financed by loans, as loans are contracted outside the budget presented to parliament. However, Parliament is requested to approve expenditure on loan repayment once the loan falls due for repayment. This has been seen as a mismatch in the system.

It has also brought about the current debate that all Government borrowings should be approved by Parliament. This is also on the premise that these are the people's representatives and therefore need to reflect the wishes of the constituents in the borrowing process because its citizens funds that are used to repay the loans. On the other hand some sections have called for the use of a select committee of Parliament to approve loans which are later tabled before parliament for approval. The other counter view is the use of a select committee of Cabinet. This is in line with the need to keep legislative roles of parliament separate from executive roles.

Recommendations

- √ There is need to set up a semi-independent debt management office (DMO) in Zambia which will be governed by a Board that reports to a select committee of Parliament. This will ensure independence of the debt office to play its role of gap financing and retain qualified staff and improve accountability.

- √ The need to separate fiscal policy from debt policy (Gap financing) to enable a more professional way of determining the required gap financing. Currently debt is used to meet operational costs (recurrent expenditure) of running Government.

- √ There is need for loans to be approved by a select committee of parliament with all justifications and conditions made available to the committee. The committee can then lay before parliament, the loans approved during every sitting. Parliament could give the guidelines on what is to be borrowed based on the approved debt strategy that should be presented to parliament side by side with the budget.

- √ There is need for a comprehensive debt strategy and policy. The objectives of this Debt Policy should articulate the following:

  1. Achieve the lowest cost of capital;
  2. Maintain a prudent level of financial risk;
  3. Preserve future financial flexibility to satisfy Government cash-flow requirements;
  4. Maintain strong credit ratings and good bilateral, multilateral and commercial relations;
  5. Maintain at minimum cost and sustainable level the guarantees and indemnities issued by the Government; and to
  6. Keep Government borrowing within the sectors and limits set by Parliament in each financial year

- √ There is need for tabulating borrowing sectors at the beginning of each financial year and in the long term debt policy.

CHAPTER 1

Introduction and Overview

Jubilee-Zambia and its partners has since 1998 been actively involved in a campaign calling for the unconditional cancellation of debts owed by Zambia on the basis of negative social economic implications that the debt service on the Zambian economy and development progress.

As a result of this debt campaign at a global level, the HIPC debt agreement was coined in 1996 to help countries like Zambia faced with a huge debt problem and a high fiscal deficit. This resulted in Zambia qualifying for debt relief under the programme in December 2000 when the country reached its decision point.

This was followed on 11th April 2005 in Zambia's accession to the HIPC Initiative and in June 2005 for the Multilateral Debt Relief Initiative (MDRI, at which moment most of its debt has been written off by its Creditors. The debt that stood at US$7.1 billion at the end of 2004 was reduced by 36.1 percent to US$4.5 billion at the end of 2005. This was as a result of cancellation by most members of the Paris Club as a result of Zambia's accession to the HIPC initiative Completion Point. As at the end of 2006, the stock of debt reduced further by 66.5 percent to US $1.5 billion from US $4.5 billion recorded in 2005. The stock of Government attributable debt (Public Debt) reduced by 83.1 percent during the period to US$ 696.7 million from US $4.1 billion recorded in 2005. The huge reduction in the debt is due to debt relief provided especially by multilateral creditors on both the HIPC and MDRI.

The accumulation of Zambia's external debt is due to historical issues that involve deteriorating world economic situation in the mid 1970s to the late 1980s and a weak institutional, policy and legal framework for both debt and economic management. It should therefore be noted that writing off the debt alone would not solve the debt problems that the country has been facing. . There is an urgent need for the Government to put in place mechanisms to carry out reforms of its institutions charged with the management of the debt, the legal framework governing debt management and policies to guide in the prudent management of the debt as it relates to financing economic developments and the fiscal gap.

It is in view of the issues above that Jubilee-Zambia having been in the forefront of debt campaigns put up this consultancy that is aimed at formulating a basis for a comprehensive public debt management reform proposal for Zambia by reviewing the strengths and weaknesses of the prevailing policy, legal and institutional framework for debt management in Zambia. The aim is for Jubilee-Zambia to use the findings of this consultancy to engage policy makers and government bureaucrats in meaningful advocacy for a strong, transparent, cost effective and accountable debt management in Zambia. Zambia's use of the IMF Debt Sustainability Framework (DSF) in managing its debt is not adequate as this does not take into account human development spending. For example it is detached from the expenditure for the attainment of Millennium Development Goals (MDGs) which is the justification for the HIPC and MDRI initiatives.

This consultancy builds on the 2004 loan contraction process in Zambia and the Human Needs Based Debt Sustainability structures. The basic premise in advancing reforms is that strengthened debt management will strengthen economic governance by ensuring; greater public accountabilities by public officials, financial and political institutions, providing a transparent early warning system that limits the chances of a debt crisis in future; guiding Government officials to use future public loans productively, maximize public interest and be able to better manage risks related to a range of new loans.

Overall Objective

The overall objective of the research is to take a critical stock of the essential elements of Zambia's current public debt management policy, institutional arrangements and practices with a view to developing a comprehensive proposal for reform. This reform proposal of the debt management framework should ensure efficiency, effectiveness and maximisation of public interests considerations in the overall policy, legal and institutional guidelines that will prevent avoidable lapse into avoidable financial vulnerabilities and debt traps.

Specific objectives

1. On the basis of the good global practices in public debt management, identify the strengths and weaknesses and gaps in Zambia's debt policy, law, institutional arrangements and major instruments
2. On the basis of the good global practice in public debt management and using examples for each component, assess the socio-economic and political implications/impacts of the strengths, weaknesses and gaps in Zambia's debt management framework
3. Develop a comprehensive proposal with clear good practice indicators for each component of debt management system that includes the JCTR proposed Human Needs Based DSA that will ensure more effective, transparent and efficient debt management operations.
4. Develop a layperson's draft of the legislative bill that contains the comprehensive proposals per component of debt management system that includes the JCTR proposed human development needs based DSA that will ensure more effective, transparent and efficient debt management.

Methodology

The paper reviewed debt management practices of GRZ through the review of GRZ, Cooperating Partners and academia's literature. The research also reviewed the Jubilee Zambia report on Loan Contraction and Human needs based on the DSF.

The research also involved interviewing some debt management officers in the Government who are involved with the day to day management of the debt and the contraction of debt and other interest groups such as the civil society and individuals with an interest in the subject matter. However, for purposes of the report these interviews are anonymised as they did not wish to have their names published.

The research also reviewed some country case studies of debt management practices particularly those in the African region which have had similar backgrounds in terms of debt problems to those of Zambia. The research also reviewed the recommended best practices by the international community that were used to evaluate Zambia's performance in debt management practices.

CHAPTER 2

Brief overview of Zambia's Chronic Deficits

For over two decades, the Zambian economy was dominated by government ownership. The government regulated commodity and food prices and food consumption was heavily subsidized. The mainstay of the economy was mining, with revenue from the export of copper used not only to finance domestic expenditure but also to import food in years of shortages.

However, the impact of the oil crises of the 1970s, stagnation of copper prices and the resulting general economic deterioration resulted in huge budget deficits.

Table 1: The Budget deficit/surplus position as a percentage of GDP deteriorated as follows: -

	1965	1971	1975	1980	1985	1991
Budget Deficit/GDP (in %)	3.6	(16.4)	(12.5)	(18.5)	(15.2)	(7.6)
Copper Prices (in cents/lb)	58.1	49.0	56.1	99.1	64.0	133.5
		1970		1982		
Terms of Trade (in US$ billion)		3.8		(0.214)		
Annual GDP Growth (in %)		4.8		2.81		

The conditions above resulted in the country resorting to borrowing to meet its budgetary requirements, food and other imports. Most of the borrowing during the time was commercial and intended to temporarily solve the country's balance of payments problems. However the unfavorable conditions continued into the late 80s resulting in the origins of Zambia's debt crisis. The balance of payments position also continued to worsen as a result of the early 1980's world energy crisis and the mid 1980's currency crisis that shot interest rates up.

The situation was further exacerbated by Government's cancellation of the International Monetary Fund (IMF) Stabilization Program on May 1, 1987 that resulted in the suspension of external financing by donors. By the early 1990s the country had accumulated external payment arrears of over US $3 billion. Consequently, debt to Gross Domestic Product (GDP) ratio rose to over 200 percent while debt service to exports ratio rose to over 50 percent in the 1990's.

From the end of World War II (WWII) to 1974, Zambia saved and invested in excess of 30 percent of GDP. Average per capita income grew at close to 4 percent per annum. This was one of the best growth performances in the world. From 1975 to 1991, Zambia's savings rate collapsed and the average investment rate, although inflated by foreign aid, external borrowing, and the accumulation of arrears, fell below 20 percent of GDP. During this period, Zambia's average per capita income declined by 2.5 percent per annum. For developing countries which avoided disasters such as civil wars and coups, this was the worst performance in the world.

During the period 1970 onwards Zambia's external debt stock had progressively been increasing reaching US$815 million in 1970, US$1.68 billion in 1975, US$3.2 billion in 1980, US$4.5 billion in 1985, US $3.7 billion in 1992, US $4.2 billion in 1994, US $6.4 billion in 1997, US $7.1 billion in 2002 and US $6.4 billion by the end of 2003. The huge increases in the 80s were as a result of huge external payment arrears that the country was accumulating due to foreign exchange difficulties. In the 2000s the increase in the debt stock was largely on account of increased borrowing from the multilateral soft window while the decrease from the 2002 to 2003 was due to HIPC debt relief delivery by creditors.

CHAPTER 3

Stock of debt

Following Zambia's accession to the HIPC and MDRI Initiatives in 2005, the country's external debt has been reduced from over US $7.1 billion at the end of 2005 to almost US $1.6 billion at the end of 2006. However, the trend in the level of domestic debt has been the opposite. The stock has increased from K1.7 trillion in 2002 to K8.8 trillion in 2006. This Huge gap is alarming and calls for the need for the country to put in place sustained measures to ensure debt sustainability and economic growth.

External Debt

As at end of December 2006, Zambia's external debt stock declined by 66.5 percent to US $1,516.2million from US$ 4,528 million in December 2005, on account of relief provided by multilateral creditors. The stock of public debt[1] reduced by 84.4 percent to US $696.7 million - (See Table 1)

Table 2 External Debt Stock 2000-2006 (in US$ million)

Creditor	2000	2001	2002	2003	2004	2005	2006	% Change2005/6
Multilateral	**3,446.8**	**3,313.7**	**3,855.1**	**3,703.1**	**3,872.0**	**3,715.7**	**390.4**	(89.49)
ADB/ADF	316.7	318.7	296.2	217.2	311.0	377.5	88.1	(76.66)
World Bank	1736.4	1837.1	2,491.0	2,294.4	2,359.0	2,436.4	114.1	(95.32)
IMF	1245.4	948.2	965.9	1,065.1	890.0	591.1	32.5	(94.50)
Others	148.3	209.7	102.0	126.3	312.0	310.7	155.8	(49.87)
Bilateral	**2,390.2**	**3,091.8**	**2,614.8**	**2,245.4**	**2,748.0**	**408.1**	**285.5**	(30.04)
Paris Club	2131.4	2713.9	2,343.1	2,000.0	2,483.0	117.5	6.7	(94.29)
Non Paris Club	258.8	377.9	271.7	245.4	265.0	290.6	278.8	(4.07)
Total Government Debt	**5,837.0**	**6,405.5**	**6,469.9**	**5,948.5**	*6,620.0*	*4,123.8*	*696.7*	*(84.40)*
Private and Parastatal	473.5	717.5	670.4	546.6	460.0	404.2	840.3	107.88
Total External Debt	**6,310.5**	**7,123.0**	**7,140.3**	**6,495.1**	***7,080.0***	***4,528.0***	***1,516.2***	***(66.52)***

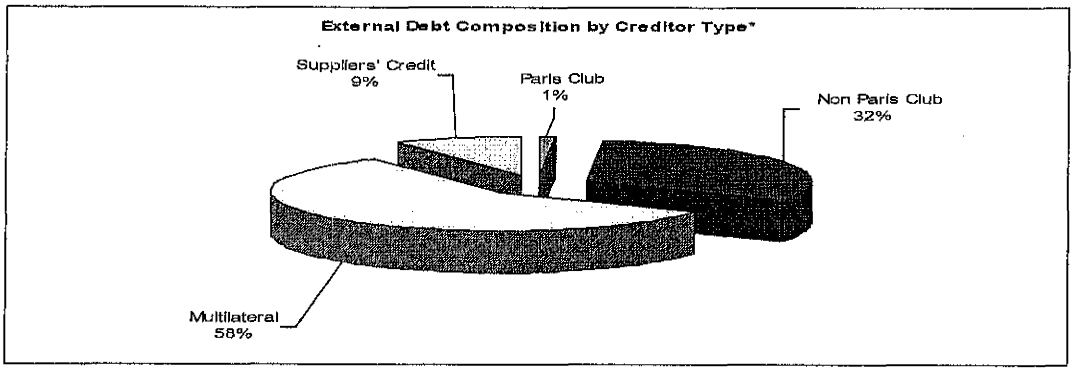
Source: Ministry of Finance and National Planning and Bank of Zambia

Composition of External Debt by Creditor Type (2006)

A total of US $390.4 million was owed to multilateral creditors[2] and accounted for 58 percent of the total debt. Of the bilateral stock of debt, the Paris Club creditors[3] and the non-Paris Club creditors were owed US $6.71 million or 1 percent and US $217.15 million or 32 percent of the total debt respectively. Suppliers Credit accounted for 9 percent of the debt stock (see Chart 1).

[1] Excluding Private and Parastatal debt
[2] These are the World Bank (IDA and IBRD), the European Union (EIB and EDF), IMF, OPEC Fund, IFAD, BADEA, the Nordic Development Fund (NDF) and the African Development Bank (ADB and ADF).
[3] The Paris Club Creditors for Zambia are the United States of America, the United Kingdoms, Austria, Canada, Brazil, Japan, Germany, Russia, France and Italy.

Chart 1: ***Total External Debt by Creditor Type; 2006 position***

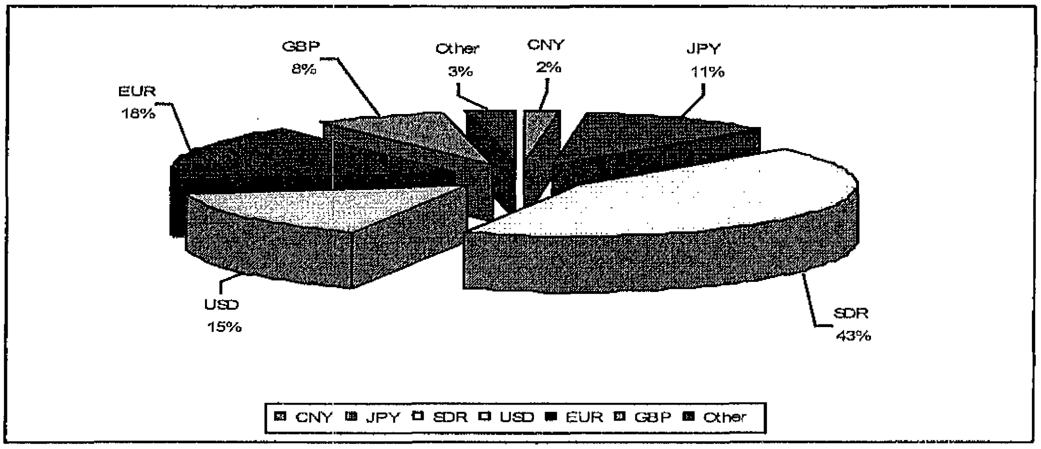


Source: Ministry of Finance and National Planning

External Debt by Currency Composition

Expressing the debt stock in terms of currency composition shows that at end-December 2006, the bulk of Zambia's external debt was in Special Drawing Rights (SDR) and stood at 43 percent. This shows a reduction from the 59 percent as at end 2005. The Euro accounted for 18 percent of the total stock while the US Dollar accounted for 15 percent, which are the same shares as the end 2005 position. The Chinese Yuan and the Japanese Yen accounted for 2 percent and 11 percent, respectively. The Yen's share has gone up from the 2 percent recorded at the end of 2005 (See Chart 2). This was beneficial for management of cost considering that the Yen was fairly balanced in terms of exposure to exchange rate risk.

Chart 2: ***Total External Debt by Currency Composition***



Source: Ministry of Finance and National Planning

Table 3 Actual External Debt Service 1997 – 2006 (million US$)

Creditor	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Bilateral	**48.4**	**42.5**	**66.9**	55.0	**39.1**	**29.1**	**58.1**	**56.8**	**71.5**	**33.6**
Paris Club	33.9	29.7	51.1	34.4	39.0	28.5	47	42.5	50.3	18.8
Non-Paris Club	14.5	12.8	15.8	20.6	0.1	0.6	11.1	16.0	21.2	14.8
Multilateral	**111.7**	**89.4**	**86.9**	**84.1**	**90.1**	**96.2**	**119.3**	**313.5**	**309.6**	**27.5**
IMF	8.7	8.0	9.1	8.3	46.6	75.2	78.5	259.5	251.1	4.1
IDA/IBRD	60.2	38.7	27.6	27.8		9.1	19.9	17.4	15.22	13.3
ADB/F	27.6	30.1	30.1	29.8	12.7	3.4	6.7	26.5	26.2	6.4
Other	14.6	12.6	20.1	18.2	14.0	8.4	14.2	10.1	17.1	11.9
Financial Institutions	-	-	-	-	-	-	3.8	-	-	-
Other					0.4					
TOTAL	**160.1**	**131.9**	**153.8**	**139.1**	**129.2**	**125.3**	**181.2**	**372.1**	**381.1**	**65.2**

Source: Ministry of Finance and National Planning and Bank of Zambia

Notes: 1.a dash implies data lacking

2. Debt service high between 2003 and 2005 due to the higher debt service to the fund (hump Problem) and higher payments to ADB/ADF due to exhaustion of interim debt relief

3. Year 2006 debt service low due to implementation of MDRI and HIPC by multilateral creditors

Domestic Debt

Table 4 Domestic Debt (in K' Billions) 2000 to 2006

	December 2002	December 2003	December 2004	December 2005	December 2006	% increase 2006/2005
Government Securities	**1,700.1**	**2,459.7**	**2,522.60**	**5,336.97**	**6,706.4**	**25.7**
Treasury Bills	817.6	1,325.6	1,293.70	2,088.6	3,261.9	56.2
GRZ Bonds	882.4	1,134.1	1,228.90	3,248.3	3,444.5	6.0
GRZ Consolidated Bond	1,675.0	1,907.7	1,646.74	1,646.7	1,120.9	(31.9)
Suppliers Arrears	433.6	636.8	577.36	509.3	515.3	1.2
Capital	140.5	313.2	293.17	335.5	340.4	
PE's & RDC's	293.1	323.7	284.19	173.8	174.9	
Pension Arrears	270.7	263.7	429.5	414.0	386.5	(6.6)
Employees Contributions	262.7	262.7	370.1			
Loans to GRZ	1.2	-	82	288.9	-	
Awards & Compensations	70.0	100.7	58.98	87.5	92.5	5.7
Grand Total	**4,853.7**	**6,269.2**	**5,498.81**	**8,283.4**	**8,821.7**	**6.5**

Source: Ministry of Finance and National Planning

CHAPTER 4

CURRENT SETUP

Current Legal Framework

External debt in Zambia is managed under authority of the Minister of Finance and National Planning (MOFNP) through powers vested in him by an Act of Parliament, Chapter 366 (hereafter referred to as Cap 366) of the Laws of Zambia. The Act provides for the raising of loans, the establishment of sinking funds, issuance of guarantees and indemnities and the granting of loans by or on behalf of the Government; and to provide for matters incidental thereto and connected therewith.

For the Acts that Govern debt contraction in Zambia see Annex 1.

Cap 366 under Subsidiary Legislation provides for the limits of the amounts of loans raised both within and outside the country under Sections 3 and 15. Section 3 states that the Minister may raise from time to time, loans not exceeding an amount outstanding at any one time such amounts as he shall from time to time be authorized by resolution of the National Assembly to prescribe by statutory instrument. Section 15 authorises the Minister to guarantee the repayment to any person ordinarily resident in and outside Zambia of any loan or any portion of the loan. From 1988, the Minister's limit for foreign loans has been at K20 trillion (approximately US$5 billion) per year and at K5 trillion (US$1 billion) per year for domestic loans.

The Act provides for the establishment of institutional structures to carry out the day-to-day functions of borrowing and repayment of loans thereafter contracted. Under this provision, the country has two sites from where debt management is conducted, the Ministry of Finance and National Planning (MoFNP) and the Bank of Zambia (BOZ).

Current Institutional Arrangements

Administration of the debt function in Zambia is sited at two centres, namely, the Ministry of Finance and National Planning and the Bank of Zambia. The Ministry manages the country's external debt as it relates to public and publicly guaranteed debt. It is in charge for negotiating, contracting, guaranteeing, record keeping and debt servicing of external debt. In the area of domestic debt, the ministry is mainly in-charge of servicing of interest on government securities. It also maintains data on internal suppliers' credit, contingent liabilities of local government entities and state enterprises.

The Bank of Zambia is charged with the responsibility of monitoring, recording its own and private sector contracted short-term external debt, management of domestic debt, in particular government securities and effecting external debt service.

Current Policy Arrangements

Currently Zambia has no debt policy or strategy to guide the management of its debt. This is despite the fact that debt has been one single most problem that has held back the country's progress in terms of development. Zambia has over the years been using programme targets agreed with the Cooperating Partners (CPs). These have involved the limiting of borrowing to concessional terms only. This however has not been adhered to by the Government that has still gone to borrow commercially from countries like India and China due to lack of Government policy or regulation. This in most cases has been hidden from CPs in some instances resulting in the non-recording of such debt in national database. A typical example of this is the 2003/2004 US$10 million Credit Line Agreement with India that has not been officially reported as new borrowing in the Government public documents such as the financial report and economic report. This situation has brought about the lack of transparency in the way debt management is being conducted in Zambia.

Furthermore, the lack of a debt strategy has left borrowing being done unguided. For example it should be a requirement under the debt strategy that a country should conduct periodic Debt Sustainability Analysis (DSAs). However, Zambia has never produced a public debt sustainability analysis report to guide policy makers in the borrowing process. As a result, borrowing is done at non-uniform and targeted terms. Further the Government has not been in a position to control and direct domestic borrowing resulting in huge accumulation of domestic Debt arrears whose principal is currently being rolled over.

CURRENT STATE OF DATA

The external debt database should provide in the successive economic reports and budget speeches, consistent data on external debt. The data is usually inconsistent and has moving figures in certain particular years. This points to the need for a comprehensive strategy to ensure data integrity.

Zambia does not have a centralized comprehensive domestic debt database. The data is fragmented in the Ministry of Finance, Bank of Zambia, Pension Fund and Government Spending Agencies. This has resulted in the lack of control and monitoring of the debt.

BEST PRACTICES

The establishment of an effective and efficient debt management system is now widely recognized as a major element of a sound economic management strategy, because of the crucial link with fiscal and monetary policies as well as overall macroeconomic economic management.

Generally countries are moving towards reorganization of their debt offices particularly to centralize borrowing powers, strengthen the monitoring capacity of the debt stock and strengthening of the debt strategy and policy. The World Bank guidelines on effective debt management puts as a best practice the need to reorganize the debt office into the Back office functions (responsible for maintaining accurate debt data), middle (responsible for assessing risk and ensuring debt sustainability) and front office (responsible for loan negotiation strategies in line with sustainability thresholds). Further the best practice is to have in place a comprehensive debt strategy and policy that stipulates when to borrow, at what terms and for what purpose. This is guided by a clear policy on debt that would stipulate the fact that debt cannot finance recurrent expenditure but only capital expenditure due to the need to create sustainable debt repayments.

Further, some countries have set up an Independent Debt Management Office, outside the Ministry of Finance, as a best practice. The aim is to retain specialised debt staff whose turnover and cost of training is very high and also ensure a separation in the operation of general fiscal policy from debt policy, which in most cases is not separated as the case is in Zambia currently. This has resulted in fragmented borrowing and poor monitoring capacity. Currently Ministries, Provinces and Spending Agencies (MPSAs) have been committing Government to Debt. An example is that of the Food Reserve Agency whose debt to South African Banks ended up on the Books of the government and the debts committed by Ministries such as Defence. Similarly the Central bank has assumed borrowing powers of the Debt Office beyond its monetary policy mandate.

A typical country example that embarked on the setting up of an independent DMO is Nigeria whose experiences are similar to those that Zambia is currently faced with.

For a long period of time, debt management arrangements in Nigeria have been characterized by major shortcomings. One area of weakness was the diffusion of responsibilities across a multitude of agencies. At the beginning of 2000, responsibilities for debt servicing were split across seven different agencies or government departments, i.e. External Finance Department of the Ministry of Finance; Multilateral Institutions Department of the Ministry of Finance; African and Bilateral economic Relations Department of the Ministry of Finance; Home Finance Department of the Ministry of Finance; Treasury Department of the Accountant General's Office; Debt management department of the Central Bank; Debt Conversion Committee Secretariat of the Central Bank; and Public Debt Office of the Central Bank. Cooperation and collaboration among these different agencies was weak and information flow poor.

In addition to the coordination problem above, debt data recording system was inadequate. In some cases, this was manually carried out. Loan records were incomplete, making it difficult to reconcile statements with creditors. Other deficiencies in the system include complicated and inefficient debt service/payment arrangements, which resulted in protracted delays payment delays and incurring of penalties; low quality human resources; and a lack of a well-defined debt strategy, among others.

The Federal Government of Nigeria undertook a major step in addressing these problems recently by establishing a semi-autonomous Debt Management Office. The creation of the DMO consolidates debt management functions in a single agency, ensuring proper coordination. The DMO centralizes and coordinates the country's debt recording and management activities, including debt service forecasts; debt service payments; and advising on debt negotiations as well as new borrowings.

CHAPTER 5

Weaknesses in Legal and Institutional Framework

Although there is a legal and administration framework for the management of the National debt, as reflected in the Loans and Guaranteed Act CAP 366 of the Laws of Zambia, there are some weaknesses in debt management such as:

- Lack of high-level coordination. No coordinating and monitoring body that oversees overall debt management at the highest level. Thus, decision making is fragmented and operations are divided among the MOFNP and Bank of Zambia. In general, other ministries have in the past assumed the role of contracting debt without the knowledge of the finance ministry. This has led to each entity performing tasks that institutions are not mandated with resulting in confusion over responsibilities, missing payment dates, misplacing documentation on disbursements, partial absence of follow up on audit reports and some inconsistency in data, etc.

- Lack of a central depository of original loan agreements. This lack of readily available information on physical loan agreements hinders access to debt records.

- Inadequate data flows on external private sector debt. Following the suspension of exchange controls regulations the capture of data on external private sector debt has been hampered.

- Lack of guidelines in terms of borrowing. Borrowing limits in the Act are the only guidelines in this area.

- Absence of permanent Negotiation teams. Negotiating teams are constituted in an ad-hoc manner. There is no consistency in the way negotiating teams are put together.

- Lack of Public Accountability: current debt management in Zambia involves Parliament, which is the people's representative, to set borrowing limits and have no say in the use of loans, sources and terms of borrowing.

- There is lack of a debt policy to guide public officers on when to borrow, where to borrow from and how to borrow.

- Centralization of borrowing powers in an individual. The Current Act only requires the Minister of finance to raise loans on behalf of the republic. This leaves the entire loan contraction process at the mercy of an individual. With current concerns about public fraud, the national coffers are open to corruption and fraud by an individual.

- There is lack of a debt strategy and policy to guide the country in the sectors of borrowing, terms and amounts of borrowing in a particular financial year.

- Political interference: raising of loans has involved decisions being passed by high level politicians without scrutiny by parliament e.g. the Chinese loans.

- Lack of Agency agreement between the ministry of Finance and Bank of Zambia that has resulted in the Central bank issuing Treasury Bills without consulting the ministry whereas the ministry still meets the cost of interest.
- Poor data management resulting in uncontrolled debt and litigations

CHAPTER 6

THE CURRENT DEBATE

Currently Parliament approves all expenditure activities of the budget except for those financed by loans, as loans are contracted outside the budget presented to parliament. However Parliament is requested to approve expenditure on loan repayment once the loan falls due for repayment. This has been seen as a mismatch in the system.

This has brought about the current debate that all Government borrowings should be approved by Parliament. This is also on the premise that these are the people's representatives and therefore need to reflect the wishes of the constituents in the borrowing process because its citizens funds that are used to repay the loans. On the other hand some sections have called for the use of a select committee of Parliament to approve loans which are later tabled before parliament for approval. The other counter view is the use of a select committee of Cabinet. This is in line with the need to keep legislative roles of parliament separate from executive roles. Following are the pros and cons

USE OF PARLIAMENT

Pros

The use of parliament is already being practiced by many countries, most of which are developed. The advantage of using parliament is that every loan acquired will reflect the people's wishes and in turn benefit them unlike a situation where a loan may not be in the interest of the nation but that of the Executive. It will improve on accountability and transparency.

Cons

It is expensive and will slow the process of loan contraction if the entire parliament is to be convened to approve a loan. This is more difficult in times of an emergency situation such as war or natural catastrophe.

There are overriding political factors that may affect loan approval even when it is a beneficial loan. It can be a tendency to politicise loan contraction for example for particular region whose politicians may not have a strong voice in parliament. It may also be the case that politicians will claim for similar loans for their regions.

USE OF SELECT COMMITTEE OF PARLIAMENT

Pros

It is quicker and cost effective for a select committee to approve loans through delegated powers and table the same before parliament. The political objectivity of a select committee may be easier managed than that of the entire parliament. It also satisfies the need for parliament to take charge of borrowing.

Cons

The fact that the entire parliament is not involved may still cause problems in terms of all citizens having a say in all borrowing as they all collectively participate in repayment of such loans.

SELECT COMMITTEE OF CABINET

Pros

The advantage with this is that the vesting of borrowing powers that are currently in the Minister of Finance will be diluted and bring about a more reflective borrowing strategy. It will also ensure that the running of the executive is independent from that of the legislature. It will also be quicker to raise loans than involving the whole Parliament.

Cons

It still will have the problem of accountability and transparency. It also does not address the problem of parliament being used as a rubber stamp by nodding expenditure it was not party to in approving.

CHAPTER 7

Recommendations

√ There is need to set up a semi-independent debt management office (DMO) in Zambia which will be governed by an advisory Board that reports to a select committee of Parliament; which will from time to time review the report of the committee. This will ensure independence of the debt office to play its role of gap financing and retain qualified staff and improve accountability.

√ There is need to separate fiscal policy from debt policy (Gap financing) to enable a more professional way of determining the required gap financing. Currently debt is used to meet operational costs (recurrent expenditure) of running Government

√ There is need for loans to be approved by a select committee of parliament with all justifications and conditions made available to the committee. The committee can then lay before parliament, the loans approved during every sitting. Parliament could give the guidelines on what is to be borrowed based on the approved debt strategy that should be presented to parliament side by side with the budget.

√ There is need for a comprehensive debt strategy and policy. The objectives of this Debt Policy should articulate the following:

1. Achieve the lowest cost of capital;
2. Maintain a prudent level of financial risk;
3. Preserve future financial flexibility to satisfy Government cash-flow requirements;
4. Maintain strong credit ratings and good bilateral, multilateral and commercial relations;
5. Maintain at minimum cost and sustainable level the guarantees and indemnities issued by the Government; and to
6. Keep Government borrowing within the sectors and limits set by Parliament in each financial year

√ There is need for tabulating borrowing sectors at the beginning of each financial year and in the long term debt policy. This should reflect the social.

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Annexes				
Annex 1: Inventory of Debt related legislation				
Chapter	**Title**	**Purpose**	**Effective**	**Comments**
Chapter 347	Finance (Control and Management) ACT	An Act to provide for the control and management of the public finances of the Republic of Zambia and for matters connected therewith. This has since been replaced by the Public Finance Act.	August 1969	Replaced with the 2006 Public Finance Act.
Chapter 348	Treasury Bills Act	An Act to enable money to be borrowed on Government of the Republic of Zambia Treasury Bills; and to provide for matters incidental to or connected therewith.	November 1929	Revoke
Chapter 349	Minister of Finance(incorporation) Act	An Act to create the Minister of Finance a corporation sole, and to provide for matters incidental thereto.	April 1958	
Chapter 350	General Loan and Stock Act	An Act to declare the terms and conditions applicable to loans authorised to be raised by the Government of the Republic of Zambia; to provide for the creation of stock; and to provide for matters incidental to or connected with the foregoing.	March 1931	Revoke
Chapter 351	Loan Act	An Act to make provision for raising a loan of K4, 500,000; and to provide for matters incidental to or connected therewith.	April, 1931	Revoke
Chapter 352	Savings Certificates Act	An Act to make provision for the issue of savings certificates; and to provide for matters incidental thereto.	August, 1952	Revoke
Chapter 353	Local Loans (registered stock and Securities Act	An Act to make provision for the creation and issue of registered stock a debentures for the purpose of raising loans in Zambia; and to provide matters incidental thereto and connected therewith.	April, 1953	Revoke
Chapter 354	Securities Act	An Act to provide for the regulation of the securities industry; to establish the Securities and Exchange Commission and to define its objects and functions; and to provide for matters connected with or incidental to the foregoing.	August, 1993	
Chapter 355	Loans(Authorisation) Act	An Act to make provision for the raising of loans; and to provide for matters incidental thereto and connected therewith.	July, 1957	Revoke

Chapter 356	Tax Reserve Certificate Act	An Act to make provision for the issue of tax reserve certificates; and to provide for incidental matters.	September, 1963	Revoke
Chapter 357	Government Securities Act	An Act to provide for the continued recognition and observance of certain obligations towards holders of Zambia Government securities issued in the United Kingdom; to authorise the Government to enter into similar obligations in relation to further issues of Zambia Government securities in the United Kingdom; and to provide for purposes connected therewith and incidental thereto.	October, 1964	Revoke
Chapter 358	General loans (Guarantee) Act	An Act to empower the Government to guarantee the discharge by certain corporations of their obligations under agreements between such corporations and governments, the International Bank for Reconstruction and Development, the Commonwealth Development Corporation or other bodies or organisations outside Zambia; and to provide for matters incidental to or connected with the foregoing.	September, 1964	Revoke
Chapter 360	Bank of Zambia Act	An Act to revise and consolidate the provisions of the Bank of Zambia Act; to revise the law relating to the composition, duties and powers of the Bank of Zambia and its Board; to revise and consolidate the law relating to the issuance of the currency of the Republic and the formulation and implementation of a monetary policy that will ensure the maintenance of price stability; and to provide for matters connected with or incidental to the foregoing.	December, 1996	
Chapter 361	International Development Association Act	An Act to make provision for acceptance by Zambia of the agreement for the establishment and operation of the International Development Association; and to provide for matters related thereto.	September, 1965	
Chapter 362	Decimal Currency Systems (Arrangements) Act	An Act to provide for the making of arrangements for the introduction of the decimal currency system.	July, 1966	
Chapter 363	Development Bank of	An Act to provide for the establishment, constitution, duties and	July 1973	

	Zambia Act	powers of a Development Bank of Zambia to assist in the economic development of Zambia and to provide for matters incidental to or connected with the foregoing.		
Chapter 364	Taxation (Provisional Charging) Act	An Act to make provision for the provisional imposition or alteration of taxation; and to provide for matters incidental thereto or connected therewith.	June, 1965	
Chapter 365	General loans (International Bank) Act	An Act to empower the Government to raise loans in foreign currency from the International Bank for Reconstruction and Development; and to provide for connected matters.	September, 1966	
Chapter 366	Loans and Guarantees (Authorisation) Act	An Act to provide for the raising of loans, the establishment of sinking funds, the giving of guarantees and indemnities and the granting of loans by or on behalf of the Government; and to provide for matters incidental thereto and connected therewith.	August 1969	
Chapter 367	Bretton Woods Agreement Act	An Act to make provision for acceptance by Zambia of the agreements for the establishment and operation of the International Monetary Fund and the International Bank for Reconstruction and Development; and to provide for matters related thereto.	September, 1965	-
Chapter 368	International finance Incorporation Act	An Act to make provision for acceptance by Zambia of the agreement for the establishment and operation of the International Finance Corporation; and to provide for matters related thereto.	September, 1965	
Chapter 369	Rhodesia railways Loans Guarantee Act	An Act to provide for the Rhodesia Railways to make good any losses incurred by the trustees of the Railway Pension Schemes upon realisation of investments; to provide for the guarantee by the Government of certain loans made to the Rhodesia Railways; to provide for the Government to make good any deficiencies in the moneys available to the aforesaid trustees for the payment of pensions; and to provide for matters connected with the foregoing.	September, 1950	Revoke
Chapter 370	Specific Loan (Rhodesia Railways)	An Act to authorise the raising of a sum of seven million five hundred and forty thousand pounds by way of loan.	December, 1950	Revoke

	Act			
Chapter 371	International bank Loan (Rhodesia Railways)Act	An Act to make provision for the raising of a loan not exceeding five million pounds sterling or the equivalent in pounds sterling or other currencies for certain purposes of the Rhodesia Railways; and to provide for matters incidental thereto.	December, 1952	Revoke
Chapter 372	International bank Loan (Approval) Act	An Act to provide approval of a loan from the International Bank for Reconstruction and Development.	May, 1953	Revoke
Chapter 373	Development (United Kingdom Government) Act	An Act to make provision for the raising of a loan or loans under the provisions of the Colonial Development and Welfare Acts of the United Kingdom to an amount not exceeding ten million pounds sterling and for the purposes of development projects approved in the Capital Fund Estimates.	August, 1960	Revoke
Chapter 374	Central African Power Corporation (Financial Provisions)Act	An Act to empower the Government to enter into agreements guaranteeing the repayment by the Central African Power Corporation of certain sums; to empower the Permanent Secretary, Ministry of Finance, to assume liability for certain loan indebtedness; and to make provision in relation to the discharge of liabilities under certain agreements.	December, 1963	Revoke
Chapter 375	International Bank Loan Act	An Act to provide for the assumption by the Republic of one-half of the obligation of the former Federation of Rhodesia and Nyasaland in respect of a loan made by the International Bank for Reconstruction and Development to the former Federation of Rhodesia and Nyasaland; and to provide for matters related thereto.	January, 1964	Revoke
Chapter 376	General Loans (Mediobanca) Act	An Act to empower the Government to raise loans from the Mediobanca-Banca[4] di Credito Finanziario S.P.A.; and to provide for connected matters.	January, 1967	Revoke

[4] This is a State Owned Italian Bank. These loans have been written off under the HIPC and Paris Club Arrangements.

Chapter 377	Loans(Kafue Gorge Hydro-Electric Power Project) Act	An Act to authorise the raising of loans for the purpose of financing the Kafue Gorge Hydro-electric Power Project; and to provide for connected matters.	June, 1968	Revoke
Chapter 378	Public Audit Act	An Act to make certain provisions relating to the duties and powers of the Auditor-General, and to provide for matters connected therewith or incidental thereto.	April, 1980	
Chapter 379	Development Bond Act	An Act to empower the Minister to raise loans by the issue and sale of bonds within the Republic.	June, 1968	

25) Permanent Appropriation – an authorization enacted by the Parliamentary Assembly of The Republic of Zambia (hereinafter referred to as: the National Assembly) to provide an appropriation for a specified purpose that does not require re-authorization in the Annual State Budget Law.

26) Electronic Registry System – The computerized system established at the Bank of Zambia, or as otherwise authorized by the Minister of Finance and National Planning (hereinafter: the Minister) which registers the issuance, account status, servicing, and redemption of State Securities held in non-physical form.

27) Electronic Registry Security – a security issued and maintained in the form of a computerized bookkeeping or accounting record in an authorized Electronic Registry System.

28) Certificate or Certificated Security – a security authorized and issued in definitive, physical, form.

29) Loan Agreement – a written agreement or other financial arrangement, including international agreements, that sets out the terms and conditions under which a Borrower has obtained funds from a lender, and includes provisions that govern their repayment.

30) Guarantee – a written undertaking to pay a financial obligation in the event the party having primary liability for repayment of such financial obligation has failed to make payment, as due.

31) Long-Term Debt – Debt which is payable over a period of one year or longer from the date of issuance.

32) Short-Term Debt – Debt which is payable over a period of less than one year from the date of issuance.

33) Capital Investment – a project for the development, improvement or rebuilding of infrastructure, including moveable and immoveable property, equipment and consulting services used in connection with such project, that is included in an approved budget, has a Amortization Period in excess of five years, and is used in connection with a governmental function serving a public purpose.

34) Amortization Period of Capital Investment – the anticipated term in years of actual use of a capital investment including usual and customary maintenance.

35) Cash Flow Deficit – a temporary deficit caused by the difference in timing of receipts of budgeted revenues and the payment of budgeted expenses, and is based on a budget in which total budgeted revenues is not less than total budgeted expenses for the fiscal year.

36) Bank of Zambia – the Bank of Zambia of the Republic of Zambia.

37) Business Day – a day which is not a Saturday, Sunday, legal holiday or other day on which banking institutions are authorized by law to close.

38) Borrower – the primary party obligated to pay Debt.

39) Annual State Budget Law – the Law for Annual State Budget of the Institutions and international liabilities for the state for the current year.

40) A local government created pursuant to the Local Government Act.

41) Council – that government body who is responsible for a municipality or town created pursuant to the Local Government Act.

42) Financing Lease – an agreement to lease a Capital Investment for a period of time at the end of which term the Capital Investment becomes the property of the borrower, as further defined by law.

43) International Agreement – an agreement under which the Republic of Zambia agrees to assume credit and other financial liabilities, which is executed in written form with one or more countries, or with one or more international organizations, and which is regulated by international law.

44) The Ministry –unless specified, the Ministry implies the Ministry incharge of public finance.

Article 4
GENERAL PROVISIONS FOR STATE DEBT

The Minister with authority from Parliament may raise from time to time, in the Republic and elsewhere, on behalf of the Government such loans as he may deem desirable, not exceeding in the amount authorised by the National Assembly in relation to the stock and in relation to the annual limit for new borrowing: -

(a) In the case of loans raised under this Act for a period of not more than one year; or

(b) In the case of loans raised under this Act for a period in excess of one year; such amount as he shall annually be authorised by resolution of the National Assembly to prescribe by statutory instrument.

The amount of all loans raised under this Act for a period of not more than one year shall be paid into an account (hereinafter referred to as "the Special Deposit Account") which is hereby established for that purpose.

The amount of all loans raised under this Act for a period in excess of one year shall be paid into the general revenues of the Republic.

Notwithstanding any other provision contained in this Act, any loan raised under this Act for a specific purpose shall be applied to that purpose and to no other purpose.

All debt charges arising from the raising of any loan under this Act shall be charged on the general revenues of the Republic.

Provided that, in the case of loans raised for a period of not more than one year, the repayment or amortisation of debt shall be paid out of the funds in the Special Deposit Account, and the interest and all expenses necessarily incurred in connection with the raising or repayment of any loan under this subsection shall be charged on the general revenues of the Republic.

There shall be included in the financial report prepared in respect of any financial year pursuant to Article 118[5] of the Constitution, a statement showing the particulars of debt charges paid in that financial year in respect of any loan raised under this Act or any other written law.

For the purposes of this section, "debt charges" includes interest, sinking fund charges, the repayment or amortisation of debt and all expenses necessarily incurred in connection with the raising or the repayment of any loan under this Act.
METHODS OF RAISING LOANS

Subject to the provisions of this Act, a loan may be raised under this Act by any of the following

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118. (1) The Minister responsible for finance shall cause to be prepared and shall lay before the National Assembly not later than nine months after the end of each financial year, a financial report in respect of that year.

(2) A financial report in respect of a financial year shall include accounts showing the revenue and other moneys received by the Government in that financial year, the expenditure of the Government in that financial year other than expenditure charged by this Constitution or any other law on the general revenues of the Republic, the payments made in the financial year otherwise than for the purposes of expenditure, a statement of the financial position of the Republic at the end of the financial year and such other information as Parliament may prescribe.

methods, that is to say:

(a) By the issue of bonds or stock;

(b) By the issue of treasury bills; or

(c) By agreement in writing.

Any loan raised under this Act shall be raised in accordance with such conditions and upon such terms as the Parliament shall, in respect of such loan, direct.

In the case of any loan raised under this Act by the issue of bonds or stock or treasury bills, the Bank of Zambia or any statutory body appointed by the Minister shall, as the agent of the Minister-

(a) Undertake and perform such functions as may be prescribed in connection therewith;

(b) The agent shall perform such functions relating to the investment and management of any sinking fund established in respect of the loan as the Minister may from time to time direct.

Article 5
The Management of the Issuance of State Debt

1) The Ministry shall have the sole authority to implement procedures for the issuance of State Debt and manage the issuance of State Debt. Debt may also be issued in national and foreign currency.
2) The ministry also has the sole authority to issue government securities, as appropriate, and may appoint the Bank of Zambia or another statutory body to carry out some of these functions.
3) The Ministry can also enter into Loan Agreements, including credit arrangement authorized to be made with the Bank of Zambia.
4) All other provisions within other laws enacted by Parliament that give authority to loan state money are hereby amended to conform to provisions of this law, giving sole authority to loan money or issue debt to the Ministry.
5) The Ministry of Finance in the frame of the state shall be the sole obligator in any case arising after the effective date of this law where the obligator to the lender on a state loan guarantee has become fully payable
6) In connection with the issuance of Indirect Domestic State Debt, the Ministry shall consult with the related Obligor and within the terms of the related Obligor's Government Decision.
7) The Department of State Debt Management has been established within the Ministry. The Department shall manage, monitor and plan State Debt and provide administrative support to the Debt Advisory Committee (hereinafter referred to as: the Committee) described below.
8) The Government Cabinet of the Republic of Zambia (hereinafter referred to as the Cabinet) shall appoint the Committee that shall be comprised of the following:

   a) Seven representatives of the Ministry, one being the Minister, who shall be designated the Chairman of the Committee, and the other the Permanent Secretary (PS- BEA), and the Secretary to the Treasury (ST), the Auditor General (AG), Deputy Secretary to the Cabinet, Special Advisor to the President for Economic Affairs, and the Director of Debt Management;

b) Three representatives of the Bank of Zambia; the Governor, the Director of Financial Markets, and the Director of Economics;

c) One representative who shall be the Managing Director of a banking institution located in the Republic of Zambia;] or any other suggestions

(6) Institutions that appoint their representatives for the Committee shall submit to the Minister the names of alternates that may substitute for the principal representative at any Committee meeting.

(7) The Committee shall have the advisory character primarily in regard to the following:

a) the status and future outlook of the State Debt;

b) the current and future revenue requirements for the servicing of the State Debt, and the current and future revenue receipts required to be received from the Entities and the District for doing so;

c) the measures that should be considered to achieve and maintain stability, continuity and balance in the State Debt Service;

d) the criteria that the Ministry should apply in issuing State Debt and State Guarantees; and

e) To assist the Ministry in the development State Debt Management Strategy referred to in Article 5.

(8) The Committee shall adopt regulations governing the operation of the Committee.

(9) The Committee may retain such experts as it deems advisable.

Article 6
State Debt Management Strategy

(1) The Ministry, in cooperation with the Debt Advisory Committee, shall determine a proposal State Debt Management Strategy that the Council of Ministers shall approve not later than one month prior to the end of the fiscal year.

(2) The Ministry shall initiate debt issuance activities within the Debt limitations established pursuant to this law.

(3) The State Debt Management Strategy shall include the following information:

a) outstanding State Debt and State Guarantees;
b) preparation of a three (3) to five (5) year medium term State Debt Management Strategy that shall include Entities and District Debt, in accordance with applicable Entity and District legislation;

c) carry out annual reviews of the strategy in b) above;

d) proposed State Debt and State Guarantees, including the purposes of such State Debt and Guarantees;

e) projections of State Debt Service for the next five (5) years; and

f) Other relevant information, such as reviewing the National Debt Sustainability Analysis, operationalisation of the debt strategy and policy.

Article 7
Coordination with Budgetary Process

(1) Based on the currency exchange data provided by the Bank of Zambia, the Ministry shall include in the projected annual budget to be submitted to the National Assembly the revenue requirements estimated to be needed in the ensuing fiscal year to meet payment obligations on the State Debt that will be due in that fiscal year as well as obligations that will be incurred during the year.

(2) An estimate of the information described above shall be made in coordination with the councils and provided to the National Assembly. The final estimates of such information shall be submitted for approval in the annual budget procedure in accordance with the time limits for Budget adoption.

Article 8
Accounts for State Debt Proceeds and Sinking Funds

The Ministry is authorized to establish and subsequently close any accounts and sub accounts that are deemed necessary to administer State Debt at the Bank of Zambia, or in Commercial Banks.

Whenever any bonds or stock are issued in respect of a loan raised under this Act for a period of more than ten years, the Minister shall cause to be established a sinking fund for the purpose of redeeming such bonds or stock.

Whenever any bonds or stock are issued in respect of a loan raised under this Act for a period of not more than ten years, the Minister may, if it appears to him desirable in the public interest, cause to be established a sinking fund for the purpose of redeeming such bonds or stock.

The Minister may cause to be established a sinking fund for the purpose of redeeming any loan raised under this Act by agreement in writing or any loan raised under the provisions of any other written law.

Whenever a sinking fund is established under section nine or ten in respect of any loan, the annual rate of contribution to such sinking fund shall be sufficient to provide for the redemption, upon the expiry of the period of such loan, of not less than seventy-five per centum of the principal of such loan.

In the event of any sinking fund established under this Act being found, at the time fixed for the repayment of any loan in respect of which it is established, to be insufficient for such redemption, the deficiency shall be a charge upon, and shall be made good out of, the general revenues of the Republic.

The Minister may give directions in respect of the establishment, management and control of any sinking fund required or permitted to be established under this Act, and such directions may include directions that a joint sinking fund shall be established in respect of two or more loans or, in the case of any loan raised partly from sources in Zambia and partly from sources outside Zambia, that different sinking funds shall be established in respect of different portions of such loan.

The power of the Minister to give directions under this section in relation to any sinking fund shall be deemed to be in addition to any other power conferred upon him under this Act to make provision in relation to the same matter.

Article 9
Debt Service Accounts for State Debt

The Ministry is authorized to establish such accounts and sub accounts at the Bank of Zambia as is necessary to provide for the timely payment of State Debt, after authority has been granted by parliament for the settlement of specific loans.

Article 10
Recordation of All Outstanding State Debt

All Ministries and other government bodies that have issued State Debt before this Law became effective shall provide in no less than ninety (90) days after the effective date of this Law, information on all such outstanding Debt. Copies of the State Debt agreements, supporting documentation, and information as to the current payment status of all outstanding Debt must be furnished to the Ministry. The information derived there from shall be entered in the Record of State Debt.

Article 11
Proceeds of State Debt

(1) The Ministry of Finance is authorized, to invest i) the proceeds of State Debt held by the State prior to their use for the authorized purpose, and ii) funds held by the State for the purpose of making payments on Debt, only in:

a) Government Bonds issued by a sovereign government rated at least "A" (high to medium quality, with many strong attributes but somewhat vulnerable to changing economic conditions) by internationally recognized rating agencies ;

b) Securities rated as above a) guaranteed by a sovereign government;

c) A deposit with any bank from the Republic of Zambia that is a member of the Deposit Insurance Agency of The Republic of Zambia;

d) A deposit with any bank that is rated at least "A" by internationally recognized rating agencies;

e) Repurchase agreements whose underlying purchased securities consist of the securities described in a) above or g) below and held by a third party custodian;

f) State Securities issued by the Republic of Zambia;

g) The Bank of Zambia.

(2) All such funds from paragraph (1) of this Article shall not be invested in any instrument that matures beyond the expected date on which the funds are expected to be applied to their permitted purpose.

Article 12
Terms of State Debt

(1) With regard to State Debt and subject to the provisions of this Law, the Ministry shall have the authority to:

a) Issue State Securities that are Short-Term or Long-Term; and

b) Enter into Loan Agreements.

(2) With regard to Direct Domestic State Debt and subject to the provisions of this Law, the Ministry shall have the authority to determine the details, form and terms of the securities that may vary from, or innovate upon, the securities described above, including, but not limited to the form of the instrument maturities, interest accrual methods, discounts and premiums.

The State should issue domestic debt for and on behalf of Councils.

Article 13
State Securities

(1) The Ministry is authorized to issue State Securities in electronic or in physical form; and is further authorized to establish and maintain directly, or through a fiscal agent, a computerized system for securities issued as book-entries.

(2) State Securities issued in the form of entries in an Electronic Registry System are obligations of the State and are no different than if issued in physical form, except that the issuance, account maintenance, and transactions affecting such State Securities, including redemption, are conducted electronically, utilizing interlinked computerized records held by and through intermediaries, acting as agents. The Electronic Registry System shall establish legal title to the ownership of the State Securities and the entry in the Electronic Registry System shall be conclusive as to the ownership of the State Securities. The Fiscal Agent shall issue satisfactory certification of the electronic record of ownership.

(3) State Securities issued in physical form are obligations of the State, and are identified by their series of issuance, distinctive serial number, face amount, and shall be in the form of registered ownership. One or more State Security may be issued in physical form to evidence collectively other State Securities of the same description issued in electronic form.

(4) State Securities may be negotiable or non-negotiable, transferable or non-transferable, depending on the terms and conditions of issue.

(5) The Ministry is authorized to offer State Securities for sale:

a) At auction, reserving, where appropriate, the right to reject any and all bids, or at a fixed price or rate;

b) At a discount, or at fixed and/or variable interest rates;

c) In specified denominations;

d) With stipulated issue and maturity dates;

e) With a limitation as to the amount of the offering;

f) With a stipulated date or dates of interest payment(s);

g) With a reservation, if any, as to the right to pay the State Securities prior to their scheduled maturity date; and

h) Regulating the payment procedure when payment dates occur on holidays.

(6) In the event the payment date on account of a State Security occurs on other than a customary business day, then such payment will be made on the next following business day, without additional interest.

(7) Where the terms and conditions of a State Security provide that the Minister may redeem it prior to maturity, such action may be taken only if it is effected in accordance with the authority determined at the time of their sale.

(8) The Ministry shall be authorized to establish rules governing the auction of State Securities. The Minister may establish an Auction Advisory Committee with such responsibilities and comprised of such membership as shall be established by the Minister pursuant to a statutory instrument.

(9) The Ministry shall be authorized to issue State Debt to facilitate debt management by replacement among the issue of several types of loans, early repayment of loans, in full or in part, already contracted, conversion of existing loans whenever current conditions of financial markets thus advise or carrying out financial operations in debt liabilities involving financial derivatives.

Article 14
Securities Regulation

State Securities are subject to the terms and conditions of their issuance, and the regulations that govern them, as prescribed by the Ministry.

Article 15
Granting of Relief on Account of Loss, Theft or Destruction of a Certificated State Security

(1) The Minister is authorized to regulate the arrangements for the loss, theft, destruction or mutilation of a State Security issued in physical form, provided the Security is identified by serial number and description, and a duly completed application for relief is filed in accordance with applicable Ministry regulations.

(2) The Minister may delegate such responsibilities described in paragraph (1) of this Article to the fiscal agent referred to in Article 16 of this Law.

Article 16
State Debt Obligations

State Debt constitutes an absolute and unconditional obligation of the State in accordance with the terms of the State Securities or the Loan Agreements. State Debt carries an unconditional and absolute commitment by the state for the timely payment of the principal and interest therein, in accordance with the terms and conditions under which the indebtedness was contracted.

Article 17
Fiscal Agent

(1) The Minister may appoint the Bank of Zambia or any other statutory institution as fiscal agent to perform the following operations, pursuant to an agreement to be executed with the Ministry:

a) To conduct auctions of State Securities and in connection therewith, to provide timely announcements of offerings, applications and instructions to interested participants, and information of the auction results.

b) To establish and maintain manual or an Electronic Registry System (records) for State Securities, which shall record the issuance of, transfers and other transactions in, and the redemption of all such Securities the issuance of which has been in the form of book-entries.

c) To maintain stocks of State Securities, and to arrange for their issuance there from in any case where such Securities are to be issued in physical form, retaining appropriate records.

d) To administer the Electronic Registry System in a way such that those who trade State Securities held therein will be able to match their deliveries to payments.

e) To provide such an Electronic Registry System for financial institutions and others that hold records of State Securities for their own account, or for the account of others, in the Electronic Registry System, the objective being to assure that the records in any moment accurately reflect the ownership and status of State Securities being held therein.

f) To maintain for the Minister accounts from which monies deposited therein can be timely withdrawn for the payments of interest and repayments of principal, on State Securities, as such payments become due.

g) To provide custodial, clearing and settlement services for State Securities.

h) To issue one or more certificates, the custody of which may be placed with one or more international banking institutions. The agent may provide interests in such global certificates, in book-entry or in certificated form.

i) To provide other services, including the assessment, as requested, of the financial condition of lending institutions participating in State Guarantee programs, and on such other matters, as mutually agreed.

j) To report on a monthly basis or as may be determined by the Minister to the Ministry Responsible for Finance on the issuances and payments made on behalf of the Republic.

(2) The Bank of Zambia, with the approval of the Ministry may appoint one or more agents to carry out the functions of paragraph 1 of this Article.

(3) The Bank of Zambia with the approval from the Minister may issue regulations that it deems necessary to carry out its responsibilities set forth in paragraph (1) of this Article, which regulations shall be binding by law throughout the Republic of Zambia.

(4) Performing the functions of the fiscal agent set forth herein shall not in any way obligate or imply an obligation of the Bank of Zambia to be responsible for the payment of such Debt or that its foreign currency reserves are in any way to be deemed collateral for the payment of such debt.

Article 18
Establishment of State Records

In accordance with the provisions of this Law, the Ministry shall establish a Record of State Debt and a Record of State Guarantees and contingent liabilities.

Article 19
Records Management

(1) To carry out the responsibilities for managing the State Debt, contingent liabilities and State Guarantees, as provided in this Law, the Ministry shall first assemble, and thereafter maintain, complete and accurate records of all obligations that comprise the State Debt, both Internal and External, and of all State Guarantees, both Internal and External.
(2) Other Ministries and Government Bodies that have heretofore held records relating thereto shall arrange for their immediate transfer to the Ministry.

Article 20
Record of State Debt

1) The Record of State Debt shall be comprised of two sub-Records: a Record of Domestic State Debt, and a Record of External State Debt.

2) The Record of State Debt shall provide data in no less than two categories, i) debt in the form of State Securities, and ii) debt in the form of Loan Agreements. The Ministry shall establish Regulations setting forth the information to be contained in such Record.

3) The Record on State Debt shall provide information as to the currency or currencies other than the national currency in which each obligation is payable or is denominated, as well as original and current valuations thereof, both in the national currency as well as in the currency or currencies in which payment is promised.

4) The Record of State Debt shall be continuously updated by the Ministry, shall be published annually not later than March 31 of each year, and shall include comparative data, where available, for at least one year earlier.

5) Notwithstanding Section 4 of this Article, the Ministry shall be continuously updating parliament and the Auditor General on a quarterly basis on the Record of State Debt.

Article 21

Record of State Guarantees

(1) The Record of State Guarantees, which shall be comprised of two sub-Records: a Record of Domestic State Guarantees, and a Record of External State Guarantees. The Record of State Guarantees shall provide data in two categories, on Domestic State Guarantees and on External State Guarantees. The Ministry by statutory instrument shall establish Regulations setting forth the information to be contained in such Record.

(2) The Record of State Guarantees shall value, provisionally, the guaranteed amount in the national currency and in the currency or currencies in which payment is promised.

(3) The Record of State Guarantee shall be continuously updated by the Ministry, shall be published annually in the Government Gazette not later than March 31 of each year, and shall include comparative data, where available, for at least a year earlier.

(4) The Ministry shall be the repository for all documentation submitted and approved under this Law, and shall be maintained in accordance with the regulations on Maintenance of Documents of the Republic of Zambia.

(5) The Ministry shall provide separately summary data on guaranteed loans in the Records of State Guarantees.

Article 22

Record of Contingent Liabilities

1. The Record of State Contingent Liabilities, which shall be comprised of two sub-Records: a Record of Domestic State contingent liabilities, and a Record of External State contingent liabilities. The Record of State contingent liabilities shall provide data in two categories, on Domestic State contingent liabilities and on External State contingent liabilities. The Ministry by statutory instrument shall establish Regulations setting forth the information to be contained in such Record.

2. The Record of State contingent liabilities shall value, provisionally, the guaranteed amount in the national currency and in the currency or currencies in which payment is promised.
3. The Record of State contingent liabilities shall be continuously updated by the Ministry, shall be published annually in the Government Gazette not later than March 31 of each year, and shall include comparative data, where available, for at least a year earlier.

4. The Ministry shall be the repository for all documentation submitted and approved under this

Law, and shall be maintained in accordance with the regulations on Maintenance of Documents of the Republic of Zambia Institutions.

5. The Ministry shall provide separately summary data on contingent liabilities in the Records of State contingent liabilities.

Article 23
Record of Council Debt

(1) The Ministry shall establish and maintain a record of information with regard to all Council Debt and Guarantees on the information that has been reported to it by the Councils and in accordance with applicable legislation, of the Councils.

(2) The Ministry is authorized to obtain such information from the Councils quarterly each year.

Article 24
Record of Non-Government Debt

1) The Ministry is authorized to collect, establish and maintain a record of information with regard to all Non-Government External Debt and to establish by laws in connection therewith.
2) The Ministry may appoint the Bank of Zambia or another agent to collect this information on its behalf.

Article 25
Penalties

1) Penalties for non submission of reports will be dealt with in accordance with the public service disciplinary code of conduct;
2) Penalties for wrongly contracting debt will be dealt with according to the financial regulations of the Government of the Republic of Zambia.
3) Penalties for misapplication, fraud or misappropriations shall be dealt with according to the financial regulations of the Government of the Republic of Zambia.

CHAPTER II

DOMESTIC DEBT

Article 26
Purposes of Domestic State Debt

Domestic State Debt may be incurred for the following purposes:

a) To finance the State's Cash Flow Deficit;

b) To finance the State budget deficit, when the expenditures authorized by law exceed, or are likely to exceed, in the judgment of the Minister within the confines of the Public Finance and Budget laws, the revenues of the State required to pay them;

c) To support the balance of payments and the management of reserves;

d) To refinance outstanding Domestic and External State Debt;

Article 28
Procedure for Issuing Domestic State Debt for Capital Investments

(1) The Capital Investment shall be authorized in the Annual State Budget Law, including a maximum amount of Domestic State Debt authorized to be issued to finance such Capital Investment.

(2) The Cabinet Decision shall set forth:

a) the maximum principal amount of the Direct Domestic State Debt;

b) the form of the Domestic State Debt;

c) the maturity and repayment terms;.

d) the purpose for which the debt is being issued;

e) Evidence of compliance with the provisions of Article 26 above;

f) the Amortization Period of the Capital Investment being financed; and

g) A finding that there will be sufficient revenues available to pay the Direct Domestic State Debt when due.

(3) Upon receipt of the Decision referred to in paragraph (2,) the Ministry is authorized to incur Domestic State Debt in accordance with the terms set forth.

(4) Not later than thirty days after the issuance of the Domestic State Debt the Minister shall forward to the Cabinet a report on such Domestic State Debt.

(5) Not later than sixty days after the issuance of the Debt, the Cabinet shall forward to the Parliamentary Assembly for its information, Cabinet Decision and the report referred to in (4) above.

Article 29
Default of Domestic State Debt

Upon the occurrence of the failure of the State to make timely payment of Debt Service on any Domestic State Debt, the Ministry shall propose to the Cabinet to recommend to the State Parliamentary Assembly to:

a) Enact an immediate statutory suspension of all guarantee programs until such time as the default in the payment of Debt Service has been corrected.

b) Authorize the Ministry to initiate discussions with creditors for an adjustment of the State Debt obligations.

c) Provide a new proposed law for enactment by parliament for additional revenues to pay the Debt.

Article 30

Domestic State Debt Obligations

(1) Domestic State Debt constitutes an absolute and unconditional obligation of the State in accordance with the terms of the State Securities or the Loan Agreements.

(2) A lender shall be required to obtain satisfactory documentation of compliance with the requirements of Article 25 (1) and (2). The Minister shall be required to provide complete and accurate information to document such compliance upon lender's request. In the event that such documentation is not obtained by the lender, the obligation of the State shall not be valid and enforceable by the lender.

Article 31
Priority of Domestic State Debt

(1) All obligations that constitute Domestic State Debt and External Debt have parity and equality of status regardless of when they were incurred, and regardless of whether they are in the form of State Securities or Loan Agreements. Claims on account of the payment of the principal of, and interest on such Debt, shall constitute a first claim against all revenues of the State regardless of their source, whether on deposit in the General Revenue Account established at the Bank of Zambia or in any other commercial bank, all accounts into which State revenues are deposited, and shall not be now or hereafter subordinated to any other claim.

Article 32
Permanent Appropriation for Domestic State Debt

The payment of the Debt Service on Domestic State Debt shall have a permanent appropriation, and the Annual Budget Law shall irrevocably take into account the amount required during the year, as determined by the Ministry.

Provide for annual agency agreement with BOZ or any other agent.

Article 33
Records of Domestic State Debt

Not more than ninety (90) days after the effective date of this Law, all Ministries and any other government bodies of the State that have heretofore issued domestic State debt shall provide to the Ministry, information on all such outstanding domestic state debt, including applications for the debt then under consideration. The Loan Agreements, supporting documentation, and information as to the current payment status of all outstanding Loans shall be furnished to the Ministry. The data derived there from shall be entered in the Record of domestic State debt.

CHAPTER III

EXTERNAL DEBT

Article 34
Purposes of External State Debt

External State Debt may be incurred for the following purposes:

a) To finance the State's Cash Flow Deficit;

b) To finance the State budget deficit, when the expenditures authorized by law exceed, or are likely to exceed, in the judgment of the Minister within the confines of the Public Finance and Budget laws, the revenues of the State required to pay them;

c) To support the balance of payments and the management of reserves;

d) To refinance outstanding Domestic and External State Debt;

e) To pay for State Guarantees, in whole or in part, in the event that the Borrowers have failed to meet their financial obligations;

f) To pay the servicing costs of State Debt, including associated costs such as security issuance, account maintenance, redemption, fiscal agency commissions;

g) To finance Capital Investments;

h) To fund the Budget Reserve Fund and the reserve position of the State;

i) To import raw materials, energy resources and other needs of the state;

j) To provide relief when natural disasters or other emergences have occurred, and /or

k) To amortize and redeem loans entered into by the state to purchase where appropriate, outstanding state debt whether for retirement or for debt management purposes.

l) It should be forbidden to use these funds to pay for salaries in the public service.

m) To lend out funds to institutions and schemes that have been approved by parliament.

Article 35

Limitations on External State Debt and External State Guarantees

(1) Limitations on the amount of External State Debt and limitations on the amount of External State Guarantees shall be established in the Annual State Budget Law. The debt limitations in the Annual State Budget Law shall expressly set forth, first, the amount of new External State Debt that can be incurred during budget year, and, second, for the total aggregate amount of External

State Debt that can be outstanding during such year.

(2) In the case of State Securities issued at a discount, the limitation shall be calculated on the discount price at the time the State Securities are initially issued. Any outstanding Debt for which funds sufficient to provide for the payment of the principal of and interest on such Debt have been irrevocably deposited with a third party for such payment shall not be subject to the calculation of the Debt limitation.

Article 36
Procedure for Contracting External State Debt

(1) The Ministry has the responsibility for negotiating and implementing procedures for executing Loan Agreements and State Securities by which the State contracts External State Debt.

(2) The Ministry shall forward to the Cabinet an initiative for negotiations in order to execute a Loan Agreement. The initiative shall consist of the following:

a) the summary Project description;

b) the reasons for issuing External State Debt;

c) the proposed amount of External State Debt to be issued;

d) the terms of the External State Debt;

e) The Ministry's recommendation.

(3) The Committee reviews the initiative from paragraph (2) of this Article, and, in the event it accepts it, the Cabinet shall thereupon appoint a negotiating delegation, which must include the Ministry.
(4) The agreement must be vetted by the Attorney General.

(5) Upon finalization of negotiations, the Ministry shall forward to the Cabinet draft Loan Agreement and the basis for the execution of the Loan Agreement that shall consist of the following:

a) the Constitutional basis;

b) the reasons for which the execution of the Loan Agreement is favourably considered and forwarded;

c) the authorization for a signatory of the Loan Agreement;

d) the amount of funds needed for execution of the Loan Agreement, and the manner of providing the funds;

e) an assessment of whether the issuance and implementation of the Loan Agreement will require the issuance of new laws or changes to the existing ones; and

f) A proposal to have the Loan Agreement, in whole or in part, temporarily applied until the contract becomes effective.

(6) The Loan Agreement shall be approved by the Cabinet and then sent to the Minister for signature, to his designated representatives.

(7) Upon making a decision from paragraph (6) of this Article, the Minister or the authorized signatory shall sign the Loan Agreement and submit it to the Ministry.

(8) The Attorney General shall issue a letter of confirmation to the lender or lenders that the agreement was signed according to the Zambian Laws for contracting loan.

Article 37
External State Debt Proceeds

The Ministry is authorized to deposit and apply the funds derived from External State Debt in accordance with the terms of the Loan Agreement. In the event any such Loan Agreement does not provide for such application such funds shall be deposited in an account at the Bank of Zambia and applied in accordance with the allocation made in the parliament approved government budget.

Article 38
Terms of External State Debt

(1) Subject to the provisions of this Law, the Ministry shall have the authority to:

a) Issue State Securities that are short-term or long-term;

b) Enter into Loan Agreements;

c) Government Securities denominated in a currency other than the national currency;

d) Loans from foreign governments, foreign government agencies, multilateral lending institutions, or other international organizations;

e) Bilateral or multilateral private sector loans; and

f) Other contractual borrowings, as authorized by law.

(2) As authorized by Cabinet and Parliament, the Minister of Finance may contract for External State Debt with international lenders, as identified in the section a) above. In any case, where External State Debt is authorized by law to be contracted by the officials of another Ministry or other Government Body, such officials shall keep the Minister of Finance fully appraised as the status of its negotiations, and obtain the latter's approval of any proposed agreement.

(3) Subject to the provisions of this Law, the Ministry shall have the authority to determine the details, form and terms of the securities that may vary from, or innovate upon, the securities described above, including, but not limited to the form of the instrument maturities, interest accrual methods, discounts and premiums.

(4) Simple interest calculation without any compounding.

Article 39
External State Debt Obligations

(1) External State Debt constitutes an absolute and unconditional obligation of the State in accordance with the terms of the State Securities or the Loan Agreements.

Article 40
Provision for Permanent Appropriation for External State Debt

The payment of Debt Service on External State Debt shall have a permanent appropriation, and the Annual State Budget Law shall irrevocably take into account the amount required, as determined by the Ministry.

Article 41
Priority of Public Debt

(1) All obligations that constitute Domestic State Debt and External Debt have parity and equality of status regardless of when they were incurred, and regardless of whether they are in the form of State Securities or Loan Agreements. Claims on account of the payment of the principal of, and interest on such Debt, shall constitute a first claim against all revenues of the State regardless of their source, whether on deposit in the Budget Account established at the Bank of Zambia or in any other commercial bank, into which State revenues are deposited, and shall not be now or hereafter subordinated to any other claim.

Article 42
Anticipated Default of External State Debt

(1) Upon the occurrence of the failure to make timely payment of Debt Service on any External State Debt, the Minister shall suggest to the Cabinet to request the State Parliamentary Assembly:

a) To enact an immediate statutory suspension of all guarantee programs until such time as the default in the payment of Debt Service has been corrected.

b) To authorize the Ministry to initiate discussions with creditors for an adjustment of the External State Debt obligations.

Article 43
Currency Exchange Valuation

The Bank of Zambia is responsible:

a) For providing to the Ministry, upon request, information on the exchange rate of the Bank of Zambia for certain currencies; and

b) For providing no less than on a semi-monthly basis the exchange rates between the national currency and any foreign currencies in which payment is specified in the External

State Debt or Guarantees, held by a foreign government, a foreign government agency, an international financial institution or other international organization, a foreign bank, a foreign business, other foreign entity or individual.

Article 44
Coordination with Bank of Zambia

The Ministry and the Bank of Zambia shall enter into an annual Agency Agreement that will prescribe the manners and terms in accordance with which the Bank of Zambia shall perform agent services for the Ministry, including but not limited to providing to the Ministry foreign currency or currencies in exchange for the national currency in amounts necessary to meet scheduled servicing of the External State Debt.

Article 45
Consultations and Reviews on External State Debt

The Minister of Finance shall consult with the Governor of the Bank of Zambia on the following matters--

a) The terms and conditions of External State Loan Agreements;
b) The refinancing of the External State Debt;
c) The status and impact of the External State Debt on foreign currency reserves, on the balance of payments, etc.;
d) Bank of Zambia monetary policy and the fiscal policy of the Ministry of Finance, as they relate to debt management concerns; and
e) Others matters, as mutually agreed

Article 46
Records of External Debt

Not more than ninety (90) days after the effective date of this Law, all Ministries and any other government bodies of the State that have heretofore issued State external debt shall provide to the Ministry, information on all such outstanding debt, including applications for external debt then under consideration. The Loan Agreements, supporting documentation, and information as to the current payment status of all outstanding Loans shall be furnished to the Ministry. The data derived there from shall be entered in the Record of State external debt.

CHAPTER IV

DOMESTIC AND EXTERNAL STATE GUARANTEES

Article 47
Description of State Guarantee

(1) A State Guarantee may only be issued in accordance with the terms of this law, and may not be implied or otherwise indirectly issued.

(2) A State Guarantee represents a contingent liability of the State. The State obligation does not arise unless Borrower receiving the loan has failed to repay, in whole or in part, the guaranteed loan, with prescribed interest, in accordance with the terms of the loan agreement. The State obligation shall be to make the scheduled loan payments when due, and the State shall not be liable for any accelerated payments unless it has expressly agreed to in accordance with the terms of the Guarantee.

(3) A State Guarantee shall be converted into State Debt upon a determination by the Ministry that the payment, or payments, due on the loan to which the State Guarantee relates have not been received in accordance with the terms and conditions of the loan, and that the Borrower is in default thereon. The action taken shall be evidenced by a Ministry document that contains a finding that the conditions for making payment on the guarantee had been satisfied, and includes information on which the determination was based. Such conversion shall not be subject to any State Debt Limitation established pursuant to this Law.

Article 48
Documentation for State Guarantees

(1) A Borrower or lending institution seeking a loan guarantee under this Law must submit a written request, which must be accompanied by documentation sufficiently detailed to enable the Ministry to assess the requester's financial circumstances and solvency. Detailed information about the lending institution and the Borrower shall be required.

(2) The Ministry shall adopt regulations setting forth the information that is to be provided in order to receive a State Guarantee. Such information shall include information about the Borrower, the lending institution, the project being financed and any counter Guarantee.

(3) Upon receipt of a request for a State Guarantee, with supporting documentation, a preliminary review shall be promptly made by the Ministry to make certain that all required information has been received. A written decision on the granting of the guarantee, based on an economic and financial analysis of the materials submitted, shall be made, and the requesting party notified, by the Ministry no more than sixty (60) after the loan request, properly documented, has been filed.

(4) The analysis from paragraph (3) of this Article shall include a determination as to the level of risk that would be incurred by the State if the guarantee would be provided. The Minister is authorized to obtain the assistance of the Bank of Zambia or others professionally engaged in risk assessments, in making risk determinations hereunder.

Article 49
Issuance Procedures for State Guarantees

(1) The Ministry shall have the responsibility for negotiating State Guarantees.

(2) The Ministry shall forward to the Cabinet the following information, together with the Ministry's recommendation:

a) the loan contract,

b) in the event the Borrower is a Council, the Decision of its legislative body,

c) The purpose of loan,

d) The guarantee of the commercial bank in cases where the Borrower is not financed through the budget of a Council,

(3) The Cabinet shall conduct a review and shall issue a Decision authorizing the issuance of the State Guarantee

(4) Upon the receipt of the Cabinet Decision the Minister shall proceed to coordinate the issuance of such State Guarantee.

(5) Provide for vetting by the Attorney General.

(6) The Minister shall forward to the Cabinet a report setting forth the actual terms of the State Guarantee.

(7) The Minister shall be authorised to execute all agreements related to the External State Guarantees.

(8) All State Guarantees must be approved by the State Parliament as a condition to its enforceability and shall bear a certification as to such ratification.

(9) The Minister is authorized to collect funds from the Borrowers or lending institution to recover the costs that the Ministry may incur in issuing State Guarantees and in servicing State Guarantees. The Ministry shall adopt Regulations that set forth the method of recovering and assessing such costs.

(10) The receipt by any lending institution of a State Guarantee shall constitute consent to the Ministry of Finance to obtain information from appropriate supervisory and banking authorities on its financial condition.

Article 50
Purpose of State Guarantees

State Guarantees shall be issued only in connection with the financing of Capital Investments and energy resources.

CHAPTER VI
Article 59

Collusion, Fraud and Deceit

(1) Participants in the Republic of Zambia Securities market are prohibited from collaborating with one or more other participants with the intent to affect the market in terms of yield, price, amount of State Securities of the same description purchased at auction or on the secondary market, the portfolio composition of the holdings of any other market participant, the investment strategy of any other market participant or participants, or, otherwise, to engage in any transaction, practice or course of conduct that would operate as a fraud or deceit upon other market participants, constitute money laundering or other corrupt activities.

(2) Violations of the prohibitions in paragraph 1 shall be subject to prosecution as fraud in financial markets, and shall constitute a Criminal Offence in accordance with the Laws of the Republic of Zambia, and shall be punishable as provided therein, including fine and forfeiture, as provided in thereof.

Provided that the Minister shall not delegate the power to make any statutory instrument under this Act.

The Minister may, by statutory instrument, make regulations to provide for the better carrying out of this Act, and, generally, providing for the raising of loans, the establishment and management of sinking funds, the giving of guarantees and indemnities, the granting of loans out of the general revenues of the Republic and for such other matters in respect of which provision is made in this Act.

Regulations under this section may provide in respect of any contravention thereof that the offender shall be guilty of an offence and shall be liable to a fine not exceeding seven thousand five hundred penalty units or to a term of imprisonment not exceeding five years, or to both.

CHAPTER VII

TRANSITIONAL AND PROVISIONS

Article 60
Bylaws

Within 90 days from the day this Law becomes effective, the Ministry shall promulgate by statutory instrument that are necessary to implement provisions from this Law.

Article 61
Conflict of Laws

(1) All laws or other regulations relating to State Debt and State Guaranties shall be harmonized with the provisions of this law within 180 days from the day this Law becomes effective.

(2) Until the laws and regulations from paragraph (1) above have been harmonized, existing laws and regulations shall be applied if they are not in conflict with the provisions of this Law.

(3) Within 180 days from the day this Law becomes effective, the laws shall be harmonized with this Law.

Article 62
Effective Date

(1) This Law shall be effective immediately on enactment by Parliament.

Provide for any public works program that is being implemented over a period exceeding one year to be reported as contingent liability.

2007-11

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