



CSO Annex Building, Cnr John Mbita & Nationalist Roads
P.O. Box 50782 Lusaka, Zambia

Tel: +260 211 252559 Email: info@zipar.org.zm
Fax: +260 211 252566 Web: www.zipar.org.zm

Consideration of the Citizens Economic Empowerment (Amendment) Bill, (N.A.B. 5 OF 2021)

Submitted to the

Committee on National Economy, Trade and Labour Matters

By the

**Zambia Institute for Policy Analysis and Research
(ZIPAR)**

Submitted: 16th February, 2021

1. Introduction

This memorandum provides ZIPAR's comments on the ramifications of the proposed amendments to the Citizens Economic Empowerment Act (N.A.B. 5 of 2021).

2. Rationale

The objective of the Citizens Economic Empowerment Amendment Bill is to revise the composition of the Board of the Commission. In this regard:

Section 7(1) of the principal Act has been amended by providing for the removal of the following part-time Commissioners from the composition of the Board of Commission:

- (b) The Secretary to the Treasury in the Ministry responsible for finance;
- (d) The Permanent Secretary in the Ministry responsible for labour and social security; and
- (e) The Attorney-General or a representative of the Attorney-General

And substitution thereof with the following:

- (b) A representative of the Secretary to the Treasury;
- (c) A representative of the Ministry responsible for commerce, trade and industry;
- (d) A representative of the Ministry responsible for labour and social security; and
- (e) A representative of the Attorney-General.

Overall, we observe that the Bill proposes to change the level of representation on the Board of Commissioners from Senior Government officials – Permanent Secretaries and Attorney General – to less senior officials for the Ministry of Finance, Commerce, Trade and Industry, Labour and Social Security and the Attorney General Office.

The proposed amendments follow the decision made by Cabinet at the 2nd Cabinet Meeting held on Monday 1st February 2021 to revise the composition of Boards by providing for removal of some senior Government officials on Boards and some Committees of public institutions such as CEEC and many others. This decision is aimed at enhancing good governance principles in public institutions.

In corporate governance, the Board of Directors plays the important role of overseeing management on behalf of shareholders and overall, overseeing the performance of both private and public entities¹. In public entities, the board acts as an intermediary between the state as a shareholder, and the company and its executive management. To ensure accountability of the Board and to ensure that it acts in the best interests of shareholders and the state-owned enterprise (SOE) thereby circumventing the principal-agent problem, the rules governing the composition of the Board for both private and public institutions become imperative.² According to Davies (2000), the composition of the board, its structure, duties and powers can be utilised to address the risk that the Board of Directors might not act in the best interests of shareholders (the

¹ OECD, (2018). Professionalising Boards of Directors of State-Owned Enterprises: Stocktaking of National Practices.

² Davies, P. L., (2000). The Board of Directors: Composition, Structure, Duties and Powers.

Government in this instance). This principal-agent problem typically arises because shareholders appoint the Board to supervise management on their behalf and to ensure that shareholders' interests are met. However, shareholders face the risk that the appointed Board may not act in their best interests or that of the enterprise for various reasons including advancing their own interests or that of management.

Beyond this, the composition of the Board of a public entity is also important for promoting transparency and accountability as outlined in the 'OECD Guidelines on Corporate Governance of State-Owned Enterprises'.³ According to the OECD good practice standards for the boards of SOEs, the composition of the board should allow the Board to exercise objective and independent judgement and to effectively serve the interests of both the company and its shareholder.⁴

To ensure that the functions of CEEC are carried out effectively and that the Government's objective of promoting effective and meaningful participation of citizens in the economy for sustainable and inclusive economic growth is realised, there is need to strengthen the governance structure of public institutions such as CEEC. How then does this the proposed change stand to affect the functions of CEEC?

3. Ramifications

3.1. Benefits

The proposed amendment is commendable as it likely to enhance the efficiency and effectiveness of the Board in overseeing management and realising CEEC's mandate of promoting broad-based economic empowerment in Zambia. The common practice of appointing senior government officials such as the Secretary to the Treasury, Permanent Secretaries and Attorney General to multiple boards potentially reduces the effectiveness of their representation on boards owing to the competing demands from various boards. This has the potential to inadvertently reduce the efficiency of the Boards in approving key strategies, annual budgets and other institutional policies required to meet the objectives of the institution. Additionally, the absence of these senior representatives in board meetings perhaps due to other competing matters of national interest deprives the Board and Institution from benefiting from their expertise in setting strategic direction.

Further a less senior representative is less politically exposed and thus at less risk of being terminated, demoted or moved to a different Ministry. Thus, this move has the potential to promote continuity in the tenure of the Board members, preserve institutional memory and increase the independence of the Board. In addition, it will partially insulate the Board and Institution from political intervention.

³ OECD, (2018). Professionalising Boards of Directors of State-Owned Enterprises: Stocktaking of National Practices.

⁴ Ibid

3.2. Potential Risks

It should be acknowledged that the appointment of senior government officials to the Board of Commissioners of CEEC had the advantage of streamlining the process of engagement between CEEC and the ministries responsible for financing the activities of the Commission and promoting industrial development, employment and accountability.

CEEC's mandate is to promote the economic empowerment of citizens through ownership of productive assets and resources, increased employment and incomes, skills development, and preferential procurement and access to services of public institutions. To undertake these functions, the Commission requires adequate financing for its operations and the Citizens Economic Empowerment Fund (CEEF), as well as policy support to advance industrial activities preferential procurement.

Thus, the representation of the Secretary to the Treasury of the Ministry of Finance and the Permanent Secretaries for the ministries responsible for commerce, trade and industry, labour and social security and the Attorney General on the Board conferred the benefit of reducing the layers of reporting thereby making coordination and engagement on fiscal and policies aimed at promoting inclusive sustainable development, more efficient. The drawback to the proposed amendment therefore is the risk that the removal of these key positions may introduce another layer of reporting in the chain of command and thus increase bureaucracy.

4. Recommendations

- i) While the Bill proposes this amendment, we observe that the Bill has omitted to include the deletion of paragraph (c) in the principal Act which still provides for the appointment of the Permanent Secretary in the Ministry responsible for commerce, trade and industry.

To ensure consistency between the measure and legal text, we propose the inclusion of the deletion of paragraph (c) in Clause 2 of the Amendment Bill.

- ii) To enhance the performance of CEEC vis-à-vis an autonomous, independent and competent Board, the new nominees to the Board of Commissioners should be well-qualified with the relevant education, professional background, skills, expertise and of good character in line with the OECD good practice standards for the boards of SOEs.

To enhance the principles of good corporate governance for public institutions, the Government should therefore go a step further and make legal and regulatory provisions for a transparent evaluation criteria for the board nominations premised on the aforementioned factors. For example, in Korea, formal qualifications for board members are stipulated in the Act on the Public Institutions Management.⁵

⁵ Ibid