CTPD'S MONDAY OPINION

This is a weekly column aimed at sharing CTPD's perspective and steering public debate on various issues pertaining to Trade & Investments Law, Public Finance Managment, Extractives and Human Development.

TODAYS TOPIC

THE PUBLIC DEBT MANAGEMENT ACT:
A Solution for Zambia's Debt Crisis? Part 2

The Public Debt Management Act: A Solution to Zambia's Debt Crisis? PART II

IN last week's Monday Opinion, we introduced the discussion leading up to the enactment of the Public Debt Management Act (the "PDMA") by highlighting some of the weaknesses of its predecessor the Loans and Guarantees Authorisation Act (the "LGAA"). In this week's opinion we continue our discourse on the PDMA, briefly discussing its salient provisions, analysing how it fairs in comparison to theLGAA and its adequacy in ensuring effective debt management. Highlighted below are some of its provisions.

1. Debt Management objectives

The PDMA provides for three objectives that Government must meet in the management of its debt in the medium to long term – (i) meet Government's financing needs in a timely manner; (ii) minimise borrowing costs with a prudent degree of risk; and (iii) promote the development of the domestic financial market. These clear and focused objectives are necessary to enable effective public debt management, while also meeting the ultimate aim of public debt management legislation – the development of a robust and effective debt management process. However, while this express provision of objectives is progressive, the PDMA fails to expressly provide for broad overarching principles that could guide public debt management. Fiscal responsibility principles such as the principles of public participation, transparency, accountability, sustainable debt management and/or prudent fiscal risk management need to be explicitly recognised by the PDMA, and not inferred. To the extent possible, these principles should be harmonised not onlywith the debt management objectives but also,with the public finance principles spelled out in the Constitution.

2. Debt ceilings

Unlike its predecessor the LGAA, the PDMA provides for maximum borrowing amounts or what is known as "debt ceilings." According to the PDMA, Government can only borrow up to 65% of the country's GDP. Currently Zambia's debtsits at approximately 120% of its GDP, an unsustainable debt level attained due to the lack of a debt ceiling in the repealed LGGA. Had the PDMA been enacted earlier, perhaps the country's debt would not have surged to such heights. Moreover, to ensure the country's resourcesare utilisedon productive and developmental socio-economic issuesand not merely on debt servicing, the PDMA provides that amount spent on repaying loans each year should not exceed 20% of the Government's revenue.

3. Provision for purpose of loans

The PDMA categorically spells out reasons why the Government may raise a loan. The purpose of loans includes to finance Government budget deficit, to finance strategic national projects, to maintain a credit balance at the treasury, to develop the domestic capital market, to mitigate the effects caused by natural disasters or national emergencies. By defining the limits within which government may borrow, the PDMAhelps protect against unnecessary and unwarranted borrowing while also enhancing effective debt management.

4. Introduction of the Debt Management Office

The PDMA provides for the establishment of the Debt Management Office (DMO) as a department within the Ministry of Finance responsible for public debt management. The DMO is tasked to, amongst many things,conduct debt management operations of the government, raise the required amount of funding, prepare annual borrowing plans,record and service debt, manage the costs and risks of the debt portfolio, and toprepare annual debt reports. While having a specialised department solely responsible for debt management operations is necessary and commendable, it is imperative that in its daily operations and analytical work, the DMO should be somewhat independent from the finance minister. Otherwise, there is a risk, particularly during periods of budget constraints, that short-term cost minimisations will override longer-term risk considerations.

5. Parliamentary oversight in the debt contraction process

The PDMA tasks the NationalAssemblywith the oversight and approval of debt, a provision missing from the repealed LGAA. Under the PDMA,the Minister of Finance must present an annual borrowing plan, which includes the overall annual borrowing needs, purpose of the loans, and broad terms of lending, to legislators for their approval. However, a major concern with this provision is that the approval of the plan alone constitutes the endorsement of the loans contained therein. This in turn limits the capacity of legislators to keep track of the material terms and conditions of specific debt transactions and impedes their ability to hold the Government accountable. This also inhibits public participation in the debt contracting process insofar as there is no requirement to publish the annual borrowing plan to the public and solicit their feedback. Furthermore, the PDMA is also silent on the powers of the Legislature to intervene where there are concerns about borrowing which fails to adhere to the medium-term debt strategy.

6. Transparency mechanisms

Unlike the LGAA, the PDMA attempts to enhance transparency in debt management by providing for the publication of various debt reports. The Minister of Finance mustpublish three (3) debt reports on an annual basis – (i) a Debt Sustainability Analysis Report;(ii) a Debt Statistical Bulletin to include information on the debt management strategy, the effects of the implementation of the debt strategy in achieving debt management objectives, credit risk assessments, outstanding lending operations, and projected debt service on outstanding external and domestic debt; and (iii) an Annual Public Debt, Guarantees and Grants Execution Report. However, the publication of these reports is not sufficient if optimal transparency in the debt management process is to be achieved. There is a need, as a recommendation, for public debt registers through which citizens can freely access relevant debt information including the loan contracts and the relevant material terms and conditions of lending.

It is quite clear from the foregoing that the PDMAscores significantly higher than its predecessor the LGAA in providing aneffective and efficient legal framework in debt management. It is thus a good starting point in better managing Zambia's debt crisis. However, the PDMA is not an end in itself, but a means through which effective debt management is enhanced.There is need for concerted effort from all stakeholders and institutions to ensure its effective implementationand to also periodically revise it to reflect the current debt needs and enhance law development.

That's it for this week, look out for another interesting topic of our weekly column.

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