

Dear Mr Greenberg,

20 July 2021

Many thanks for sharing a first draft of the SADC Model PFM Law, which I have had an opportunity to now peruse as a member of the technical working group. I have also considered the SADC PF Second Memorandum dated 14 July 2021 which is similarly well received.

My sense is that the first draft is certainly moving in the right direction and taking shape. Below please find feedback on certain sections of the preliminary version of the model law.

Yours faithfully



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**Feedback on the draft SADC Model PFM law as developed and circulated by Daniel Greenberg on 14 July 2021**

- 1) Section 48(1) is currently framed permissively, and does not obligate the Minister to “make regulations about the treatment for budgetary purposes of expenditure that has not been authorised...” It is suggested that this clause be revised by replacing **may** with **must**.
- 2) I was unable to locate sections in the current draft PFM law that define various forms of expenditure that could create the potential for misuse or abuse of public funds. While there is a clause dealing with unauthorised expenditure there do not currently appear to be clauses defining for instance, fruitless and wasteful expenditure, irregular expenditure and so forth and what corrective action should be taken where such forms of expenditure are identified. Please could the drafter give consideration to including such clauses, together with a clause that introduce the offence of financial misconduct under circumstances where such expenditure occurs, and requiring corrective action to recover, limit or reduce loss, and consequences for parties implicated in such affairs?

- 3) With regard to section 74(1) it is proposed that the bolded worded be removed in the following sentence:

The Auditor General must examine any resource accounts received from a Ministry **under** with a view to being satisfied—

or the word **scrutiny** or **audit** be added so that it reads as:

The Auditor General must examine any resource accounts received from a Ministry under **scrutiny/audit** with a view to being satisfied—

- 4) I would recommend that section 74(3) require that the Auditor General submit all its audit reports to Parliament. It is proposed that to achieve this, section 74(3)(a) be revised to read as follows:

(a) must certify them and submit a report to Parliament,

I note that section 74(3)(d) requires that the Auditor General “if not satisfied of the matters set out in subsection (1)(a) to (d), must report to Parliament.” This clause may be understood by some readers to require this, but a narrow reading may lead to a situation where some authorities and Auditor General’s interpret this clause as only requiring reporting where the AG is not satisfied of the matters as listed in subsections 1(a) to (d). This would in the writer’s opinion be an unreasonable limitation on access to audit reports thus limiting the public’s access to relevant material that would enable a better understanding of where and how public funds were used by state organs and entities.

- 5) I would recommend that section 77(3) require that the Auditor General submit its audit report (on the whole of government accounts) to Parliament. It is proposed that to achieve this, section 77(3)(a) be revised to read as follows:

a) certify them and submit a report to Parliament,

- 6) I note that section 77(4) requires that the Finance Ministry “must lay accounts and reports received under subsection 3(b) before Parliament.” This clause may be sufficient to ensure that the accounts and Auditor General’s report reach Parliament in most countries, but in the absence of the revision proposed above with regard to clause 77(3)(a), situations may arise where Finance Ministry’s fail to comply with clause 77(4). In such scenarios, the proposed revised clause 77(3)(a) would provide additional assurance that the Auditor General’s report reaches Parliament for consideration by elected representatives.

- 7) Considering that the Auditor General is appointed by Parliament in accordance with section 82(1), it is proposed that section 82(3) be revised to empower Parliament rather than the Minister, to make regulations about the office of the Auditor General. This would also limit the potential for influence being exerted upon the Auditor General, and would allow for greater parliamentary oversight and hopefully public participation in the making of regulations. If retained in their current form, section 82(3) would give the Minister the power to develop regulations to dismiss the Auditor General, despite Parliament holding the powers of appointment. It is submitted that Parliament should carry the powers of both appointment and dismissal.

- 8) In further support of the aforesaid, it is proposed that an additional sub-section be included within section 82, requiring that Parliament (assuming the proposal above is accepted), when making or revising regulations about the office of the Auditor General, must invite public submissions on such proposed regulations or amendments to existing regulations.
  
- 9) I stand to be corrected, but in most SADC countries, the Auditor General is appointed by a resolution of Parliament made on a motion by the President. Should this not be the route to follow, rather than giving this motion to the Minister as currently required by section 82(2)?

I look forward to considering comments from other members of the Technical Working Group as we work collaboratively towards the development of this model PFM law.