Legal Aspects of Promoting Investor and Issuer Participation in Sub-Saharan Africa Equity Markets—The Case for a Functional Bond Market

Dr Samamba, Lennox Trivedi, PhD—Law

Faculty of Law, School of Humanities and Social Sciences, The Copperbelt University, ZAMBIA

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ABSTRACT

This study examines the Zambian regulatory and institutional framework which governs the public distribution of securities so as to establish whether or not the said framework provides adequate incentives for the growth of bond issues and the bond market in Zambia. The study employs the doctrinal and the non-doctrinal approaches to evaluating the effectiveness of regulatory rules and institutions. The results of the study are: (i) the Zambian bond market is in the nascent stage of development like the bond markets of most Sub-Saharan jurisdictions (ii) the corresponding equity markets in Sub-Saharan jurisdictions are also under-developed in comparison to their South American, Asian and European counter-parts (iii) there are quantitative restrictions on the investment of surplus pension monies in securities, and (iv) there is limited pension fund participation in domestic Sub-Saharan securities markets. This study argues that the efforts to enhance the investor base for Sub-Saharan equity markets could be augmented by a functional bond market which could serve as a source of investors for bond-like equities, convertible bonds and equity-linked bonds. The study argues further that by promoting the issue of convertible and other equity-linked Green and Sustainability Bonds, a functional bond market could serve as a source of investors for the equity markets as investors convert the bonds to equities or, exchange the bonds with equities or indeed subscribe for new issues of equity securities. A corollary argument is that a vibrant and successful secondary bond market is likely to incentivize new issues of equity securities and enhance the supply of equity securities to the market so as to match up the escalating demand—a condition which is necessary for price stability. The other argument is that the replacement of the quantitative restrictions with the prudent-person rule for the investment pf surplus pension fund monies is likely to promote the participation of pensions funds in bond markets and ensure the success of Sub-Saharan Africa securities markets.

Key Words: Issuer, Investor, Participation, Bonds, Equity, Securities, Markets, Africa

INTRODUCTION

One of the major constraints on the growth of Africa's equity markets is the narrow and shallow pool of investors. Experts have often cited the absence of or limited investment of pension assets in equities in domestic securities markets as the major constraint on the growth of demand for listed securities in African stock markets.[1] Also, often cited as one of the major constraints on the growth of the investor base and the growth of demand for the securities which are listed in African securities markets, is the poor investor education and the narrow range of securities and the limited financial asset diversification which make it difficult for the investors to effectively hedge against financial market risk.[2]

The object of this study is to examine the Zambian regulatory and institutional framework which governs the public distribution of securities so as to establish whether or not it provides adequate incentives for the growth of bond issues and the success of the bond market in Zambia. The findings of this study, and the proposals for remedial legislative and institutional reforms which have been made in this article in respect of Zambia do apply to a large extent to other jurisdictions in Sub-Saharan Africa. Thus, Zambia is simply

selected here as a case study. The central argument of this article is that the efforts to enhance the investor base for equity markets could be augmented by a functional bond market which could serve as a source of investors for bond-like equities. Also, by promoting issue of convertible and other equity-linked or equity-like Green Bonds and Sustainability Bonds, a functional bond market could serve as a source of investors for the equity markets as investors covert the bonds to equities or, exchange the bonds with equities or indeed subscribe for fresh issues of equity securities. A corollary argument is that a vibrant and successful secondary bond market is likely to incentivize new issues of equity securities and enhance the supply of equity securities to the market so as to match up the escalating demand—a condition which is necessary for price stability. The sub-central argument is that the replacement of the quantitative restrictions with the prudent-person rule for the investment of surplus pension fund monies is likely to promote the participation of pensions funds in bond markets and ensure the success of Sub-Saharan Africa securities markets.

BACKGROUND TO THE PROBLEM

After gaining political independence from British rule, Zambia like many other Sub-Saharan countries embraced the Communist political ideology. Under the Communist ideology, the State owned all means of production. Private ownership was not promoted and this negatively impacted the establishment of stock exchanges in the region. Benny,[3] observes that social democracies (which promote private property rights) tend to have more developed financial markets than the left-leaning regimes. In line with Benny's observation, Mwenda,[4] observes, with respect to Zambia, that although the Zambian Securities Acts 1970 and 1990, respectively, provided for the establishment of a stock exchanges in Zambia, the left-leaning government of President Kenneth Kaunda could not give effect to said law. Despite the lack of the enabling institutional framework—a stock exchange, President Kaunda's left-leaning Government could still issue Government Bonds through the Central Bank. The Government did not provide any incentives to promote private property ownership or Corporate Bond issuance. In the 1991, Zambia became a capitalist and socially-democratic state. The right-leaning capitalist democratic Government of President Frederick Chiluba promoted private property ownership. And, as way of promoting private investment and trade, President Chiluba's Government enacted the Securities Act 1993 which piece of legislation established the Lusaka Securities Exchange (the LuSE),[5] and the Securities and Exchange Commission,[6] and provided for the establishment of other securities exchanges.[7] However, the Chiluba regime did not, by a deliberate policy, provide any incentives to the domestic private companies or other entities which could issue securities and list on the LuSE to enable them to list on the LuSE. Instead, the Chiluba regime looked to the State-Owned Enterprises (SOEs) which were ear-marked for privatization as a source of listings for the newly established LuSE. However, in Zambia and many other Sub-Saharan jurisdictions, only a few of the privatized SOEs proceeded to list on domestic securities exchange. As the privatization wave subsided, the rate at which the new entrants were admitted to the Official List of most Sub-Saharan African securities exchanges decreased also. For example, since its inception in 1994, Zambia's Lusaka Securities Exchange has only managed to attract 24 listings, one of which is in fact a cross-listing.[8] Undoubtedly, in part, this stark reality rationalizes the low capitalization and liquidity of the LuSE, and most Sub-Saharan African securities markets. As Professor Cohn observes:

The hope in most countries was that the privatization process would provide a constant flow of new listings to the exchange. When the Uganda Stock Exchange was created in 1997, eight SOEs were on the list for near-term privatizations.[9] That list, and those hopes, failed to materialize. Today, seven years later, only one of the eight companies on that list has had a public offering. The Ugandan experience is typical. Through a combination of political and economic factors, privatization programs have seen only a trickle of public offerings instead of the anticipated stream. In many instances, governments found it more convenient to off-load SOEs through private means, sometimes through measures that bordered upon self-dealing and corruption. Whatever the reasons, privatizations have not been a major fuel for stock market growth.[10]

Thus, the opportunity to enhance the supply securities to the domestic securities exchanges was lost in most Sub-Saharan African countries. And, in particular, the opportunity to develop the capacity of private companies to issue corporate bonds was lost. The argument here is that Sub-Saharan African countries can enhance the robustness of their securities markets as by promoting the issuance of Corporate Green Bonds and Sustainability Bonds which have caught the eye of Venture Capital Funds (VCFs), recently. Green and Sustainability Bond investment is part of the post-COVID-19 Recovery Strategy of most VCFs and other styles of investment companies.

Statement of The Problem

In the light of the background to the problem which has been given above, the statement of the problem which is under investigation could be formulated as follows:

To what extent does the Zambian regulatory and institutional framework for the public distribution of securities provide incentives and safeguards for the growth of bond issuance and the bond market in Zambia?

LITERATURE REVIEW

The literature which is available on the subject which is under investigation examines mainly the state of Sub-Saharan African bond markets or the effect of the bond issuance on the performance of the equity market. On the state of the bond markets in the region…..

On the effect a bond issuance on the performance of the equity market, a study which was conducted by Wanjiku,[11] examines the effect of bond issues on the price of the shares which were listed on Kenya's Nairobi Stock Exchange (the NSE). Wanjiku's stsudy uses the event study methodology which seeks to identify any abnormal returns which are observed around the event day. The data which was used for this study was extracted from the NSE Daily Stock Report and the NSE Handbook for the period 2009-2013. All the listed companies which were sampled had an eventful bond issue. This data was analysed by using Microsoft Excel and comparing Critical t-value with table t-value. The results of the Wanjiku study show an abnormal fall in the prices of the shares the bond issue dates. This phenomenon is referred to as the 'the announcement effect of bond and equity issues. The 'announcement effect' of bond and equity issues was confirmed in an earlier study which was conducted by Castillo.[12] The Castillo study analysed the impact of securities offering announcement on stock prices for a sample of 172 issues of securities in the Chilean financial market during the 1993-2002 period. The sample consists of equity issues and 56 corporate bond issues. The results of the Castillo study are consistent with the No-News Theory or the Myers and Majluf Asymmetric Information Theory whose prediction is that the announcement of the issue of debt should produce either no effect on the price of the stock or a very minimal negative effect.[13] Therefore, the abnormal negative shift in the prices of the equity securities which was recorded by the Wanjiku study may be attributed to the small size of the Kenyan equity market. This position is confirmed by the Castillo study whose results indicate the magnitude of the abnormal negative returns in the stocks was 'directly related to the relative size of the equity issue'. The results of the Castillo study also indicate that when the firms announce an equity issue, the prices of the listed stocks decreases—making this form of financing more expensive. However, in the long-run, the post-announcement performance of the bond market has beneficial effects on the equity market.

Campbell,[14] conducted an empirical study which compared the reliability of the bond markets and the stock markets predicting economic growth. The study compared forecasts of real economic growth from models which were based on bond and stock market data. The study posted results which showed that bond markets do better than stock markets in predicting economic growth.[15] The results of the Campbell study also indicate that stock market illiquidity is related to bond risk, and that the performance of the bond

market co-moves with the performance of the equity market.[16] Also, Bouwman, Sojli and Tham,[17] conducted an empirical study that investigated the link between bonds and a cross-section of stocks. The results of this study provide new evidence that shows a link between stock market illiquidity and sovereign bonds risk premia.[18] This evidence links high-risk bonds to stock market illiquidity, and the low-risk bonds to stock market liquidity. In a nutshell, the evidence which is provided by the Bouwman-Sojli-Tham study makes a good foundation for the proposition that the good performance of the low-risk bonds has a positive impact on the liquidity of a stock market which serves as a secondary market for those bonds.

The current study makes the case for the establishment and development of bond markets in Sub-Saharan Africa states with a special focus on the issuance of corporate bonds of a special kind—the Green Bonds and the Sustainability Bonds which are currently appealing to the Venture Capital Funds and other styles of investment companies. The argument of the current study is that the successful and vibrant bond markets are likely to enhance the robustness of Sub-Saharan African securities markets as they strive to emerge from the battering of the COVID-19 pandemic.[19] A functional regional bond market would also enhance the resistance, resilience and fortitude of Sub-Saharan African equity markets as they face future financial crises.

The World Bank,[20] in a quite recent study which was conducted on the state and performance of the African securities markets observes that the pension funds in Africa are less developed than the banking system.[21]In particular, the World Bank observes that not only are there fewer private pension funds than the public pension funds but also the limited participation of the public funds in bond markets.[22] The World Bank attributes the limited participation of the public pension funds in the bond markets to the statutory quantitative restrictions on the investment of the surplus pension monies in securities.[23] The current study argues that the participation of the pension funds in Sub-Saharan African bond and equity markets could be promoted by promoting the establishment of private pension funds, and the replacement of the quantitative restrictions with the prudent-person rule. The efficacy of these measures in yielding the desired results could be enhanced by a deliberate governmental policy which encourages and promotes a culture of securities investment among the pension funds—both private and public.

METHODOLOGY

This study falls into the qualitative research category. It focuses on answering specific questions which relate to the problem which is under investigation by using both primary and secondary data. The research is underpinned by the doctrinal and the non-doctrinal approaches to examining the effectiveness of the Zambian regulatory and institutional framework which governs the public distribution of securities. By the doctrinal approach the author gives a descriptive exposition of the applicable legal rules, and offers a complete restatement of the law were applicable.[24] By the non-doctrinal approach, the author identifies the legal problem, analyses it and proposes remedial changes to the regulatory and the institutional framework which governs the public distribution of securities in Zambia.[25] These two methods were used in analysing both primary and secondary data. Primary sources of data such as relevant legislation and case law which relate to the subject/problem which is under investigation were used. Secondary sources of information such as journals and other written commentaries on the primary sources were also used. A checklist of documentary sources was used, as well. And, as a possible way of avoiding subjectivity in the selection of documentary sources, the study employed non-probability sampling method—purposive sampling. Both primary and secondary sources of data were used as aids to drawing inferences, making deductions and comparisons.

The research questions which were used are:

1. What is the composition (the segments) of the Zambian securities market?
2. What is the bond market composition (the segments), by percentage, in Zambia?

3. What is the institutional investor composition in the financial market?
4. What limitations are placed on the investment of surplus pension monies in securities?
5. To what extent have the Zambian pension funds participated in the Zambian securities markets?

THE RESULTS OF THE STUDY

QUESTION	ANSWER
Is there a bond market?	YES
What is the stage of development of the bond market, if any?	Nascent Stage
What is stage of Development of the corresponding equity market?	Under-developed
Are there restrictions on the investment of surplus pension monies in securities?	YES
What is the extent of the participation of pension funds in domestic securities markets?	Extremely limited

The following section gives empirical evidence on the state of African bond markets as a possible way of putting the legal arguments and proposals for reform herein made in proper socio-economic perspective.

EMPIRICAL EVIDENCE ON THE STATE OF AFRICAN BOND MARKETS

This section gives empirical evidence on the state of African bond markets as a possible way of putting the legal arguments and proposals for reform herein made in proper socio-economic perspective.

A) Increasing Investor Participation Through Bond Market Development

A well-functioning primary bond market can effectively serve a good source of new investors thereby increasing the investor base of a stock market through secondary-market listings on stock markets. With the increase in the number of investors participating on the stock markets comes growth in liquidity.

There are also economic benefits associated with the development of a well-functioning bond market. United States Agency for International Development (USAID) Southern Africa Global Competitive Hub (Trade Hub) observes that:

The development of the bond market in Africa would allow governments to improve terms on which they borrow in the domestic financial market and thus reduce dependency on foreign currency denominated debt. A developed bond market would also increase financing options available to the corporate sector. It would also act as catalyst for development and stability of financial markets and for regional integration.[26]

Besides these benefits, a developed bond market is also important in providing an alternative—alternative to banks—source of debt finance for both government and companies, especially when large sums are being raised.[27] Despite these enormous benefits that a well-functioning bond market potentially has, it is sad to observe that bond markets in most eastern and southern African countries remain undeveloped in comparison to other regions of the world. Bond markets in these countries are at a nascent stage of development and there is a strong need to support their development.[28] The USAID Southern Africa Competitive Hub (Trade Hub) observes that:

Bond markets in most African countries remain undeveloped and one of the reasons underpinning the inadequacy of these markets is lack of institutional and operational infrastructure which in turn leads to low levels of liquidity, a narrow investor base, short maturity on the bonds issue and high borrowing costs. This impacts ultimately the competitiveness and breadth of financial products available to both the corporate and retail sector of the economy.[29]

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Further, the Macroeconomic and Financial Management Institute of Eastern and Southern African Institute (MEFMI)[30], observes:

Bond markets, however, which are an integral part of the capital markets, remain largely underdeveloped in Africa with corporate bond markets non-existent or in their infancy. In most African countries the public sector dominates debt issuance, mainly with debt instruments of very short tenor and activities focused on the domestic primary market with limited secondary market trading. Although several countries have listed the bonds on the stock exchange, secondary market trading remains virtually non-existent due to the "buy and hold" strategy of domestic banks who hold the bulk (about 70 per cent) of the debt, in part due to the limited lending opportunities and prudential requirements like liquid asset ratios in some countries that require banks to hold a certain amount of their assets in government-issued paper. With the exception of South Africa, corporate bonds markets are largely non-existent.[31]

An argument is made that the lack of secondary market bond listing and trading in in Zambia and most African countries is likely to hinder growth of the equity market investor base given the empirically proven link between performance of bonds and bond-like equities in the secondary market.[32]

B) Constraint Relating to Undeveloped Bond Markets in Eastern and Southern Africa

Efforts to establish the state of bond markets in eastern and southern African states are often frustrated by the scarcity of data on the subject. There is not enough information that has been captured on the operations and performance of bond markets in the aforesaid region. No information was found outside the period 2006-2010.

As has been earlier stated in this study, the current state of the bond market in eastern and southern African countries leaves so much to be desired. These markets are in the nascent stage of their development and badly need developing. Tables 1, 2 and 3 below show that, by comparison, as at 2010, Sub-Saharan bond markets were still smaller in size and capitalization—consisting both in government and corporate bonds—than bond markets in other developing, emerging and developed economies.

In Sub-Saharan Africa, the government bond market accounted for 14.8 percent of the total capitalization of the African bond market. This represents a 21 percent fall in the contribution of government bonds to the total market capitalization since 2006. Though corporate bonds brought in only a paltry 1.8 percent, this in essence represents a quantum leap (80 percent increase) in the contribution of corporate bonds to total bond market capitalization since 2006. However, government securities still represented accounted for the preponderant portion of the total market capitalization.

In contrast to the trend shown by Sub-Saharan African countries, there is not much difference between the contribution of government securities and corporate securities to the total market capitalization among Asian countries. For example, Malaysia has recorded 53.7 against 57.0. China has 27.3 against 22.8, while South Korea recorded an even higher figure for corporate bonds (48.0 against 59.5). Latin America exhibited a similar trend. Chile has a higher record for corporate bonds than for government bonds (13.1 against 17.0), while Brazil and Mexico recorded very narrow gaps between the two segments (39.4 against 22.7, and 22.6 against 17.1, respectively).

Central Europe showed a trend similar to that exhibited by Sub-Saharan Africa—wide gaps between the government bonds segment and the corporate bond segment in favor of the former.

Among the developed countries, Australia and the United States of America recorded larger contributions from the corporate securities than they did government securities (27.4 against 51.0, and 75.7 against 98.6,

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respectively). By contrast, Japan posted an even much greater contribution from government bonds (205.4 against 37.8).

From SADC and COMESA regions, the combined capitalization of these two regions, as collected from Table 8 below, was USD 105.03 million. Over 84 percent of this combined capitalization came from South Africa. South Africa recorded a corporate bonds segment that was about the size of the government bonds segment (47, 035 against 41, 199) and boasting incomparably-high levels of liquidity of 4089.9%. Quite interestingly, only Botswana, recorded a larger corporate bond segment than the government bond segment (533 against 306). Generally speaking, the government bonds segment was much larger than the corporate bond segment in most cases. About 16 percent of the capitalization of the combined region was shared among the other countries than South Africa. This paltry 16 percent may be explained by the fact that most of these countries have bond markets which are in their infancy and in dire need of development.

It must be observed that though the contribution of corporate bonds to the total capitalization of the Sub-Saharan bond market has been steadily rising, the contribution of this asset class still remains way below that of government bonds in Sub-Saharan Africa. An argument is made that while there is generally urgent need to develop Sub-Saharan bond markets, there is particular need to consolidate efforts directed at bridging the gap between the size of the government bonds segment and the corporate bonds segment.

An argument is made that the increased investor participation that would come with the development of the two segments would grow the overall investor base of the bond market. The growth in the overall investor base is likely to stimulate growth in liquidity of the bond market—as a primary issuing market—and by extension the, the liquidity of the stock market which serves as a secondary market for listing purposes.

A further argument is made that if regional secondary markets—stock markets—were integrated by way of cross-listings of the bonds, the under-capitalized bond markets of the region would greatly benefit from the breadth and depth of the South African bond market as listed on Johannesburg Stock Exchange. The combination of cross-listings, increased cross-border trade in securities (bonds and other securities) and the exemption of issuers who have complied with disclosure obligations in their home countries from further foreign compliance, is likely to stimulate notable growth in liquidity levels on stock markets in the region.

A question may be asked, "Are there benefits accruing to a stock market—as a secondary market for listing purposes—as a result of bond market development?" The following sub-section explores this question.

Table 1: Bond Market Capitalization Comparison, 2010

Region	**Country**	**Market Capitalization (% GDP)**		**Contribution to Total Domestic Debt (%**	
		Government	**Corporate**	**Government**	**Corporate**
Developing Countries and Emerging Africa					
Africa	**All**	14.8	1.8	89.2	10.8
	South Africa (SA)	31.2	20.0	60.9	39.1
	All exclu SA	14.2	1.3	91.8	8.2
	CEMAC [33]	10.5	0.7	93.8	6.3
	WAEMU [34]	14.1	2.3	86.0	14.1
	Oil exporter	7.7	1.1	87.5	12.5

	Fragile economy	18.4	1.2	93.9	6.1
	Low Income	15.3	1.1	93.3	6.7
	Middle Income	15.1	3.5	81.2	18.8
Asia	**China**	27.3	22.8	54.5	4.5
	Hong Kong	35.9	13.8	72.2	27.8
	Malaysia	57.3	57.0	50.2	49.8
	South Korea	43.8	59.5	42.4	57.6
	Thailand	50.5	12.8	79.7	20.3
Latin America	**Argentina**	13.3	2.6	83.7	16.3
	Brazil	39.4	22.7	63.4	36.6
	Chile	13.1	17.0	43.5	56.5
	Mexico	22.6	17.1	56.9	43.1
Central Europe	**Czech Republic**	23.3	11.2	67.5	32.5
	Hungary	57.3	7.0	89.1	10.9
	Poland	42.6	1.8	95.9	4.1
Developed Countries					
Global	**Australia**	27.4	51.0	35.0	65.0
	Canada	63.2	26.5	70.5	29.5
	Japan	205.4	37.8	84.5	15.5
	USA	75.7	98.6	43.4	56.6
	Europe	55.8	46.4	54.6	45.4

Source: IMF staff compilations based on data from IMF, IFS, WEO and World Bank, 2013.

Table 2: Sub-Saharan Africa Bond Market Capitalization, 2006-2010

Group		**Year**				
		2006	**2007**	**2008**	**2009**	**2010**
Government Securities Market Capitalization as percentage (%) of GDP	All	18.7	15.4	14.6	14.1	14.8
	South Africa (SA)	27.3	23.9	22.4	27.0	31.2
	All ex South Africa	18.4	15.1	14.3	13.7	14.2
	CEMAC	15.5	13.8	11.3	10.4	10.5
	WAEMU	14.8	14.7	15.6	12.7	14.1
	Oil exporters	9.7	8.9	9.1	9.1	7.7
	Fragile Countries	20.1	18.5	19.1	18.4	18.4
	Low Income	22.6	17.2	16.5	16.5	15.3
	Middle Income	19.9	14.7	12.7	12.2	15.1

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Corporate Bond Market Capitalization as a percentage (%) of GDP	All	1.0	1.5	1.5	1.7	1.8
	South Africa	18.2	19.4	19.2	19.9	20.0
	All ex South Africa	0.5	0.9	1.0	1.2	1.3
	CEMAC	0.0	0.2	0.6	0.9	0.7
	WAEMU	1.6	2.2	2.3	2.5	2.3
	Oil exporters	0.2	0.3	0.6	0.8	1.1
	Fragile countries	0.6	0.9	1.0	1.1	1.2
	Low Income	0.5	0.8	0.8	0.9	1.1
	Middle Income	2.3	3.2	3.1	3.4	3.5
Contribution of Corporate Bonds to the Market by percentage (%)	All	5.1	8.9	9.3	10.8	10.8
	South Africa	2.7	5.9	6.7	7.8	8.2
	All ex South Africa	39.9	44.7	46.1	43.4	39.1
	CEMAC	0.0	1.4	5.0	8.0	6.3
	WAEMU	9.8	13.0	12.8	16.4	14.0
	Oil exporters	2.0	3.3	6.2	8.1	12.5
	Fragile Countries	2.9	4.6	5.0	5.6	6.1
	Low Income	2.2	4.4	4.6	5.2	6.7
	Middle Income	10.4	17.9	19.6	21.8	18.8

Source: IMF staff compilations based on data from IMF, IFS, WEO and World Bank, 2013.

Table 3: Capitalization and Liquidity of COMESA-SADC Bond Markets, 2008.

Country	**Nominal Value Outstanding**		**Value Traded**		**Liquidity**			**GDP USD Mn**	**Cap % GDP**
	Govt Bonds USD Million	**Other USD Million**	**Govt Bonds USD Million**	**Other USD Million**	**Govt Bonds USD Million**	**Other USD Million**	**Overall**		
Angola	2, 796	n/a	n/a	n/a	n/a	n/a	—	61.3	4.6
Botswana	306	533	39	4	12.8%	0.8%	5.2%	12.4	6.8
Kenya	4, 777	112	1, 227	[2]	[2]	[2]	25.1%	27.0	18.1
Lesotho	0	0	0	0	0	0	—	1.6	0.0
Malawi	36	0	0	0	0	0	0.0%	3.6	1.0
Mauritius	3, 330	n/a	154	—	13.2%	n/a	—	6.9	48.1
Mozambique	154	55	2.64	0.66	1.7%	1.2%	1.6%	8.1	2.6
Namibia	633	246	43	15	6.8%	6.2%	6.6	7.4	11.8
Rwanda	25	2	0.9	0.3	3.4%	15.0%	4.0%	3.3	0.8
South Africa	47,035	41,199	1,923,695	143,935	4089.9%	349.4%	2343.3%	283.1	31.2
Swaziland	50	10	—	—	—	—	—	2.9	2.1
Tanzania	650	37	—	—	—	—	—	16.7	4.1

Uganda	718	43	214	—	29.8%	—	28.2%	11.8	6.5
Zambia	1, 722	268	1.2	0.0	0.1%	0.0	0.1%	11.4	15.1

Source: USAID Southern Africa Global Competitive Hub (Trade Hub), 2009.

Notes:

[1] “Other” includes quasi-governmental, municipal, parastatals, corporates, banks, etc.

[2] data includes both government and corporate bonds.

—close to zero value

n/a means not available.

Bond Market Developing and The Benefits Accruing to Secondary Markets—Stock Markets

There is no precise definition of bond market development. This may be ascribed to the broadness of the term ‘development’.

There are a number of benefits that may accrue to a secondary market as the bond market develops. These benefits stem from the following empirically founded propositions, namely that:

1. bond markets serve as better predictors of economic growth than do stock markets;
2. stock market illiquidity is related to bond risk; and
3. bond market performance commoves with bond-like stocks.

Empirical evidence is supplied in support of the propositions which have been given above.

Regarding the proposition that bond markets are a better mechanism for predicting economic growth than equity markets, Harvey, conducted an empirical study which compared the capacity and reliability of bond markets and stock markets in predicting economic growth. The study compared forecasts of real economic growth from models which were based on bond and stock market data. The results of the study showed that bond markets are better than stock markets in predicting economic growth.[35]

An argument is made that a well-performing bond market should serve as a reliable signal for the economic-growth potential of a prospective investment destination. Thus, the well-informed and financially educated investors are likely to invest in such a market. The resulting shift in capital allocation to an economy which has economic-growth potential, it is argued, is likely to enhance investor-participation in domestic securities markets. As a corollary, the broadened investor-base is likely to enhance the breadth and the depth of the underlying securities market and increase the liquidity of the market.

Bouwman, Sojli and Tham, conducted an empirical study that investigated the link between bonds and a cross-section of stocks. The results of this study provide new evidence that shows a link between stock market illiquidity and sovereign bonds risk premia.[36] This evidence links high-risk bonds to stock market illiquidity and low-risk bonds to stock market liquidity. Also, the said evidence links bond market performance to stock market performance. It should therefore, necessarily follow that the good performance of low-risk bonds should positively impact the liquidity of a stock market that serves as a secondary market for those bonds.

The empirically-proven link which exists between the performance of the bond market and the securities market that serves as the secondary market for the listing of the bonds, was much earlier posted by a study

which was conducted Baker and Wurgler.[37] The results of the Baker-Wurgler study particularly showed that government bonds co-move [more strongly] with bond-like stocks; stocks of large mature, low-volatile, profitable, dividend-paying firms.

There was also some co-movement, albeit weak, which was posted with respect to those stocks which were not bond-like but were listed on the same secondary market.

Further, the results of the Baker-Wurgler study show that the variables that are derived from the yield curve which is developed and used to predict returns on bonds, could also be used to predicts returns on bond-like stocks. Therefore, it could be argued that a well-performing bond market is likely to increase the consumption of bond-like or bond-linked equities in the secondary market, and enhance the liquidity of the market. On the strength of this evidence—the positive link which exists between bond market performance and stock market performance, it is proposed that governments in African states embark on the development of the domestic bond markets as a possible way of enhancing issuer and investor participation, and stimulating the growth of the liquidity of their poorly-capitalized domestic bourses. In developing these markets, particular attention should be given to the gap which exists between the government-bond segment—which forms the preponderant part of the bond market, and the corporate-bond segment—which in many countries in Africa accounts for an almost-insignificant portion of the total capitalization of the domestic bond markets.

In Part VII below, proposals are made for steps which could be taken by eastern and southern African countries in their quest to develop well-functioning domestic bond markets.

Africa Development Bank's Efforts to Stimulate Growth of Africa's Bond Markets—Promoting Corporate Bond Issuance

As a possible way of strengthening the capital base of domestic financial institutions and stimulating Africa's corporate bond market, the African Development Bank has approved a US $10-million investment through its private-sector window in the Africa Financial Sector Deepening Fund which is being managed by Adventis Ltd as the fund manager.[38] The Fund seeks to raise US $100 million by the first closing date, and US $200 million by the second closing date, and to invest well-over 10 years to address the growing demand among domestic financial institutions for Tier 2 (subordinated) capital and to deepen domestic currency capital markets.[39]

Given the scarcity of long-term domestic currency funding and underdeveloped non-sovereign domestic currency bond markets, the Fund will offer a significant private-sector demonstration effect by making sizable Tier 2 capital available to financial institutions.[40] By leveraging capital structure and balance sheets, Tier 2 instruments will allow financial institutions to grow their lending and to scale up their long-term loan portfolio so as to support infrastructure, industries, and manufacturing, among other sectors, in the targeted economies.[41]

The Fund will invest mainly in subordinated debt instruments which are issued by financial institutions. The Fund will also support the issue and listing of bonds on domestic securities exchanges, and crowd in domestic institutional investors in order to scale up investments in financial institutions, and to optimize and enhance their long-term capital base and develop domestic bond markets.[42]

A) The Hybrid Character of Subordinated Debt Instruments and Its Benefits to Issuers

Subordinated debt instruments are hybrid securities and, as such, they are market-traded instruments with debt and equity characteristics.[43] Thus, they could effectively be issued as debt in the primary bond market and, traded as such in the secondary market. The hybrid character of subordinated debt makes it

more appealing to investors than pure equity and pure debt. As Johnson explains:

Subordinated debt is a hybrid of debt and equity. As its name suggests, it is a form of debt financing. However, subordinated debt has many financial characteristics of equity. Financially, it is equity; and in law (and for taxation purposes), it is debt. Thus, this form of hybrid financing allows a company to raise finance which is akin to equity finance by issuing debt, and allows a company to reap the financial benefits of equity, together with the taxation and other benefits of debt.[44]

The following part examines the Zambian regulatory and institutional framework for public distribution of securities so as to establish whether or not it provides adequate incentives for the growth of debt subordination.

The Zambian Regulatory and Institutional Framework for Debt Subordination And, Listing of Subordinated Debt as Securities

Under the Zambian regulatory and institutional framework which governs the subordination of debt, a debtor company has power to compromise with its creditors or any class of creditors or its members or any class of its members.[45] This power is exercisable whether or not the company is a going concern or is in liquidation.[46] Also, on account of the freedom of contract, a company is at liberty to contract further debt on its own terms including the condition that the debt which is so contracted shall rank below the existing or future debts both in terms of the payment of principal and interests when the debtor company is a going concern or is in liquidation. Further, the debt which is contracted could be subordinated through inter-creditor arrangements/agreements—independently of the debtor company. By the sais inter-creditor arrangement, the creditors would be classified as 'Senior Creditors (SCs), or Mezzanine Creditors (MCs), or Junior Creditors (JCs). Of course the liquidator may, in the insolvency of the Common Debtor (CD) of the lenders, resist such an arrangement by arguing, firstly that "on account of the doctrine of *privity* of contract, they are not privy to the arrangement. Secondly, it would be open to the liquidator or receiver or administrator, as the case may be, to argue that they are, on the authority of *British Eagle*[47] and *re Polly Peck*[48] bound to distribute the assets of the insolvent debtor in accordance with the mandatory insolvency regime. One way of avoiding this hurdle, as the author has proposed elsewhere,[49] is the introduction of a mini-liquidation within the regulatory framework. By the said mini-liquidation, the portion of the distribution which is supposed to go to the individual unsecured creditors who are party to the debt subordination agreements are pooled together after a distribution, on the mandatory *pari passu* basis, is made to the general body of the unsecured creditors. Thereafter, the pooled-assets should be distributed in accordance with the inter-creditor arrangements (the debt subordination agreements) that may have been entered into by the unsecured creditors of the insolvent. This way, it is argued, no offence would be done to the *pari passu rule* or the anti-deprivation rule.

Listability of Subordinated Debt

As regards issue and *listability* of subordinated debt as debt securities, the Zambian Securities Act 2016 accommodates subordinated debt in its definition of 'debt securities'. Thus, other than the shortcoming which relates to the exclusion of other entities than companies from issuing bonds, the Zambian regulatory and institutional framework which governs the issuance of debt securities facilitates not only the issue but also the listing of subordinated debt as debt securities. Therefore, it is submitted that, subject to remedying the shortcomings which are inherent the current Zambian regulatory and institutional framework which governs the issue and listing of debt securities, Zambia is poised to realize maximum benefits from the African Development Bank Bond Market Development Programme.

Proposals For Establishing a Well-Functioning Bond Market in African Countries

Generally, the development of a well-functioning bond market follows a fairly well-established sequence of

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steps—some of which may happen in parallel.[50] The process involves the following steps:

1. establish an appropriate macroeconomic and financial environment;
2. establish an equity market;
3. establish a government bond market;
4. develop market institutions and infrastructure;
5. develop legal and regulatory framework;
6. develop an investor base;
7. develop skills and capacity of market participants; and
8. establishing a corporate bond market.

These steps are briefly examined below.

A) Establishing a Conducive Macroeconomic and Financial Environment

For a bond market to thrive, there is need for a conducive macroeconomic environment. A favourable macroeconomic atmosphere, in turn, needs a broad market-driven economic system whereby the prices of the securities are driven by market forces—the market forces should provide the appropriate signals and incentives. Reliance on market forces implies the removal of price control mechanisms. Similarly, exchange controls, and quantitative restrictions on the investment of surplus pension fund assets, which have the effect of delaying[51] or altogether scaling back the amount of capital which could be exported or the volume of securities which could be bought domestically or across international borders, will have to be removed. In addition to these interventions, there is need to manage inflation levels—must range between low and moderate.[52] In order to get the macroeconomic fundamentals right, there is also need to make sure the exchange rate is not excessively over-valued or under-valued.[53] Also, the interest rates on the bonds should not be too high nor excessively volatile.[54]

B) Establishing an Equity Market

It is generally accepted that the success of a bond market partly depends on the existence of a vibrant and successful securities market which has a thriving equity market. Where there is no such securities market, there is need to establish one.

C) Establishing a Government Bond Market

It is also generally accepted that a vibrant and successful government-bond market is a prerequisite to a successful corporate-bond market. There are a number of reasons for this view. Firstly, governments are the largest borrowers in the economy.[55] The huge government borrowings are likely to attract quite a good number of investors especially when the interest rates are attractive and the prevailing economic conditions are favourable. The reasonable expectation is that a solid investor-base should be formed from such a wide participation. Secondly, government bonds are the most attractive fixed-income instruments to investors due to their ‘risk-free’ status.[56] Thirdly, if properly structured, government securities can provide depth and liquidity to the market—which feature serves as a constant stimulant to the market.[57]

D) Developing Market Institutions and Infrastructure

The process of building the necessary infrastructure would involve the construction of institutions that can handle primary bond issues and ensure that the bonds which are offered for sale find buyers at reasonable prices.[58] Even more importantly, an active secondary market is needed for the development of the bond market.[59] Since most countries in Eastern and Southern Africa have securities exchanges, this should not

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pose a challenge. Only there is need to enhance the capitalization and liquidity of these exchanges.

For government bonds, primary dealers (PDs) play a crucial role in both primary and secondary markets. They have the role of ensuring the success of the primary government bond issues, and market-making in secondary markets.[60]

In countries like South Africa, Kenya, Zimbabwe and Mauritius where immobilized and dematerialized securities have been introduced in the domestic securities markets, there is need to ensure that the electronic securities transfer systems of the Central Securities Depositories (CSDs) are well-functioning so as to foster speedy transfer of huge volumes of securities with ease—even across international borders. The speed with which trades and orders of immobilized and dematerialized securities are executed in electronic securities transfer systems enhances the 'speed', 'breadth' and 'depth' of the underlying securities market. In the context of cross-border trade in securities, regional integration of payment systems is highly recommended as a possible way of speeding up the transmission of the payments which are made for the bonds which are purchased across international borders.

E) Developing the Regulatory and Institutional Frameworks for the Bond Market

Bonds have been included in the definition of 'securities' under the Securities Regulatory Frameworks of all Civilized States, including the Eastern and Southern African States. The bonds are also regarded as debt securities at Common Law. The existing securities Acts, common law and equity should serve as an adequate regime. However, in most Eastern and Southern African States, debt subordination, the issue of subordinated debt as securities, and the listing of this kind of debt on securities exchanges has not been provided for. As a possible way of accelerating the growth of Eastern and Southern African bond markets, it is highly recommended that the shortcomings which have been highlighted above, are remedied by legislative and institutional reform.

F) Developing Skills and Capacity of Market Players

The issuance and trading of bonds or generally securities, are highly specialized activities which require specialized skills and capacity in the market players—the brokers, the dealers, the investors, the financial advisors, and the market regulators.[61] Capacity building and skills acquisition may be easier for the private sector. The private sector may simply hire some companies or individual who possess the required skills and capacity. The Central Government will need to fund skills acquisition and capacity building programs for the market regulators so as to ensure that those regulators are conversant with the market practices of the market players. Enhanced capacity and skills on the part of market regulators, are likely to ensure effective prevention and control of securities market misconduct and enhance market confidence.

H) Establishing a Corporate Bond Market

Once a success market for government bonds has been established, the issuance and trading of corporate bonds may follow.[62] The government bonds risk-free yield curve would be used to price the corporate bonds, and to measure the associated risk.[63]

COMPOSITION OF THE BOND MARKET

A vibrant and successful bond market has two components, namely, the corporate-bond segment, and the government-bond segment. While a functional bond market encompasses both these segments, the two segments are in many respects different. Generally, government bonds are issued first as a possible way of developing a risk-free curve by which the corporate bonds can be priced.[64] Government-bonds are generally issued to finance domestic budget deficits, and are often tied to specific public sector development

projects. Conversely, corporate-bonds are purely a corporate debt financing avenue which serves as a source of external capital which could be used to finance the commercial projects of companies.

Constraints Relating to Quantitative Restrictions on Cross-Border Investment of Pension Assets

In this section, we examine the possible effect of *quantitative restrictions* on growth of demand for the bonds which are listed in foreign securities markets in Sub-Saharan Africa.[65] This section also introduces empirical evidence on the geographical distribution of *quantitative restrictions* in the COMESA Region. The COMESA Region is only used as a case study since the observation, findings and the proposals for remedial legislative and institutional reform which have been made in respect of this region are also relevant to the rest of Sub-Saharan Africa. This exercise puts the legal arguments which are made in this section and elsewhere in the study in proper socio-economic context.

All the jurisdictions which appear in Table 4 below have statutory quantitative restrictions, on the investment of surplus pension monies in securities, in force. The said restrictions apply to domestic and foreign securities markets. Since the focus of this study is the Aggregate Demand (Domestic Demand + Foreign Demand), empirical evidence on the distribution of the quantitative restrictions on cross-border investment of pension monies in securities is supplied below. The said evidence highlights the potential effect which the quantitative restrictions on the cross-border investment of surplus pension monies have on the foreign demand for the listed bonds.

Ashok and Spataro observe that pension funds could mobilize long-term saving and channel them to investment in securities markets.[66] In this respect, the World Bank observes that the potential of pension funds to contribute to capital market development and economic growth has been theoretically argued and empirically proven.[67] Increased pension fund participation in securities markets stimulates growth of liquidity.[68] Given the object of this study, this section argues that increasing institutional presence in foreign securities markets in the region is likely to increase demand for listed bonds. It is also likely to increase cross-border trade in the bonds in the region,[69] and ease the liquidity challenges which are faced by domestic securities markets.[70]

The Pension Schemes Regulation Act No. 40 of 1996,[71] introduces the concept of cross-border investment of pension assets in Zambia. The relevant provision in the said law stipulates as follows:

25(1).“Trustees may invest in such type of investment as may be approved by the Registrar.

(3)The Minister may on recommendation of the Board, by statutory instrument issue investment guidelines relating to the limits for investment categories.

Provided that the Minister may, on recommendation of the Board, by statutory order, permit a pension fund to invest and maintain [outside Zambia] for the benefit of the Members [not more than 30 per cent] of net assets of the pension fund [subject to agreement between the trustees and fund managers].

Thus, at present, a pension scheme may invest in listed and quoted equities and corporate bonds outside Zambia.[72] However, there is a quantitative limit on cross-border investment of pension assets.[73]

Quantitative Restrictions in other Eastern and Southern African States

Quantitative restrictions are quite wide spread in the COMESA region.[74] They are geographically distributed as shown in Table 8 below.

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Table 4: Quantitative Restrictions on Cross-border Investment of Pension Assets in some Eastern and Southern African Countries as at 2015

Country	Status on Cross-border Investment/ Portfolio Limits in Listed Equities
Egypt	Not more than 20% of fund size
Kenya	Not more than 70% of fund size
Malawi	Cross-border investment not allowed
Mauritius	Not more than 10% of fund size
Namibia	Not more than 30% of fund size
South Africa	Not more than 25% of the fund size
Tanzania	Cross-border investment not allowed
Zambia	Not more than 30% of the fund size
Zimbabwe	Cross-border investment not allowed

Source: Collected from the OECD Annual Survey of Investment Regulation of Pension Funds in OECD and Non-OECD Countries (2018), Tables 1 and 2.

Quantitative restrictions stall growth of cross-border trade in securities in two ways.[75] Firstly, *quantitative restrictions* reduce demand for securities in foreign markets.[76] Secondly, these measures create equity home bias.[77]As the author explains elsewhere:

[T]he imposition of quantitative limits and outright prohibition on/of investment of pension assets serves to limit the amount of capital available for investment in securities across international boundaries. Outright prohibitions only serve to promote equity home bias.[78]

As a possible way of increasing cross-border trade in bonds in the region, it is proposed that the quantitative restrictions be lifted.[79] The author argues that quantitative restrictions on the export of capital should be imposed only when there is a pressing economic constraint.[80] This argument is rationalized by SADC Protocol on Fin & Invest 2006 which encourages free movement of capital within the region with liberty to restrict the same if the economic situation justifies.[81] To this end, the SADC Protocol on Fin & Invest 2006, provides:

Art 15(1) State Parties shall encourage the free movement of capital.

(2) Notwithstanding the provisions of paragraph 1, State Parties may regulate capital movements subject to their domestic laws and regulations, when necessitated by economic constraints.[82]

The following subsection makes a case for qualitative regulation of investment of pension assets in listed securities through the prudent-person-rule.

The Case for Qualitative Restriction Through the Prudent Person Rule

The preceding subsection has examined the effect of *quantitative restrictions* on foreign demand for listed securities. It was noted that *quantitative restrictions* limit the amount of capital that could be exported for investment in listed securities. The subsection demonstrated that foreign demand for listed securities may be increased by lifting *quantitative restrictions* in the COMESA Region. In this subsection, we make a case for qualitative regulation of the investment of pension assets in listed securities through the *prudent-person-rule*.

The prudent-person-rule may be stated as follows:

'A fiduciary must discharge his or her duties with the care, skill, diligence and prudence that a prudent person acting in a like capacity would use under the same circumstances in the management of the affairs of an organization of the like character, aims and objectives'.[83]

The case for the *prudent-person-rule* as a substitute for *quantitative restrictions* consists in the following empirically-proven propositions, namely:

1. the illegality of *quantitative restrictions* on cross-border investment of pension assets in the COMESA region;
2. the higher economic cost of *quantitative restrictions* than that of the *prudent-person rule;*[84] and
3. empirical evidence showing much better performance of pension funds regulated by the *prudent-person rule* than those regulated by *quantitative restrictions*.[85]

These factors are considered below, in turn.

1) The Illegality of Quantitative Restrictions on Investment of Pension Assets in the COMESA Region

Imposition of *quantitative restrictions* violates the spirit of the COMESA Treaty 1993. The COMESA Treaty 1993 enshrines free of movement of capital in the region.[86] The free movement of capital in the region is realized by:

1. the unimpeded flow of capital within the region through removal of controls—exchange controls, quantitative restrictions and other like controls—on the transfer of capital among Member States;
2. ensuring—by Member States—that their citizens and residents freely acquire stocks, shares and other securities or invest in enterprises in territories of other Member States; and
3. encouraging—by Member States—cross-border trade in government securities such as treasury bills, development and loan stocks within the region.[87]

The underlying object of Article 81 of the COMESA Treaty and Article 86 of the EAC Treaty is increasing cross-border trade in securities in the region. In disapproving the existence of *quantitative restrictions*, the author has argued elsewhere that:

[Q] uantitative restrictions on cross-border investment of pension assets in listed securities constitute a form of non-tariff barriers to cross-border securities trade to the extent that they restrict the amount of capital that can be exported for investment. In this context, quantitative restrictions on cross-border investment of pension assets may be viewed as repugnant to the spirit and letter of the COMESA Treaty 1993 which guarantees freedom of capital movement in the region.[88]

Increased cross-border trade in securities in the region could to be achieved through:[89]

- unimpeded supply and demand for securities across international borders in the region;
- unrestricted purchase of securities across international borders in the region; and
- un-impeded cross-border transfer of funds for the purchased securities.

Thus, it is submitted that the prevalence of *quantitative restrictions* in the COMESA Region hinders growth of demand for securities. Quantitative restrictions achieve this end by reducing the sphere of influence of pension funds on securities markets in the region. As a possible way of increasing demand for listed securities—the bonds, and cross-border trade in securities in the region, it is proposed that *quantitative restrictions* be replaced with the *prudent-person-rule*.[90]

CONCLUSION

This article has examined the Zambian regulatory and institutional framework which governs the public distribution of securities so as to establish whether or not the said framework provides adequate incentive for growth of bond issuance, and the success of bond markets in Zambia. The conclusion reached in this article is that the said framework provides quite attractive incentives for the growth of bond issuance, and the bond market in Zambia. It was noted that the bond markets in Eastern and Southern Africa are in the nascent stage of development. It was also noted that the Zambian regulatory and institutional framework which governs the issuance and listing of bonds provides for the issuance and listing of both plain-vanilla bonds and the hybrids such as subordinated debt. As a possible way of promoting the issuance and listing of subordinated debt, proposals were made for the introduction of debt subordination (and its effectiveness in the winding up of the common debtor) in the Eastern and Southern African States which have not introduced the concept yet. It was also noted that the prevalence of quantitative restrictions on the investment of surplus pension monies in securities is likely to hinder the growth of cross-border investment in bonds in the region. As a possible way of promoting cross-border investment in the bonds in the region, proposals were made for the replacement of the said quantitative restrictions with the prudent-person rule. A central argument was made that the implementation of the proposals for remedial legislative and institutional reform which have been made in this study, the efficacy of the regulatory and institutional framework in promoting the success of the bond market is likely to be enhanced. In particular, it was argued that the efforts of the Central Governments in the region to enhance the investor-base for the domestic equity markets could be augmented by establishing functional bond markets, and promoting the issuance of convertible and other equity-linked or equity-like Green Bonds and Sustainability Bonds.

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FOOTNOTES

[1] See, Mwenda, K., (2000). Legal Aspects of Corporate Finance: A Case for Emerging Stock Markets. Warwick: PhD Thesis, Warwick University 2-3, (hereinafter 'Kenneth K. Mwenda (2000)') <http://wrap.warwick.ac.uk/2474/ > accessed 26 June, 2023; Yartey, C.A. and Adjasi, C.K., (2007). Stock Market Development in Sub-Saharan Africa: Critical Issues and Challenges. International Monetary Fund (IMF) Working Paper WP/07/209; Nyang'oro, O. and Njenga, G., (2022). Pension Funds in Sub-Saharan Africa' (2022) United Nations University Working Paper 2022/95; Samamba L.T., (2018). Quantitative Restrictions on the Investment of Pension Assets as Constraint on the Growth of Cross-border Trade in Securities. African Law Journal, 4:4, 135

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[4] Mwenda, K., (2001). Zambia's Stock Exchange and the Privatization Programme: Corporate Finance Law in Emerging Markets. New York: Edwin Mellen

[5] See, Zambian Securities Act 1993, s 9 *(repealed)*

[6] See, Zambian Securities Act 1993, s 3 *(repealed)*

[7] See, Zambian Securities Act 1993, s 8 *(repealed)*

[8] Shoprite Checkers PLC is primarily listed on the Johannesburg Stock Exchange and secondarily listed (cross-listed) on the Lusaka Stock Exchange. In 24 years of her existence, this translates to an average of 1 new listing (Initial Public Offer 'IPO') per year.

[9] The Chairman of the Uganda Capital Markets Authority stated in 1997 that the following SOEs were expected to make public offerings in the "near future": National Insurance Corporation, Uganda Commercial Bank, Uganda Consolidated Properties, Ltd., Uganda Airlines, the government's 30% holding in BAT, Uganda Grain Milling Corporation, The New Vision, and Uganda General Machinery. The New Vision (July 26, 1997, p. 27), interview with Leo Kibirango, Chairman of the Ugandan Capital Markets Authority.

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[13] See, Myers, S.C. and Majluf, N., (1984). Corporate Financing and Investment Decisions when Firms have Information which the Investors do not have. Journal of Financial Economics, 13, 187-221; See also, Miller, M.H. and Rock, K., (1985). Dividend Policy under Asymmetry Information. Journal of Finance, 40, 1031-1051

[14] Campbell R. H., (1989). Does the Bond Market Do Better than Stock Markets in Predicting Economic Growth? Financial Analysts Journal, 1-18.

[15] *ibid*

[16] *ibid*

[17] Bouwman, K.E., Sojli, E. and Tham, W.W., (2014). Stock Market Illiquidity, Funding Liquidity, and Bond Risk Premia. Journal of Finance, 14-43.

[18] *ibid*

[19] For the role of the Domestic and the Regional Compensation Funds in enhancing the resilience and fortitude of the Sub-Saharan African securities markets as they strive to emerge from the financial shocks of the COVID-19 pandemic, see, Samamba, L.T., (2023). Issuer and Investor Proprietary Rights in Eastern and Southern African Securities Markets: The Role of a Compensation Fund, and the Case for a Regional Compensation Fund, IX(I) *(forthcoming)*

[20] The World Bank, (2011). Financing Africa: Through the Crisis and Beyond. Washington D.C.: The World Bank, 155-191

[21] *ibid*

[22] *ibid*

[23] *ibid*

[24] For a detailed discussion of this approach, see, Salter, M. and Mason, J., (2007). Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research. London: Pearson Education Limited

[25] Dobinson, I. and John, N., (2007). Qualitative Legal Research, in McConville, M. and Chiu, W.H. (eds), (2007). Research Methods for Law. Edinburgh: Edinburgh University Press

[26] USAID Southern Africa Competitive Hub (Trade Hub), (2009). SADC-COMESA Bond Mapping Project—Reference No. 2

[27] *ibid*, 5

[28] Mu, Y., Phelps, P. and Stotsky, J.G., (2013). Bond Market in Africa,' International Monetary Fund, IMF Working Paper, WP/13/12, 4

[29] USAID Southern Africa Competitive Hub (Trade Hub) (2009), *op.cit*

[30] The following eastern and southern African countries are members of MEFMI, namely (1) Zambia (2) Swaziland (3) Lesotho (4) Mozambique (5) Malawi (6) Botswana (7) Namibia (8) Zimbabwe

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(9) Angola (10) Tanzania (11) Kenya (12) Uganda, and (13) Rwanda.

[31]Macroeconomic and Financial Management Institute of Eastern and Southern Africa (MEFMI), (2013). Guidelines for Government Securities Issuance in MEFMI Region. Harare: MEFMI

[32] See, empirical evidence below, in this subsection, on the positive relationship between the two phenomena

[33] Central African Economic and Monetary Union

[34] West African Economic and Monetary Union

[35]Campbell R. H., (1989). Does the Bond Market Do Better than Stock Markets in Predicting Economic Growth? Financial Analysts Journal, 1-18.

[36]Bouwman, K.E., Sojli, E. and Tham, W.W., (2014). Stock Market Illiquidity, Funding Liquidity, and Bond Risk Premia. Journal of Finance, 14-43.

[37]Baker, M. and Wurgler, J., (2011). Co-movement and Predictability Relationships between Bonds and a Cross-Section of Stocks. Finance Journal, 33-61.

[38] Africa Development Bank Group, (2018). Stimulating Africa's bond markets: Africa Development Bank approves USD 10 million equity investment in Financial Sector Deepening Fund' Africa Development Bank Investment Brief, 8 June 2018; https://www.afdb.org/en/news-and-events/stimulating-africas-bond- markets-african-development-bank-approves-us-10-million-equity-investment-in-financial-sector-deepening-fund-18234/; Accessed 4 July, 2023

[39] *ibid*

[40] *ibid*

[41]*ibid.* Based on market opportunities, the Fund has identified priority countries as Botswana, Ethiopia, Côte d'Ivoire, Kenya, Mauritius, Namibia, Rwanda, Tanzania, Uganda, Ghana and Zambia.

[42] *ibid*

[43] Ali, P.U., (2002). The Australian Hybrid Market. Companies and Securities Law Journal, 20, 298, 299

[44] Johnson, B., (1987). Subordinated Debt: The Australian Perspective. Australian Business Review 80, 81

[45] Zambian Corporate Insolvency Act 2017, s 46(3)(4)(a)(b)

[46] Zambian Corporate Insolvency Act 2017, s 46(2)

[47] *British Eagle International Airlines Ltd vs Cie Nationale Air France* [1975] 2 ALL ER 390 (HL)

[48]*Re Polly Peck International PLC (In Administration)* (No. 4); *Marangos Hotel Co. Ltd and Others vs Stone and Others* [1998] 2 BCLC 185 (CA)

[49] See, Samamba, L.T., (2023). The Effectiveness of 'Flip Provisions' in Double Winding Ups—The Liquidation of the Senior Creditor and the Common Debtor' (2023) Zambia Law Journal, 7, 1-23 *(forthcoming)*

[50] USAID Southern Africa Global Competitive Hund (Trade Hub) (2009), 8, *op.cit*

[51]This reduces the amount of capital or securities which are available to the investors during the period which is provided for the approval of application for permission to sell the securities locally or to export the securities or capital. In the event that the supply of capital is delayed, the supply of securities would also be delayed since the trades on the securities exchange are executed against finality of payment. Thus, the demand for the securities is likely to exceed the supply, and drive the price of securities upwards, and vice versa.

[52] , USAID Southern Africa Global Competitive Hund (Trade Hub) (2009), 9, *op.cit*

[53] *ibid*

[54] *ibid*

[55] *ibid*

[56] *ibid*

[57] *ibid*

[58] *ibid*

[59] *ibid*

[60] *ibid*. They have the responsibility of making the bonds available for sale and quoting buy-sell prices.

[61] *ibid*

[62] *ibid*

[63] *ibid*

[64] *ibid,* 5

[65] Here, 'quantitative restrictions' refers to 'quantitative restrictions on cross-border investment of surplus pension monies in listed securities'. For purposes of brevity in this article, 'quantitative restriction' is usedin place of the full phrase.

[66]Ashok T. and Spataro, L., (2014). The Effect of Pension Funds on Market Performance: A Review. Journal of Economic Surveys, 30: 1, 1

[67] The World Bank, Pension Funds, (2000). Capital Markets and the Power of Diversification. Washington D.C.: The World Bank

[68] Davis, E.P., (2005). The Role of Pension Funds as Institutional Investors in Emerging Markets, 1-25.

[69] See, Samamba L.T., (2018). Quantitative Investment of Pension Assets as a Constraint on the Growthof Cross-border Trade in Securities. African Law Journal, 4, 135

[70] The International Organization for Securities and Exchange Commission (IOSCO) observes that, increasing participation of pension funds increases liquidity of stock markets: International Organization for Securities and Exchange Commissions, (2007). Factors affecting Liquidity of Emerging Markets

[71] As amended by Act No. 27 of 2005.

[72]Pension Schemes (Investment Guidelines) 2011, regs 7(1), 9(1)(2), 11 as read in light of the Pension Schemes Regulations Act 1996, s 25. By 'listed equities' it is meant shares of a company excluding sharesin a property company, whether such shares are preferred or not, including convertible debentures: Pension Schemes (Investment Guidelines) Regulations 2011, reg 3 *(definition of 'equities')*. This definition seems to claw in ordinary shares, equity shares, stock, hybrids (subordinated debt, convertible debt securities, convertible preference shares, and preference shares) and bonds, and notes. The ambit of this definition is fairly wide to promote cross-border trade in securities in a fairly-wide range of securities. It would do better to include non-convertible debentures, though. Thus, a pension scheme may invest between 1.5% and 21% of its net assets in listed securities of the kind enumerated above: Pension Scheme Regulation Act 1996, s25; Pension Scheme (Investment Regulations) 2011, reg 7(1). 1.5% of the remainder (9%, 21% of the allowed 30% having been invested in listed and quoted equities) may be invested cross-border in pure debt securities (corporate bonds): Pension Scheme (Investment Guidelines) 2011, reg 9(1)(2). The remaining7.5% of the allowed 30% may be invested cross-border in other assets than property: Pension Scheme (Investment Regulations) 2011, reg 11(2).

[73] A pension scheme cannot invest more than 30 per cent of the net value of its assets in listed and quoted equities and corporate bonds outside Zambia: Pension Scheme Regulation Act 1996, s 25; Pension Scheme (Investment Guidelines) Regulations 2011, reg 11(1).

[74] Samamba Lennox Trivedi X, at 137, *op.cit*

[75] Samamba L.T., (2020). Cross-border Transfer and Pledge of Securities in Eastern and Southern Africa—Current Legal and Institutional Challenges. Saarland: Lambert Academic Publishing, 687 (hereinafter 'Samamba BOOK I')

[76] Samamba Lennox Trivedi BOOK I, *ibid*

[77] *ibid*

[78] *ibid*

[79]The United Nations observes that although eastern African countries have made significant advances in promoting cross-border investment of pension assets in listed assets, pension investment is restricted to the EAC: The United Nations, 'Pension Funds, Insurance Companies as Key Drivers of Regional Integration (2017) 1-15. The author argues here that given the liquidity of eastern African pension funds, extendingtheir investment to COMESA members who are not EAC members is likely to increase stock marketactivity in the region.

[80] Thus, the moment such constraints subside, such restrictions—whose sole object is to shield the domestic economy from adverse external competition—should be lifted so as to allow cross-border tradeand competition which is inherent in liberalized international trade: Samamba Lennox Trivedi X, at 140, *op.cit*

[81] *ibid*

[82]SADC Protocol on Fin & Invest 2006 (Annex 1: Annex on Cooperation), Art 15(1)(2). This proviso is an accommodation of an empirically proven position that capital market/current account liberalization is mainly associated with growth in countries with a certain institutional threshold—a threshold which most emerging markets and frontier markets in the COMESA Region are yet to achieve: Gallager, K.P., (2015). RULING CAPITAL: Emerging Markets and the Regulation of Cross-border Finance. New York: Cornell University Press, 56-60.

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[83] The World Bank, (2013). Pension Investment Restrictions Compromise Fund Performance. World Bank Pension Fund Premier, 1-8, at 2. Under this rule, fund managers are expected to use their skill, experience and expertise to judge whether or not they should invest, how much they should invest, and whether or not the contemplated investment would hurt the interests of the pensioners: *ibid*

[84] For empirical evidence, see: Rees, R. and Kessner, E., (1999). Assets Allocation and Funding Policy for Corporate-Sponsored Defined Benefits Pension Funds. Journal of Portfolio Management, 14, 66-73; Davis, E.P., (1995). Pension Funds, Retirement-Income Security and Capital Markets: An International Perspective. Oxford: Oxford University Press

[85] Srinivas, S., Whitehouse, E. and Yermo, J., (2000). Regulating Private Pension Funds: Structure, Performance and Investments: Cross-Country Evidence. Social Protection Reform Working Paper 02/13, The World Bank, Washington, DC <www.worldbank.org/pensions> accessed 19 March 2017; Davis (1995); (2000c), *op cit*

[86] COMESA Treaty 1993, Art 81. Article 81 of the COMESA Treaty 1993 is almost verbatim and seriatim reproducing the substance of Article 86 of the East African Community Treaty 1999 (EAC Treaty 1999).

[87] COMESA Treaty 1993, Art 81(a)(b)(c). These provisions of the COMESA Treaty 1993 almost verbatim and seriatim reproduce the substance of clauses (a), (b) and (c) of Article 86 of the EAC Treaty 1999.

[88] Samamba Lennox Trivedi X, 50, *op.cit*

[89] *ibid*

[90] The prudent-person-rule for regulation of cross-border investment of pension assets in listed securities allows fund managers to invest as much as the prevailing situation allows using their judgement, skill and investment experience and expertise: See, Samamba Lennox Trivedi X, *op.cit.* In any event, the interests of beneficiaries would be protected by common law rules and principles of equity which impose duties on fund managers and trustees (common law and fiduciary duties): For duties of trustees and other fiduciaries, see generally, Gadner S., (1996). The Law of Trusts. Oxford: Clarendon Press