

# Select Committee on Trade and Industry, Economic Development, Small Business Development, Tourism, Employment and Labour

## Briefing by the dtic on Programme 5: Consumer and Corporate Regulation Programme

7 June 2022



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# PURPOSE

To brief the Select Committee on Trade and Industry, Economic Development, Small Business Development, Tourism, Employment and Labour on the role and mandate of Programme 5 of the Department of Trade, Industry and Competition.



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# CONTEXT AND KEY POLICY CONSIDERATIONS

- ❑ Vision: To lead in consumer and corporate regulation that impacts positively on the South African economy.
- ❑ Purpose: CCRB develops and implements coherent, predictable and transparent regulatory solutions that facilitate easy access to redress and efficient regulation for economic citizens and to promote competitive, fair and efficient markets.
- ❑ Development of policies, laws and regulatory frameworks.
- ❑ Regulatory solutions are developed in the areas of lotteries; gambling; liquor; companies; intellectual property; credit and consumer protection.
- ❑ Gambling, liquor and consumer protection are functional areas of concurrent national and provincial legislative competence and require great collaboration between the two levels of government.
- ❑ Though the regulation of macro manufacturing and distribution of liquor are exclusively national government competency; greater collaboration exists between **the dtic**; provincial departments (responsible for retail licensing and regulation of micro manufacturing of liquor); provincial Liquor Authorities; Department of Agriculture, Forestry and Fisheries (responsible for the Liquor Products Act, 1989) and the South African Police Services (responsible for enforcement).





# OBJECTIVES



1. To increase access to economic opportunities for small businesses and previously disadvantaged citizens;
2. To develop efficient regulation to reduce the regulatory burden on business and increase confidence and certainty in South African business regulation;
3. To create a business regulatory environment that promotes competitive, fair and efficient markets;
4. To provide access to redress for economic citizens to increase confidence in the markets;
5. To promote awareness of rights, duties/responsibilities to increase activism and public participation; and
6. To share and exchange regulatory experience with partners nationally and internationally to promote simple, appropriate and more effective regulatory solutions.

# CCRB POLICIES AND LEGISLATION

1. Consumer Protection Act, 2008 (Act No. 68 of 2008)
2. National Credit Act, 2005 (Act No. 34 of 2005)
3. National Credit Amendment Act of 2014 (Act No. 19 of 2014)
4. Liquor Act (Act No. 59 of 2003)
5. National Liquor Policy, 2016
6. Lotteries Amendment Act, 2013 (Act No. 57 of 1997)
7. National Gambling Act, 2004 (Act No. 7 of 2004)
8. National Gambling Amendment Act, 2008. This Act was signed into law but did not come into effect
9. National Gambling Policy, 2016
10. Companies Act, 2008 (Act No. 71 of 2008)
11. National Liquor Norms and Standards, 2015
12. South African Company Law for the 21st Century
13. Guidelines for Corporate Law Reform (policy)
14. Intellectual Property Laws Amendment Act 2013. This Act was signed into law but did not come into effect
15. Copyright Act, 1978 (Act No. 98 of 1978)
16. Designs Act, 1993 (Act No. 195 of 1993)
17. Merchandise Marks Act 1941 (Act No. 17 of 1941)
18. Patents Act, 1978 (Act No. 57 of 1978)
19. Performers Protection Act, 1967 (Act No. 11 of 1967)
20. Trade Marks Act, 1993 (Act No. 194 of 1993)
21. Counterfeit Goods Act 37 of 1997
22. Counterfeit Goods Amendment Act 25 of 2001



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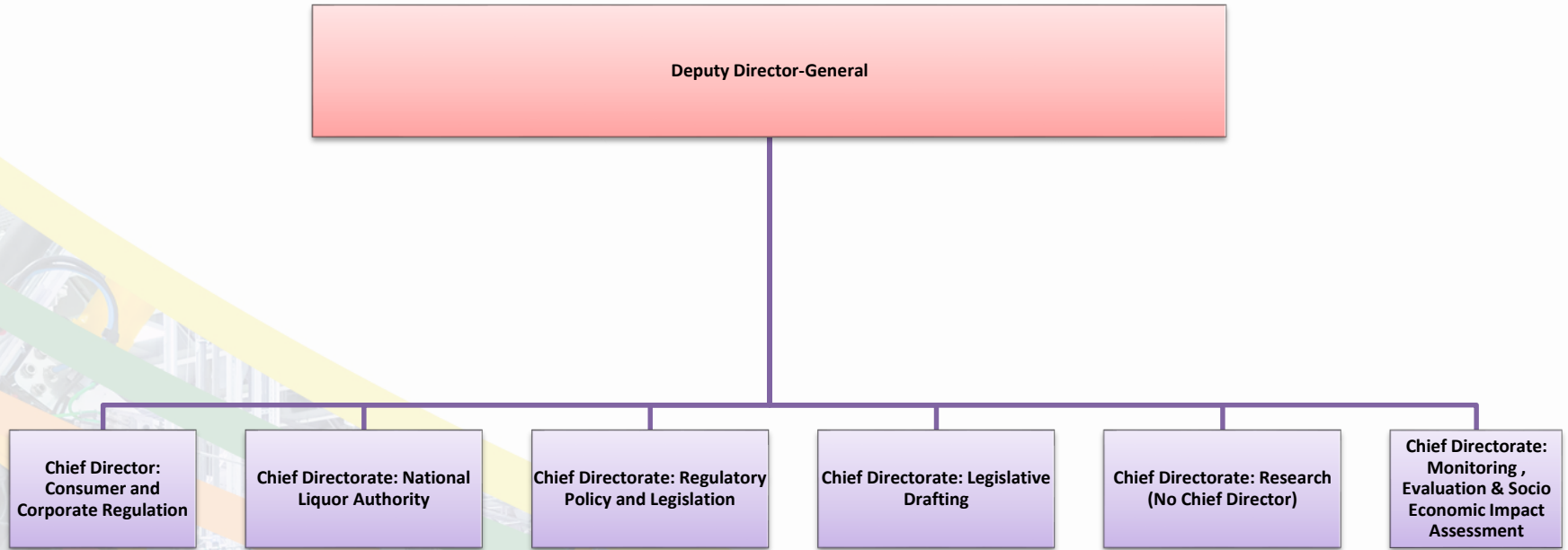
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# STRUCTURE



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# NATIONAL LOTTERY



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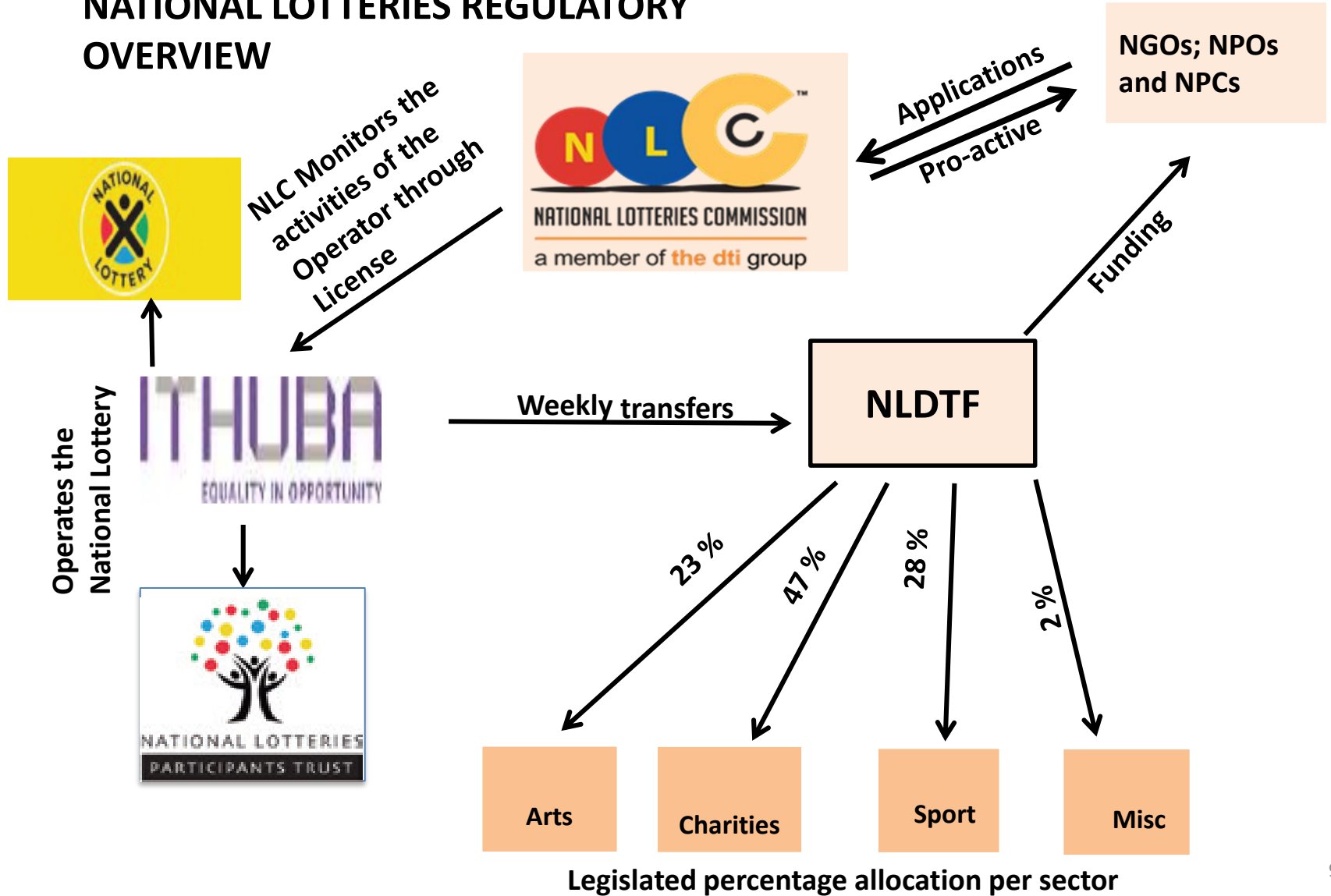
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# NATIONAL LOTTERIES REGULATORY OVERVIEW



# LOTTERIES LEGISLATIVE FRAMEWORK

The Lotteries Act, 1997 as amended by the Lotteries Amendment Act, 2013 provides for:

- a. Efficient processing of applications;
- b. Open-call applications and multi year funding;
- c. Pro Active funding based on informed research;
- d. For appointment of full time Distributing Agencies;
- e. National Lotteries Commission (NLC) to manage the National Lotteries Distribution Trust Fund (NLDTF) and to regulate the National Lottery as well as other lotteries, including society lotteries to raise funds and promotional competitions;
- f. Accountability of Distributing Agencies to both Minister and NLC Board;
- g. Limit active participation of conduits;
- h. Removal of Reconstruction and Development Programme; and
- i. Allows the Licensing of Organ Of State to conduct National Lottery.

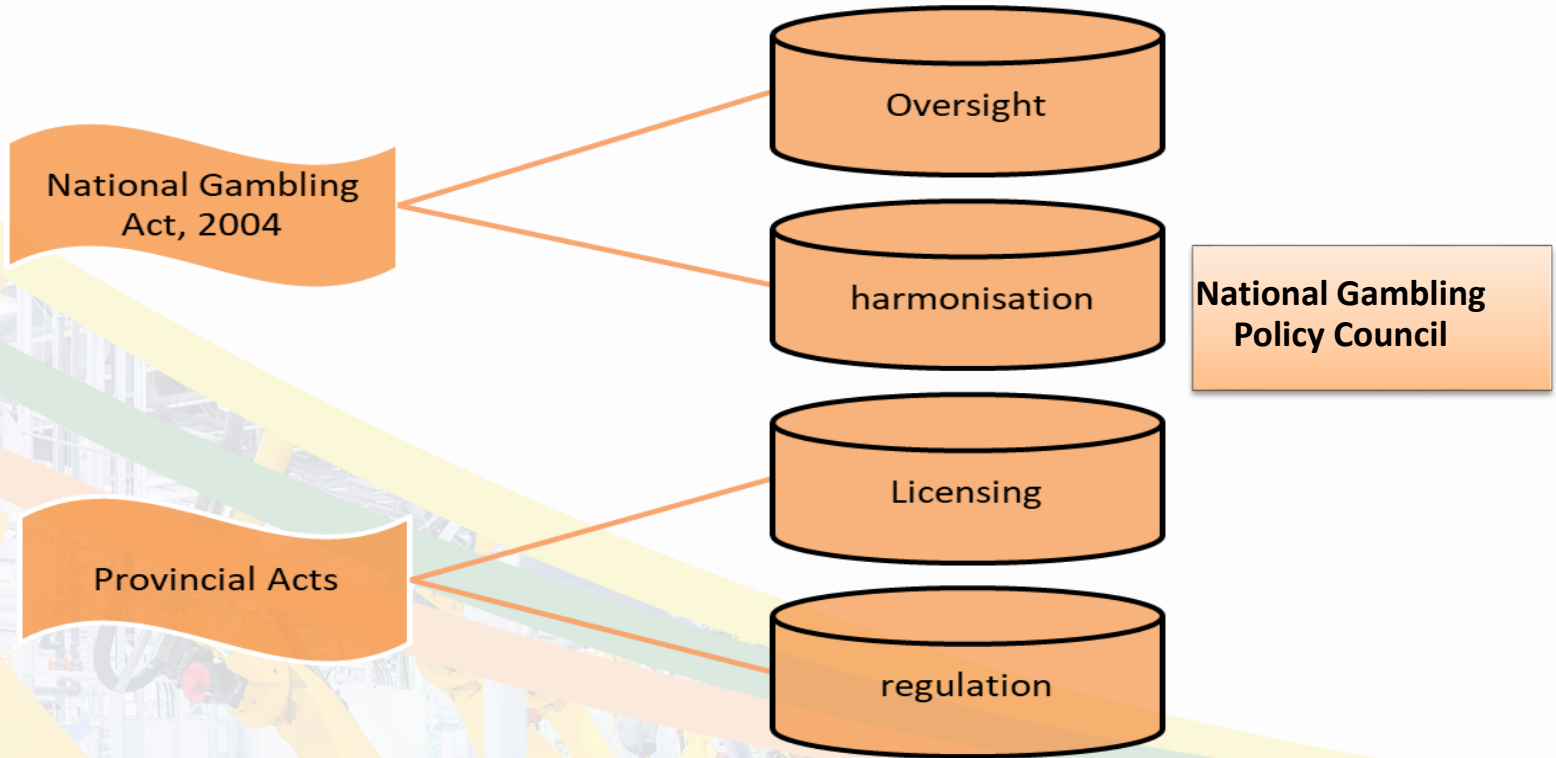
# LOTTERIES LEGISLATIVE FRAMEWORK

- **Legislative developments**
- The Regulatory Impact Assessment was concluded in Q4 on the Lotteries Act for 2021/22.
- Further work will be underway with the NLC to take the recommendations forward including to develop a policy and commence with the legislative process.

# NATIONAL GAMBLING



# NATIONAL GAMBLING REGULATORY OVERVIEW



# NATIONAL GAMBLING LEGISLATIVE FRAMEWORK

- The National Gambling Act, 7 of 2004 provides the modes of gambling include casinos, Bingo, Limited Pay-out Machines, horse racing and sports betting.
- The National Gambling Act, 33 of 1996 establishes the National Gambling Board.
- The 2004 Act establishes the National Gambling Policy Council, which is consisting of Minister and the nine Members of Executive Council responsible for gambling regulation in the provinces.
- The Act provides for the co-ordination of concurrent national and provincial legislative competence over matters relating to casinos, racing, gambling and wagering, and to provide for the continued regulation of those matters.
- It provides for the establishment of certain uniform norms and standards applicable to national and provincial regulation and licensing of certain gambling activities.
- It provides for the establishment and maintenance of a national central electronic monitoring system capable of: detecting and monitoring significant events associated with limited pay-out machine.
- It provides for the creation of additional uniform norms and standards applicable throughout the Republic.
- The Act provides to retain the National Gambling Board; and to repeal the National Gambling Act, 1996.



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# NATIONAL GAMBLING LEGISLATIVE FRAMEWORK

- **Legislative developments:**

- The National Gambling Amendment Bill was introduced to Parliament in August 2018 and underwent the Parliamentary processes between 2018 and March 2019.
- One of the key amendments is to provide for the establishment of the National Gambling Regulator led by CEO as Accounting Authority.
  - To provide for the procedure for forfeiture of unlawful winnings.
  - To empower the National Gambling Policy Council to make a final decision at a second sitting with the majority of members present in that meeting.
  - To extend the National Central Electronic Monitoring System to other modes of gambling.
  - To enhance the powers of the national inspectorate to curb illegal gambling activities.
- The Bill was reduced to focus on governance related amendments. There were several amendments removed from the comprehensive Bill.
- The NGB has no Board because it was terminated in 2014 and NGB was placed under Administration.
- The Bill had lapsed in 2019 and was revived in the 6<sup>th</sup> Parliament.
- The Bill was not voted favourably by majority of Provinces during the final mandates and was referred to Mediation by the NCOP in December 2021.
  - **Final mandates: Not in favour:** GP, FS, NW and WC; **Abstained:** EC, KZN. **In favour:** NC, LMP, MPG
- It is currently in the Mediation process in Parliament.

# NATIONAL LIQUOR



# NATIONAL LIQUOR LEGISLATIVE FRAMEWORK

The Liquor Act 59 of 2003 provides:

- To reduce socio-economic costs of alcoholic abuse;
- To establish national norms and standards in order to maintain economic unity within the liquor industry;
- To provide for essential national standards and minimum standards required for the rendering of services;
- To provide for measures to promote co-operative government in the area of liquor regulation; and
- To address the issue of transformation in the liquor industry.



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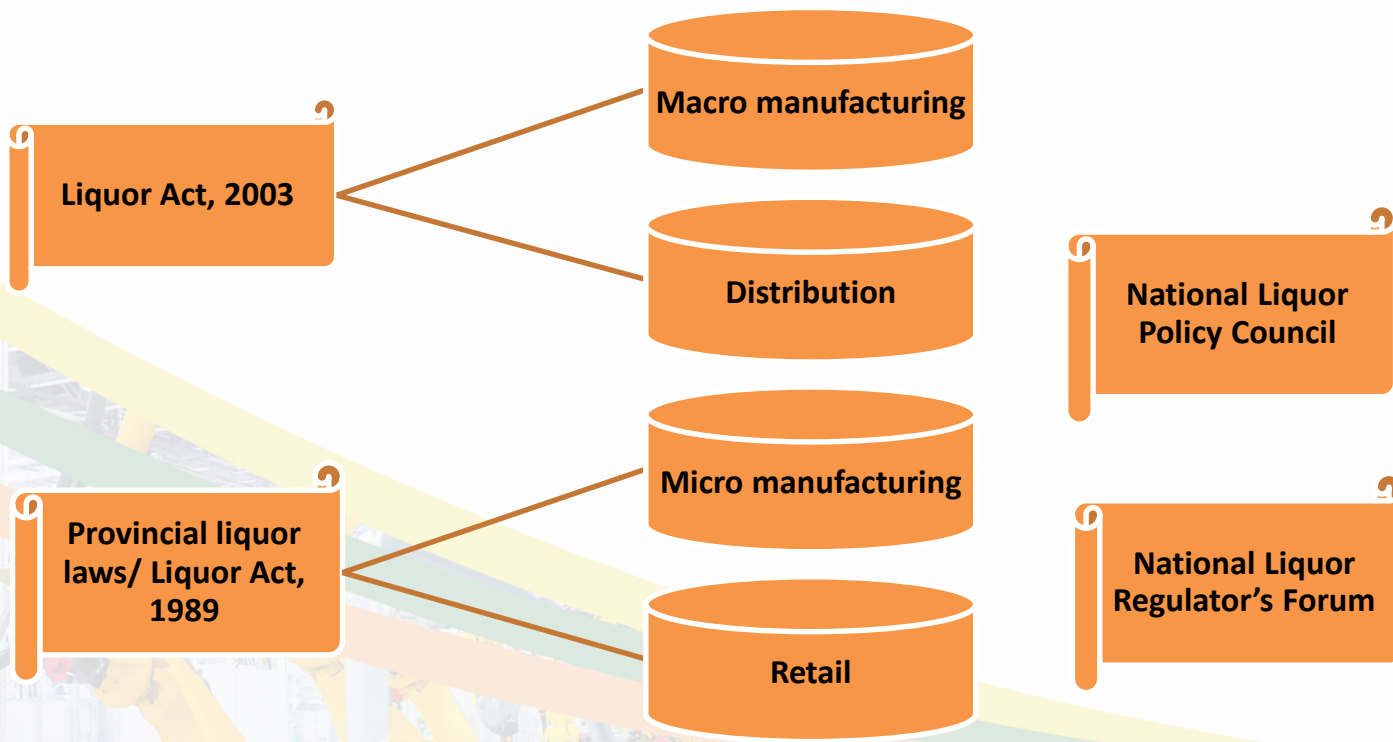
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# NATIONAL LIQUOR REGULATORY OVERVIEW



# LIQUOR LEGISLATIVE FRAMEWORK

- **National Liquor Authority (NLA):**
- Regulates: Manufacturing (thresholds applicable) and Distribution (no thresholds applicable) of liquor and methylated spirits.
- NLA is a Chief Directorate within CCRB that functions as a Regulator.
- It issues licences for new applications, renewals, relocations, etc.
- Conducts inspections and blitz enforcement operations with other law enforcement agencies and provincial liquor regulators.
- It conducts intergovernmental coordination and harmonization with the provincial liquor authorities through the National Liquor Regulators Forum that meets quarterly.
- It has a Memorandum of Understanding for enforcement with other regulators such as CIPC, SAPS, SARS, B-BBEE Commission.
- It conducts inspectorate functions nationwide.



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# NATIONAL LIQUOR LEGISLATIVE FRAMEWORK

- **Legislative developments:**
- The liquor amendment Bill was finalised and published for public comment after Cabinet approval in 2016. It went through the Nedlac process in 2017.
- The Bill was presented to the Cabinet Committee in 2018 and certain issues were raised,(consultation with other Ministers and certification of the Bill).
- The Bill was kept in abeyance due to the parliamentary programme of 2018 and it was to be addressed after the elections.
- In 2019, South Africa held its sixth general elections and there was a new administration. The year 2020 saw the emergence of covid-19 pandemic in the country. Both the elections and the covid-19 pandemic affected the processing of the Bill.
- The magnitude of challenges of covid-19, prompted **the dtic** to seek a government coordinated approach in addressing the issue of alcohol abuse and/or binge drinking, realising that the Bill in its current form, will not be sufficient to address these challenges.
- On 22 September 2021, **the dtic** hosted the intergovernmental engagement on liquor with the aim of proposing a coordinated approach that government need to undertake to resolve the challenge of liquor abuse and/or binge drinking.
- A process to review the liquor policy and Bill and to encourage the coordinated strategy of measures on liquor abuse in South Africa is underway.



# CORPORATE LAW



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# COMPANIES LEGISLATIVE FRAMEWORK

The Companies Act, 2008 provides for:

- a. Business rescue provisions were introduced to assist financially distressed companies, save jobs and promote economic growth. Business rescue came into effect in 1 May 2011.
- b. Social and Ethics Committees (SECs) were established to promote corporate governance and socially responsible business practices.
- c. Independent reviews were introduced to support small enterprises.
- d. Company registration was enhanced for the removal of burdensome regulatory framework. Innovations in company registration and adoption of the eXtensible Business Reporting Language (XBRL) for financial reporting have been introduced.
- e. The Act provides for fundamental transactions of mergers and Takeovers in the interest of minority shareholders.
- f. There is a need for effective consequence management in order to address corporate scandals and to ensure good governance and transparency.



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# COMPANIES LEGISLATIVE FRAMEWORK

- **Legislative developments:**
- The Companies Act is under review.
- The Companies Amendment Bill was published in the Gazette in October 2021, following Nedlac discussions and Cabinet's approval.
- The Bill addresses disclosures of remuneration and pay gaps, the disclosure of shares ownership to combat money laundering and meet international obligations, as well as reducing red tape in some of the core amendments that were found problematic during the implementation of the Act since 2011.
  - Some of the amendments include: to clarify when a Notice of Amendment of a Memorandum of Incorporation (MoI) takes effect; access to company records; to empower the court to validate the irregular creation, allotment or issue of shares; to provide for instances where a special resolution is required for the acquisition of shares by the company; to ensure the differentiation of duties between the chairperson of the Tribunal and its Chief Operation Officer; The provisions of section 92 of the Act are amended to reduce the cooling-off period relating to auditors from 5 years to 2 years.
- The Department plans to submit the Bill for Consideration of Cabinet to introduce it to Parliament in the 2022/23 financial year.
- The second Companies Amendment Bill with a focus on corporate governance and participation of workers in company Boards structures will be developed this financial year.



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# INTELLECTUAL PROPERTY (IP) LEGISLATION



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# INTELLECTUAL PROPERTY LEGISLATION IN CCRB

- Administration of the IP legislation in the Branch
  - Merchandise Marks Act, Patents Act, etc.
  - The Merchandise Marks Act provides for the use of the National Flag of the Republic in connection with any trade, business, profession, occupation or event, or in connection with a trade mark, mark or trade description applied to goods;
  - It also provides for the use of any mark, word, letter, figure or any arrangement/combination thereof in connection with any trade, business, profession, occupation or event, or in connection with a trade mark, mark or trade description applied to goods.
  - The Act also provides for the designation of an event as a protected event provided that the event is in the public interest; and Organisers of the event have created sufficient opportunities for small businesses; Especially small businesses from previously disadvantaged communities. The purpose for the designation of an event as a protected event is to curb ambush marketing, which refers to marketing campaigns that take place around an event but does not involve payment of a sponsorship fee to the event organisers.
  - A number of events, have, been declared protected events. They include the 2010 Soccer World Cup, the 2009 British & Irish Lions tour and the 2013 African Cup of Nations and the 2016 CEO Sleepout.
  - Administration of the Patent Examination Board
- Copyright Act and Performers' Protection Act
  - The Acts are in the legislative review phase and currently in Parliament.
  - They were passed by both Houses of Parliament in the 5<sup>th</sup> Administration and referred back to the National Assembly by the President in June 2020 in terms of section 79(1) of the Constitution.



# Copyright Amendment Bill

- To develop a legal framework on Copyright and related rights that will promote accessibility to producers, users and consumers in a balanced manner; this includes flexibilities and advancements in the digital space that should empower all strata of the citizens of South Africa.
- To introduce provisions, which deal with matters pertaining to collective management. Collecting societies will only be allowed to collect for their registered members, and all collecting societies have to be accredited with the Companies and Intellectual Property Commission (“CIPC”).
- To deal with the protection of works and rights of authors in the digital environment.
- The Bill provides for standard contractual terms to empower authors when negotiating contracts. This will close the loophole that has resulted in unfair contractual terms that has led to creators signing away their rights.

## Objectives of the CAB

- To introduce a Resale Royalty Right. This Resale Royalty Right means that an artist could be entitled to a royalty when their original work is resold commercially.
- To introduce a hybrid system for the reproduction of copyright material for limited uses or purposes without obtaining permission and without paying a fee or a royalty. Furthermore, this provision stipulates the factors that need to be considered in determining whether the copyright work is used fairly.
- To provide for exceptions and limitations in education, libraries, archives and museums, computer programmes.
- To provide for the availability of accessible format copies of a work to accommodate persons with disabilities. This provision extends beyond matters pertaining to the blind and includes other disabilities such as other learning disabilities, dyslexia etc.
- To provide for the sharing of royalties in respect of literary, musical, artistic and audiovisual works.
- It provides for the recordal and reporting of certain acts.
- To strengthen the Copyright Tribunal so that it can deal with all Copyright and related rights matters.
- To address the rights of authors in commissioned works that includes to facilitate commercial exploitation by any person so licensed.
- To introduce Technological Protection Measures (TPMs) to reduce incidents of copyright infringement.

## Treaties Informing the Bills

- **WIPO Performances and Phonograms Treaty (WPPT)** administered by the World Intellectual Property Organisation (WIPO), deals with the rights of two kinds of beneficiaries, particularly in the digital environment: (i) performers (actors, singers, musicians, etc.); and (ii) producers of phonograms (persons or legal entities that take the initiative and have the responsibility for the fixation of sounds). South Africa is not a member.
- **The Beijing Treaty on Audio Visual Performances (BTAP)** deals with the intellectual property rights of performers in audio-visual performances. It is administered by WIPO, South Africa is not a member.
- **WIPO Copyright Treaty (WCT)** deals with protection for authors of literary and artistic works, such as writings and computer programs; original databases; musical works; audiovisual works; works of fine art and photographs, South Africa is not a member.
- **Marrakesh Treaty**: to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled. South Africa is not a member.
- **Berne Convention** (South Africa is a member): deals with the protection of literary and artistic works.

# COPYRIGHT AMENDMENT BILL

- On 5 December 2018 the National Assembly adopted the Bill. On 28 March 2019, the NCOP adopted the Bill and it was referred to the President.
- On 16 June 2020, a letter was received from the President of the Republic to the Speaker of Parliament to refer the Copyright Amendment Bill, 2017 [B13-2017] and the Performers' Protection Amendment Bill, 2016 [B24-2016] to the National Assembly for consideration of the President's reservations on their constitutionality.
- Section 79(1) of the Constitution of the Republic of South Africa requires that the President must either assent to and sign a Bill, or if the President has reservations about the constitutionality of the Bill, refer it back to the National Assembly for reconsideration.

# COPYRIGHT AMENDMENT BILL

- The President raised the following reservations:
  - **Incorrect Tagging**
    - The Bills were section 75 Bills (includes the Performers' Protection Amendment Bill) that do not affect the provinces. The President was of the view that the Bills concerned are incorrectly tagged and are in fact Section 76 Bills, given that they affect cultural matters and trade—namely trade in copyright- in which provinces exercise competence.
    - The Bills were retagged to section 76 Bills in 2021 following deliberations in parliament.
  - **Retrospective and Arbitrary Deprivations of Property**
    - The President also had reservations that several sections of the Copyright Amendment Bill may constitute retrospective and arbitrary deprivations of property in that copyright owners will be entitled to a lesser share of the fruits of their property than was previously the case.
    - He raised reservations with Section 6A(7), 7A(7) and 8A(5) of the Copyright Amendment Bill as constituting retrospective and arbitrary deprivations of property. The provisions are seen to reach far beyond the authors it seeks to protect. They deprive copyright owners of property without sufficient reason and will result in substantial arbitrary deprivation of property. They relate to the retrospective application of royalties. These clauses will be removed from the Bill.
  - **Impermissible Delegation of Legislative Power to the Minister**
    - The President in his letter stated that sections 6A(7)(b), 7A(7)(b) and 8A(5)(b) confer substantial discretionary powers on the Minister and this may well constitute an impermissible delegation of legislative authority and as such would be constitutionally invalid if the Bill is assented to in its current form.
    - These provisions empower the Minister to conduct an impact assessment and develop regulations that will be tabled in the National Assembly. These clauses were included to ensure that the royalties are dispensed responsibly after further study and not arbitrarily.
    - These provisions will be removed from the Bill as agreed from the parliamentary discussions.



# COPYRIGHT AMENDMENT BILL

- The President raised the following reservations:
  - **The Copyright Exceptions**
    - The President raised a reservation that the Copyright Amendment Bill introduces Copyright exceptions in the new sections 12A to 12D, 19B and 19C. These sections may encounter constitutional challenges and he cited specific sections of the Bill: Sections 12A, 12B(1)(a)(i), 12B(1)(c), 12B(1)(e)(i), 12B(1)(f), 12D, 19C(3), 19C(4), 19C(5)(b) and 19C(9) may constitute deprivation of property; Sections 12A and 12D may further violate the right to freedom of trade, occupation and profession. Other reasons cited by the President include other copyright exceptions listed in his reservation provided for in the Copyright Amendment Bill may constitute arbitrary deprivation of property and may violate the right to freedom of trade, occupation and profession, and may be in conflict with the World Intellectual Property Organisation (WIPO) Treaty and the WIPO Performance and Phonograms Treaty.
  - **International Treaty Implications**
    - The President indicated he has reservations about whether the Bills comply with the international Treaties.
    - The President in his letter was not specific with the challenges he had reservations with regarding the Treaties. He referred the Bills back to Parliament in order that Parliament may consider the Bills against South Africa's international law obligations.

# COPYRIGHT AMENDMENT BILL

- There were 2 calls for public comments. The recent provisions on the Remitted Bills were advertised for public comment from 3 December 2021 to 21 January 2022 and the deadline was extended to 28 January 2022 (2nd call for comments). This was a follow up process from the process undertaken in 4 June to 9 July 2021 (1st call for comments) wherein parliament advertised the clauses (i.e sections 12A, 12B, 12C, 12D, 19B, 19C and compliance with international treaty obligations) and held public hearings in August 2021 (11 and 12 August), to address the concerns of the President.
- In terms of section 79(1), the Committee must limit the consideration of the inputs to clauses affected by the reservations only.
- The public comments led to further proposed amendments, recommended by the public, in an effort to address the President's reservation. The amendments were informed by the previous public submissions process of June-August 2021.
- The Portfolio Committee on Trade and Industry is still deliberating on the Bill and work is in progress.

# Performers' Protection Amendment Bill

- Performers Protection is a related right of Copyright that caters specifically for the protection of the rights of performers.
- In 2015 the CAB (The PPAB was still combined with the CAB) was published for public consultation purposes and 122 written submissions were received. The CAB and PPAB were separated into two (2) different Bills based on comments received.
- Cabinet approved the PPAB for introduction into Parliament on 08 June 2016.
- In 2016 Socio Economic Impact Assessments (SEIAS) was completed on the PPAB.
- The Bill was introduced to Parliament and referred to the Committee on 2 December 2016.



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# Performers' Protection Amendment Bill

- The Committee held a workshop with the Department of Trade and Industry (**the dti**) on intellectual property and the key concepts related to the Performers' Protection Amendment Bill on 7 February 2017. It also received a briefing on the Performers' Protection Amendment Bill on 21 February 2017.
- The Committee advertised and called for written submissions in national, provincial and regional newspapers in all official languages from 19 January until 6 February 2017. The Committee received 22 submissions.
- Due to the cross-references with the Copyright Amendment Bill, which had not yet been tabled, the Committee resolved to await the tabling of the Copyright Amendment Bill to ensure alignment between the two Bills. The Copyright Amendment Bill was subsequently introduced in 16 May 2017.
- On 13 and 14 September 2018 public hearings on the PPAB were held with **the dti** responding to submissions from the hearings on 09 October 2018.
- Further public consultations on the PPAB were held by the Trade and Industry PC between October and November 2018 wherein additional comments on specific provisions of the PPAB were requested from the public.
- The Trade and Industry PC adopted the PPAB on 15 November 2018. The National Assembly passed the PPAB on 5 December 2018.



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# Performers' Protection Amendment Bill

- **Challenges faced by performers:**
- Non-payment of repeat fees.
- Non-payment for commercial exploitation.
- Unfair Contracts resulting in the perpetual signing away of their economic rights.
- The lack of updated industry contracts for freelance performers.
- Non – Recognition of the Moral and Economic Rights of performers.
- Non – Ratification of Treaties that make provision for the recognition of the Moral and Economic Rights.
- Disputes not resolved speedily.
- The digital environment is not catered for in the Acts wherein audio-visual content is consumed (Non ratification of digital Treaties).

# Performers' Protection Amendment Bill

- To address the challenges facing the creative industry from non-payment of royalties; lack of formalisation of the creative industry which exposes it to abuse; piracy; and rights of performers by making provision for:
  - the protection of performers' moral and economic rights;
  - royalties or equitable remuneration to be payable when performance is sold or rented out;
  - recordal and reporting of certain acts and offences thereof;
  - written agreement where rights of performers are involved;
  - the protection of rights of producers of sound recordings; and
  - prohibition of conduct in respect of technological protection measures ("TPMS") and copyright management information.



# Performers' Protection Amendment Bill

- **WIPO Performances and Phonograms Treaty (WPPT)** administered by the World Intellectual Property Organisation (WIPO), deals with the rights of two kinds of beneficiaries, particularly in the digital environment: (i) performers (actors, singers, musicians, etc.); and (ii) producers of phonograms (persons or legal entities that take the initiative and have the responsibility for the fixation of sounds) South Africa is not a member.
- **The Beijing Treaty for Audio Visual Performances (BTAP)** deals with the intellectual property rights of performers in audio-visual performances. It is administered by WIPO, South Africa is not a member.
- **WIPO Copyright Treaty (WCT)** deals with protection for authors of literary and artistic works, such as writings and computer programs; original databases; musical works; audiovisual works; works of fine art and photographs, South Africa is not a member.
- **Rome Convention** secures protection in performances for performers in phonograms (sound recording) for producers of phonograms and in broadcasts for broadcasting organisations. It is administered by WIPO.



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# CONSUMER PROTECTION



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# CONSUMER REGULATORY OVERVIEW

## National Consumer Commission

-to enforce compliance

## National Consumer Tribunal

- established in terms of the National Credit Act to adjudicate on consumer protection complaints

## Other structures

-recognised by the Consumer Protection Act for enforcement

## Provincial Consumer Authorities

## Civil Society

- accreditation of consumer groups to act on behalf of members of the society – this may include Non-governmental Organisations (NGOs)

## Statutory Ombudsman

Industry Ombuds accredited in terms of Consumer Protection Act

Ordinary Courts or consumer courts to handle matters relating to unfair contracts

## CONCURRENT JURISDICTION (CONSUMER)

- CCRB participates in the Consumer Protection Forum (CPF), a structure formed in the spirit of co-operation and upholding intergovernmental relations between the institutions that are in the consumer protection space taking into cognisance Schedule 4 of the Constitution, declaring consumer protection as a concurrent jurisdiction between national and provincial governments;
- The National Consumer Commission spearheads the CPF made out of the 9 provincial consumer authorities, **the dtic**, National Department of Tourism, Motor Industry Ombudsman of SA, Consumer Goods and Services Ombud, Financial Sector Conduct Authority, Council for Medical Schemes, National Energy Regulator of SA, National Credit Regulator, National Regulator for Compulsory Specifications, Independent Communications Authority of SA and recently joined by the Credit Ombud.
- Collaborative efforts of the CPF include the World Consumer Rights Day celebrated in March each year, joint enforcement of the National and Provincial Legislation and education and awareness efforts.
- The following Committees of the CPF drive the collective efforts: 1) Compliance Committee, 2) Consumer Education Committee and 3) Research, Policy and Strategy Committee, currently chaired by **the dtic**.

# CONSUMER PROTECTION LEGISLATIVE FRAMEWORK

The National Consumer Protection Act, 2008 provides for:

- a. National Norms for consumer protection
- b. Fair and sustainable market place for consumer products
- c. Consumer information and disclosure
- d. Unfair marketing and business practices
- e. Protect consumers from hazards to their well-being and safety
- f. Develop effective means of redress for consumers
- g. Promote and provide for consumer education, including education concerning the social and economic effects of consumer choices
- h. Facilitate the freedom of consumers to associate and form
- i. Responsible consumer behavior
- j. Establishment of the National Consumer Commission



# CONSUMER PROTECTION LEGISLATIVE FRAMEWORK

- **Legislative developments:**
- The Regulatory Impact Assessment on the Consumer Protection Act was completed in February 2021.
- The review of the codes for consumers goods and the motor industry is underway.
- There is work on the Clothing, Textiles, Footwear and Leather Masterplan to clarify the labelling requirements.



# NATIONAL CREDIT

# CREDIT LEGISLATIVE FRAMEWORK

The National Credit Act, 2005:

- a. Promote a fair and non-discriminatory marketplace for access to consumer credit and for that purpose to provide for the general regulation of consumer credit and improved standards of consumer information;
- b. Promote black economic empowerment and ownership within the consumer credit industry;
- c. Prohibit certain unfair credit and credit-marketing practices;
- d. Promote responsible credit-granting and use and for that purpose prohibit reckless credit-granting;
- e. Provide for debt reorganisation in cases of over-indebtedness;
- f. Provide for registration of credit bureaus, credit providers, debt counsellors, PDAs and ADR agents;
- g. Establish national norms and standards relating to consumer credit;
- h. Promote a consistent enforcement framework relating to consumer credit;
- i. Establish the NCR and the NCT; and
- j. Promote and advance the social and economic welfare of South Africans, promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry.
- k. In 2014, the amendment Act provided for the alteration of the governance structure of the National Credit Regulator; to empower the Chief Executive Officer to delegate certain functions to other officials of the National Credit Regulator; to provide for the registration of payment distribution agents; to tighten measures relating to debt counsellors and the conduct of their practices as debt counsellors; to allow registrants to voluntarily cancel their registration.





# CREDIT LEGISLATIVE FRAMEWORK

- **Legislative developments:**
- The National Credit Amendment Act 2019 will be reviewed.
- It was passed in August 2019.
- It addresses measures of debt relief for the low income earners who are over-indebted.
- Currently the SA natural person insolvency system remains largely creditor-oriented. This excludes the poor from the process, which is contrary to international trends and best practice.
- Statutory measures currently offering debt relief, including sequestration; administration, and debt review as debt counsellors cannot cost-effectively assist the poor.
- The Act provides for people whose income is  $\leq$  R7 500pm; and unsecured debt is  $\leq$  R50,000 and are over-indebted but not subject to sequestration or administration order.
- A regulatory Impact Assessment was conducted in 2019, which was presented to the Portfolio Committee which highlighted possible unintended consequences with the Act.
- The Department has been in consultation with some industry stakeholders and regulators since October 2019 and there are areas to be addressed in order to avoid the unintended consequences.

# SUMMARY OF LEGISLATIVE PROCESSES

# KEY LEGISLATIVE PROJECTS AND ACTIVITIES FOR 2022/23

## Bills before the National Assembly

- **Remitted Bills:**
- Copyright Amendment Bill
- Performers' Protection Amendment Bill

## Bill in Mediation in Parliament

- National Gambling Amendment Bill

## Bills to be introduced to Parliament

- Companies Amendment Bill (comprehensive)
- Companies Amendment Bill on Corporate Governance for worker participation in Boards

## Bills under review

- National Credit Amendment Act on debt intervention (Committee Bill)
- Liquor Amendment Bill



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# CCRB REGULATORY ENTITIES



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### Main functions of the NLC

- Regulates the National Lottery, sports pools as well as other lotteries, including society lotteries to raise funds and promotional competitions.
- Other responsibilities of the Commission include advising the Minister of Trade and Industry on policy matters relating to the National Lottery, sports pools and other lotteries.
- NLC Board is the trustee of the National Lottery Distribution Trust Fund (NLDTF), into which National Lottery proceeds that are intended for allocation to good causes are deposited.
- The NLC provides administrative support to the distributing agencies which adjudicates applications for funding. The distributing agencies (DAs) are appointed by the Minister of Trade and Industry, in conjunction with other relevant Ministers, after a process of public nomination.

### Main functions of the NGB

- The NGB is established in terms of the NGA, and as a Schedule 3A public entity in terms of the Public Finance Management Act PFMA ), 1999 (Act 1 of 1999) under the Executive Authority EA ) of the Minister of Trade, Industry, and Competition in an effort to enable **the dtic** to achieve its objectives and ultimately its mandate. The mandate of the NGB is set out in sections 33 and 34, read with sections 21, 32 and 65 of the NGA, and these are:
- Oversight of gambling in the Republic of South Africa by evaluating the compliance monitoring of licensees by PLAs and assisting PLAs to ensure that the unlicensed gambling activities are detected
- Monitoring of market conduct and market share
- Monitoring socio economic patterns of gambling activity and research in order to identify patterns of the socio economic impact of gambling and addictive or compulsive gambling
- Establishing and maintaining a national registry of every gambling machine or gambling device manufactured within or imported into the Republic, as well as maintaining all other legislative prescribed registers
- Investigating the circumstances of any gambling activity that relates to unlawful winnings that the NGB has held in trust, and either delivers the winnings to the person who won them if not found to be illegal winnings or apply to the High Court for an order to declare the winnings to be forfeited to the State if found to be illegal
- Advising and providing recommendations to the National Gambling Policy Council on , amongst others, matters of national policy and legislative changes relating to gambling.
- POLICY MANDATES
- The NGB's key priorities are premised on the National Gambling Policy (2016) through which the outcome of the key performance of the NGB manifests by the effect and quality of its advice and recommendations to the National Gambling Policy Council on , amongst others, matters of national policy, matters of concurrent legislative competence and legislative changes relating to gambling



Companies and Intellectual  
Property Commission

a member of the dti group

## Main functions of the CIPC

- Registration of Companies, Co-operatives and Intellectual Property Rights (trade marks, patents, designs and copyright) and maintenance thereof.
- Disclosure of Information on its business registers.
- Promotion of education and awareness of Company and Intellectual Property Law.
- Promotion of compliance with relevant legislation.
- Efficient and effective enforcement of relevant legislation.
- Monitoring compliance with and contraventions of financial reporting standards, and making recommendations thereto to the Financial Reporting Standards Council (FRSC).
- Licensing of Business rescue practitioners; and
- Report, research and advise Minister on matters of national policy relating to company and intellectual property law.





## Main functions of the CT:

- The Tribunal's mandate is adjudication in relation to any application that may be made to it in terms of the Act, and to make any order provided for in the Act in respect of such an application; assist in the resolution of disputes as contemplated in part C of Chapter 7 of the Act;
- Perform any other function assigned to it by or in terms of the Act, or any law mentioned in Schedule 4;
- To reduce compliance regulatory costs, provide redress and quick/easy access to stakeholders, particularly small businesses; and
- Provide mediation where required or deemed necessary.

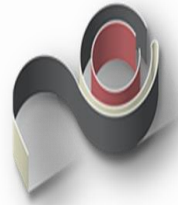


Takeover  
Regulation  
Panel

a member of **the dti** group

### Main functions of the TRP:

- To regulate affected transactions or offers set in part B and C of chapter 5 of the Act that involve regulated companies.
- To investigate complaints relating to Affected Transactions and Offers.
- To apply to court for an order to wind up a company in certain circumstances.
- To consult with the Minister of **the dtic** in respect of additions, amendments or deletions; to the Takeover Regulations.
- May consult with any person with a view of advising that person on the application of the Act and the Takeover Regulations.
- May issue, amend or withdraw information on current policy dealing with an affected transaction or offer for guidance.
- May receive and deal with any representations by parties on any matter in respect of affected transactions or offers; and
- May perform any other function assigned to it by legislation.



NATIONAL CONSUMER COMMISSION

a member of the dtic group

## Main functions of the NCC

- Promote a fair, accessible and sustainable marketplace for consumer products and services, and for that purpose.
- Establish national norms and standards relating to consumer protection.
- Provide for improved standards of consumer information.
- Prohibit certain unfair marketing and business practices.
- Promote responsible consumer behaviour.
- Promote a consistent legislation and enforcement framework relating to consumer transactions.



national consumer tribunal

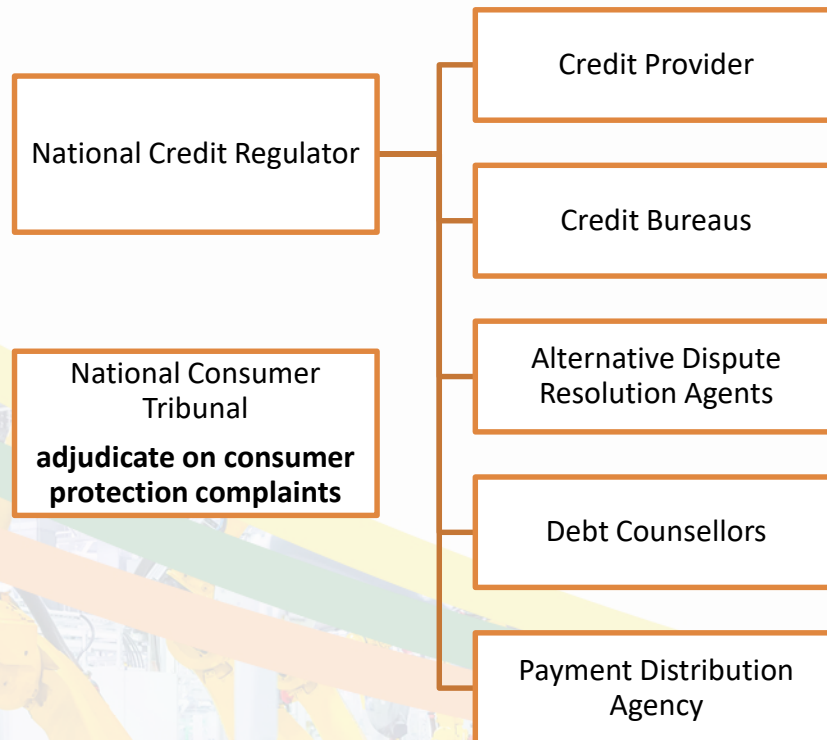
## Main functions of the NCT

- The National Consumer Tribunal was established in terms of the National Credit Act, No. 34 of 2005 (“NCA”) to adjudicate on applications and referrals in terms of the NCA.
- The NCT derives its mandate from Section 27 of the National Credit Act. The role of the Tribunal is to adjudicate on:
- Applications made in terms of the National Credit Act 34 of 2005 or the Consumer Protection Act 68 of 2008 by consumers, credit providers, credit bureaux, debt counsellors, the National Credit Regulator and the National Consumer Commission.
- Applications for interim relief and review decisions by the National Credit Regulator and the National Consumer Commission.
- Matters referred to the Tribunal by the National Credit Regulator or the National Consumer Commission regarding complaints related to allegations of prohibited conduct; and
- Applications for debt re-arrangement agreements to be made an order of the Tribunal in terms of the National Credit Act 34 of 2005 or consent orders in terms of the Consumer Protection Act 68 of 2008.
- As an independent adjudicative entity, the NCT’s mandate is to hear and decide on cases involving consumers, suppliers of goods and services, credit providers, regulators, debt counsellors, credit bureaux, payment distribution intermediaries as well as alternative dispute resolution agents. In so doing, the Tribunal hears applications and cases that are premised upon the terms outlined within the NCA, CPA and the Rules of the Tribunal.

## Main functions of the NCR

- Provides for the general regulation of consumer credit and improved standards of consumer information.
- Promotes a fair and non-discriminatory market place for access of consumer credit.
- Promotes black economic empowerment and ownership within the consumer credit industry.
- Prohibits certain unfair credit and credit-marketing practices.
- Promotes responsible credit granting and use, and for that purpose to prohibit reckless credit granting.
- Provides for debt re-organisation in cases of over-indebtedness.
- Regulates credit information, provides for registration of credit bureau, credit providers and debt counselling services.
- Establishes national norms and standards relating to consumer credit, promotes a consistent enforcement framework relating to consumer credit.

# National Credit Regulator





# STATUTORY COMMITTEES REPORTING TO CCRB



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# STATUTORY COMMITTEES

## Patent Examination Board (PEB)

- Established in terms of section 21 of the Patents Act
- Oversees the patent examination administered in terms of the Patents Act.

## Specialist Committee on Company Law (SCCL)

- Established in terms of section 191 of the Companies Act
- Advises Minister on Company Law and policy matters.

## Financial Reporting Standards Council (FRSC)

- Established in terms of section 203 of the Companies Act
- Advises Minister on matters relating to financial reporting standards.

## Standing Advisory Committee on Intellectual Property (SACIP)

- Established in terms of section 40 of the Copyright Act
- Advises Minister on intellectual property law and policy matters.

## National Liquor Policy Council (NLPC)

- Established in terms of section 37 of the Liquor Act
- A statutory forum to discuss policy issues in relation to liquor regulation.

## National Gambling Policy Council (NGPC)

- Established in terms of section 61 of the National Gambling Act
- A statutory forum to discuss policy issues in relation to gambling as it is a concurrent competence with the provinces.



# STATUTORY COMMITTEES

- The recruitment of the FRSC members is currently underway.
- The functions of Financial Reporting Standards Council are outlined in Section 204 of Companies Act, 2008 as follows:
  - receive and consider any relevant information relating to the reliability of and compliance with financial reporting standards and adapt international reporting standards for local circumstances and consider information from the Commission as contemplated in section 187(3)(b);
  - advise the Minister on matters relating to financial reporting standards; and
  - consult with the Minister on the making of regulations establishing financial reporting standards, subject to the requirements set out in section 29(5).

# OTHER WORK OF THE BRANCH



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# Research and other Key Projects and Activities for 2021/22 and 2022/23

## Accession to Intellectual Property Treaties

- WIPO Copyright Treaty (WCT)
- Beijing Treaty on Audiovisual Performances
- WIPO Performances and Phonograms Treaty (WPPT)
- WIPO membership

## Research and Impact Assessments

- RIA into the National Lotteries Act
- Companies Act RIA
- Consumer Protection Act RIA

## Education and awareness

- Session on CCRB legislation held in various communities across the country
- Education and Capacity building on liquor matters

Litigation and  
Complaints  
Red tape  
reduction projects

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# EDUCATION AND AWARENESS SESSIONS

- Collaborative webinars have taken place on 23 November 2021 (Gambling webinar with South African Responsible Gambling Foundation and Provincial Licensing Authorities).
- Collaborative webinars have taken place on 25 November 2021 (Credit and Consumer – Black Friday webinar with National Consumer Commission, National Credit Regulator and ProudlySA).
- Conducted Spend Wisely webinars with NCC, Proudly SA and NCR on 25 March 2022
- Conducted webinars with **the dtic** call centre officials on 23 and 31 March 2022.
- Conducted a workshop in Tembisa on 10 March 2022.
- In collaboration with the NCR, participated in the education and awareness workshop in QwaQwa on 11 March 2022.
- Participated in the World Consumer Rights day activities from 14 to 18 and 24 and 25 March 2022 in KZN. Also In Venda on 29 March 2022.

# CONSUMER AND CORPORATE REGULATION (5):APP TARGETS

10 Output Indicators

**Purpose:** Develop and implement coherent, predictable and transparent regulatory solutions that facilitate easy access to redress and efficient regulation for economic citizens.

| OUTCOME                  | OUTPUTS  | OUTPUT INDICATORS   | ANNUAL TARGETS |         |         |
|--------------------------|--|---|----------------|---------|---------|
|                          |  |   | MTEF PERIOD    |         |         |
|                          |  |   | 2022/23        | 2023/24 | 2024/25 |
| <b>Transformation</b>    | Reports setting out the work completed on the Companies Amendment Bill   | Number of approved reports setting out the work completed on the Companies Amendment Bill towards corporate governance and worker protection  | 2              | 2       | 2       |
|                          | Reports on the development of the Companies Amendment Bill   | Number of progress reports on the development of the Companies Amendment Bill   | 2              | 2       | 2       |
|                          | Reports setting out the work completed on the National Credit Amendment Bill   | Number of approved reports setting out the work completed on the National Credit Amendment Bill   | 2              | 2       | 2       |
| <b>Capable State</b>     | Reports setting out progress on the development of proposed measures against alcohol abuse.  | Number of approved reports setting out progress on the development of proposed measures against alcohol abuse.  | 2              | 2       | 2       |
|                          | Reports setting out the work completed on the National Gambling Amendment Bill   | Number of approved reports setting out the work completed on the National Gambling Amendment Bill   | 2              | 2       | 0       |
|                          | Reports on the following:<br>1. Proposal on legislation to be migrated<br>2. Red-tape reduction<br>3. Key legislation under review and preliminary proposals<br>4. Steps taken on ease of compliance | Report setting out proposal on legislation to be migrated;  | 1              | 1       | 1       |
|                          |  | Number of reports on red-tape reduction   | 2              | 2       | 2       |
|                          |  | Number of report on key legislation under review and preliminary proposals  | 1              | 1       | 1       |
|                          |  | Number of approved report setting out steps taken on ease of compliance   | 1              | 1       | 1       |
|                          |  |   |                |         |         |
| <b>Industrialisation</b> | Report setting out steps taken and the results thereof, on evaluating and improving the impact of the dtic regulations on localisation, jobs, exports and investment                                 | Number of approved report setting out steps taken and the results thereof, on evaluating and improving the impact of the dtic regulations on localisation, jobs, exports and investment | 1              | 1       | 0       |

| Consumer and Corporate Regulation Branch Budget        |                |                |                |
|--|----------------|----------------|----------------|
| Economic Classification                                | 2022/23        | 2023/24        | 2024/25        |
|  | R'000          | R'000          | R'000          |
| Compensation of employees                              | 62 590         | 59 350         | 60 269         |
| Goods and services                                     | 23 344         | 23 715         | 24 212         |
| Transfers and subsidies                                | 264 778        | 268 316        | 280 506        |
| <i>Transfers and subsidies composed of:</i>            |                |                |                |
| <i>Companies Tribunal (CT)</i>                         | <i>24 529</i>  | <i>25 702</i>  | <i>26 997</i>  |
| <i>National Consumer Commission (NCC)</i>              | <i>59 388</i>  | <i>59 973</i>  | <i>62 666</i>  |
| <i>National Consumer Tribunal (NCT)</i>                | <i>54 756</i>  | <i>55 295</i>  | <i>57 778</i>  |
| <i>National Credit Regulator (NCR)</i>                 | <i>83 241</i>  | <i>84 060</i>  | <i>87 835</i>  |
| <i>National Gambling Board of SA (NGB)</i>             | <i>36 477</i>  | <i>36 836</i>  | <i>38 490</i>  |
| <i>World Intellectual Property Organisation (WIPO)</i> | <i>6 387</i>   | <i>6 450</i>   | <i>6 740</i>   |
| Payments for capital assets                            | 167            | 175            | 183            |
| <b>Total</b>   | <b>350 879</b> | <b>351 556</b> | <b>365 170</b> |



# RECOMMENDATION

- The Select Committee to note the presentation of Programme 5.



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***Thank you***

***Ngiyabonga***

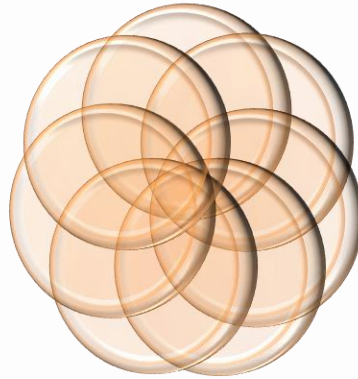
***Baie dankie***

***Enkosi***

***Ke a leboga***

***Na khensa***

***Ndi a  
livhuwa***



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