

**BRIEFING TO THE SELECT COMMITTEE ON TRADE AND  
INDUSTRY, ECONOMIC DEVELOPMENT, SMALL BUSINESS  
DEVELOPMENT, TOURISM, EMPLOYMENT AND LABOUR**

**THE NATIONAL GAMBLING AMENDMENT BILL, 2018**

**16 JULY 2019**



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Department:  
Trade and Industry  
REPUBLIC OF SOUTH AFRICA



# Purpose of the Presentation

To brief the Select Committee on Trade and Industry, Economic Development, Small Business Development, Tourism and Employment and Labour on the National Gambling Bill.



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# CONTENT OF PRESENTATION

1. Context of amending the National Gambling Act (NGA)
2. Outlook of the gambling industry
3. Legislative development Timelines for the National Gambling Amendment Bill, 2018
4. Rationale of the Bill in the Preamble
5. Listing of illegal Gambling Operators and prohibition of advertising to self excluded persons
6. The National Central Electronic Monitoring System (NCEMS)
7. The National Gambling Policy Council
8. Establishment of the National Gambling Regulator
9. Intergovernmental Relations for the NGR
10. The powers of the National Inspectorate
11. Consequential amendments
12. The Minister's power to develop regulations
13. Transitional arrangements to transform from NGB to NGR
14. Conclusion



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# CONTEXT OF AMENDING NGA

Wiehahn Commission recommended strict regulation of gambling, 1995

Gambling Review Commission Report, 2010 recommending policy reforms.

The National Gambling Amendment Bill, 2018 was adopted by the National Assembly after extensive consultation with the public and immediate stakeholders. The Bill underwent the Select Committee process. The NCOP referred the Bill back to the Committee.

National Gambling Act, 1996 is passed introducing the National Gambling Board

National Gambling Amendment Act, 2008 passed to regulate interactive gambling. Act is not promulgated.

2004 National Gambling Act amends 1996 Act introducing the National Gambling Policy Council to ensure policy alignment at national and provincial government.



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# CONTEXT OF AMENDING NGA

## CONT.....

The Wiehahn Commission set principles, which became the yardstick for the national gambling policy as enshrined in the Act. The principles, as set out below, remain relevant in guiding gambling policy development.

- Protection of society from over-stimulation of latent gambling through the ***limitation of gambling opportunities***.
- Protection of players and integrity and fairness of the industry through ***strict control and supervision*** of the industry.
- ***Uniformity and harmonisation*** of policy and legislation at all levels of government across provinces through minimum norms and standards, cooperation and coordination.
- Generation ***of revenue and taxes*** for provincial governments and for good causes.
- Economic empowerment of the ***historically disadvantaged***.
- Promotion of ***economic growth, development and employment***.



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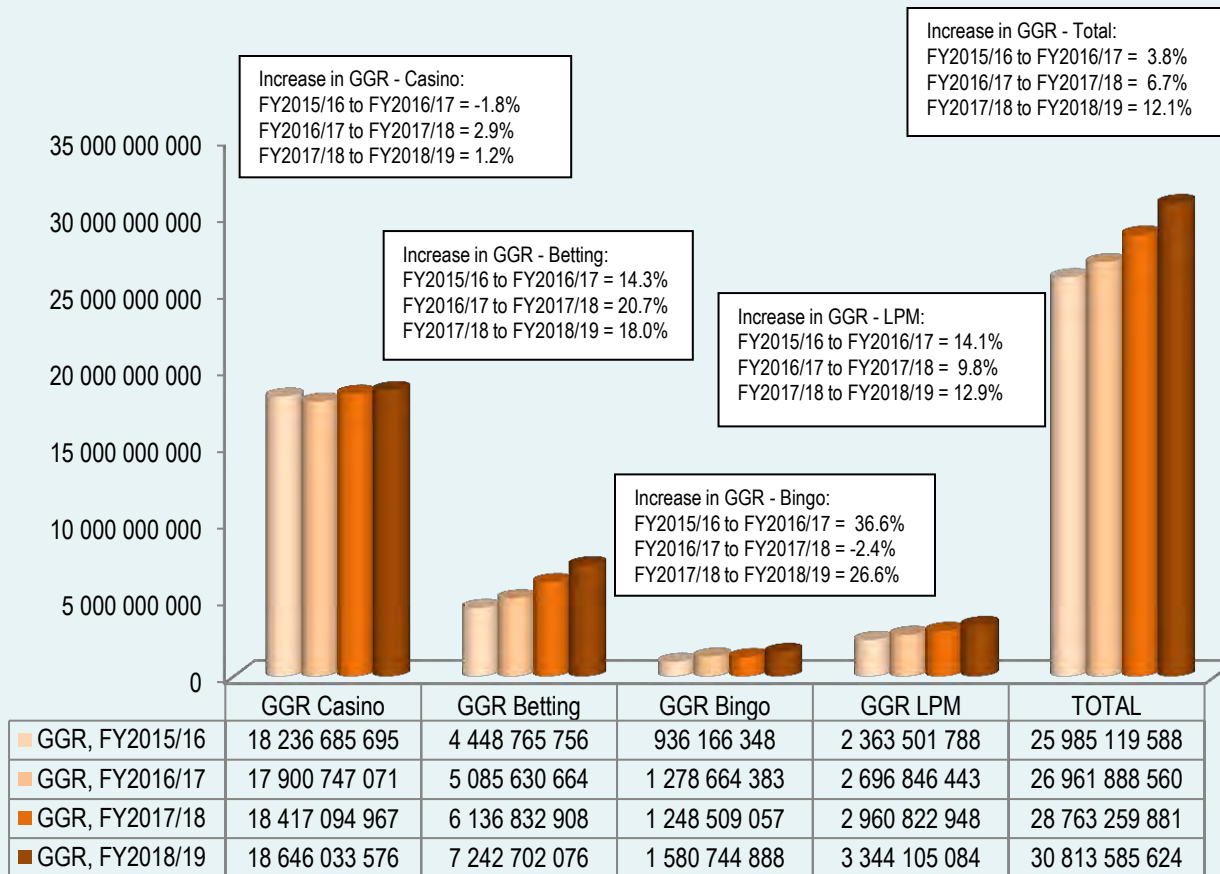
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# CONTEXT OF AMENDING NGA

- Cabinet approved the National Gambling Policy in 2016, that gave direction for the gambling industry.
- As the Policy is not law, the policy positions set out therein can only be given force and effect by being written into law.
- Further, it must be emphasized that the NG Policy was subjected to a public consultation process, so policy positions were subjected to comments from stakeholders.
- The NG Bill seeks to legislate the thinking of government in terms of “why” gambling should be regulated and “why” a National Gambling Regulator should be established.
- The underlying objective of gambling regulation in SA is punter protection, regulation of gambling and revenue collection.

# OUTLOOK OF THE GAMBLING INDUSTRY

## Growth in GGR (all modes): FY2015/16 - FY2018/19



Gambling investment stimulates the local economy and contributes to government revenues (taxes/levies), Gross Domestic Product (GDP), investment and employment. Gross Gambling Revenue (GGR) increased by 3.8% from R26,0 billion (FY2015/16) to R27,0 billion (FY2016/17), by 6,7% from R27,0 billion (FY2016/17) to R28,8 billion (FY2017/18) and by 7.1% to R30,8 billion in FY2018/19. A total amount of R30,8 billion in GGR was generated during FY2018/19. Casinos accounted for the highest proportion of total GGR generated, being 60,5% as compared to other regulated gambling modes. Compared to all other provinces, Gauteng at a 41% share, accounted for the highest amount of GGR generated. The gambling sector's contribution to the economy stood at approximately 0.81% in 2016. The total tax/levies collected from the legal modes of gambling amounted to R3,1 billion in FY2018/19.



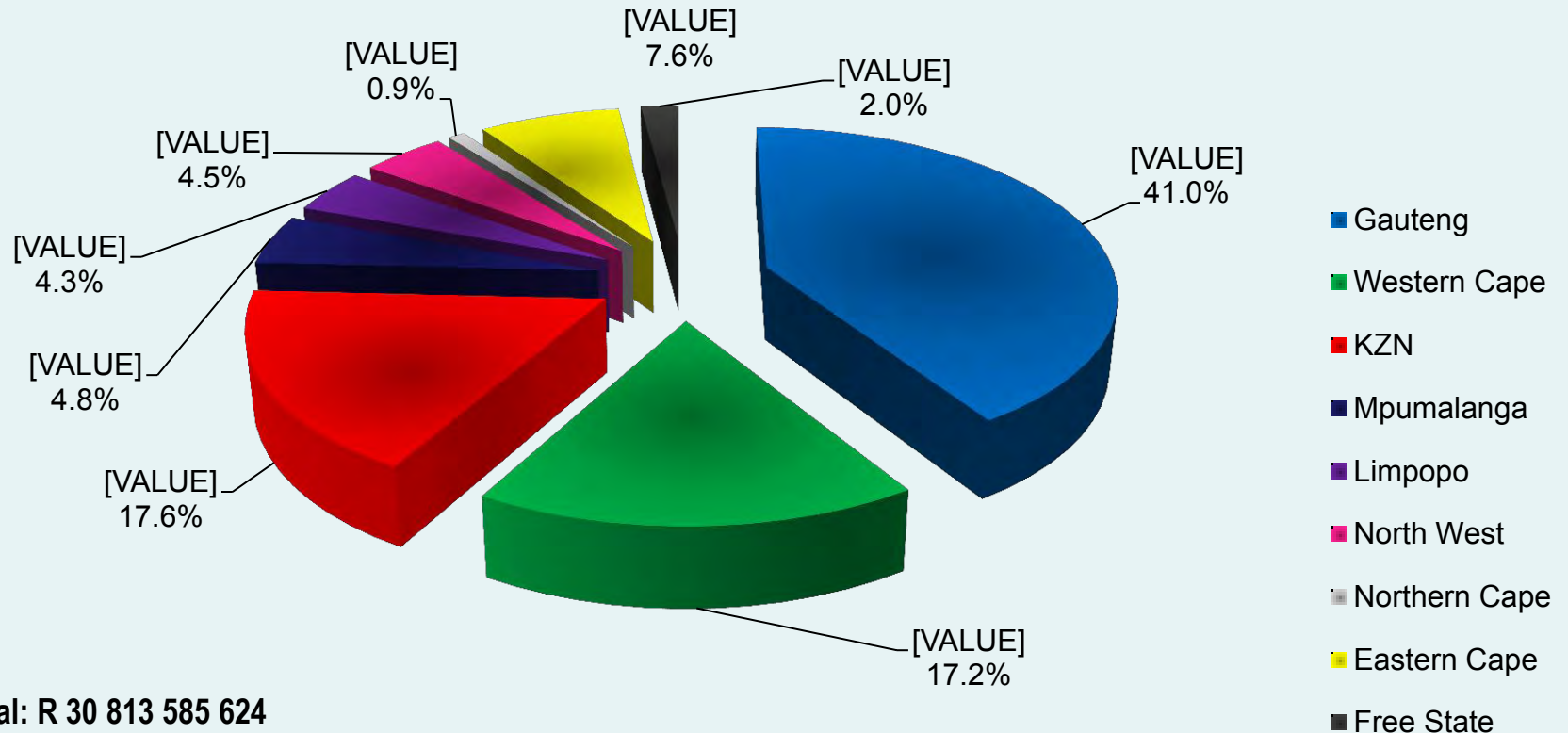
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# OUTLOOK OF THE GAMBLING INDUSTRY

GGR per province, all modes, FY2018/19



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## LEGISLATIVE DEVELOPMENT TIMELINES: NATIONAL ASSEMBLY

- 15 May 2015 **the dti** published the National Gambling Policy for broader public consultation.
- Written submissions were received, direct engagement with immediate stakeholders and consultative workshops were conducted until September 2015.
- The National Gambling Policy was approved by Cabinet on 17 February 2016 and the National Gambling Amendment Bill was drafted pursuant to the approved National Gambling Policy, 2016.
- 30 September 2016 the National Gambling Amendment Bill was published for broader public consultation for 45 days and direct engagements with stakeholders and the public were conducted until early 2017.
- The final Bill was submitted to the Office of the Chief State Law Advisor and certified as per their letter dated 18 May 2018 and later to Cabinet which approved on 4 July 2018.
- **the dti** published the Notice of Intention to Introduce the National Gambling Amendment Bill in the Government Gazette on 20 July 2018.
- The Bill was introduced to Parliament and referred to the Committee on 21 August 2018.
- The National Assembly adopted the Bill on the 5 December 2018.

## LEGISLATIVE DEVELOPMENT TIMELINES: NCOP

- The Bill was presented at the Select Committee on 30 January 2019.
- The provincial briefings took place during February to March 2019.
- The Bill was published for public comment. The submissions were received and the Department responded on 26 February 2019.
- The public hearings were undertaken in provinces from February to early March 2019.
- Negotiating mandates were received from provinces. The Department together with the NGB responded to the negotiating mandates.
- The final mandates were received from provinces. NW, FS, MP, LP, NW voted in favour of the Bill. EC abstained. WC, GP and KZN voted against the Bill.
- The Bill was referred to the National Council of Provinces for adoption.
- The Department notes that the process of the Select Committee is commencing from the beginning.

# RATIONALE OF THE BILL

## PREAMBLE

- 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;
- To amend and delete certain definitions; and
- To provide for the transitional arrangements.

# LISTING OF ILLEGAL GAMBLING OPERATORS AND PROHIBITION ADVERTISING TO SELF EXCLUDED PERSONS

- Clause 3 inserts section 10A which empowers the National Gambling Regulator (NGR) to keep a register of unlawful gambling operators and also that the said operators will be disqualified for five years from applying for a licence to operate. This is in addition to the criminal sanctions and fines envisaged under the Act.
- The clause further provides that the operator can approach the NGR to motivate for removal from the register.
- Only once the courts had declared someone an illegal gambling operator, is the illegal Gambling operator listed on the register.
- Clause 4 inserts amendment of section 14 by inserting subsection 13 which requires operators to remove excluded persons from their mailing list.
- Clause 5 amends section 16(4) to provide that unlawful winnings be forfeited to the NGR subject to compliance with the PAJA – the winnings will no longer be forfeited to the State after a High Court order as the provision requires in the current Act. It further strengthens the conditions to verify the unlawful winnings.
- The onerous burden of applying to the High Court is being removed, making the process easier and saving tax payers money.

# NATIONAL CENTRAL ELECTRONIC MONITORING SYSTEM (NCEMS)

- Clause 12 amends section 27 to provide that the National Central Electronic Monitoring System (NCEMS) will be extended to apply to casino, bingo and betting activities under the auspices of the NGR.
- Clause 12 further provides for the national license, the implementation date for the NCEMS and gives powers to the Minister to determine the extent of the operation of the NCEMS
- The intention is to consolidate information throughout the country from all legal modes of gambling.
- This is a great step towards governments' effort to implement the 4<sup>th</sup> Industrial revolution and enhanced regulatory oversight over the PLA's and Gambling industry.
- Existing monitoring systems at various gambling venues will continue to function as normal.
- The NCEMS is a National register as set out in the NGA 2004 and this function will ensure that the NGR continues to work as a central repository of gambling information in addition to that which is already required in terms of the national registers.
- The output of NCEMS will supply PLAs, Manufacturers, and Operators with valuable intelligence in terms of the gambling sector performance both at provincial and national levels. The information can also be used for reporting of national statistics, as well as for determination of taxes and levies.
- The NGB will assist with accountability regarding the accuracy of gambling taxes and levies.

# NATIONAL GAMBLING POLICY COUNCIL

- Clause 26 inserts section 63A which provides that in cases where there is the National Gambling Policy Council (NGPC) meeting and there is no quorum, the decision on issues tabled will be made in the next meeting provided it is supported by the majority of the voting members present at that meeting.
- The NGPC is established in terms of section 61(1) of the National Gambling Act of 2004 to ensure policy alignment at national and provincial government.
- The quorum is constituted by the Minister and at least 5 members of the executive Council (MEC) responsible for casinos, racing, gambling and wagering in that province.
- Schedule 4 of the Constitution of the Republic of South Africa lists casinos, racing, gambling and wagering (excluding lotteries and sports pools) as a functional area of national and provincial concurrent legislative competence, granting both provincial and national government the power to legislate and regulate gambling.
- The NGPC is critical for collaboration and co-operation between national and provincial governments and to ensure there would not be a conflict of policy.
- This is intended to address the delays caused by lack of quorum which affects the policy decisions to be made and other coordination efforts of the National Gambling Policy Council.

# NATIONAL GAMBLING POLICY COUNCIL

## NATIONAL GAMBLING POLICY COUNCIL MEETINGS FROM 2013 TO 2018

| 2013                                                                                                        | 2014                                               | 2015                                                                                                          | 2016                                    | 2017                                                                                                                                                                                | 2018                                                                                                  |
|-------------------------------------------------------------------------------------------------------------|----------------------------------------------------|---------------------------------------------------------------------------------------------------------------|-----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| 02 Aug 2013. The meeting took place without a quorum. Round robin was recommended for decisions to be made. |                                                    | 02 March 2015. The meeting took place without a quorum. Round robin was recommended for decisions to be made. | In March 2016. Meeting was rescheduled. |                                                                                                                                                                                     | 12 March 2018. Meeting took place and had a quorum. 1st communication to MECs was on 25 January 2018. |
|                                                                                                             | 05 Sept 2014. Meeting took place and had a quorum. | 09 and 10 December 2015. Meetings were initiated but never materialised due to the quorum.                    | 22 April 2016. Meeting was cancelled.   | 03 April 2017. Meeting was cancelled on a day at the venue due to the quorum. Communication to MECs was on 28 January 2017. Meeting had financial implications.                     |                                                                                                       |
|                                                                                                             |                                                    |                                                                                                               |                                         | 06 July 2017. Meeting was cancelled. 1st communication to MECs was 22 May 2017. Letters for the National Gambling Amendment Bill were subsequently sent to the MECs by round robin. |                                                                                                       |



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# NATIONAL GAMBLING POLICY COUNCIL

- This amendment is intended to address the delays caused by the lack of quorum which affects the policy decisions to be made and other coordination efforts of the National Gambling Policy Council.
- The provision was regarded by the Office of the Chief State Law Advisors as being 'in order' as it was not discussed specifically in their certification report.
- The approach was supported by the members of the National Gambling Policy Council during their meetings including the meeting of 05 September 2015.
- This was tabled in the National Gambling Policy Council meeting of 12 March 2018 and the matter was noted.

# ESTABLISHMENT OF THE NATIONAL GAMBLING REGULATOR

- Clause 28 amends section 64 to provide for the establishment of the National Gambling Regulator as a public entity which is a juristic person led by the CEO.
- Clause 29 amends section 65(1) by inserting subparagraph 65(1)(eB) to empower the NGR to collect and retain monitoring fee from all modes of gambling for the National Central Electronic Monitoring System.
- Clause 30 inserts section 65A and 65B which provides that the CEO is eligible for appointment for a period of 5 years which can be renewed for another 5 years.
- The provision further provides that the CEO must be a fit and proper person who must not be disqualified and all other requirements for appointment.
- Section 65B provides for the functions of the CEO to perform and outlines responsibilities that include responsibilities pertaining to the functions of the NGR, the appointment of staff, management of the NGR financial resources, delegation of certain functions and to be accountable to the Minister.
- The Bill seeks to remove the concept of a Board comprising various external members, and replacing this concept with governance led by a Chief Executive Officer, with the assistance of a Deputy CEOs.



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# ESTABLISHMENT OF THE NATIONAL GAMBLING REGULATOR

- The NGB has for the past five years been under Administration and it has successfully achieved 100% of its performance targets year on year, and has received a clean audit for the past 3 consecutive years.
- The NGR will play an oversight role that includes setting norms and standards, ensuring compliance, monitoring trends of industry performance, managing national registers and advising the NGPC.
- The NGR has no licensing function and therefore will not impact the mandate of the provincial licence authorities. It is envisaged the NGR will become a regulator with strengthened regulatory and enforcement capability.
- The creation of the NGR with the proposed governance structure will improve efficiency. It is proposed that the NGR is established in line with other entities of **the dti** after considering **the dti** research on agency rationalization.
- **the dti** regulators which had adopted the governance model of the Board structures presented governance challenges. Other entities with similar governance structures (single head with no external Board) include the Public Protector, CIPC, NLC, NCT, NRCS, NCC, Competition Commission etc.

# STRENGTHENED MANDATE OF THE NGR

- Monitoring of compliance by licensees is a necessary national competence and the NGAB is being amended to give effect to this. This will ensure more effective regulation of gambling and enhance punter protection.
- The NGAB extends monitoring of compliance to include Licensees, which currently does not take place. The NGB currently has no direct link to licensees, and is unable to intervene or assist punters when approached directly to resolve gambling related disputes.
- The NGB can only refer queries to PLAs for investigation and resolution however the NGAB will enable the NGR to investigate matters that are not resolved by PLAs. – the NGR will be empowered to effectively work towards eradication of illegal gambling activities proactively and/or in collaboration with PLAs and/ or other law enforcement agencies. This will enhance punter protection.



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# INTERGOVERNMENTAL RELATIONS

- Clause 32 inserts section 66A to empower the NGR to work collaboratively with other government departments or institutions responsible for gambling related matters, and
- May enter into working agreements with such institutions which includes establishing forums for such purposes.

# POWERS OF THE NATIONAL INSPECTORATE

- Clause 40 inserts section 76A to provide for additional powers of the national gambling inspectors that they may act with or without provincial inspectors to investigate illegal gambling activities. This is for those cases when the provincial inspectors are not available to accompany the national inspectors.
- 'With or without provincial inspectors' as an approach, aims to ensure in instances where action has to be taken to combat an illegal activity and upon consultation, the PLA is unable to assist, the NGR can intervene.
- These powers are not limited to and will extend to the following:
  - powers to serve the illegal operator with the notice to stop operating pending investigation, litigation and prosecution;
  - the gambling inspectors will also advise landlords to lawfully evict the illegal operators from the premises; and
  - Notifying financial institutions including Banks to stop gambling related financial transaction with any proven illegal gambling operator in compliance with the Financial Intelligence Centre Act (FICA) by not processing payments in relations to illegal gambling activities.



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# CONSEQUENTIAL AMENDMENTS

Most of the provisions are merely technical or editorial to clarify provisions in the Act and at the most is to replace either the words “board” or “CEO” with the words “National Gambling Regulator”, this is also the case with the amended definitions (e.g. Clause 8, 9, 10, 11, 14, 17, 18).

## REGULATIONS

- Clause 42 amends section 87(1) by inserting subparagraph (fA) which will empower Minister to make regulations to set out the criteria the NGR will use to observe when considering the applications for additional LPMs from provinces.



# TRANSITIONAL ARRANGEMENTS

- Clause 44 provides for the transitional arrangements which provide that the employees of the NGB will be deemed to be employees of the NGR.
- The immovable and movable assets, financial, administrative and other records, contractual rights and obligations and liabilities of the board will be those of the NGR.

# CONCLUSION

The Select Committee on Trade and Industry, Economic Development, Small Business Development, Tourism and Employment and Labour to note the briefing presentation by the Department of Trade and Industry.

# THANK YOU



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