

# Portfolio Committee on Trade, Industry and Competition

Briefing by the dtic on the review and development of legislation as well as implementation of legislation, particularly the Companies Amendment Acts; IP Laws Amendment Act; National Credit Amendment Act and others

22 October 2024



**the dtic**

Department  
Trade, Industry and Competition  
REPUBLIC OF SOUTH AFRICA

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# PURPOSE

**To brief the Portfolio Committee on Trade, Industry and Competition on the implementation and review of the following legislation:**

1. the 2024 Companies Amendment Acts (2 laws)
2. Intellectual Property Laws Amendment Act, 2013
3. National Credit Amendment Act, 2019
4. Status of the reviews of the following pieces of legislation:
  - (i) the Liquor Act, 2003
  - (ii) the National Credit Act, 2005 as amended
  - (iii) the National Gambling Act, as pertaining to the regulation of various forms of gambling, including Betting, Electronic Bingo Terminals (EBTs), horseracing and development of enforcement capacity pertaining to illegal online gambling.
5. An overview of the other legislation **the dtic** is currently reviewing:
  - (i) National Building Regulations and Building Standards Act, 1977
  - (ii) Patents Act, 1978, Designs Act, 1993 and Trade Marks Act, 1993

**Due to the number of laws to be presented, the presentation on each law will be high level at most and not cover clause by clause or sections of the law in details.**

## COMPANIES AMENDMENT ACT NO.16, 2024 AND COMPANIES SECOND AMENDMENT ACT NO. 17, 2024: PROCESSES OF THE BILLS

- The Bill was introduced in Parliament on 28 August 2023 and presented to the Portfolio Committee on Trade, Industry and Competition on 29 August 2023.
- The National Assembly adopted the Bills on 30 November 2023.
- The Bills were passed by the National Council of Provinces in March 2024 and referred to the President for assent.
- The two Bills were assented into law by the President on 26 July 2024.

# CORE POLICY OBJECTIVES OF COMPANIES AMENDMENT ACT NO 16, 2024

1. The main Act addresses **two** prime categories of policy objectives:
  - ❑ The ease of doing business.
  - ❑ The achievement of equity between directors and senior management on the one hand, and shareholders and workers on the other hand as well as addressing public concerns regarding high levels of inequalities in society.
2. The original published Bill of 2021 addressed **three** prime categories of policy objectives. They included the efforts to counter money laundering and terrorism and promote transparency about share ownership.
3. There are measures to counter money laundering/terrorism and promote beneficial ownership transparency. The measures address the country's priority to implement General Laws Amendment Act (GLAA) sufficiently enough to exit the Financial Action Task Force, grey-listing.
4. Companies and Intellectual Property Commission (CIPC) is undertaking the implementation of the legislation and applicable Regulations. CIPC is in the process to provide adequate, accurate and timely access of the Beneficial Ownership (BO) Information to Law Enforcement Agencies as they pursue criminal investigations with money laundering and terror financing elements.
5. The measures taken include the establishment of the beneficial ownership register; monitoring of the register and CIPC is implementing efforts to ensure accuracy, adequacy of the BO Register information to ensure data integrity; collaboration with law enforcement entities; education and awareness and pursuing remedial enforcement actions against companies that contravene the Act and are non-compliant.

# OBJECTIVES OF THE ACT

The Act provides as follows to:

- clarify when a Notice of Amendment of a Memorandum of Incorporation takes effect;
- provide for the Commission to publish, as prescribed, the notice of the location of a company's records;
- differentiate where the right to gain access to companies' records may be limited;
- provide for the preparation, presentation and voting on companies' remuneration policy and directors' remuneration report;
- provide for the filing of a copy of the annual financial statement;
- empower the court to validate the irregular creation, allotment or issue of shares;
- clarify that shares which are not fully paid are to be transferred to a stakeholder and dealt with in terms of a stakeholder agreement;
- exclude the subsidiary company from the requirements relating to financial assistance;
- provide for instances where a special resolution is required for the acquisition by a company of its own shares; to provide for a social and ethics committee report and remuneration report to also be presented at an annual general meeting of a public company;
- provide for the circumstances under which a private company will be a regulated company;
- provide for the publication of the application for exemption from the requirement to appoint a social and ethics committee;

# OBJECTIVES OF THE ACT

- deal with the composition of the social and ethics committee; to provide for the preparation by the social and ethics committee of a social and ethics committee report, as prescribed, to be presented at the annual general meeting or shareholders meeting, as the case may be;
- provide, in respect of a private company, personal liability company or non-profit company, for the appointment of an auditor at a shareholders meeting if such appointment is a requirement in terms of the Act;
- extend the definition of an employee share scheme to include situations where there are purchases of shares of a company;
- provide for the determination by the Minister, in consultation with the Panel, of financial thresholds, for purposes of identifying the private companies to which Parts B and C of Chapter 5 of the Act apply; to provide for post-commencement finance for unpaid amounts that are due to the landlord during business rescue proceedings;
- provide for the Commission to substitute a contested name of a company under certain circumstances;
- provide for mediation, conciliation and arbitration by the Companies Tribunal only in respect of relief or complaints in terms of the Act;
- further provide for the operation and governance of the Companies Tribunal; and
- provide for pronouncements that may be issued by the Financial Reporting Standards Council.

## COMPANIES SECOND AMENDMENT ACT, ACT 2024: CORE POLICY OBJECTIVES OF THE ACT

- The Zondo Commission of Enquiry into State Capture (**“Zondo Commission”**) made a recommendation to amend the Companies Act, 2008 (Act No. 71 of 2008, to extend the time bar which is contained in sections 162(2) and 162(3) of the Companies Act.
- Section 162 of the Companies Act makes provision for an application to a Court for an order declaring a person delinquent or under probation.
- **Who is a “delinquent director”?**-Section 162 of the Companies Act deals with the topic of delinquency and states that a court must declare a director to be delinquent where they have failed to discharge their duties in terms of the Companies Act, provided they are currently, or were a director in the 24 months preceding the application.
- **On what grounds can a person be declared a “delinquent director”?**-Section 162(5) of the Companies Act contains a number of grounds on which a person may be declared a delinquent director. These include among others that a person, while a director:
  - grossly abused the position of director;
  - took personal advantage of information of an opportunity to gain an advantage for another person (other than the company on whose board the director serves) or to knowingly cause harm to the company or a subsidiary of the company;
  - intentionally, or by gross negligence, inflicted harm upon the company or a subsidiary of the company; or
  - acted in a manner that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance of the director’s functions within, and duties to, the company.

# CORE POLICY OBJECTIVES OF THE ACT

## **Core policy objectives**

- The Zondo Commission made a recommendation in respect of two specific companies and certain persons connected with those companies; that section 162 of the Companies Act be amended so as to ensure that the application for a declaration of delinquency may be brought even after the two years on good cause shown. Whilst the aforesaid recommendations of the Zondo Commission were limited to specific cases, it was considered to be in the public interest that any amendments to the Companies Act to extend the time bar set out in sections 162(2) and 162(3) be of wider application and should apply generally.
- It was proposed that the period of five years is appropriate for the time bar.
- In certain circumstances even the time bar of five years may be insufficient and the Court should be empowered on good cause shown to extend that time period in a specific case. Furthermore, when good cause is shown to the Court to extend the time bar such power of the Court should include the right to extend the time period even in respect of any of the circumstances mentioned in section 162 of the Companies Act which may have occurred in the period before the extension.



## CORE POLICY OBJECTIVES OF THE ACT

- Although not the subject of a recommendation of the Zondo Commission, it appeared on reflection that the time bar in section 77(7) of the Companies Act also required amendment.
- Section 77 deals with the liability of directors and prescribed officers for breaching their fiduciary duties and duties of care, skill and diligence as well as certain statutory duties.
- It provides that “Proceedings to recover any loss, damages or costs for which a person is or may be held liable in terms of this section may not be commenced more than three years after the act or omission that give rise to that liability.”
- Whilst the period of three years in section 77 of the Companies Act conforms with international best practice, it was considered appropriate that the Court should also be empowered, on good cause shown, to extend the time bar of three years, on the basis that such extended period may also cover acts or omissions that occurred during the period before the extension.

## COMMENCEMENT OF THE COMPANIES ACTS

- Most of the main sections of the Companies Amendment Act can come into effect as the Act is ready to be implemented. The Minister can approve that the law be proclaimed in sections that will create the ease of doing business and reduce red tape.
- There are sections that can be implemented much later based on the concerns raised by stakeholders during the Parliamentary processes, to ensure readiness by companies.
- There are also few sections of the Act that require Regulations.
- Some sections may be implemented in early 2025 after the regulations are finalised and consulted upon.
- The Companies Second Amendment Act that provides for the Zondo Commission recommendations, is ready for implementation.
- Processes are underway for the proclamation of the Acts and dates will be announced by Minister soon.
- The department plans the process of the commencement of the Acts to be completed by 1 April 2025.

## FURTHER WORK ON THE COMPANIES ACT, 2008

- The Companies Amendment Act signed into law had a specific focus and could not address many other policy issues and impediments to the Act.
- During the Nedlac process between 2019-2021, more issues were identified that **the dtic** committed to review and consider.
  - The issues include challenges in business rescue, social and ethics committees, workers represented in company boards, share buybacks, corruption in companies.
- A Regulatory Impact Assessment was conducted by **the dtic** completed in 2021 to address certain sections in the Act.
- There are other amendments that were proposed by stakeholders, before the parliamentary process that could not be accommodated in the previous parliamentary process due to more work required.
- The Specialist Committee on Company Law Chaired by Professor Michael Katz is currently reviewing amendments to the comprehensive companies amendment Bill.
- In the recent Parliamentary process, there were a number of issues that could not be incorporated and were to be considered for further research and consultations. The issues include:
  - The gender pay gap
  - Remuneration report disclosures issues raised such as consideration of 5 year historical pay ratios, rotational meetings, inclusion of subcontractors or outsourcing solutions, matrix of reporting, contracted and fixed term workers, other types of ratios and categories of data and other issues
  - Consideration of intergroup loans in section 45
  - Beneficial ownership provisions amended with GLAA in 2022 but conflicting definitions in s1 and 56 between beneficial interest & beneficial owner and other proposals

# INTELLECTUAL PROPERTY LAWS AMENDMENT ACT, 2013

## TIMELINE OF THE ACT

- Bill introduced to the National Assembly 20 April 2010.
- The Department of Trade and Industry briefed the Portfolio Committee on the Intellectual Property Laws Amendment Bill on 18 May 2010.
- The Bill was passed by the National Assembly and sent to the NCOP on 26 October 2011.
- The Bill was passed by both Houses and sent to the President for assent on 07 December 2011.
- The Bill was returned to the National Assembly by the President due to reservations about its constitutionality on 19 September 2012.
- The Bill was passed by the National Assembly on 04 June 2013.
- The Bill was passed by both Houses and sent to the President for assent on 14 November 2013.
- The IPLAA was signed by the President and became the Act 28 of 2013 in December 2013.
- In April 2016, the Minister of Science and Technology introduced the Protection, Promotion, Development and Management of Indigenous Knowledge Systems (IKS) Bill to the National Assembly.
- Department of Trade and Industry paused the development of regulations in 2015 to await the Department of Science & Innovation's (DSIs) Bill. One of the main reasons for non-enactment was to ensure alignment with the DSI legislation which is now passed into law.
- In 2017 the Departments presented to the joint Portfolio Committees on Science and Technology and Trade and Industry to outline the alignment of the IPLAA and the DSI law.
- In March 2020, the Departments presented the integrated approach to the Portfolio Committee on Trade and Industry.

## CONTEXT OF IPLAA

- Indigenous knowledge is critical in the economic development and development of the cultural industry of South Africa.
- IPLAA aims to recognise and protect certain manifestations of indigenous knowledge. South Africa has a rich heritage that has an impact on the communities and society.
- Indigenous Knowledge Systems (IKS) deals with research, development, promotion, education and strengthening of the regime of Indigenous Knowledge.
- The Intellectual Property Laws Amendment Act amends South Africa's four existing Intellectual Property (IP) statutes to incorporate indigenous intellectual knowledge as a form of IP, the laws are as follows:
  - The SA Copyright Act 1978, the Performers' Protection Act 1967, the Trademarks Act 1993 and the Design Act 1993 are amended to include certain forms of traditional knowledge protection.

# CHALLENGES WITH IPLAA

- This Act is not in force and certain stakeholder groups have expressed an opinion in support of repealing it.
- The fact that the other Indigenous Knowledge legislation exists in the Department of Science and Innovation (DSI), which deals with promotion and preservation of indigenous knowledge, the only relevant remaining aspect in the IPLAA is the three requirements of prior informed consent, disclosure of source of origin and benefit sharing agreement; There was a view that only the registration of indigenous knowledge meeting IP requirements will be considered for registration under IPLAA.
- The department was of the opinion, other features of IPLAA can be suitably implemented in the DSI piece of indigenous knowledge legislation to avoid overlapping functions between these two legislation.
- It is observed that functions and institutions such as National Council, National Trust and National Database in IPLAA constitute overlaps and duplications of the functions in both IPLAA and DSI Indigenous Knowledge legislation and it was considered, they will not be implemented.

# CHALLENGES WITH IPLAA

- A legal opinion was sought in 2020 by **the dtic** for clarity on several issues pertaining to the legislation and matters connected thereto in order to develop a plan for the development of regulations and implementation of the IPLAA.
- The legal opinion advised that IPLAA is flawed in key respects from definitions of what the relevant works are, fails to address registration sufficiently, is not clear on issues of originality, assignment and less likely to benefit the communities as is. The Department was advised to amend the law rather than develop the regulations. Further that the implementation on a piecemeal basis is discouraged.
- During August 2020, the Regulation Branch of **the dtic** conducted consultations on the Legal Opinion with the stakeholders encompassing stakeholders from a legal and academic background as well as Government.
- The views received from the stakeholders were mixed. Some of the stakeholders disagreed with the outcomes and legal aspects of the Legal Opinion finding fundamental flaws in law and others supported the Legal Opinion and repeal of the legislation.

# STATUS OF THE ACT

- The Act is not being implemented and there are no regulations to bring the Act into force.
- The process to develop the regulations will not be an easy process given the criticism against the Act and core issues raised about the Act being defective.
- There may be uncertainties that may subject the Act to litigation in future due to interpretation issues and provisions in the Act highlighted by other experts and the legal opinion. There are also concerns that this may not benefit the communities and may bring more uncertainties for them.
- The Department of Science and Innovation (DSI) have developed sui generis legislation for the protection of Indigenous Knowledge as indicated in previous slides.
- There are possible overlaps with the DSI legislation.
- International treaty has not been concluded in this area due to the complexity of this area of work.
- Companies and Intellectual Property Commission is an entity of the Department of Trade, Industry and Competition with a legislative mandate to register: Companies and Cooperatives, Copyright in Films, Designs, Trademarks, Patents and the Department has engaged with CIPC extensively on the implementation of the Act and measures to address the challenges.
- The Department has commented to the regulations by the DSI in 2021.
- The Department is currently considering options on the legislation.
- There will be internal consultations to chart a way forward.



# NATIONAL CREDIT AMENDMENT ACT, 2019 (NCAA): BACKGROUND ON THE BILL

## Timelines of the Act:

- **October 2016:** Portfolio Committee on Trade and Industry (PC T&I) adopted a resolution that it should consider initiating legislation to pursue debt relief measures for the most vulnerable of consumers; necessitated by the high levels of over-indebtedness of low income consumers.
- **15, 17 and 25 November 2016:** PC T&I engaged with stakeholders in the industry (Debt Counsellor Associations; Banks; Non Bank Lenders; Micro Finance; Retail; Financial Consultants) on possible debt relief measures;
- **March 2017:** National Assembly gives permission that the PC T&I may proceed with such development;
- **May 2017:** The Department of Trade and Industry (**the dti**) briefed the PC T&I on the policy that would underpin debt relief.
- Further briefs on the policy received from National Treasury (30 May 2017) and the Department of Justice and Constitutional Development (13 and 27 June 2017);
- **November 2017:** Draft 5 of the Bill was published for public inputs. The Committee received 31 submissions; and 30, 31 January 2018, 2 and 13 February 2018: Public hearings were held;
- **12 September 2018:** Bill 30-2018 passed by the National Assembly (NA) and transferred to the National Council of Provinces (NCOP).
- The Bill was passed by the National Council of provinces in 28 March 2019. And signed by the President into law by 13 August 2019.

## Context of Act

- Purpose of the National Credit Act, 2005: to promote and advance the social and economic welfare of South Africans; to promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market industry; and to protect consumers;
- The Act protected South Africa from the 2008 global financial meltdown. However, the Act does not address low income workers on debt review.
- Existing natural person insolvency measures are not accessible to all consumers:
- Insolvency/Sequestration requires benefit to credit providers;
- Administration and Debt Review are not affordable for some consumers;
- Not providing suitable alternative measures subjects these consumers to unjustified and unfair discrimination on socio-economic grounds.

# PURPOSE OF NCAA

- **The purpose of the Act is as follows:**
- provide for debt intervention;
- include the evaluation and referral of debt intervention applications as a function of the National Credit Regulator and to provide for the creation of capacity within the National Credit Regulator and logistical arrangements;
- include the consideration of a referral as a function of the Tribunal;
- require a debt counsellor to investigate whether an agreement is reckless;
- to provide for a court to enquire into and either refer a matter for debt intervention or make an order related to debt intervention;
- provide for a Magistrate's Court and the Tribunal to determine the maximum interest, fees or other charges when re-arranging debt and for guidance to be prescribed in this regard;
- provide for an application for debt intervention and the evaluation thereof;
- provide for the Tribunal to re-arrange a consumer's obligations and make an order in respect of an unlawful credit agreement;
- provide for orders related to debt intervention and rehabilitation in respect of such an order;
- provide for mandatory credit life insurance to be prescribed;
- provide for offences related to debt intervention, prohibited credit practices, selling or collecting prescribed debt and related to failure to register as required by the Act;
- provide for measures when an offence is committed by a person other than a natural person;
- to provide for penalties in relation to the newly created offences;
- provide for the Tribunal to change or rescind an order under certain circumstances; and
- require the Minister to make regulations related to a financial literacy programme.

# MAIN THEMES OF THE ACT

- Create a targeted debt intervention measure for over-indebted consumers who are not able to qualify for, or afford existing debt relief measures;
- Address some deficiencies around reckless lending;
- Providing for possible compulsory credit life insurance (may be prescribed) in certain instances;
- Provide for better enforcement of the National Credit Act (NCA), including measures to address actions that were rendered unlawful by the Act but which were not criminal so that enforcement was limited to civil actions; and
- Correct deficiencies in the powers of Magistrate's Court related to debt relief measures.

## DEBT INTERVENTION MEASURE – QUALIFYING CRITERIA

### **Who qualifies?** Section 86A(1):

- A person who-
  - ☐ is a natural person (or joint estate);
  - ☐ is a consumer under unsecured credit agreements / short term credit transactions / credit facilities only: Provided that the total of the principal debts under these agreements may not be more than R50,000;
  - ☐ during the 6 months preceding the application, has received an average income of no more than R 7,500 per month;
  - ☐ is over-indebted; and
  - ☐ is not sequestrated or subject to an administration order.

**Section 29(b):** The Minister may annually review the qualifying values for gross income (R7,500) and total unsecured debt (R50,000).

These amounts may however not be amended in respect of any application that is referred for suspension and possible extinguishing of debt.

### **Are any agreements excluded?** Section 86A(2)

- ☐ A secured credit agreement;
- ☐ A developmental credit agreement and;

A credit agreement where the credit provider has started legal proceedings to enforce that agreement.

### **Who will administer the debt intervention measure?**

- The debt intervention measure will be administered and processed by the NCR without charge to a qualifying applicant.

## DEBT INTERVENTION MEASURE PROCESS

- Debts are re-arranged within a period of five years or longer – where applicant is successful in applying for DI, the NCR must refer the matter with a recommendation to the NCT;
- NCT then conducts a hearing and makes an order to reject / make an order to declare reckless agreement/s / make an order for debt re-arrangement (S 87(1A));
- Referral to NCT is made where DI applicant has insufficient income and assets to allow for obligations to be re-arranged, the NCR must refer the matter with a recommendation to the Tribunal for an order (S 86A(6)(e)).
- Removal from records (S 71): The NCR issues a clearance certificate within 7 business days after DI applicant has -
  - satisfied financial obligations under credit agreements subject to DI;
  - demonstrated financial ability for future debt;
  - no arrears on re-arranged agreements;
  - must submit a copy of clearance certificate to registered credit bureaux.

### Tribunal orders: Section 87A -

- NCT can make an order that applicant does not qualify for DI – application is rejected;
- NCT can suspend credit agreement/s in part or fully for 12 months (may be extended for one further period of 12 months);
- NCT can declare the total amount under the qualifying credit agreements as extinguished; and
- NCT may rescind / change an order for DI where applicant was dishonest in the application or does not comply with the DI order.

## DEBT INTERVENTION MEASURE - EXTINGUISHING DEBT

- The total of the amounts in section 101(1) may be extinguished in respect of each qualifying credit agreement – S86A(6).
- The extinguishing may be a percentage of the total amounts, provided it applies equally to all credit agreements affected by the application – S87A(7).
- When extinguishing debt, the Tribunal must also limit the applicant's right to apply for credit for at least 6 months and up to further months it deems fair and reasonable. In determining the period, the Tribunal must consider:
  - The total unsecured debt and number and period of agreements affected;
  - The applicant's credit record.
- The applicant may not enter into any further credit agreement, (excl. agreements to provide debt intervention) until all re-arranged obligations are fulfilled or the period of limitation after extinguishing of debt has lapsed.
- Credit Providers may not enforce credit agreements through litigation or judicial process until all re-arranged obligations are fulfilled.
- If debts were extinguished all rights to enforce cease.

### **Section 88B: Rehabilitation**

- If the applicant has repaid the full amount that was due on the date of the application, has attended financial literacy training and has improved his / her financial circumstances, he / she may apply for rehabilitation.
- The NCR must notify all affected credit providers, who may make submissions to the Tribunal, and registered credit bureaux.
- The NCR must notify the applicant of the rehabilitation order and must serve a copy of the order on each affected credit provider and registered credit bureau.

## STATUS ON THE IMPLEMENTATION OF THE ACT

- **September 2019:** Presentation was made by **the dtic**, NCR and the NCT to the Portfolio Committee on the readiness to implement the Act.
- An independent Regulatory Impact Assessment (RIA) was commissioned in 2019 that recommended that the Act had areas of concerns that could impact the economy, vulnerable consumers and have unintended consequences. It was also presented to the Portfolio Committee.
- A blended and cost effective approach was discussed with Minister, industry and entities for implementation purposes.
- **September 2020:** Upon Ministerial request, industry provided proposals on implementation which were subsequently revised and resubmitted to **the dtic**.
- Some of the industry stakeholders consulted, remained of the view that the NCAA may face various constitutional and legal challenges, especially as it relates to the extinguishment of debt and the delegation of plenary powers to the Minister. They highlighted the previously emphasized risks and unintended consequences and indicated they did not support the legislated extinguishment of debt.
- To address the shortcomings and minimise the unintended consequences of the NCAA, there was a subsequent amendment process planned in accordance with **the dtic** Annual Performance Plan (APP) for 2022/23.
- The Department will give Parliament a way forward on the Act's processes following further consultations.

# REVIEW OF LEGISLATION: LIQUOR ACT

## Process of the Liquor Amendment Bill

- Research revealed that South Africa has a high level of alcohol consumption as compared with other countries globally.
- The review of the 1998 Liquor Policy and the amendment of the Liquor Act 59 of 2003 (Liquor Act) commenced in 2016 by **the dtic**.
- The Liquor Amendment Bill (Bill) was published for public comment in 2016 following Cabinet approval. The Bill aimed to address and reduce the socio-economic harms associated with liquor abuse; and provide for wider participation and transformation in the liquor industry.
- The Bill provides inter alia, for the restriction of advertising of liquor in certain platforms; increasing of the supply and drinking age from eighteen to twenty-one years; imposing certain liability on the manufacturers, distributor and retailers; issuance of Broad-Based Black Economic Empowerment level of compliance; and increase penalties to encourage compliance with the legislation.
- In 2017, the Bill was tabled before the National Economic Development and Labour Council (Nedlac) Trade and Industry Chamber Task Team for engagement.
- In 2018, the Bill was tabled before the Cabinet Committee requesting Cabinet's approval to introduce the Bill into Parliament.
- The Bill was however not approved with the Committee recommending that the Minister and the Inter-Ministerial Committee on Combating Substance Abuse (IMC) collaborate on the Bill and source an independent legal opinion on the issue of the drinking and purchasing age of liquor. Consultation was undertaken with the IMC and legal opinion was sought wherein there were inconsistent advice received on the matter.

## Status of the policy and Bill

- In 2020, following the covid-19 pandemic, it became apparent that the Bill needs to be complemented by other government interventions in order to have an impact.
- Thus, intergovernmental engagements on liquor abuse and measures to reduce the liquor abuse was held, resulting in the Cabinet Memorandum on government coordinated approach to address the challenges of liquor abuse in South Africa.
- The intention of the cabinet memorandum was to brief Cabinet on existing respective measures to address alcohol abuse and propose a coordinated set of actions to address alcohol-abuse in South Africa. The Cabinet Memorandum was approved on 01 November 2023.



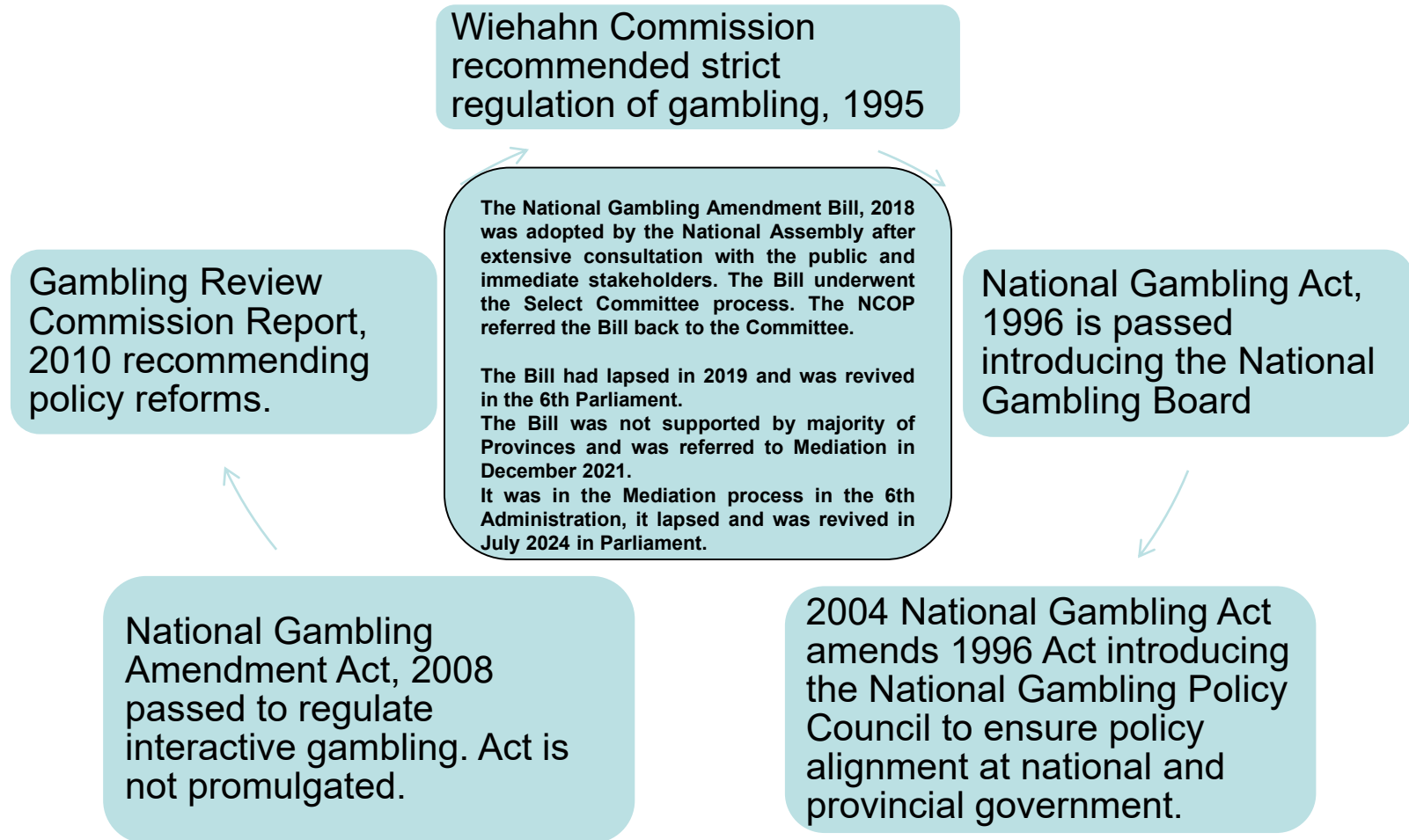
## Overview of policy review

- The **dtic** made a presentation to the Portfolio Committee in 2016 related to the review of credit policy and legislation. Several issues were highlighted. (e.g enforcement powers of the NCR, NCT, collection of prescribed debt, non application of affordability assessments, consumer rights to sale of repossessed motor vehicles, etc.)
- There has been several challenges presented to the PC by the NCR and NCT on enforcement, administrative and legislative hurdles.
- The issues as presented in the legacy reports of Parliament are noted by the Department.
- There are issues of concern in credit policy and legislation and they include:
  - implementation and enforcement challenges in debt review;
  - Enforcement challenges in the Act
  - powers of the NCR and NCT to ensure their effectiveness;
  - challenges with over-indebtedness,
  - reckless lending practices
  - Regulation of debt counsellors and the relevant debt counseling system
  - marketing practices in debt counseling
  - the emolument attachment orders, misuse of social grants;
- The Department will consolidate the issues with the NCR and NCT to ensure a comprehensive updated policy review is submitted. This will include challenges that emerged over time in trends, research, benchmarks and consumer complaints.
- There are Regulations related to the prescribed fees and interest rates, Payment distribution agents as well as other regulations to strengthen the work of the NCR and NCT that still need to be finalised.
- Between 2018 and 2019, the department working with the NCR consolidated the regulations and they were supported by legal opinions and substantive vetting. A discussion document was published on **the dtic** website and consultations were held with industry during early 2020 to finalise the regulations.
- In the 6<sup>th</sup> Administration, focus was on the National Credit Amendment Act of 2019; policy issues flagged in 2016 will undergo further review, consultation, validation and consolidation.

## Challenges in debt review and others

- Some of the challenges include:
- Misleading advertisements and marketing practices of debt counsellors
- Consumers' lack of understanding of the debt counselling process
- Referral of consented restructuring proposals to the magistrate court or the national consumer tribunal (Although it is not unlawful for magistrate courts to adjudicate on applications where all parties have consented to the restructuring proposal, it has been noted that some debt counsellors use this provision to exploit consumers. They collaborate with attorneys for exorbitant legal fees to refer matters to court when a reasonable option is available through the National Consumer Tribunal (the Tribunal).
- Others who make use of the Tribunal charge exorbitant fees(e.g.R6000 on average) whereas the Tribunal fees for such applications are way less than R1000.)
- Lack of debt counselling fee regulations. Although the guidelines are recognised in some courts and the Tribunal, consumers are being exploited by debt counsellors charging own fees and not applying the NCR DC fee guidelines.
- Section 58 and 58A dealing with voluntary cancellation of registration. The provisions are severely inadequate and create a gap for many consumers to remain under debt review without an active debt counsellor because they provide for a process where debt counsellors(DCs) can voluntary deregister without moving consumers to another debt counsellor first.
- Review of various thresholds in the Act
- Definition issues (developmental credit, small business)
- Issues related to social grants and attachments court orders impacting consumers

# NATIONAL GAMBLING ACT: CONTEXT OF AMENDING NGA



## 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***.

# NATIONAL GAMBLING ACT

- The rationale of the National Gambling Amendment Bill, 2018:
- 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; and
- To enhance the powers of the national inspectorate to curb illegal gambling activities.

# NATIONAL GAMBLING ACT

- There are challenges in the regulation of gambling.
- In 2018, a comprehensive Bill was introduced into Parliament to address amongst others, the following:
- Loopholes in the legislation as well as governance issues:
  - Exploitation of gambling activities (e.g betting on lotteries and sports pools)
- The proliferation of electronic bingo terminals.
- The National Gambling Board was dissolved and the NGB has been under Administration since 2014. The Bill recommended an establishment of a Regulator.
- Slow transformation in the industry.
- Self-regulated horse racing industry:
  - Labour issues, transformation, no norms and standards.
- Illegal gambling and enforcement challenges in the country.
- The country is facing challenges with issues of illegal gambling by punters and illegal operators.
- The problem is perpetuated by challenges in enforcement. Provincial Licensing Authorities and the NGB is collaborating with SAPS and other stakeholders to combat illegal gambling with little success.
- **Online gambling** was addressed in the Bill as far as strengthening the NGB enforcement capacity and it remained prohibited. There is an existing law on interactive gambling that has not come into effect due to concerns of potential harms of gambling for minors and vulnerable persons. The Department is currently developing a draft policy on online gambling. The online gambling policy will be discussed with relevant stakeholders including the National Gambling Policy Council.
- The comprehensive Bill is currently under review in the Department.

**AN OVERVIEW OF OTHER LEGISLATION:  
NATIONAL BUILDING REGULATIONS AND BUILDING STANDARDS ACT, ACT 103 OF 1977  
BACKGROUND**

- 1. The administration of the National Building Regulations and Building Standards Act, Act 103 of 1977 resides with the Department of Trade, Industry and Competition. The National Regulator for Compulsory Specifications (NRCS) administers certain aspects of the Act on behalf of the Minister of Trade, Industry and Competition, whereas the municipalities are responsible for the implementation and enforcement of matters provided for in the Act in terms of Part B of Schedule 4 to the Constitution of the Republic of South Africa, 1996.**
- 2. The Act provides for the promotion of uniformity in law relating to the erection of buildings in the areas of jurisdiction of municipalities and for prescribing of building standards and related matters. The primary aim of this legislation is to ensure the erection of safe buildings based on acceptable building science practice, good workmanship and the use of quality materials.**
- 3. The Act is outdated and predates the Constitution. As a result of this, certain Sections of the Act have been successfully challenged in Court, thus necessitating the amendment of the Act to address these Constitutional and legislative gaps within the current Act.**

## SECTIONS TO BE AMENDED

- The Act was last amended in 1995, although Regulations were promulgated in 2010. There are two sections of the Act that have been successfully challenged and declared unconstitutional by the Constitutional Court. The proposal is that these sections are remedied in accordance with the Constitution:
- 1. Section 9 of the Act currently includes provisions relating to the Review Board of Appeal, which the Minister appoints, whereas municipalities are responsible for the implementation and enforcement of matters provided for in the Act. On 7 June 2018, in *City of Johannesburg Metropolitan Municipality v Chairman of the National Building Regulations Review Board and Others*, the Constitutional Court confirmed the declaration of invalidity made by the Pretoria High Court on section 9 on the Review Board of Appeal. It was declared unconstitutional by the Constitutional Court as it undermines the executive authority of the Local Authority in terms of section 156 of the Constitution of South Africa.
- To address the unconstitutionality of section 9, the Bill proposes that the executive authority of the relevant municipality must consider appeals as the appeal authority in accordance with section 51 of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013). Because this proposes an amendment, and not only a repeal of the section that was declared unconstitutional, it will necessitate publishing the Bill for public comment.

## SECTIONS TO BE AMENDED

2. **Section 29(8) of the Act currently provides that a local authority must prior to the making and promulgation of any regulation or by-law that relates to the erection of a building, submit a draft thereof to the Minister for approval. Without such approval, a regulation or by-law promulgated will be void. The Constitutional Court on 23 June 2023, in City of Cape Town v Independent Outdoor Media (Pty) Ltd and Others has declared section 29(8) unconstitutional on the basis that it violates the exclusive legislative authority of municipalities by requiring the approval of the Minister before a by-law that “relates to the erection of a building” may be validly promulgated. The ruling found that section 29(8) usurps the powers of the municipality to exercise its original legislative powers by requiring that prior ministerial approval is given for the making of by-laws relating to the erection of a building. The Court ruled that section 29(8) infringes on the separation of powers principle of the Constitution.**
- **To address the unconstitutionality of section 29(8) the Bill proposes that it be repealed.**



## **GUIDANCE BY THE OFFICE OF THE CHIEF STATE LAW ADVISER AND SOCIO- ECONOMIC IMPACT ASSESSMENT**

- **The Bill will be tagged as a Section 76 Bill and will be referred to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it pertains to matters referred to in section 154(2) of the Constitution.**
- **The SEIAS was conducted;**
- **The SEIAS supported the amendments;**
- **The financial implications were also considered during the SEIAS;**
- **There are no new financial implications for the State as the municipalities are already mandated by the constitution to administer the matters dealt with in the Act and are already exercising the powers and functions provided for in the Act in terms of their competence.**

## CONCLUSION

- **The intention is for the National Building Regulations and Building Standards Amendment Bill, to be submitted to Cabinet for public comment in November 2024.**
- **Once approved by Cabinet, it will be published in the Government Gazette for a 30 day comment period; thereafter the dtic will go through the comments received and incorporate them in the Bill, where applicable/if needs be.**
- **The Bill would then be submitted to OCSLA for pre-certification, SEIAS to be re-obtained and Bill submitted to Economic Cluster, before going back to Cabinet for approval to introduce in Parliament in May 2025.**

# PATENTS, DESIGNS AND TRADE MARKS LEGISLATIVE CHANGES CONSIDERATIONS

## Key legislative changes



**Patent Act-** To repeal the Patents Act, 1978 (Act No. 57 of 1978), and the accompanying regulations to bring South Africa's outdated Patent regime in line with international best practice, including integrating the WTO TRIPS flexibilities. It will introduce substantive search and examination of patent applications which is a significant departure from the current depository system and will contribute to affordable and equitable access to medicines. It will introduce reforms to provide for broader inclusive participation in the patent system, ensure protection of IP and promote innovation. The Bill will be submitted to the Executive Authority in October 2024.

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**Designs Act:** To amend the Designs Act, 1993 (Act no 195 of 1993). This Bill embodies provisions that are intertwined and should be advanced in parallel with the Patents Bill. The Patents Bill introduces "utility model patents". This utility model system provides more accessible protection for local incremental innovation that is common among small businesses in South Africa. The introduction of a utility model patents regime requires an amendment to the South African Designs Act as certain aspects of the current Designs Act will be rendered superfluous by utility models. The Bill will be submitted to the Executive Authority in October 2024.

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**Trade Marks Act:** Amendments to the Principal Act, to accede and domesticate the Madrid Protocol Concerning the International Registration of Trade Marks adopted at Madrid on 27 June 1989. A key objective in acceding to the Madrid Protocol for many developing countries is to solidify trade relations with major trading corporations. Accession to the Madrid System is a conduit for a country's modernisation of its IP system (through legislative amendments and systems development). The Madrid Protocol offers the promise of a convenient route to trade mark protection via a single international registration. The submission to the Executive authority is expected in February 2025.

## FUTURE LEGISLATION TO BE TABLED IN PARLIAMENT

- The department will review a list of legislation and indicate about the legislation expected to be tabled in Parliament within the next five years.

This review will include the following:

- A description of the purpose of these amendments
- Consideration of issues in depth with consideration to evidence (evidence based)
- Challenges and policy issues to be addressed
- Timeframes for completing these for submission to Parliament
- That process to make a list of laws will be undertaken and the department will submit a legislative programme to parliament in Quarter 4 of this financial year.

**THANK YOU!**