SOUTH AFRICAN BOOKMAKERS' ASSOCIATION

SUBMISSION ON
NATIONAL GAMBLING AMENDMENT BILL [B 27B-2018]

A. INTRODUCTION:

1. The South African Bookmakers' Association ("SABA") is a voluntary association representing the collective interests of licensed bookmakers throughout the country, having 112 members.

2. SABA was founded in 1951 and is the leading voluntary association for bookmakers. The Association is governed by a board of up to nine elected directors, which meet at least once every two months to formulate and approve policy for implementation.

3. As a critically affected and significant industry stakeholder, SABA welcomes and appreciates the opportunity to submit its comments on the Bill referenced on the covering page hereof ("the Bill").

4. As a starting point, it is noted that the Bill purports, at various junctures, to amend certain provisions of the National Gambling Act, No. 7 of 2004, as amended by the National Gambling Amendment Act, No. 10 of 2008. In this regard, SABA records that the latter Act has not yet come into effect, as pursuant to the provisions of Section 89 thereof, such Act was to come into operation on a date to be fixed by the President by proclamation in the *Government Gazette*. As no such date has yet been proclaimed, the relevant provisions have not been brought into effect, with the result that there is a fundamental mismatch between numerous clauses of the Bill in relation to the sections and subsections of the Act which purport to amend and/or to delete and/or to insert therein, and which in SABA's respectful view, requires further consideration from a legal perspective.

5. All references to "the Act" contained herein are references to the existing National Gambling Act, No. 7 of 2004.

6. SABA's comments follow the chronology of the clauses contained in the Bill, and therefore are not set forth in any particular order of importance.

B. INDIVIDUAL PROVISIONS OF THE BILL

7. AD CLAUSE 3 [Insertion of section 10A]:

7.1. SABA notes that this proposed provision requires the NGR to keep a register of "unlawful gambling operators", which will be disqualified from obtaining a licence for five years from the date on which such person was listed in the register.

7.2. SABA submits that the relevant section is ill-conceived and inchoate. The section makes no provision for the manner in which the listings for which it makes provision are to be carried out, or the manner in which they should be made known to the persons affected thereby. Nor is any attention given to the juncture at which a person may be listed (i.e. whether this could be done prior to the conviction of a person on a charge of this nature is open to serious question, as it offends against the presumption of innocence). If a listing may be made only on a post-conviction basis, the need for the list falls away, as the person in question would in any event be disqualified for licensing in the ordinary course.

7.3. As is implicitly recognised in the proposed subsections (3) and (4), a listing may cause unwarranted reputational damage (especially if it is performed without satisfactory levels of proof), and may have to be undone through litigation. In addition, SABA submits that care should be taken to prevent any possible conflicts between the Act and the Protection of Personal Information Act, 2013.

7.4. On the basis of the above considerations, SABA submits that the proposed register will serve no meaningful purpose, but will ultimately increase regulatory red tape, and potentially result in a challenge from a constitutional perspective, without securing any meaningful regulatory benefit.

8. AD CLAUSE 12 [Amendment of section 27]:

8.1. SABA notes that the presentation previously made to the National Assembly Portfolio Committee on Trade and Industry by the Department of Trade and Industry (dti) deals with the proposed amendments to Section 27 as follows:

Provision	Generic Comment	Final Position
Section 27 is amended to ensure that the third party is appointed to operate the National Central Electronic Monitoring System (NCEMS) gets a national licence.	Limited Payout Machine operators recommended that the NCEMS be left to them as it is the case in other gambling modes. Some provinces believe they must operate the NCEMS and that it must be extended to all gambling modes as they often struggle to get the required information from operators.	In line with the approved policy the Bill currently provides that the NGB must develop capacity to extend the NCEMS to all other gambling operations.

8.2. It is pointed out that the description of the provision in question given above falls short of disclosing the actual nature and breadth of the amendments proposed to Section 27, and their significance and impact for all industry sectors. The proposed amendments extend significantly further than requiring the operator of the Central Electronic Monitoring System ("CEMS") to obtain a national licence (which it is already required to hold, and does in fact hold).

8.3. In short, the proposed amendments to Section 27 would ultimately require a single CEMS in respect of all sectors of the gambling industry, including casinos, bingo operators, bookmakers and the totalisator, with each such sector being required to pay monitoring fees to the NGR.

8.4. SABA submits that there is no justification for the above provision, which it assumes is based on incomplete and/or inaccurate information regarding the

matter. The CEMS, which is currently in existence, was put in place as a result of the wide distribution of large numbers of limited pay-out machines ("LPM's") on a multitude of different venues (mostly small businesses) throughout the country, and the need to ensure that all gambling transactions performed on these machines could be tracked, stored and reported upon. The purpose of Section 27 was to ensure that all transactions in the (spatially challenging) LPM environment were accounted for, so that the revenues due would be accurately calculated and paid over. As a result, the Act requires all LPM's to be linked to the CEMS.

8.5. SABA points out that there are no fewer than nine published standards developed by the South African Bureau of Standards, which have been put in place specifically to ensure the integrity of gambling and betting operations and the accuracy, credibility and reliability of the data generated in respect of each and every gambling and/or betting transaction. In terms of Section 19(2) of the Act, every gambling machine and gambling device made available for play must be tested and certified as complying with the applicable (national) technical standard. This includes all software and monitoring systems used in casinos and licensed bingo operations, and as well as the wagering systems used by licensed bookmakers and the totalisator in the conduct of their respective operations. The national technical standards contain a plethora of detailed requirements which are expressly designed to ensure both the integrity of all gambling and betting operations, as well as the reliability of the transactional records which are used in the calculation of gambling and betting taxes and levies. The various standards are as follows:

SANS 1718-1:2008	Gaming equipment Part 1: Casino equipment
SANS 1718-2:2016	Gambling equipment Part 2: Limited payout machines
SANS 1718-3:2003	Gaming equipment Part 3: Monitoring and control systems for gaming equipment
SANS 1718-4:2018	Gaming equipment Part 4: Wagering recordkeeping software (for bookmaking and totalisator operations)

SANS 1718-5:2009	Gaming equipment Part 5: Local area and wide area jackpot and progressive jackpot equipment
SANS 1718-7:2007	Gaming equipment Part 7: Tokens
SANS 1718-8:2007	Gaming equipment Part 8: Roulette wheels
SANS 1718-9:2005	Gaming equipment Part 9: Central monitoring system for limited payout machines
SANS 1718-10:2009	Gaming equipment Part 10: Server-based gaming systems

8.6. It is an indisputable fact that all gambling and betting transactions which take place in licensed establishments throughout the country are monitored and accurately stored on systems which must comply with the requirements of the relevant standard. Adherence to these standards means, in effect, that the relevant transactions are fully and accurately captured and stored, and can be interrogated and reported upon on an individual as well as a collective basis. In the casino environment, for example, all transactions (which by definition occur on the relevant licensed premises only) are monitored by sophisticated gaming management systems, which perform the same function as the CEMS, in respect of all gambling transactions. The same applies to licensed bingo outlets. In addition, each provincial regulator has remote, real-time access to these systems, so that all transactions can be actively tracked, stored and reported upon in the same manner. Therefore gaming regulators can access this information, at any time and for any regulatory purpose. Similar principles apply in the licensed bingo environment.

8.7. In the licensed bookmaking environment, all betting transactions are required to be conducted by means of computerised wagering software, which is required to comply with the prevailing technical standards, and which similarly tracks and records each and every betting transaction and is capable of generating a range of reports in respect of any given betting transaction or defined range of betting transactions, as and when these may be required by the regulator. In addition, back-ups are required to be kept and provided to regulators at set intervals. Accordingly, there is no scope for

the conclusion that regulators are unable to access relevant information in relation to betting transactions from a compliance, fair play or tax-generation perspective. It should be noted that this very information forms the basis for the compliance and taxation-related audits, which are routinely conducted by every PLA in the performance of its mandate.

8.8. Finally, in the context of totalisator operations, the wagering software which is required to be used by licensed totalisator operators is similarly required to comply with the same technical specifications, and therefore has the same functional capabilities, as those utilised in the bookmaking environment.

8.9. The development of a single CEMS in respect of all gambling modes will therefore serve no regulatory purpose and provide no additional benefits, as all the information required by the regulator in respect of each industry sector is currently available. Moreover, it should be recognised that each gaming sector operates within significantly different parameters. For example, events that are regarded as "significant" in the casino environment would not arise in the bookmaking or totalisator environment. The implication of this is that a single CEMS would be required to make provision for a broad range of completely distinct categories of *"significant events"*, depending on the nature and manner of operation of the industry sector in question. The development of such a system would be extremely cumbersome, time-consuming and cost-intensive, while delivering no identifiable benefit to any of its end-users.

8.10. Moreover, it is difficult to conceive of what "events" would be regarded as "significant" in the context of licensed bookmaking operations. SABA notes, in this regard, that the term *"significant event"* is defined in the Bill as being *"a condition which makes a game unplayable or affects the outcome of a gambling activity and is recorded in a gambling machine or gambling device"*. The only conceivable environments in which these conditions might arise are in licensed casinos, bingo outlets and on LPM sites, where the "games" referred to in the definition are played, and the outcome thereof is determined, on gambling machines and/or devices. In the licensed bookmaking environment, on the other hand, bookmakers' use certified wagering systems purely to capture, record and store the details of betting

transactions on external events, which exist and occur completely independently of the bookmaker's wagering system. No player in the bookmaking environment makes use of any gambling device or machine in order to place a bet. Accordingly, it is not possible, in the bookmaking environment, for conditions to arise, which would either make a game unplayable, or which would affect the outcome of the game, which as previously stated is an independent external event or contingency on which the betting is struck. It is therefore apparent from the definition in the Bill itself, that the fundamental differences between the casino, bingo and LPM environments, on the one hand, and the bookmaking and totalisator sector, on the other are not understood.

8.11. As previously indicated, both licensed casinos and bingo outlets have fully fledged monitoring and/or gaming management systems which have been tested and certified as complying with the relevant technical standards, and which function in the same manner, and (at the very least) as reliably, as the CEMS, while the CEMS is already in place in relation to licensed LPM operations countrywide. There is therefore no scope for the contention that the extension of the CEMS to cover all other gambling modes would be more accurate in determining the taxation of gambling operators or strengthen the oversight responsibility of the NGR.

8.12. Correspondingly, the proposal to develop a single NCEMS for all gambling modes stands in direct contradiction to the requirements entrenched in the Act in relation to the prevailing technical specifications for gambling devices. These requirements cover gambling devices, server-based gaming devices, gaming equipment, monitoring systems and wagering systems, with a view to ensuring that all transactions are tracked, recorded and stored in a comprehensive and appropriate manner, so as to preserve the integrity of licensed operations, to promote fair play and to ensure the accurate and timeous calculation and payment of gaming and betting taxes and levies. No device which does not comply with the prevailing technical standards may be made available for use/play in the country, with the result that all gaming and betting transactions are fully auditable.

8.13. In addition, to the extent that the proposed amendments to section 27 contemplate that the National CEMS will be maintained by the NGR, which will collect and retain monitoring fees and generate reports in respect thereof, the provision in question will have the impractical effect of duplicating roles and responsibilities as between PLA's on the one hand, and the NGR, on the other.

8.14. Against the backdrop of the above, there is manifestly no need to develop a further, single, national system which would effectively supplant all the prevailing technical standards, at great cost to all sectors of the industry, which would deliver no identifiable regulatory benefit and moreover would not prove to be commercially feasible. SABA therefore submits that the proposed provision is not required and should be deleted.

9. AD CLAUSES 23, 24 & 25 [Amendment of sections 61, 62 & 63]:

9.1. To the extent that these Clauses propose to effect amendments to provisions of the Act dealing with the National Gambling Policy Council ("the Council"), and in view of the submissions made in Paragraph 10 below regarding the historical failure of the Council to function effectively, SABA is unable to support the proposed amendments.

9.2. Instead, as will be apparent from Paragraph 10 above, SABA respectfully submits that Sections 61, 62 and 63 of the Act should be deleted in their entirety.

10. AD CLAUSE 26 [Insertion of section 63A]:

10.1. The presentation previously made to the relevant National Assembly Portfolio Committee on Trade and Industry by the dti dated 12 September 2018 reported as follows in relation to the proposed Section 63A:

Provision	Generic Comment	Final Position
Section 63A is inserted to provide that the National Gambling Policy Council meeting be empowered to make decisions by members in attendance at the following meeting if the previous meeting failed to reach a quorum.	There is opposition on the ground that the approach is against corporate governance.	The provision will remain as it is.

10.2. SABA is unable to support the proposed Section 63A, in view of the well-documented failure of the Council to function effectively in the past. It is noted that although the concerns expressed by interested persons have been noted, no explanation has been given for the view that the section should *"remain as it is"*.

10.3. The Gambling Review Commission ("GRC") reported that during the period 2006 – 2010 (inclusive) the Council had failed to achieve a quorum for five of its eight scheduled meetings (noting also that in 2006 and 2010, the Council failed to schedule the two meetings required per annum in terms of the Act). In 2006 and 2008, no meetings were held at all. In addition, the GRC reported that the Council had taken no fewer than five years to resolve one extremely important matter (and then only through mediation).

10.4. Having regard to the above, the GRC reported as follows:

> *"The Policy Council does not appear to be effective in settling disputes or in reaching agreement on policy matters, especially where there is a conflict of objectives. Attempts to resolve matters directly between the CEOs of the ten (10) gambling regulators achieve similar results as the Policy Council. In effect this means that it is difficult to obtain agreement on a national policy relating to gambling, and the careful balance that must be struck between revenue maximization, proliferation and social impact can easily be undermined."*

10.5. In addition, the Final Gambling Policy contains the following observation regarding the Council:

> *"The Council is always affected by the lack of quorum enabling meetings to take resolutions. This has a negative impact on the Council's ability to coordinate policy at national and provincial government. This has resulted in a number of policy discrepancies at national and provincial level."* [Emphasis added]

10.6. To the best of SABA's knowledge, there has been no improvement in the record of the Council in more recent years.[1] SABA respectfully submits that the dti disclose and confirm the number of meetings successfully held by the Council during the past eight years. It is further submitted that this information should properly be placed in the public domain, in order to provide an accurate account of the extent to which Council members have demonstrated any regard for the express requirements of the Act in relation to their attendance of meetings of the Council, and flowing from this, the extent to which it would be justifiable from a policy perspective to retain this body.

10.7. Against the backdrop of the above, SABA submits that rather than being retained, the Council should be disbanded. The implication of the proposed Section 63A is that that if the Council fails to establish a quorum at any single meeting, agenda items will nonetheless be rolled over until the following meeting, at which decisions may be taken by the Council, irrespective of whether a quorum is established. This proposed *modus operandi* will have the effect of entrenching, rather than reversing, the dysfunctional nature of the Council, in that Council members, who have historically failed to attend on a regular basis even when their attendance was absolutely required for the purposes of establishing a quorum, will now effectively be placed in a position to absent themselves from two consecutive meetings, notwithstanding which decisions will be able to be taken despite the absence of a quorum.

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[1] In this regard, SABA notes from page 2 of the Minutes that it was recorded that *"there had not been a quorum of the National Gambling Policy Council for over a year"*.

10.8. SABA submits that the corporate governance requirements pertaining to any enterprise or body should apply likewise to the Council, and if that body will not be in a position to achieve a quorum for the purposes of its' functioning, it is unlikely to achieve its objectives and should be disbanded. In this regard, it is submitted that it is inherently undesirable that an inquorate Council, which may comprise only a handful of members, should be empowered to take binding decisions affecting the industry as a whole without following a proper consultative process involving all, or at least a substantial majority of affected stakeholders. SABA therefore submits that the proposed section should be deleted.

10.9. Further to the above, SABA notes that the suggestion was made at the public hearings convened by the National Assembly Portfolio Committee on Trade and Industry in October 2018, that the provisions of the proposed Section 65C were justifiable, on the basis that currently it would be open to Council members who did not support particular agenda items for Council meetings, to decline to attend such meetings so that a quorum could not be reached, and thereby to impeded the functioning of the Council in respect of "unpopular" proposals or decisions. In SABA's respectful view, the logical response to this is that if a sufficient number of Council members, such as to allow for a quorum, were not in favour of a particular proposal or decision, attended the relevant meetings, then the relevant proposal or decision would not be carried in the ordinary course.

10.10. SABA submits that the Council has demonstrably failed to achieve any of its objects, and the lack of policy cohesion is a direct result of its inability to achieve a quorum, or otherwise successfully to hold meetings on more than a handful of occasions in the 15 years since its original establishment. In addition, SABA submits that such determinations as may be made by the Council are devoid of any legal force, and that, as the history of this matter has amply demonstrated, national policy regarding gambling is more reliably and effectively made by Parliament itself, as supplemented by the subordinate legislation for which the Act makes provision.

11. AD CLAUSE 30 [Insertion of sections 65A, 65B & 65C]:

11.1. Regarding the proposed structure of the NGR, and the functions and powers proposed to be conferred on its Chief Executive Officer pursuant to the proposed Section 65B (which include, without being limited to, all the existing powers and functions of the NGB), SABA submits that the mandate proposed to be conferred on it is too extensive to be effectively carried out by a single functionary, in the person of the CEO.

11.2. SABA is of the view that the structure which the Bill puts in place for the NGR, in terms of which it will be a trading entity of the Department of Trade and Industry ("the dti"), which will operate under the leadership of a Chief Executive Officer, is likely to impede, rather than to enhance, its effectiveness and its ability to carry out the extensive legislative and regulatory mandate conferred on it by the Bill.

11.3. SABA notes that the proposed NGR has no governing board, and therefore no ultimate decision-making body, composed of various persons with established levels of expertise in the various areas, which are relevant to its functional areas. It will be noted, in this regard, that the *"administrative action"*[2], which is at the heart of the regulation of the gambling industry cannot be valid if it is not taken in a procedurally fair manner. Procedural fairness requires the decision-maker *inter alia* to take account of all factors, which are relevant to the decision at hand. In the context of the regulation of gambling, this requires a collective decision-making process by a group of carefully selected individuals having expertise in law, financial and accounting matters, law enforcement and social work (with particular emphasis on problem gambling and addictive behaviour), amongst others. The proposal to vest the decision-making functions of the NGR in its Chief Executive Officer effectively compromises the capacity of the NGR to achieve its mandate from the outset, by undermining its potential to make balanced decisions from a well-informed perspective. Furthermore, the proposed structure of the NGR has numerous adverse implications in the context of corporate governance.

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2 As defined in the Promotion of Administrative Justice Act, No. 3 of 200.

11.4. Generally, it is considered unlikely that the NGR will succeed where the NGB has failed. SABA submits that rather than providing for a new, more limited body (in terms of structure) to perform the extremely extensive functions assigned to the NGB, attention should rather be focused on identifying the root causes for the failure by the NGB to deliver on its statutory mandate, and that measures should be put in place to address and effectively to eliminate these.

11.5. It is further noted that while Clause 30 of the Bill is headed "Insertion of section 65A, 65B and 65C in Act 7 of 2004", the Bill itself contains no proposed section 65C. This omission is of great significance. It is further recorded, in this regard, that the previous version of the Bill which served before the Portfolio Committee on Trade and Industry, and in respect of which submissions were invited and public hearings were held, indeed included the proposed Section 65C, which provided as follows:

Committee of National Gambling Regulator

65C. *(1) The Minister may from time to time establish such committee as he or she considers necessary to perform specified functions of the National Gambling Regulator.*

(2) A committee consists of—

(i) not more than five persons who are independent from the National Regulator and who are appointed by the Minister; and

(ii) the Chief Executive Officer.

(3) A member of a committee established in terms of subsection (1) must have the appropriate skill and expertise in the gambling industry and of the function which that member will perform on the committee.

(4) A member of a committee, other than a person who is in the full-time employment of the National Gambling Regulator or any

other organ of state, is appointed on the terms and conditions of service determined by the Minister in consultation with the Minister of Finance.

(5) A committee may—

(a) be established for a period determined by the Minister when the committee is established; and

(b) determine its own procedures provided that the committee is chaired by a member of the committee.

(6) A member of a committee must be impartial, a fit and proper person and may not—

(a) expose themselves to any situation in which the risk of a conflict may arise between their responsibilities and any personal or financial interest; or

(b) use their position or any information entrusted to them to enrich themselves or improperly benefit any other person.

(7) A member ceases to be a member of a committee if the—

(a) member resigns from the committee;

(b) Minister terminates the person's membership because the member no longer complies with subsection (6); or

(c) member's term has expired.

(8) A member of a committee who has personal or financial interest in any matter on which the committee performs a function must disclose that interest and withdraw from the proceedings of the committee when that matter is discussed.".

11.6. In its presentation to the National Assembly Portfolio Committee on Trade and Industry dated 12 September 2018 regarding the proposed Section 65C, the dti indicated that it was decided "*to establish an ad hoc Committee of the NGR by internal and external people to deal with concerns about CEO (sic)*

overturning the decisions of boards of PLA's". This was provided as the sole rationale for the proposed enactment of Section 65C.

11.7. It is SABA's contention that, the only reasonable inference to be drawn from the proposed inclusion of Section 65C in the previous version of the Bill is that it was conceded by the dti that the authority conferred on the NGR by the Act should not be vested in a single person (i.e. the Chief Executive Officer of the NGR). As a result, a policy shift was made, proposing that the Minister should be empowered in certain cases to appoint *ad hoc* Committees to perform certain functions of the NGR.

11.8. SABA's comments on the previous version of the Bill, with particular reference to the proposed Section 65C, SABA submitted that, given that it had been conceded that other persons with particular levels of expertise would be required to exercise certain of the powers and functions of the NGB in some cases, including the ability to overturn decisions made by the boards of PLA's, it would be more practical (and effective) to continue to incorporate a governing Board in the structure of the NGR. SABA maintains that it is doubtful that *ad hoc* Committees, which would be required to be served by a maximum of five independent persons, and which would also be required to have appropriate industry-related skills, would be easily established, bearing in mind the nature of the skills required, the fact that such persons would be required to be independent of the NGR and the logistical aspects of arranging multiple meetings with suitable professionally qualified persons. Moreover, SABA projected that there may be more than one such *ad hoc* Committee in existence at any given time, possibly comprising different persons. SABA maintains that this would not only be difficult to manage, but also could be expected to entail substantial expense, and argued that in cases where a number of different Committees had been established to perform different functions, this would not be in the interests of consistent and/or predictable decision-making and would not advance continuity in this regard.

11.9. Further to the above, SABA maintains that, on the other hand, the appointment of a Board with a fixed number of members commanding particular skills sets, and with the appropriate level of parliamentary oversight

and accountability, would eliminate these difficulties, and would ensure consistent and predictable decision-making processes, as well as ensuring the containment of costs. The appointment of a Board would also have the added benefit of ensuring that the probity of individual Board members are required to be established prior to their appointment, with the result that sensitive decisions impacting on the industry would be made by persons demonstrably suitable to make them. In contrast, the appointment by the Minister of *ad hoc* Committees whose probity would not have been tested and confirmed could provide scope for abuse and subsequent legal challenges in respect of decisions taken.

11.10. Against the backdrop of the above, SABA puts forward that the proposed Section 65C was removed from the Bill, on the basis of the cost implications inherent in its proposed provision for ad hoc Committees of the NGR, as well as the various logistical difficulties highlighted above and the corresponding potential for inconsistency and a lack of continuity in the decision-making processes in relation to the NGR. As a result, the original position that all the powers and functions of the NGR should simply be vested in a single functionary, despite this being a position which was recognised as being inappropriate in certain cases, and in respect of which compensatory measures were proposed, in the form of the proposed Section 65C is maintained

11.11. However, since it is clear that the dti indeed previously conceded that it would not be either appropriate or desirable to vest all the powers and functions of the NGR (including the power to overturn decisions taken by the boards of PLA's) in its Chief Executive Officer, SABA submits that it is inappropriate, by means of the current Bill, to revert to a previous policy position which was conceded as being not entirely appropriate.

11.12. Further to the above, SABA places on record that the dti commissioned an Agency Rationalisation Study, with a view to determining whether the various agencies of the dti (including the National Gambling Board) were performing their respective statutory mandates effectively, and if not, to identify the root causes and make focused recommendations, including in relation to the

optimal structuring of such entities, with reference to a benchmarking exercise.

11.13. It should further be noted in the above regard, that a Report was produced, setting forth the outcome of the above Study ("the Report"). During the hearings held in the National Assembly before the Portfolio Committee on Trade and Industry, the dti made numerous references to the Report, while at the same time not making same publicly available. Only after a multitude of requests and approaches by members of the National Assembly before the Portfolio Committee , was the Report ultimately made available.

11.14. SABA respectfully submits that the lack of transparency regarding the provision to affected stakeholders of the Report is a source of material concern. This is so because the position taken in the Report in respect of the optimal structuring of the NGB/NGR differs fundamentally from the intended structure for the NGR for which the Bill makes provision. It is not suggested, or even implied, in the Report that the powers and functions of the NGR should be vested in its Chief Executive Officer. Instead, the Report recommended as follows:

"It is recommended that the National Gambling Board and the National Lotteries Board should be merged in a new institution that could provide a more permanent basis of regulation, monitoring and implementation of policies that deal with gambling and lotteries."[3]

11.15. Corresponding, the following primary recommendation is set forth in the Report:

"It is therefore suggested that the current structure of the NGB should be reviewed in order to create the right regulatory capacity to deal with the regulation of gambling. In light of the various forms of statutory bodies it can take, it is recommended that the NGB be transformed into the National Gambling and Lotteries Commission (NGLC) to create on organisation with both the resources and skills base to regulate both gambling and lotteries. This will enable the NGLC to go beyond its advisory role and to set up a

3 See Report, page 4

permanent structure to deal with a fast changing environment for gambling and lotteries. Enforcement will be enhanced through a dedicated Gambling and Lotteries Tribunal (GLT) since most cases that are currently brought may not be dealt with for protracted periods of time and may add to an already overburdened court system. Decisions taken by NGLC or entities for which it is responsible may be review by the GLT on the basis of an application for the review of such decisions based on the principles of administrative justice contained in the Constitution."[4]

11.16. There is accordingly a material mismatch between the recommendations in the Report and the proposed structure for the NGR set forth in the Bill itself. Against this backdrop, SABA submits that it is reasonable to conclude that there are no compelling grounds for the proposed structural reconfiguration of the NGR, which, as the Bill currently stands, vests all the powers and functions conferred on the NGR in its Chief Executive Officer. This is also apparent from the fact that the dti itself previously proposed the inclusion of Section 65C in the Act, that this concentration of extremely wide-ranging powers in a single functionary would not be appropriate or sustainable in all cases. This being the case, the question must arise as to the basis for reverting to the original policy position, which is not supported by the dti's research into the issue.

11.17. The research commissioned by the dti did not provide support for the intended structure incorporated in the Bill . Accordingly, SABA submits that there is nothing in the Bill, which suggests that the proposed structure of the NGR will assist in law enforcement in relation to illegal gambling. As has already been observed, certain of the processes for which the Bill makes provision, for example in the context of the register of "unlawful gambling operators" are fraught with potential constitutional pitfalls and unlikely to succeed in practice, while others, discussed in Paragraph 12 below in the context of the powers of the NGR inspectorate, fail to have regard to the jurisdiction of PLA's in the context of law enforcement, and therefore, if enacted in their current form, will set up material internal conflicts within the Act itself.

11.18. Based on the above, SABA respectfully submits that there is no evidence to suggest that the proposed structuring of the NGR, as set forth in the Bill, will be

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4 See Report, page 116

either appropriate or effective. In contrast, the Bill is open to criticism for vesting a disproportionate amount of power in a single individual, whom SABA projects cannot reasonably be expected to fulfil the ambitious statutory mandate to be conferred on him or her. SABA therefore repeats its submission that the root causes for the failure of the NGB should be investigated and addressed through appropriate legislative measures, which will not ultimately redound to the prejudice of the gambling industry on a countrywide basis.

12. AD CLAUSE 40 [Insertion of section 76A]:

12.1. It is respectfully submitted that the interests of uniformity and legal certainty would not be served by empowering the national inspectorate to *"ensure compliance of gambling institutions with the provisions of the Act"*.

12.2. In the above regard, it should be borne in mind that the operations of the holders of provincial licences, including bookmakers, are monitored for compliance-related purposes by the PLA's which issued the relevant licences. Further to this, it should be noted that, in terms of Section 30 of the Act itself, PLA's have exclusive jurisdiction to:

"(a) investigate and consider applications for, and issue-

(i) provincial licences in respect of casinos, racing, gambling or wagering, other than for an activity or purpose for which a national licence is required in terms of this Act; and

(ii) subject to Part B of this Chapter, national licences for any activity or purpose for which a national licence is required or optional in terms of this Act, other than a licence contemplated in section 38(2A)(a);

(b) conduct inspections to ensure compliance with-

(i) this Act;

(ii) applicable provincial law; and

(iii) the conditions of-

(aa) national licences issued by it, subject to sections 33 and 34; or

(bb) provincial licences issued by it;

(c) impose on licensees administrative sanctions in accordance with this Act or applicable provincial law; and

(d) issue offence notices in respect of offences in terms of this Act or applicable provincial law."

12.3. It is submitted that the proposed Section is not enforceable to the extent that it is in material conflict with the above provisions.

12.4. In addition, SABA submits that it is inherently undesirable for the holder of a provincial licence to be subjected to compliance monitoring by two different bodies, in the form of the relevant PLA, on the one hand, and the NGR, on the other. One of the likely unintended consequences of this would be that licensees would be subjected to different sets of standards, based on different interpretations of the nature and scope of their compliance-related obligations.

12.5. SABA submits that the proposed subsection (3) is superfluous, in as much as the relevant prohibitions are already contained in the Financial Intelligence Centre Act, No. 38 of 2001. Accordingly, these are not required to be repeated in the Act itself.

13. CONCLUSION

SABA respectfully requests that due consideration be afforded to its comments and recommendations, which seek to promote a progressive, responsible and sustainable approach to regulating the gambling industry and related activities in accordance with prevailing policy, including the implementation of an appropriate legislative and regulatory regime.

SABA believes that it is imperative that a balanced and pragmatic approach is adopted in support of a responsible and sustainable operating environment for the South African industry.

This requires the exploration and formulation of legislative provisions that can effectively address the challenges facing the industry and any operational and compliance concerns in this regard without jeopardising its development, as well as maintaining the respective roles of the industry, on the one hand, and the citizens which are served by its operations.

SABA stresses that its aim is to contribute constructively towards an appropriate and suitable legal framework for gambling activities in South Africa, which maintains and supports the resultant socio-economic benefits inherent therein.

SABA would welcome further discussions and engagement regarding the observations, comments and recommendations contained in its response to the Bill.