

**Briefing by the dtic on the status of implementing the following legislation: Intellectual Property Laws Amendment Act; National Credit Amendment Act; Legal Metrology Act; and Protection of Investment Act**

**Briefing by the dtic on the status of the review process with regard to the following: Consumer Protection Act and National Gambling Act**

## **PORTFOLIO COMMITTEE ON TRADE, INDUSTRY AND COMPETITION**

**13 September 2022**



**the dtic**

Department:  
Trade, Industry and Competition  
REPUBLIC OF SOUTH AFRICA

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# Presenters

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- Intellectual Property Laws Amendment Act (IPLAA), National Gambling Act, Consumer Protection Act, National Credit Amendment Act

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- Protection of Investment Act

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- Legal Metrology Act

# Purpose

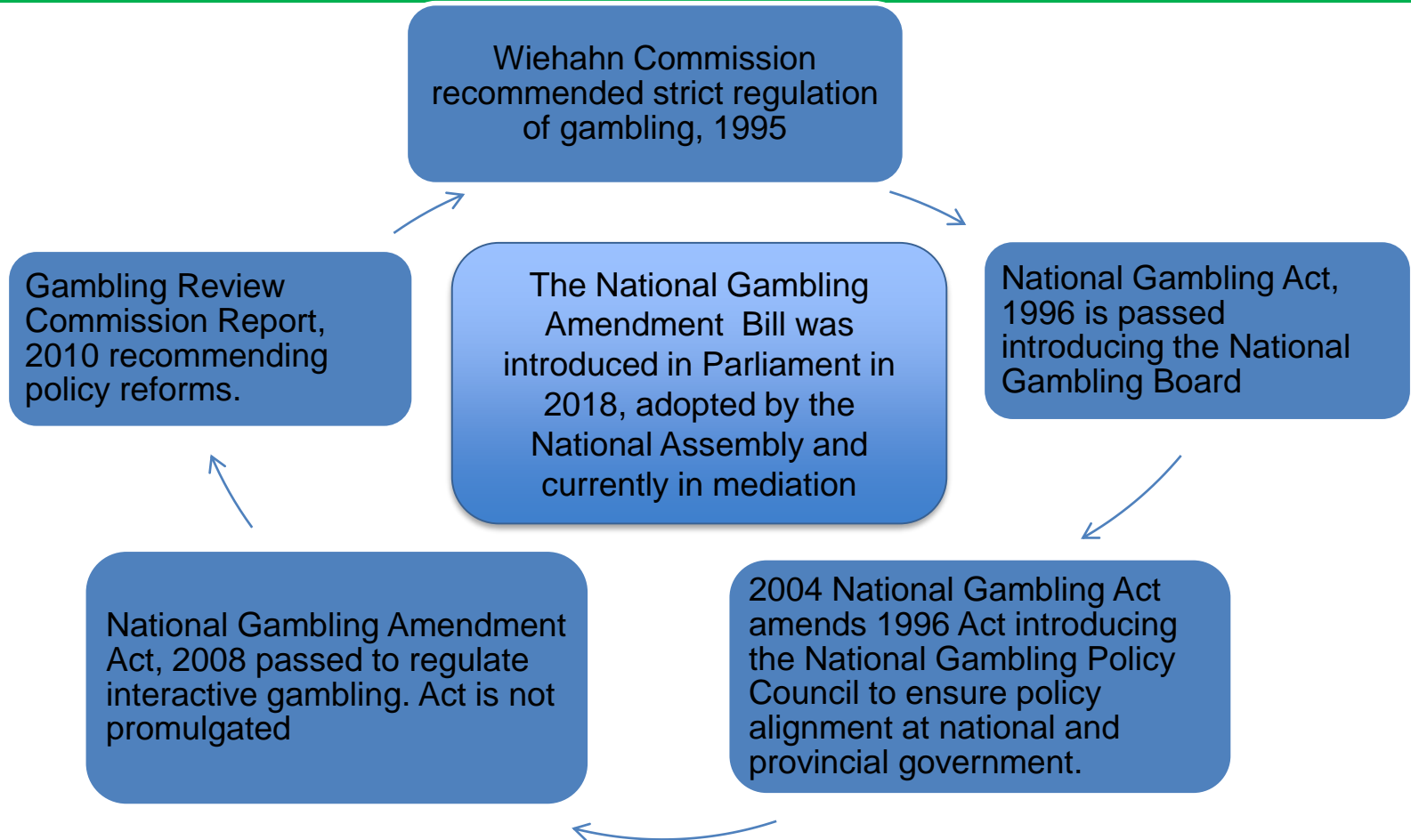
To brief the Portfolio Committee on Trade, Industry and Competition on -

the status of implementing the following legislation: Intellectual Property Laws Amendment Act; National Credit Amendment Act; Legal Metrology Act; and Protection of Investment Act; and

the status of the review process with regard to the following: Consumer Protection Act and National Gambling Act.

# **National Gambling Act, 2004 and Amendment Bill, 2018**

# Background



# Background

- 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 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***.

# Rationale of the National Gambling Amendment Bill

## Preamble

- To provide for the reconfiguration of the National Gambling Board which will become the National Gambling Regulator led by CEO without a board structure;
- To provide for the automatic forfeiture of unlawful winnings to the National Gambling Regulator;
- To provide for the quorum of the National Gambling Policy Council to make a final decision in the second meeting with the majority of the 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.



# Legislative Development Timelines Since 2015

- 15 May 2015 **the dtic** published the National Gambling Policy for broader public consultation.
- Written submissions were received, direct engagement with immediate stakeholders and public 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 27 June 2018.

# Legislative Development Timelines

- The Bill was introduced to Parliament and referred to the Committee on 21 August 2018.
- On 12 September 2018, the Committee was briefed by the Department of Trade and Industry (**the dtic**) on the Bill.
- On 19 September 2018, the Committee called for written submissions, with the closing date for submission being 12 October 2018.
- On 24 and 26 October 2018, the Committee held public hearings on the Bill.
- The National Assembly adopted the Bill on the 5th of December 2018.
- The Bill was tabled and deliberated in the Select Committee in 2019.
- The Bill was referred to the Mediation Committee.

# Revision of the Bill by the 6th Parliament

- The Bill was revived by the National Council of Provinces in the 6th Parliament and referred to the Select Committee on Trade and Industry, Economic Development, Small Business Development, Tourism, Employment and Labour (Select Committee) on 17 October 2019.
- The Chairperson of the Select Committee forwarded the correspondence to the relevant Portfolio Committees responsible for Gambling in the Legislatures to inform them of the processes to be followed with regard to the Bill.
- **the dtic** briefed the Select Committee on 16 July 2019.
- The period 18 to 27 November 2019 was set aside by the National Council of Provinces for Permanent Delegates to brief the respective Portfolio Committees responsible for Gambling in the Provinces. The intention was to familiarize the new members with the contents of the Bill.
- During their interactions on the Bill, some provinces agreed to submit the final mandate of the 5th Parliament with the signature of the current Speaker. Some preferred to start the process from the beginning.

# Concerns Raised on the Bill

## Establishment of the National Gambling Regulator (NGR)

- Provinces raised concerns regarding the proposed establishment of the NGR without a Board structure regarding issues of corporate governance.
- With the above in mind, it was however proposed that the NGR is established in line with other entities of the Department of Trade, Industry and Competition (**the dtic**) after considering **the dtic** research on agency rationalization.

## National Central Electronic Monitoring System (NCEMS)

- Provinces were concerned that NCEMS which is currently only provided for the monitoring of Limited Payout Machines (LPMs) will be extended to all modes of gambling. Issues were raised that Casinos and Bingos already have their own monitoring systems and Provincial Licensing Authorities have access to this information when it is needed.
- The NCEMS is a national register as set out in the National Gambling Act (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 intention to extend the NCEMS to other modes of gambling is to consolidate information throughout the country for all legal modes of gambling.

## Concerns Raised on the Bill

### National Gambling Policy Council (NGPC)

- The amendment empowers the majority of the members present in the second meeting of the NGPC to make a decision if in the first meeting there was no quorum. Most of the provinces opposed this provision.
- The proposed insertion of section 63A serves to empower the NGPC to be progressive in its decision making in that they would be able to deliberate on matters before NGPC and in the second meeting the motion may be passed.
- Failure by the NGPC to meet has negative implications for gambling regulation in South Africa due to lack of harmonization in gambling laws and policy.
- Other options were suggested for addressing the quorum. Disbanding the Council will result in not giving effect to the Constitution and the risk of conflict with regard to policy and legislative development may rise and this will pose challenges as opposed to solutions. Round-robin ordinarily is utilized to cast a vote on matters which have been deliberated. Passing of motions have been attempted through round-robin and has proven not to be a viable option.
- During the certification of the Bill by the Office of the State Law Advisor, the vote of the majority of members at the second meeting was seen as a policy decision that is rational as it serves legitimate government purpose.
- It was found to meet constitutional imperatives from a cooperative governance point of view in that this was a collective decision of both National and Provinces.

## Concerns Raised by the Bill

- **The National Inspectorate**
- Issues of autonomy and independence of the Provincial Inspectorate were raised, where National Inspectors are allowed to investigate without prior approval of the province and without being accompanied by the Provincial Inspectors.
- Section 76A provides 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 where the Provincial Inspectors are not available to accompany the National Inspectors.

# Final Mandates by Provinces

- The final mandates were submitted as follows: three provinces voted in favour of the Bill: four provinces voted against the Bill and two provinces abstained from voting.

| Provinces     | Status                      |
|---------------|-----------------------------|
| Eastern Cape  | Abstained from voting       |
| Free State    | Voted against the Bill      |
| Gauteng       | Voted against the Bill      |
| KwaZulu-Natal | Abstained from voting       |
| Limpopo       | Voted in favour of the Bill |
| Mpumalanga    | Voted in favour of the Bill |
| Northern Cape | Voted in favour of the Bill |
| North-West    | Voted against the Bill      |
| Western Cape  | Voted against the Bill      |

## Outcome on the Bill – NCOP decision

- The Select Committee referred the Bill to the National Council of Provinces. The Bill was rejected and referred for mediation to the Mediation Committee of the National Assembly on the 14 December 2021.
- The mediation on the Bill was placed on the Parliamentary programme for 2022 and scheduled for the 7 June 2022; however, the mediation meeting was cancelled.
- The Bill is awaiting rescheduled dates by the Mediation Committee and for the Parliamentary processes to unfold.



# Consumer Protection Act, 2008

# Background

- The Consumer Protection Act, 2008 (CPA) came into effect on the 31 March 2011.
- The CPA is a result of the 2004 policy review, which repealed the Unfair Business Practices Act of 1998, the Sale and Service Matters Act of 1964, and the Trade Practices Act of 1976.
- The legal framework burdened the consumers due to policies that were not transparent, lacked redress, hindered access to fair practices. They were not in line with global best practice regarding consumer rights.
- The CPA seeks to protect consumers in their day to day dealings with retailers, suppliers and other businesses.
- Provide comprehensive consumer redress for consumers and establish the National Consumer Commission.

# Background

- The CPA promotes an economic environment that supports and strengthens a culture of consumer rights and responsibilities, business innovation and enhanced performance.
- promotes a fair, accessible, and sustainable market place for consumer products and services;
- promote and protect the economic interests of consumers;
- Provides for fundamental consumer rights;
- Prohibits certain unfair marketing and business practices;
- improves access to, and the quality of, information that is necessary so that consumers are able to make informed choices according to their individual wishes and needs;
- protect consumers from hazards to their well-being and safety;
- develop effective means of redress for consumers;
- promote and provide for consumer education, including education concerning the social and economic effects of consumer choices;
- facilitate the freedom of consumers to associate and form groups to advocate
- and promote their common interests; and
- promote consumer participation in decision-making processes concerning the marketplace and the interests of consumers.

# Regulatory Impact Assessment

- Since the CPA commenced in 2011, various problematic areas have also been identified by stakeholders, consumers and the National Consumer Commission (NCC).
- In light of these challenges, **the dtic** found it necessary to appoint a service provider to conduct the RIA in order to determine and assess regulatory interventions and provide options analysis for **the dtic's** consideration.
- DNA Economics was appointed to conduct the RIA in terms of *Bid No.: dti 11/19-20* and finalised it in March 2021.

## RIA- CPA Cont...

### The CPA challenges

- The hierarchy of consumer complaints in the CPA;
- The mandate of the NCC in terms of consumer complaint handling;
- The impact of the misalignment of provincial consumer laws with the CPA and a general failure in the exercise of cooperative concurrent jurisdiction;
- Challenges in Alternative Dispute Resolution (“ADR”);
- Enhancement of the section 56 implied warranty provisions for the benefit of all stakeholders;
- The effectiveness of product recall provisions in the CPA;
- Implementation of labelling requirements for products containing Genetically Modified Organisms (GMOs);
- The need for an extended focus in the CPA on trade in illicit goods; and
- The need for a franchise ombudsman.

## RIA- CPA CONT...

### RECOMMENDATIONS

- The NCC should **establish separate complaints handling and investigation and enforcement departments** and increase its capacity in investigations and enforcement, whether by upskilling existing investigative capacity or bringing on board new skills and capacity;
- A **common case management system** that serves the NCC, Provincial Consumer Protector Authorities (PCPA) and ADR schemes should be developed to simplify referral and case management between institutions, avoid unnecessary duplication and rework in the complaints handling chain, and enable accurate data on the number and nature of complaints;
- **NCC inspection functions should be delegated** to PCPAs and customs officials to increase the reach and scale of its labelling and price inspections;
- The **NCC's monitoring function should include more proactive** oversight and analysis of data from ombuds;
- **Dedicated capacity** should be created in **the dtic** to support provinces to harmonise their laws and increase capacity;

# RIA- CPA CONT...

## RECOMMENDATIONS

- **Current fora and opportunities for coordination** should continue, supplemented by mechanisms such MOUs between institutions setting out respective roles and responsibilities.
- New industry codes should be developed for:
  - **Parts of motor vehicle value chain** (e.g. sale of new cars, sale of second-hand cars, repairs and maintenance; limited warranty for new and used cars; product recall)
  - **Franchising**, substituting regulations 2 and 3, adding detail on termination of agreements, and providing for mandatory mediation, conciliation and arbitration in cases of a dispute.
  - **Timeshare**, substituting the Property Timesharing Control Act, providing for cancellation of agreements, and limiting the penalties for cancellation, mandatory membership of CSOS or the CGSO;
- **Product recall** for food and foodstuff sector, referencing the primary regulator, with a supportive role for the NCC;
- **MIOSA and CGSO's codes** should be revised to include clear guidance on governance, accountability and reporting.

## RIA- CPA CONT...

### RECOMMENDATIONS

- The following provisions of the CPA should be amended:
  - **Section 52(1)** to extend the jurisdiction of the NCT over sections 40, 41 and 48;
  - **Section 69** to remove the restriction on accessing courts, allow access to the Small Claims courts in first line dispute resolution, insert prohibition on lodging a matter with more than one recourse venue at a time;
  - **Section 71** to include ADR agents as parties that can request the NCC to initiate an investigation, enable referring matters to the NCC.



## Possible Regulation Reviews in the CPA

- **the dtic** has commenced with the review of the CPA.
- The industry codes (motor industry and the consumer goods codes) are being reviewed for further amendments.
- A policy development process is in the pipelines.
- There are indication from experts that the CPA still requires implementation before it is amended. Meaning that the amendments can be addressed in the near future.
- The Timeshare legislation in **the dtic** is anticipated to be migrated to a more suitable Department.

# Intellectual Property Laws Amendment Act, 2013

## Background on implementation of IPLAA

- 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.

# Objectives 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 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 IP statutes to incorporate indigenous intellectual knowledge as a form of IP.
- The Copyright Act, 1978; the Performers' Protection Act, 1967; the Trade Marks Act, 1993; and the Designs Act, 1993, are amended to include certain forms of TK protection.

# Challenges with IPLAA

- This Act is not in force and academics 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. Only the registration of indigenous knowledge meeting IP requirements will be considered for registration under IPLAA
- Other features of IPLAA can be suitably implemented in the DSI piece of indigenous knowledge legislation to avoid overlapping functions between these two legislations.
- 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 legislations and they will not be implemented.

# Challenges with IPLAA

- A legal opinion was sought in 2020 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 CCRB 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 IPLAA, 2013.

## 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. There may be uncertainties that may subject it 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.
- In 2020, the Department consulted with stakeholders on the implementation of the Act.
- The Department of Science and Innovation (DSI) have developed sui generis legislation for the protection of Indigenous Knowledge.
- Possible overlaps with the legislation.
- International treaties have not been concluded in this area due to the complexity.
- The IPLAA uses the existing Intellectual Property system to protect indigenous knowledge.

# Institutional Arrangements of IPLAA

**CIPC is an entity of the Department of Trade, Industry and Competition with a legislative mandate to register:**

- Companies and Cooperatives
- Copyright in Films
- Designs
- Trade Marks
- Patents

**Under the following domestic legal framework:**

- Copyright Act, 1978 and Performers' Protection Act, 1967
- Patents Act, 1978
- Registration of Copyright in Cinematograph Films Act, 1977
- Trade Marks Act, 1993
- Designs Act, 1993
- Counterfeit Goods Act, 1997



## Way Forward

- The Department has commented to the regulations by the DSI in 2021 and will continue to engage with the DSI on the mandate.
- The Department is currently considering options as follows: for the mandate to be addressed by the Department of Science and Innovation to implement Indigenous Knowledge and for **the dtic** to amend other Acts such as Trade Marks Act of 1993, Designs Act of 1993 to ensure IK integration in the Intellectual property laws; or
- Repeal IPLAA; or
- For the Department to conduct further consultations on the implementation of IPLAA with the aim to have draft regulations by March 2023- May 2024.
- The work is still under consideration.

# **National Credit Amendment Act, 2019**

# Purpose of NCA

- 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.

## Background on Implementation Work

- September 2019: Presentation was made by **the dtic**, NCR and the NCT to the Portfolio Committee.
- In consultation with industry role players (Banking Association of Southern Africa and the National Credit Retail Federation) and agencies, implementation of the NCAA would have followed a phased approach for a duration of up to 24 months. A blended and cost effective approach was agreed with industry for implementation purposes.
- September 2020: Upon Ministerial request, industry provided proposals on implementation which were subsequently revised and resubmitted to **the dtic**
- 2021/22 APP: NCAA implementation plan was considered as a priority performance indicator.

# Key Provisions of NCAA

- Capped Debt Intervention (DI) : total unsecured debt owing to credit providers of no more than R50 000 with gross income of R 7 500 for an average of 6 months preceding DI application. Purpose is to promote a change in consumer borrowing and spending habits;
- DI Application (S 86A): Applicant must apply to the NCR to be declared over-indebted where the NCR can either accept / reject application or make a recommendation to the applicant to re-arrange debt with credit provider/s where applicant does not qualify for DI but is experiencing (or likely to) difficulty in satisfying obligations;
- Applicant is at liberty to apply to Magistrate's Court (S 86A(7)) or NCT to have obligations re-arranged;
- Disqualifications from DI (S 86A(2): developmental credit agreements; where credit provider approaches the Court to enforce a credit agreement – in terms of S 130;
- Reckless credit agreement: Debt Counsellor must determine if any of the applicant's credit agreements were reckless (S 86(6)(b)) and must report it to the NCR or Magistrate's Court (S 82A).

## Key Provisions – Relating to NCR and DI

- Record of debt intervention: The NCR is required to keep a record of DI applications as contemplated in section 86A, the status thereof and any orders granted in respect of same;
- 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.

## Key Provisions – s 87a

### Other Orders Relating to DI

- 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.

## NCAA – Implementation Funding

- **the dtic** subsequently requested funding from the NT for implementation of the NCAA.
- NT provided R 11.4 million in funding.
- Funding was disbursed as follows: NCR received R 7 million and NCT received R 4.4 million.



# NCAA TO NCAB

- A 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.
- Consultations between the Department, the Minister, some industry stakeholders between September 2019 and September 2020 highlighted further areas that would impede the implementation as well as cost effectiveness of the Act.
- To address the shortcomings and minimise the unintended consequences of the NCAA, there will be a subsequent amendment process in accordance with **the dtic** Annual Performance Plan (APP) for 2022/23.
- The NCAB will now be undergoing changes to develop a strengthened framework.
- The amendment to the NCAA will be underway.

## Status Update

- Due to the postponement of the NCAA implementation, funds expended thus far will not amount to fruitless / wasteful expenditure as the infrastructure at entities are currently in use and serving the intended purposes of the entities.
- The above is indicative of the state of readiness of the entities to effectively and efficiently service the public within the credit realm.
- The amendment process of the Act is prioritised as an APP output for 2022/23.

# Protection of Investment Act, 2015

# Acronyms

|     |   |
|-----|---|
| BIT | Bilateral Investment Treaty                     |
| PIA | Protection of Investment Act, Act No 22 of 2015 |
| FDI | Foreign Direct Investment                       |

# Background

- The Act was signed into law on 15 December 2015
- Subordinate regulation (Regulations on Mediation Rules) was subsequently prepared and promulgated as regards Dispute Resolution
- The Act was assented to by Proclamation
- Both the Act and the Regulations simultaneously commenced on 13 July 2018

# Objectives of the Act

- Clarifies standards of legal protection for all investors, foreign and domestic, by setting out provisions, ordinarily found in investment treaties, that are consistent with SA's Constitution and legal frameworks
- Reaffirms the Government's commitment to maintain an open, transparent environment for investment, and adds no new obligations on investors
- Ensure a balance between the rights and obligations of investors and Government, and the right to regulate in the public interest
- Encourages investors to align their activities to support SA's national economic development and socio-economic transformation objectives
- Provides that investors may seek protection of their investment in any competent SA court, statutory body or independent tribunal, under the Arbitration Act (1965)
- Provides a dispute avoidance mechanism wherein investors may raise their concern with Government for amicable resolution without resort to legal challenges.

# Provisions of the Act

Notable provisions include:

- Expropriation and compensation that are in line with SA's Constitutional requirements
- Fair Administrative Action confirms administrative, legislative and judicial processes are not arbitrary and ensure procedural justice
- Provides for arbitration in domestic courts
- Novel: Mediation to avoid disputes (set out in accompanying regulations)
- To date, no requests have been received for mediation and there have been no challenges to any government measure under the Act.

# **Legal Metrology Act, 2014**



# Context of Legal Metrology

- Metrology is the science of measurement. There are 3 parts to metrology - scientific/technology, industrial and legal metrology.
- Legal Metrology is that part of metrology that focus on regulatory requirements placed on measurements and measuring instruments. The aim is to provide confidence that measuring instruments that are used for health, public safety, consumer trading scales and taxation are all functioning within their allowed tolerances.
- The Legal Metrology Act 9 of 2014 was developed to assist Government departments or State entities that are not regulating measurements and measuring instruments optimally to address such gaps through targeting those areas to be regulated. The National Regulator for Compulsory Specifications (NRCS) is the implementing agency of the Legal Metrology Act.
- The essence of legal metrology activities is: developing regulations, approving measuring instruments (type approval) and market surveillance inspections.

# Consultations with Stakeholders

In order to assess the Legal Metrology needs of stakeholders, NRCS consulted stakeholders including the following:

- The South African Local Government Association (SALGA) in connection with electricity and water meters that municipalities use to recover costs of services.
- The Road Traffic Management Corporation (RTMC) to determine needs of various measuring devices that traffic law enforcement officers use.
- Additional consultations included those with South African Bureau of Standards regarding standards that can be used for legal metrology regulations, as well as other consultations with stakeholders such as business associations to assess their understanding of the needs in the market.

# Implementation progress

In order to develop appropriate regulations, the NRCS first develops interim measures before proposing regulations. Interim measures were developed for devices that include the following:

- Multidimensional instruments – devices that weigh while at the same time sizing the dimensions of an object. Such devices are used for freight measurements.
- Traffic speed measurements - various devices including radar, laser and cameras that are used by traffic law enforcement officers
- Classification system for vehicle at open road electronic tolling points (e-tag)
- Evidential breath analysers – devices to measure blood alcohol levels

## Other devices

NRCS is currently in process to develop nine (9) interim requirements which includes the following devices:

- Electricity energy meters
- Dynamic fluids other than water measuring devices
- Vehicle exhaust emissions

## Conclusions

- As interim measures are being implemented, the NRCS will continue consultations with stakeholders
- Once the NRCS is satisfied with interim measures, proposals will be made to **the dtic** to gazette the measures as regulations.
- **the dtic** and NRCS will continue to meet monthly to monitor the implementation of the Legal Metrology Act.

**Thank You**