

REPUBLIC OF SOUTH AFRICA

NATIONAL GAMBLING AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill published in Government Gazette No. 30124 of 26 July 2007)
(The English text is the official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

[B 31B—2007]

ISBN 978-1-920240-??-?

No. of copies printed 1 800

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the National Gambling Act, 2004, so as to change certain definitions and insert new definitions; to provide for the regulation of interactive gambling so as to protect society against the stimulation of the demand for gambling; to provide for the registration of players and opening of player accounts; to provide for the conditions applicable to interactive gambling licenses; to provide for further protection of minors and other persons vulnerable to the negative effects of gambling; to provide for the remittance of winnings to foreign nationals; to ensure that the gambling industry complies with the Financial Intelligence Centre Act; and to prevent gambling from being associated with crime, money laundering or financing of terrorist and related activities; and to provide for matters related thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 7 of 2004

1. Section 1 of the National Gambling Act, 2004 (Act No. 7 of 2004), hereinafter referred to as the principal Act, is hereby amended—

- (a) by the insertion after the definition of “**associate**” of the following definition: 5
“**‘authorised financial institution’** means a financial institution registered in terms of the Banks Act, 1990 (Act No. 94 of 1990), or comparable legislation in approved foreign countries contemplated in section 11A, which regulate institutions that conduct the business of a bank;” 10
- (b) by the insertion after the definition of “**Council**” of the following definition: 15
“**‘data’** has the meaning ascribed to that word in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);”;
- (c) by the insertion after the definition of “**electronic agent**” of the following definitions: 20
“**‘electronic betting or wagering’** means betting or wagering in the manner contemplated in section 4(3);
‘electronic communication’ has the meaning ascribed to that phrase in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);”;

- (d) by the insertion after the definition of “**excluded person**” of the following definition:
 “**‘external company’** has the meaning ascribed to that phrase in section 1 of the Companies Act, 1973 (Act No. 61 of 1973);”;
- (e) by the insertion after the definition of “**fixed-odds bet**” of the following definition: 5
 “**‘foreign national’** means an individual who is neither a citizen nor a resident of the Republic;”;
- (f) by the substitution for the definition of “**gambling device**” of the following definition: 10
 “**‘gambling device’** means equipment, software or any other thing that is used, or at the time of its manufacture was designed to be used, in determining the result of a gambling activity;”;
- (g) by the insertion after the definition of “**gambling machine**” of the following definition: 15
 “**‘home page’** has the meaning ascribed to that phrase in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);”;
- (h) by the insertion after the definition of “**informal bet**” of the following definitions: 20
 “**‘interactive gambling equipment’** means electronic or other equipment used by or on behalf of an interactive provider—
 (a) to store information relating to a person who is participating in the gambling;
 (b) to present, to persons who are participating or may participate in the gambling, a virtual game, virtual race or other virtual event or process by reference to which the gambling is conducted; 25
 (c) to determine all or part of a result or of the effect of a result; or
 (d) to store information relating to a result, but does not include equipment which— 30
 (i) is used by a person to take advantage of interactive gambling facilities provided by another person; and
 (ii) is not provided by that other person;
‘interactive gambling licence’ means an interactive gambling operator licence, or an interactive gambling employment licence contemplated in section 39A; 35
‘interactive gambling software’ means computer software designed for use in connection with interactive games, but does not include software designed for use solely in connection with a gambling machine;”;
- (i) by the substitution for the definition of “**interactive provider**” of the following definition: 40
 “**‘interactive provider’** means a person licensed to make an interactive game available to be played;”;
- (j) by the insertion after the definition of “**minor**” of the following definition: 45
‘money laundering’ has the meaning set out in section 1 of the Financial Intelligence Centre Act, 2001 (Act No.38 of 2001).”;
- (k) by the insertion after the definition of “**national licence**” of the following definition:
 “**‘nominated account’** means an account nominated by a player and held in the player’s name at an authorised financial institution;”;
- (l) by the insertion after the definition of “**person**” of the following definition: 50
 “**‘player account’** means an account held in the name of the player with an interactive provider;”;
- (m) by the insertion after the definition of “**register of excluded persons**” of the following definition: 55
 “**‘registered player’** means a person who is registered or provisionally registered to participate in interactive gambling activities in terms of this Act;”;
- (n) by the addition of the following definition: 60
 “**‘website’** has the meaning ascribed to that word in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002).”.

Insertion of section 1A in Act 7 of 2004

2. The following section is hereby inserted in the principal Act after section 1:

“Interpretation

- 1A.** In applying this Act, consideration may be given to—
- (a) foreign and international law; and
 - (b) international conventions, declarations and protocols relating to gambling.”.

Substitution of section 2 of Act 7 of 2004

3. The following section is hereby substituted for section 2 of the principal Act:

“Application of Act 10

2. This Act applies to all gambling activities licensed within the Republic, but does not apply to an activity that is regulated in terms of the Lotteries Act, 1997 (Act No. 57 of 1997).”.

Insertion of section 2A in Act 7 of 2004

4. The following section is hereby inserted in the principal Act after section 2: 15

“Purpose of Act

- 2A.** The purpose of this Act is to—
- (a) provide a legal basis for the regulation and control of all licensed gambling activities;
 - (b) preserve the integrity of the Republic as a responsible global citizen by ensuring an efficient and effective gambling regulatory regime;
 - (c) promote the development of a responsible gambling industry in the Republic;
 - (d) ensure that all gambling activities are conducted responsibly, fairly and honestly;
 - (e) ensure that all players are treated fairly and that the privacy of a player is respected;
 - (f) protect minors and other vulnerable persons from the negative effects of gambling;
 - (g) protect and advance the interests of historically disadvantaged persons;
 - (h) protect society against the over-stimulation of the demand for gambling;
 - (i) prevent gambling from being a source of, or associated with crime or disorder, or used to support crime, disorder or money laundering.”. 35

Amendment of section 3 of Act 7 of 2004

5. Section 3 of the principal Act is hereby amended—

- (a) by the deletion in paragraph (c) of the word “or” at the end of subparagraph (i) and the addition of the word “or” at the end of subparagraph (ii); and
- (b) by the addition in paragraph (c) after subparagraph (ii) of the following subparagraph:
 - “(iii) an interactive game.”.

Amendment of section 4 of Act 7 of 2004

6. Section 4 of the principal Act is hereby amended by the addition of the following subsection: 45

- “(3) A person may participate in the activities contemplated in subsections (1) and (2) by way of electronic communication.”.

Amendment of section 5 of Act 7 of 2004

7. Section 5 of the principal Act is hereby amended by the addition of the following subsection:

- “(3) The Minister may make regulations regarding—
- (a) specified games, systems and methods that meet the criteria specified in subsection (1)(a) as interactive games; and 5
 - (b) the forms of electronic communication that may or may not be regarded as a form of electronic communication for the purposes of this Act.”.

Insertion of section 5A in Act 7 of 2004

8. The following section is hereby inserted in the principal Act after section 5: 10

“Interactive gambling transaction

5A. An interactive gambling transaction—

- (a) commences when a player account is debited in the amount of a wager; and
- (b) concludes when the— 15
 - (i) player account is credited with the amount of winnings, in the case of a winning bet; or
 - (ii) player loses the game.”.

Insertion of sections 6A, 6B and 6C in Act 7 of 2004

9. The following sections are hereby inserted in the principal Act after section 6: 20

“Payment of prizes and remittance of profits and winnings

6A. (1) If a player in an interactive game conducted by an interactive provider wins a monetary prize, the interactive provider must immediately credit the amount to the player account.

(2) If a player in an interactive game conducted by the interactive provider wins a non-monetary prize the provider must— 25

- (a) have the prize delivered personally, by courier or by post to the player; or
- (b) give the player written notice of an address within the Republic where the prize may be collected. 30

(3) If a non-monetary prize in an interactive game conducted by an interactive provider has not been collected within a year after notification to the winner, at the place where it may be collected, the interactive provider—

- (a) may dispose of the prize by public auction or tender or in some other way approved by the board and must— 35
 - (i) pay for the disposal of the prize from the proceeds of the sale; and
 - (ii) pay the remainder of the proceeds into the player account; or
- (b) if there is no current player account and the interactive provider is unaware of the whereabouts of the player, the interactive provider must, subject to an order of the High Court for the forfeiture of such funds, pay the funds over to the State. 40

(4) If a claim for a prize in an interactive game is made to an interactive provider within a year of the date of identification of the winner, the interactive provider must— 45

- (a) immediately settle the claim; and
- (b) if the interactive provider cannot settle the claim immediately, the interactive provider must, by notice in the prescribed manner and form, immediately inform the claimant— 50
 - (i) of the interactive provider’s inability to settle the claim; and
 - (ii) that the claimant may, within 10 days of receiving the prescribed notice, request the board, in the prescribed form, to resolve the claim.

- (5) The claim against the interactive provider lapses if—
- (a) it is not settled within a year from the date of identification of the winner; and
 - (b) after a diligent search, the interactive provider has not located the player.

Dispute resolution and complaint procedures

- 6B.** (1) If there is a dispute arising out of an interactive game or any matter in relation thereto, either party may, within the prescribed period, refer the dispute to the board for resolution.
- (2) The board must resolve the dispute in accordance with the prescribed complaints resolution procedure.

Remittance to foreign nationals and external companies

- 6C.** Subject to exchange control regulations and taxation laws—
- (a) a foreign national player may remit prize money to a foreign destination; and
 - (b) an external company that is an interactive provider in terms of this Act, may remit dividends or profits to a foreign destination if the external company is able to meet its financial commitments, which include prize money and other liabilities, in the Republic.”.

Substitution of section 11 of Act 7 of 2004

10. The following section is hereby substituted for section 11 of the principal Act:

“Unauthorised interactive gaming unlawful

- 11.** A person must not engage in or make available an interactive game [except as authorised] other than an interactive game provided under a license issued in terms of this Act [or any other national law].”.

Insertion of section 11A in Act 7 of 2004

11. The following section is hereby inserted in the principal Act after section 11:

“Provision of interactive gambling facilities

- 11A.** (1) An interactive provider must—
- (a) not permit a person to participate in an interactive game unless that person—
 - (i) is registered as a player and has opened a player account with that interactive provider in that person’s name;
 - (ii) has nominated an account held with an authorised financial institution for the movement of funds into and out of the player account in the prescribed manner; and
 - (iii) has set a limit on the funds that may be transferred from that person’s nominated account into the player account, in the prescribed manner, for the purpose of participating in interactive games;
 - (b) immediately transfer funds in excess of the prescribed maximum amount held to the credit in the player account to the player’s nominated account;
 - (c) not conduct a further game if an interactive game conducted by an interactive provider is started but miscarries because of human error or a failure in the operating or telecommunications system and that further game is likely to be affected by the same error or fault; and
 - (d) in the prescribed manner and form—
 - (i) establish and verify the identity of players;
 - (ii) record the identity, address and account information of players;

- (iii) obtain and record a statement from a player confirming that a player is 18 years or older;
 - (iv) obtain and record a statement from a player confirming that the law of a country within which the player primarily resides, does not prohibit the player from playing interactive games; and
 - (v) report to the board any information which the interactive provider suspects may relate to the commission of an offence.
- (2) For the purposes of this section, an interactive provider or a player, must not—
- (i) convert any funds in a player account into any other form of value; or
 - (ii) transfer any funds from a player account to any account other than the account nominated in terms of subsection (1)(a)(ii) where the funds initially originated from.
- (3) The Minister must—
- (a) prescribe procedures for—
 - (i) player registration;
 - (ii) registration and control of player accounts; and
 - (iii) dealing with an interactive game that was started but discontinued because of human error or a failure in the operating or telecommunication system; and
 - (b) from time to time, publish a list of foreign countries from which an interactive provider may accept accounts for the purpose of movement of funds in the manner contemplated in subsection (1)(a)(ii).
- (4) The countries contemplated in subsection (2)(b) must meet the conditions set by the Financial Action Task Force or any international organisation of which the Republic is a member, and whose objective is to combat money laundering and financing of terrorist and related activities.”.

Amendment of section 12 of Act 7 of 2004

12. Section 12 of the principal Act is hereby amended—
- (a) by the deletion in subsection (3)(c) of the word “or” and the addition after subsection 3(d) of the word “or”; and
 - (b) by the addition to subsection (3) of the following paragraph:

“(e) register as a player for an interactive gambling activity.”.

Substitution of section 13 of Act 7 of 2004

13. The following section is hereby substituted for section 13 of the principal Act:

“Restrictions on granting credit to gamblers

13. (1) A person licensed to make any gambling activity available to the public must not extend credit contrary to this Act or any other law, in the name of the licensee or a third party, to any person for the purposes of gambling.
- (2) Despite subsection (1), an interactive provider may not extend credit to any person for the purposes of engaging in interactive games.”.

Amendment of section 14 of Act 7 of 2004

14. Section 14 of the principal Act is hereby amended by the substitution for subsection (12) of the following subsection:
- “(12) Every licensee authorised to make a gambling activity available to the public must—
- (a) make available at all of its licensed premises and on its website—
 - (i) the prescribed form to be used by a person wishing to register as an excluded person in terms of subsection (1); and
 - (ii) a directory of local recognised counselling, treatment or education services addressing the problems of compulsive and addictive gambling; and

- (b) prominently post a notice advertising the availability of those materials, forms and information, in the prescribed manner and form, at every [entry] entrance to those premises and on its website.”.

Amendment of section 15 of Act 7 of 2004

15. Section 15 of the principal Act is hereby amended by the addition of the following subsections: 5

(3A) Any person who provides any form of advertising or promotional services in respect of interactive gambling, shall be guilty of an offence, and liable to conviction.

(3B) Despite the provisions of subsections (1), (2), (3) and (4), an interactive provider who fails to comply with section 15 (3A), shall be guilty of an offence, and liable to conviction. 10

Amendment of section 30 of Act 7 of 2004

16. Section 30 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for subparagraph (ii) of paragraph (a) of the following subparagraph: 15

“(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 an interactive gambling licence;”

- (b) by the substitution in subsection (1) for item (aa) of subparagraph (iii) of paragraph (b) of the following item: 20

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

- (c) by the substitution in subsection (2) for paragraph (b) of the following paragraph 25

“(b) ensure compliance with, conduct investigations and issue offence notices under the Financial Intelligence Centre Act, to the extent required by that law, in so far as it applies to the gambling industry, other than interactive gambling;”

Amendment of section 31 of Act 7 of 2004

17. Section 31 of the principal Act is hereby amended— 30

- (a) by the substitution in subsection (1) for subparagraph (ii) of paragraph (b) of the following subparagraph:

“(ii) that are operated in terms of a national licence issued by that licensing authority; or“

- (b) by the substitution in subsection (1) for item (aa) of subparagraph (iii) of paragraph (b) of the following item: 35

“(cc) a national licence issued by that licensing authority;”

- (c) by the substitution in subsection (1) for subparagraph (ii) of paragraph (c) of the following subparagraph:

“(ii) a national licence issued by that licensing authority, to the extent that the national licensee is operating within that province;” 40

- (d) by the substitution in subsection (1) for paragraph (e) of the following paragraph:

“(e) to supervise and enforce compliance by licensees with the obligations of the accountable institutions in terms of the Financial Intelligence Centre Act, to the extent required by that law, in so far as it applies to the gambling industry, other than interactive gambling;” 45

- (e) by the substitution in subsection (1) for subparagraph (ii) of paragraph (g) of the following subparagraph: 50

“(ii) national licence issued by that licensing authority—.”.

Amendment of Part C of Chapter 2 of Act 7 of 2004

18. Part C of the principal Act is hereby amended by the substitution for the heading to Part C of the following heading:

“*Gambling premises and websites*”.

55

Amendment of section 17 of Act 7 of 2004

19. Section 17 of the principal Act is hereby amended—
- (a) by the substitution for the heading to section 17 of the following heading:
 “**Standards for gambling premises and websites**”;
 - (b) by the substitution for subsections (2) and (3) of the following subsections, respectively:
 - “(2) Every licensee operating licensed premises or websites at or on which a gambling activity is conducted or gambling games are accessed must post a notice, in the prescribed manner and form, warning of the dangers of compulsive and addictive gambling. 10
 - (3) A person licensed to engage in, conduct, or make available licensed activities in, on or from particular licensed premises or websites must comply with prescribed standards for the design, use and maintenance of such licensed premises or websites in or on which gambling activities [may] take place.”; and 15
 - (c) by the addition of the following subsection after subsection (3):
 “(4) The Minister may prescribe the standards for the security, access and maintenance of an interactive provider’s website and the requirements for the disclosure of information that must be met.”. 20

Insertion of section 18A in Act 7 of 2004 20

20. The following section is hereby inserted in the principal Act after section 18:

“Websites

- 18A.** (1) The board must keep a register of all websites on which an interactive game is licensed to be played.
- (2) The interactive provider must— 25
 - (a) prominently display the licence issued to the interactive provider on the home page of the website; and
 - (b) maintain adequate control and supervision of the website at all times.”.

Substitution of section 32 of Act 7 of 2004 30

21. The following section is hereby substituted for section 32 of the principal Act:

“Jurisdiction of board

- 32.** (1) The board has exclusive jurisdiction to—
 - (a) investigate and consider applications for, and issue, subject to Part B of this Chapter, national licences for interactive gambling; 35
 - (b) conduct inspections to ensure compliance with—
 - (i) this Act; and
 - (ii) the conditions of national licences for interactive gambling; and
 - (c) ensure compliance with, conduct investigations and issue offence notices under, the Financial Intelligence Centre Act, to the extent required by that Act, in so far as it applies to the gambling industry. 40
- (2) In accordance with this Act and subject to the direction of the Council provided for in Chapter 4, the board may exercise the powers and perform the duties assigned to it in terms of this Act.”. 45

Substitution of section 33 of Act 7 of 2004

22. The following section is hereby substituted for section 33 of the principal Act:

“Responsibilities of board

33. The board is responsible to—
- (a) take reasonable steps to ensure— 5
- (i) that unlawful activities relating to interactive gambling and unlicensed interactive gambling activities are prevented, detected and prosecuted;
 - (ii) that undertakings made by licensees, holding a licence to make interactive games available, are carried out to the extent required by the licence; 10
 - (iii) that employees within the interactive gambling industry are licensed to the extent required by this Act;
 - (iv) that each item of interactive gambling equipment or interactive gambling software, being used or made available for use by a licensee, is registered and certified in terms of this Act; 15
 - (v) that a person providing goods or services to an interactive provider which are integral to the provision of interactive games, hold a certificate of suitability issued by a relevant provincial licensing authority. 20
 - (vi) the complete and timely collection and remittance of taxes, levies and fees relating to interactive gambling activities;
- (b) approve internal control systems for licensees, which must include— 25
- (i) accounting systems; and
 - (ii) administrative procedures for the conduct of interactive games;
- (c) inspect websites at which interactive gambling is conducted and premises where interactive gambling equipment and software are located;
- (d) inspect interactive gambling equipment and interactive gambling software used for any activity that is permitted in terms of a national licence; 30
- (e) enforce this Act in respect of—
- (i) premises, activities or prescribed devices licensed by the board; and 35
 - (ii) offences;
- (f) supervise and enforce compliance by licensees with the obligations of accountable institutions in terms of the Financial Intelligence Centre Act, to the extent required by that Act, in so far as it applies to the gambling industry; 40
- (g) review licences and the activities of licensees in the prescribed manner; and
- (h) suspend or revoke any national licence issued by the board in accordance with section 43(3);
- [(a)](i) evaluate— 45
- (i) the issuing of national licences by provincial licensing authorities; and
 - (ii) the compliance monitoring of licensees by provincial licensing authorities;
- [(b)](j) conduct oversight evaluations of the performance of provincial licensing authorities in the manner envisaged in section 34, so as to ensure that the national norms and standards established by this Act are applied uniformly and consistently throughout the Republic; and 50
- [(c)](k) assist provincial licensing authorities to ensure that unlicensed gambling activities are detected in the manner envisaged in section 66(2) and (3), 55
- as provided for in Part B of this Chapter.”.

Amendment of section 35 of Act 7 of 2004

23. Section 35 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) [A] The board and a provincial licensing authority must keep a register of each person to whom it grants a national licence, or a provincial licence, including— 5
- (a) the activities permitted under each such licence;
 - (b) the address of any premises or website in, on or from which licensed activities may be engaged in, conducted or made available under licences issued by it; and 10
 - (c) the name and identifying information of each person who is known to hold 5% or more of the total financial interest in a licensee.”.

Amendment of section 37 of Act 7 of 2004

24. Section 37 of the principal Act is hereby amended—

- (a) by the insertion after subsection (1) of the following subsection: 15

“(1A) An interactive gambling licence must be issued as a national licence.”;
- (b) by the addition of the following subsections:
 - “(3) The Minister may prescribe criteria or a framework of subject matter to be taken into account by the Board in attaching conditions to a licence to make interactive games available to be played, which may include— 20
 - (a) technical specifications and standards for interactive gambling equipment and software used by the interactive provider in connection with the licensed activities; 25
 - (b) standards in respect of—
 - (i) a system used for the generation of results in a virtual game, virtual race or other virtual event or process used in the course of interactive gambling;
 - (ii) internal systems and controls of an interactive provider, in particular regarding the identification of customers and reporting of suspicious transactions; 30
 - (iii) any other aspect of the process of interactive gambling; and
 - (c) the provision of assistance to persons who are or may be affected by problems related to gambling. 35
 - (4) It is a condition of every licence to make interactive games available to be played that the interactive gambling equipment used by the interactive provider must be situated within the Republic.”.

Insertion of section 37A in Act 7 of 2004

25. The following section is hereby inserted in the principal Act after section 37: 40

“Maximum number of interactive gambling licences

- 37A.** (1) The Minister may, by regulations made in accordance with section 87 and after considering the criteria set out in this section, prescribe the maximum number of interactive gambling licences that may be granted in the Republic. 45
- (2) Before making the regulations contemplated in subsection (1), the Minister must consult the Competition Commission established in terms of section 19 of the Competition Act, 1998 (Act No. 89 of 1998), and must consider, amongst other things—
- (a) the number and geographic location of— 50
 - (i) existing licensed casinos and interactive providers operating within the Republic and the period of validity of the licences under which they operate;
 - (ii) additional interactive gambling licences available in terms of the maximum numbers in force; and 55

- (b) whether it is desirable to prescribe a maximum number of interactive gambling licences, after considering—
- (i) the incidence and social consequences of compulsive and addictive gambling;
 - (ii) black economic empowerment;
 - (iii) new entrants in the gambling industry;
 - (iv) job creation within the gambling industry;
 - (v) diversity of ownership within the gambling industry;
 - (vi) efficiency of operation of the gambling industry; and
 - (vii) competition within the gambling industry.
- (3) If the Minister prescribes a maximum number of interactive gambling licences in the Republic that is less than the number of existing interactive providers, the existing interactive providers may continue to operate, subject to the conditions of their respective licences, but no additional licences may be granted in the Republic until the number of existing interactive providers is less than the prescribed maximum number of interactive gambling licences.”.

Amendment of section 38 of Act 7 of 2004

26. Section 38 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection:
- “(2A) A person who wishes to apply for—
- (a) an interactive gambling operator licence, must apply to the board; and
 - (b) an interactive gambling employment licence, must apply to the relevant provincial licensing authority,
- in the prescribed manner and form and pay the prescribed fees.”.

Amendment of section 39 of Act 7 of 2004

27. The following section is hereby substituted for section 39 of the principal Act:

“Authority to issue national licence

39. A provincial licensing authority may issue a national licence, except an interactive gambling operator licence, to an applicant who meets the requirements of this Act.”.

Insertion of section 39A in Act 7 of 2004

28. The following section is hereby inserted in the principal Act after section 39:

“Authority to issue interactive gambling operator licence

- 39A. (1) The board may issue an interactive gambling operator licence to a person who meets the requirements of this Act.
- (2) A provincial licensing authority may, in accordance with section 28, issue an interactive gambling employment licence to an employee or a member of the management staff of an interactive provider.”.

Substitution of section 40 of Act 7 of 2004

29. The following section is hereby substituted for section 40 of the principal Act:

“National licence procedures

40. (1) Upon receiving an application for a national licence, a provincial licensing authority or the board must—
- (a) notify each other regulatory authority of the application;
 - (b) conduct the investigations prescribed by this Act with respect to probity, technical competence, industry competitiveness or any other prescribed matters; and

(c) conduct any prescribed hearings or other proceedings in respect of the application.

(2) After completing the prescribed investigations, hearings or other proceedings required in terms of subsection (1), a provincial licensing authority or the board may—

(a) notify the applicant in writing that it refuses to grant the licence applied for; or

(b) notify the applicant and each other regulatory authority in the prescribed manner that it proposes to issue the licence as applied for, and specify any conditions of the proposed licence.

(3) A provincial licensing authority that has received a notice in terms of subsection (2)(b) may request the Chief Executive Officer, except in respect of an interactive gambling operator licence, to conduct an oversight evaluation contemplated in section 42.”.

Amendment of section 43 of Act 7 of 2004

30. Section 43 of the principal Act is hereby amended by the addition of the following subsection after subsection (2):

“(3) The board may suspend or revoke an interactive gambling operator licence if any of the circumstances contemplated in subsection (1)(a) to (c) occur, within any part of the Republic.”.

Amendment of section 46 of Act 7 of 2004

31. Section 46 of the principal Act is hereby amended by the deletion in subsection (1) of the word “or” at the end of paragraph (e) and the insertion after paragraph (e) of the following paragraph:

“(eA) as an interactive provider; or;”.

Amendment of section 48 of Act 7 of 2004

32. Section 48 of the principal Act is hereby amended—

(a) by the insertion after subsection (2) of the following subsection:

“(2A) The board issuing a national licence may issue it as—

(a) a permanent licence; or

(b) a temporary licence, subject to the fulfilment of certain conditions within a specified period, with the intention that upon fulfilment of those conditions, a permanent licence will be issued in substitution of the temporary licence.”;

(b) by the substitution for subsection (4) of the following subsection:

“(4) A provincial licensing authority or the board issuing a national licence must issue a licence certificate in the prescribed form to the licensee.”; and

(c) by the addition of the following subsection after subsection (5):

“(6) The board issuing a national licence—

(a) may issue it with or without conditions; and

(b) must set out in the licence certificate—

(i) the duration of the licence;

(ii) the specific activities permitted in terms of the licence or a reference to the applicable law that describes such activities; and

(iii) the name or description of the specific premises in, on or from which the licensed activity may take place.”.

Amendment of section 49 of Act 7 of 2004

33. Section 49 of the principal Act is hereby amended—

(a) by the deletion in subsection (1) of the word “or” at the end of paragraph (e);

(b) by the substitution for paragraph (f) of the following paragraph:

“(f) has been convicted during the previous ten years, in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under the [Corruption Act, 1992 (Act No. 94 of

- 1992),] Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), the Financial Intelligence Centre Act, the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004) or an offence in terms of this Act or applicable provincial law, and has been sentenced to imprisonment without the option of a fine, or to a fine exceeding the prescribed amount, unless the person has received a grant of amnesty or free pardon for the offence; or”; and**
- (c) by the addition to subsection (1) of the following paragraph after paragraph (f):
- “(g) has been convicted during the previous ten years of any computer or computer software related crime.”.

Amendment of section 50 of Act 7 of 2004

- 34.** Section 50 of the principal Act is hereby amended—
- (a) by the deletion in subsection (2) of the word “or” at the end of paragraph (h);
- (b) by the substitution for paragraph (i) of the following paragraph:
- “(i) has been convicted during the previous ten years, in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under the [**Corruption Act, 1992 (Act No. 94 of 1992),] Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), the Financial Intelligence Centre Act, the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004) or an offence in terms of this Act or applicable provincial law, and has been sentenced to imprisonment without the option of a fine, or to a fine exceeding the prescribed amount, unless the person has received a grant of amnesty or free pardon for the offence; or”; and**
- (c) by the addition to subsection (2) of the following paragraph after paragraph (i):
- “(j) has been convicted during the previous ten years of any computer or computer software related crime.”.

Insertion of expression “or the board” in Act 7 of 2004

- 35.** The principal Act is hereby amended by the insertion of the expression “or the board” after the expression “provincial licensing authority”, wherever it appears in sections 50, 53, 54, 58, 59 and 60.

Amendment of section 56 of Act 7 of 2004

- 36.** Section 56 of the principal Act is hereby amended—
- (a) by the deletion in paragraph (a) of the word “and” at the end of subparagraph (ii) and the addition of the word “and” at the end of paragraph (b)(ii);
- (b) by the addition of the following paragraph after paragraph (b):
- “(c) may refuse to issue a licence if the board considers that the proposed website or site for the location of the interactive gambling equipment is unsuitable for the proposed licensed activities having regard to this Act, any other applicable legislation or any other relevant factor.”.

Amendment of section 57 of Act 7 of 2004

- 37.** Section 57 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “(1) When considering an application for a licence, an application for an employment licence or a request to transfer a licence, a provincial licensing authority or the board may request—”; and

- (b) by the addition of the following subsection after subsection (3):
“(4) The board must record every probity report it prepares in terms of this Act and compile such reports as are contemplated in subsection (3).”.

Amendment of section 65 of Act 7 of 2004

5

38. Section 65 of the principal Act is hereby amended—

- (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (e) and the insertion after paragraph (e) of the following paragraph:
“(eA) monitoring and evaluating the gambling industry’s international competitiveness and advising the Minister thereon; and 10
- (b) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
“(c) recommend to the Council guidelines for an effective, uniform and consistent implementation of this Act throughout the Republic and changes to bring about uniformity in the laws of the various provinces in relation to casinos, racing, gambling and wagering;” 15
- (c) by the deletion in subsection (2) of the word “and” at the end of paragraph (e) and the addition of the word “and” at the end of paragraph (f); and
- (d) by the addition to subsection (2) of the following paragraph:
“(g) collate and make available to the Minister statistical data, information and reports necessary for monitoring the performance of the interactive gambling sector.” 20
- (e) by the addition in subsection (4) of the following paragraph:
“(d) may, in consultation with the Council, make rules not inconsistent with this Act, determining any matter that is considered necessary or expedient for purposes of achieving the objects of this Act.” 25

Amendment of section 66 of Act 7 of 2004

39. Section 66 of the principal Act is hereby amended by the addition of the following subsection:

- “(6) Where— 30
- (a) this Act requires oversight and evaluation as contemplated in section 33; and
- (b) the board concludes, on reasonable grounds, that the provincial licensing authority is unable to perform any such function effectively,
 the Minister must consult with the responsible Member of the Executive Council of the relevant province to determine the steps to be taken to ensure the fulfilment of that statutory obligation.” 35

Amendment of section 82 of Act 7 of 2004

40. Section 82 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) It is an offence to contravene sections 6A, 7 to 20, 22(1) and (4), 23(1), (2) and (3), 25(1), 26(2) and (3) and 28 of this Act.” 40

Insertion of section 86A in Act 7 of 2004

41. The following section is hereby inserted in the principal Act after section 86:

“Delegation

86A. (1) The board may, subject to this Act and in consultation with the relevant provincial licensing authority, delegate any powers or duties that are to be exercised or performed by the board in terms of section 33(a) to (g) to any provincial licensing authority. 45

- (2) A delegation in terms of subsection (1)—
- (a) must be in writing;
 - (b) is subject to any limitations, conditions and directions the board may impose;
 - (c) does not divest the board of the responsibility concerning the exercise of the power or the performance of the duty.”. 5

Amendment of section 87 of Act 7 of 2004

42. (1) Section 87 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (g) of the following paragraph: 10
- “(g) matters contemplated in section 5, 6A, 11A, 13, 14, 15, [or] 17 or 48, any other matters to be prescribed in terms of this Act, and in general, any incidental matter that may be considered necessary or expedient to prescribe in order to achieve the objects of the Act.”.
- (2) Section 87 of the principal Act is hereby amended by the substitution for paragraph (d) of subsection (3) of the following paragraph: 15
- “(d) the period of duration of a licence and the procedures and fees for the amendment or renewal of licenses.”.

Short title and commencement

43. This Act is called the National Gambling Amendment Act, 2007, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 20

Insertion in Act 15 of 2004

44. The following section is hereby inserted in the principal Act after section 88:

Tax on interactive gambling

88A. Tax on interactive gambling activities will be imposed in terms of appropriate legislation. 25

**MEMORANDUM ON THE OBJECTS OF THE
NATIONAL GAMBLING AMENDMENT BILL, 2007**

1. BACKGROUND

- 1.1 The interactive gambling industry in South Africa is currently unregulated and is generally plagued by crime, criminal elements, little or no protection of players, uncontrolled exposure of children and other persons vulnerable to gambling and a host of other negative factors. This situation has resulted in a considerable loss of revenue to the national fiscus and compromises the country's reputation as a responsible global citizen and the reputation of the gambling industry in general.
- 1.2 Interactive gambling is generally accepted to mean all forms of remote gambling taking place via the internet or other related forms of telecommunication. The Bill, however excludes interactive gambling activities taking place between two or more persons that are facilitated by a third party, as the implications of this form of interactive gambling are currently being investigated.
- 1.3 Item 5 of the Schedule to the National Gambling Act, 2004 (Act No. 7 of 2004) ("the Act"), requires the Minister to introduce in Parliament, within two years of the effective date of the Act, legislation for the regulation of interactive gambling. The Act came into operation on 1 November 2004.
- 1.4 In October 2005, a committee that was established by the National Gambling Board ("the Board") in terms of item 5 of the Schedule to the Act, presented a report on the regulation of interactive gambling to the Board and the National Gambling Policy Council ("the Council") in accordance with the requirements of the Act.
- 1.5 The report identified a number of key impact areas for consideration, which included—
 - (a) competitiveness with global gaming jurisdictions;
 - (b) employment;
 - (c) competition;
 - (d) gambling exposure;
 - (e) addiction to gambling;
 - (f) exposure to money laundering and organised crime; and
 - (g) cost of regulation and monitoring.
- 1.6 After considering the report, the Board and the Council recommended that the Department prepare draft legislation for the effective regulation of interactive gambling, addressing the following areas:
 - (a) effective and uniform regulation, licensing and controlling of interactive gambling;
 - (b) protection of persons who participate in licensed gambling activities;
 - (c) protection of children and other vulnerable persons from gambling;
 - (d) protection of society and the economy against over-stimulation of demand for gambling;
 - (e) licensing of interactive gambling providers and registration of players;
 - (f) conducting of interactive gambling activities in a transparent, fair and equitable manner; and
 - (g) monitoring and control of interactive gambling.
- 1.7 The policy framework for interactive gambling prepared by the Department recommended that interactive gambling should form part of the broader policy for the regulation of all forms of gambling and be regulated by the Board.

2. OBJECTS OF THE BILL

2.1 Overview

The Bill seeks to address the socio-economic implications of an unregulated interactive gambling industry by establishing an effective and efficient regulatory framework, based on sound policy objectives that are in line with the government's broad policy framework for the regulation of all forms of gambling.

2.2 Provision of interactive gambling games

The Bill establishes a legal basis for the provision, regulation and control of interactive gambling within the Republic and also provides for the approval of interactive games, interactive gambling equipment and software.

2.3 Player protection

The Bill provides for the registration of players and for player exclusion on a voluntary basis. The Bill also contains provisions to ensure that registered players are treated fairly by interactive providers. It also provides for the resolution of disputes between players and interactive providers by the Board in accordance with prescribed dispute resolution systems.

2.4 Protection of children and other vulnerable persons

The Bill seeks to protect minors and other vulnerable persons from being harmed and exploited by gambling by placing an obligation on the interactive provider to ensure that players utilising their interactive gambling services are 18 years or older and also provides for the Minister to prescribe mechanisms and procedures to ensure that unregistered players and children cannot access interactive gambling facilities.

2.5 Advertising

The Bill provides for licensed interactive gambling providers only to advertise for interactive gambling and extends the restrictions contained in the Act in respect of advertising to interactive gambling as well. It also empowers the Minister to prescribe the manner and form for interactive gambling advertising.

2.6 Licensing

The Bill provides for the licensing of interactive gambling providers as well as their employees and premises. The Bill further provides for the Minister to prescribe procedural requirements for licensing by the Board in order to ensure compliance with certain technical specifications and standards for equipment, software and premises.

2.7 Compliance and enforcement

The Bill places an obligation on the Board to ensure compliance by all stakeholders with the provisions of the Bill. The Bill further makes provision for the Minister to prescribe interactive gambling software and hardware procedures to maintain the integrity of interactive gambling activities, registered player data and game data.

2.8 Problem gambling

The Bill makes provision for the monitoring and reporting of registered players' gambling habits to assist the board in detecting problems associated with addictive or compulsive gambling. It also places an obligation on

interactive providers to develop self-diagnosis systems to provide players with early warning signs.

2.9 Money laundering

The Bill provides for the Minister to prescribe control systems in respect of money laundering which will allow for flexibility in dealing with technological developments. It also creates an obligation on interactive gambling providers to report suspicious and illegal activities.

2.10 Relationship between national and provincial gambling

Since interactive gambling falls under the functional area of concurrent national and provincial legislative competence, the Bill proposes the allocation of certain functions and duties relating to the implementation of the Bill to provincial licensing authorities as well as the delegation of certain powers and duties of the board to provincial licensing authorities. It also establishes certain uniform norms and standards to generally regulate the gambling industry within the Republic.

3. BODIES AND ORGANISATIONS CONSULTED

The following bodies/organisations were consulted:

- National Gambling Board;
- All provincial licensing authorities;
- National Treasury;
- South African Revenue Services;
- South African Reserve Bank; and
- Casino Industry Association.

4. FINANCIAL IMPLICATIONS

The Board will administer the regulation of interactive gambling and additional personnel will accordingly be required to undertake this function. The Board will make available the additional expenditure in its budget. It is also anticipated that certain expenses will be recouped from the interactive gambling licensing revenue.

5. COMMUNICATION IMPLICATIONS

The Bill was published in the *Gazette* for public comment and further consultations were held with other government departments, sector regulators, industry associations and other interested persons.

6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the Department of Trade and Industry are of the opinion that the Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within a functional area listed in Schedule 4 to the Constitution, namely “gambling”.
- 6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

