

REPUBLIC OF SOUTH AFRICA
NATIONAL GAMBLING AMENDMENT BILL

(As introduced in the National Assembly as a section 76 Bill)

(MINISTER OF TRADE AND INDUSTRY)

[B - 99]

GENERAL EXPLANATORY NOTE:

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

B I L L

To amend the National Gambling Act, 1996, so as to provide anew for the disposal of the financial interest of certain entities in gambling activities; to provide for any legal disability of certain entities to be disregarded under certain circumstances; and to provide for the retrospective operation of those provisions; and to provide for matters connected therewith.

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

Amendment of section 13 of Act 33 of 1996, as amended by section 1 of Act 36 of 1999

1. (1) Section 13 of the National Gambling Act, 1996, is hereby amended:

(a) by the substitution for subparagraph (ii) of paragraph (f) of subsection (1) of the following subparagraph:

"(ii) in the case of the North West Development Corporation (Pty) Limited, the Transkei Development Corporation Limited and Ciskei Peoples Development Bank Limited or any company or corporation into which any of those entities may have been converted or any organ of State or organisation with which the State is concerned to which those entities have transferred an interest in gambling activity, from a date determined by the Minister by notice in the Gazette; or"; and

(b) by the substitution for paragraph (fA) of subsection (1) of the following paragraph:

"(fA) a provincial licensing authority shall, notwithstanding paragraph (f), disregard—

(i) any financial interest in any gambling activity held by the State, an organ of State or any organisation with which the State is concerned, including any entity contemplated in paragraph (f)(ii);

(ii) any legal disability such as provisional judicial management, judicial management or any form of winding-up as provided for in the Companies Act, 1973 (Act No. 61 of 1973), or in any other law, of any entity contemplated in subparagraph (i),

when considering an application for a licence contemplated in paragraph (j)

before the date contemplated in paragraph (f)(i), (ii) or (iii), as the case may be."

(2) Subsection (1) shall be deemed to have been enacted and to have come into operation on 18 April 1997, and all licensing procedures followed, including the consideration of applications for casino licences and conclusions reached regarding the qualifying status of any applicant for a casino licence, which would have been valid if subsection (1) had been enacted and in operation on that date, are to the extent necessary, hereby validated.

Short title

2. This Act is called the National Gambling Amendment Act, 1999.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL GAMBLING AMENDMENT BILL, 1999

Purpose of Bill

The motivation for the enactment of the Gambling Matters Amendment Bill, 1999 [B33-99] was set out in detail in its accompanying Memorandum on the Objects of that Bill.

That motivation included the consideration that section 13(1)(f) of the National Gambling Act, 1996 (Act No. 33 of 1996) ("the Act"), should be amended to allow the Minister to determine, by notice in the *Government Gazette*, the cut-off date by which the State must divest itself of all its financial interests in gambling activities.

The then proposed section 13(1)(f) was drafted so as to cast the net as widely as possible to include any form of financial interest in gambling activities of the State, any organ of State or any organisation with which the State is concerned in the national sphere of government and other spheres.

The Gambling Matters Amendment Bill, 1999, was duly passed by Parliament as the Gambling Matters Amendment Act, 1999 (Act No. 36 of 1999) ("the Amendment Act"), and by means of Proclamation No. R.71, 1999, the Minister has determined 10 May 2003 as that cut-off date.

There is now a difference of opinion as to whether the Amendment Act - section 13(1)(f)(ii) in particular - includes North West Development Corporation (Pty) Ltd ("NWDC"). Since it is an organisation with which the State is concerned, the intention was clearly to include it in section 13(1)(f)(ii) of the Amendment Act. This is evident from the Memorandum on the objects of the Amendment Act that supported the passing of the said Act.

It should be noted that—

- The NWDC was placed under provisional judicial management during February 1999 and under final judicial management during August 1999.
- The NWDC was therefore already under the legal disability of judicial management by the time of the passing of the Gambling Matters Amendment Act during April 1999.
- The intention of the Amendment Act is that the NWDC should not be required to dispose of its financial interest in gambling activities before 10 May 2003, in spite of that legal disability.

If the provisions of section 13(1)(f)(ii), as they now read, are interpreted as not including NWDC, this would result in—

- The NWDC being in breach of a statutory duty to have disposed of its financial interest in gambling activities by 10 May 1999.
- That breach potentially leading to a disqualification under the provincial gambling legislation of all those existing casino licences and new casino licence applications in which the NWDC holds an indirect shareholding.
- The prospect of the NWDC being forced to dispose of those shares in a "fire sale", which would cause immediate and direct loss to the North West provincial government and the central government in excess of R1 billion.

- The consequential dissolution of the NWDC and its remaining interests and assets will unavoidably lead to further job losses in those interests that will be closed, thereby also affecting extended families that are reliant on their breadwinners.

It is accordingly proposed in clause 1(a) of the Bill that section 13(1)(f)(ii) of the Act be amended in order to remove the existing doubt as to whether it is included or not. Contrary to the drafting convention that law has to be drafted in general terms, it has been decided that the entities involved be referred to by name, in order to put the provision beyond any doubt.

Clause 1(b) of the Bill proposes an amendment to subparagraph (fA) of section 13(1) of the Act, the effect of which will be to clarify and confirm the legislature's specific intention that the entities contemplated by subparagraph (ii) of section 13(1)(f) of the Act, as amended in terms of the Bill, are to be dealt with by the provincial licensing authorities in accordance with the provisions of that subparagraph (fA), and regardless of any legal disability of any of those entities. The latter provision contemplates, for example, the NWDC's provisional judicial management and other such legal disabilities.

The proposed amendments should appropriately apply with retrospectivity in order to ensure that the legislature's intention is achieved and also to safeguard against the risk of technical challenges. In order to achieve those objectives, it is considered prudent to make the amendments retrospective as from the commencement of the Act. Clause 1(b) of the Bill proposes accordingly.

Consultation

The Ministry of Finance and the National Gambling Board were consulted on the Bill.

Parliamentary procedure

The Department of Trade and Industry and the State Law Advisers are of the opinion that the Bill should be dealt with by Parliament in accordance with section 76 of the Constitution of the Republic of South Africa 1996 (Act No. 108 of 1996).