FRONTLINE AFRICA
ADVISORY

Legislative and Regulatory highlights

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Introduction

- With two months to go before the elections, Parliament has been working to finalise priority bills, including the Electricity Regulation Amendment Bill, the Gas Amendment Bill, and the Electoral Matters Amendment Bill.
- Most Portfolio Committees also concluded their legacy reports as Parliament prepared to entered the constituency period from 28 March and is scheduled to dissolve on 23 April ahead of the elections.

Small Medium and Micro Enterprises

Draft National Business Licensing Policy

- On 01 March 2024, the Department of Small Business Development (DSBD) published the draft National Business Licensing Policy for public comment.
- The draft policy aims to assist in identifying, updating and modernising licensing legislation that addresses challenges related to previously disadvantaged SMMEs within specific local industries and protects priority local business undertakings.
- The policy further focuses on developing and implementing smart and effective licensing arrangements.
- DSBD has recently signed a declaration of intent on co-operation in the fields of entrepreneurship and innovation with Algeria. The declaration is expected to promote collaboration and partnership in the areas of policy, institutional, regulatory and operational levels with the aim of developing the start-up ecosystem in both countries.
- Minister Stella Ndabeni- Abrahams has also outlined the department's plans to creating enabling policy frameworks that include:
  - The development of the National Small Enterprise Development Framework
  - Making changes to the National Small Enterprise Bill which will lead to the creation of the Small Business Ombudsman
- The Department has also outlined its plans to create a "one-stop" shop centre for all small businesses - The Small Business Enterprise Development and Finance Agency.

Possible Implications

- The fair, transparent, and ethical allocation of business licenses could ensure that legitimate businesses are able to operate within the confines of the law and minimize the number of illegitimate licenses issued.
- Should the policy be successfully implemented, it could promote preferential treatment business licensing for SMMEs, which could possibly encourage informal traders to formalize their businesses in a more efficient, hassle-free manner.
- The development of smart and effective arrangements could reduce regulatory burdens of the current system and facilitate ease of doing business for SMMEs.
- In light of the upcoming elections and the change in cabinet, it remains to be seen whether new political leadership will be able to fast track the implementation of the policy in order to assist with the recovery of the SMME space in South Africa.

Energy

Electricity Regulation Amendment Bill

- On 14 March 2024, the National Assembly passed and transmitted the Electricity Regulation Amendment Bill to the National Council of Provinces (NCOP).
- The Bill aims to:
  - Provide for an open market platform that will allow for competitive electricity trading in South Africa.
  - Make provision for the creation of the Transmission Systems Operator (TSO) to act as a wheeler and dealer of electricity.
  - Strengthen the role of the National Energy Regulator of South Africa (NERSA) to include powers to license entities that will implement the competitive market and have regulatory oversight during transitioning to a competitive market.
- The Bill has been criticised by political parties and organised labour that include the Economic Freedom Fighters (EFF) and the South African Federation of Trade Unions (SAFTU), who assert that the legislation will further the objectives of privatising the energy provision of the country.

- The Bill is also in line with NERSA's latest decision to approve:
    - o The transfer of Eskom Holdings' powers and duties related to the Power Purchase Agreements (PPAs) with independent power producers (IPPSs) to the National Transmission Company of South Africa (NTCSA).
    - o The issuance of a cost recovery letter to the NTCSA as the buyer of electricity from the IPPs, replacing Eskom in this role – which enables the NTCSA to recover the cost of buying the electricity through tariffs paid by its clients, including municipalities and its retail clients.
    - o The amendment of the IPPs' generation licences to designate the NTCSA as the buyer of the electricity they produce, replacing Eskom in this role.

Possible Implications

- The Bill is a positive step towards integrating the private sector in the procurement of energy that can feed into the country's power grid.
- The Bill is also likely to promote the growth of independent power producers that can compete with Eskom.
- The creation of NTCSA, together with the powers and duties transferred to it, alleviates the pressure from Eskom, which can focus on the generation and distribution of power.
- However, given the history of state-owned entities in the country, and how poorly they have been managed, it remains to be seen if the NTCSA can be effective in its new role within the energy market.
- NERSA is also likely to receive more attention and scrutiny on the role it will play to issue, amend, withdraw, suspend, and revoke licenses, in light of the historical criticism it has received about how it has failed to regulate the electricity, piped-gas and petroleum pipelines industries.

Electoral Matters

Electoral Matters Amendment Bill

- On 12 March 2024, the National Assembly passed the Electoral Matters Amendment Bill, with 240 votes in support and 90 in opposition.
- The Bill looks to amend the Political Party Funding Act of 2018, to align various sections of the legislation with the Electoral Amendment Act of 2023, which enables independent candidates to contest elections for seats in the National Assembly and provincial legislatures.
- Worth noting in the Bill is the attempt to regulate the private and public funding of independent candidates and independent representatives, as it seeks to provide for the inclusion of independent representatives who may receive funds from the Multi-Party Democracy Fund (MPDF).
- This element of the Bill has received much criticism from political parties and concerned organisations, such as *My Vote Counts*, who believe the proposed amendments will limit transparency in terms of party funding.
- The Bill further proposes increasing the proportionality of the party funding allocation from 66.6% to 90% and decreases the equitable allocation from 33.3% to 10%.
- In its current form, the Bill will work towards the African National Congress' (ANC) favour, which has received significant attention for its financial difficulties in the past year.
- While the Democratic Alliance (DA) maintains its opposition to the Bill, much like the ANC, it stands to benefit more given its position in Parliament, as the main opposition party.
- The Bill is currently under consideration by the National Council of Provinces (NCOP).

Possible Implications

- There are major concerns that the Bill favours well established political parties, creating an uneven playing ground for smaller parties and individual candidates. These concerns, however, ignore the fact that this is an outcome of a democratic process through which parties with more votes get a larger share of seats in Parliament and, accordingly, a bigger share of funding.
- Castigating major political parties for receiving a larger share of funding from the MPDF or similar instruments is counter-intuitive and paradoxical, as it fails to recognise that political funding is a critical element of sustaining democracy.
- The charge that Bill will also limit the amount of information citizens will have around party funding is also without merit; for the Independent Electoral Commission (IEC) will, as it has been doing, publish fund allocation to political parties and independent candidates through regular reports.

Transport

Economic Regulation of Transport Bill

- On 12 March 2024, the National Assembly passed the Electoral Matters Amendment Bill, with 240 votes in support and 90 in opposition.
- The Bill focuses on streamlining transport regulations and consolidating economic regulations of all forms of transport (such as road, rail, port and air) under a single framework.

- The Bill will also focus on achieving an efficient and cost-effective transport system through the creation of a Transport Economic Regulator. The Regulator will be tasked with:
  - o Regulating the provision of adequate and efficient transport facilities and services
  - o Research market structures and service delivery to determine whether or not particular entities, markets, facilities or services within the transport sector are functioning competitively amongst others.
- The transport sector has seen a number of developments take place that include the Department of Transport's decision to request for an extension of the COVID-19 Taxi Relief Fund in order to assist more taxi operators benefit from the fund.
- Transnet has also proposed a multiyear tariff structure to balance the interest of the market demand (expectations of network access seekers), readiness of market players and existing legal requirements.
- This also includes the creation of a framework within Transnet rail infrastructure that would break Transnet's monopoly in the sector and set tariffs for three to five years with provisions for minor annual reviews and significant reviews every five years.

Possible Implications

- The Bill will empower the proposed Regulator to ensure fair pricing by all transport entities operating in the country.
- The Regulator will also be expected to ensure that any criminal activities and acts of corruption are dealt with and that all actors in the transport sector are provided with fair access to the transport market.
- While the creation of a Regulator can be seen as a positive step forward, it remains to be seen how effective it will be to manage the sector, given the criticism levelled against other regulators in the country in respect of their inability to effectively manage their respective sectors.

Creative Sector

Copyright Amendment Bill

- On 29 February 2024, the National Assembly and the NCOP passed the Copyright Amendment Bill and sent it to the President for assent.
- Introduced in 2017, the Bill went through several rounds of discussions and drafts including final amendments by the NCOP.
- Additions to the Bill include:
  - o Equitable remuneration or share in royalties regarding literary or musical works, with the author being entitled to receive a fair share of the royalty received.
  - o The author of a visual artistic work in which copyright subsists, as may be applicable, must be paid royalties on the commercial resale within the art market of that particular work.
  - o A resale royalty right may not be alienated, save for transmission on the death of the holder of the right by testamentary disposition, or by operation of law.
- The Bill has been met with great opposition by various sections of the industry, with the International Publishers Association (IPA), the International Association of Scientific, Technical, and Medical Publishers, International Authors Forum, and the International Federation of Reproduction Rights Organizations all requesting the National Assembly not to adopt the Bill.
- The four entities argue that the Bill's excessive focus on exceptions, instead of the rights of creators, is not what the function of a new copyright law should be, as they believe it devalues the art and creates new avenues which creators will no longer have the right to earn royalties from.
- The entities also believe that the major issue of the Bill is the excessive and defective system of exceptions and limitations, which will prevent the establishment of a fair marketplace for books and is especially penalising for literary, educational and academic copyrighted works.
- The ANC has asserted that it will request President Cyril Ramaphosa to return the Bill back to parliament for further consideration.

Possible Implications

- The amended Bill continues to face significant opposition due to the possible exploitation creatives may encounter.
- Furthermore, there has not been meaningful consultation on the Bill, in that many reservations from the sector players and other stakeholders have either been ignored or not sufficiently incorporated in the latest version of the Bill.
- It would be recalled that this would not be the first time the President referred the Bill back to Parliament. He previously did so in 2020.

Sport Sector

South African Institute for Drug-Free Sport Amendment Bill

- On 26 March 2024, the National Assembly passed the South African Institute for Drug-Free Sport Amendment Bill.
- The Bill looks to establish an anti-doping agency, towards promoting and ensuring the adoption of a centralised doping control programme, which may subject any athlete to testing, with or without advance notice, both in- and out-of-competition.
- The amendments follow the World Anti-Doping Agency (WADA) identifying several sections of the Act that did not comply with its code.
- This also follows the Bloemfontein laboratory losing its accreditation from WADA, as its urine-sample testing was not up to the regulator's standard.
- As the country prepares to participate in the upcoming Paris Olympics later this year, the SA Institute for Drug-Free Sport has organised for urine sample testing to be done in Doha, Qatar.
- The Bill will also see the creation of an Anti-Doping Appeal Board, which will process all related appeals within its jurisdiction.

Possible Implications

- The Bill will seeks to place the country's anti-doping standards in line with international standards. This will facilitate the country's seamless participation in international sporting events, that also include the upcoming Olympics.
- South Africa can continue to be strongly considered for possible international tournaments, similar to events such as the FIFA and IRB World Cups.

End of 6th Parliament

Portfolio Committees Legacy Reports

- Several portfolio committees released their legacy reports. These reports provided an overview of the activities the committees undertook during the 6th Parliament, the outcome of key activities, as well as any challenges that emerged during the period under review.
- The Portfolio Committee on Small Business Development noted the importance of ensuring that recommendations and resolutions are effectively implemented and carried out. As such, the next Parliament should work towards developing a system that can monitor and track executive's responses to suggestions provided by committees.
- The Committee also noted how there are few instruments in existence to foster private sector partnerships with small businesses. It therefore suggested the development of a comprehensive market access strategy that is crucial to streamline the department's mandate.
- In light of the number of small enterprises the country kept losing, red tape was also noted as a key obstacle to promoting economic opportunities, with government's initiatives such as Regulatory Impact Assessment and the Red Tape Reduction strategy all not being effective to produce favourable environments.
- During the Portfolio Committee on Health's Legacy Report, the Committee noted the importance of continuously monitoring the state of health service delivery across the country. This includes monitoring the implementation of the ideal clinics' realisation and maintenance programme, as the country prepares to improve the status of public facilities in preparation for the implementation of the National Health Insurance (NHI).
- The Committee also noted the lack of dedicated resources to deal with the overwhelming volume of public submissions received on the NHI Bill. This challenge presented a major delay in the processing of the submissions.
- In the Higher Education and Training Portfolio, the Committee noted good governance in several entities under the Department of Higher Education and Training. These include the Council of Higher Education (CHE) as well as the South African Qualifications Authority (SAQA), both operating in a fairly stable, effective management throughout the terms.
- However, entities such as National Student Financial Aid Scheme (NSFAS) and the National Skills Fund (NSF) remained a concern for the Department and the Portfolio Committee, with oversight mechanisms being inadequate as well as the delayed tabling of annual reports, which limited the Committee's ability to fully scrutinize.

Possible Implications

- It is clear from the many committees' legacy reports that effective oversight over departments and state entities was below expectations.
- The 7th Parliament will be required to look into ways of ensuring that committees are well resourced to effectively carry out oversight over departments and state entities.
- There will also be a need for greater synergy between the Executive and Parliament on what Bills can realistically be processed in a term or in any given year. The 6th Parliament was on occasion presented with multiple bills which could not be completed, such the Tobacco Products and Electronic Delivery Systems Control Bill. There is a likelihood of these bills being reintroduced by the next government.

- However, the composition of the next government and next Parliament after the elections may mean that some of the lapsed bills will have to be started *de novo.*

END