

# **MPUMALANGA GAMING BOARD**



# **MPUMALANGA GAMING ACT**



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**MPUMALANGA GAMING ACT, 1995 (ACT NO. 5 OF 1995) AS  
AMENDED**

(Latest amendment: Mpumalanga Gaming Amendment Act, 2000 (Act no 7 of 2000))



**ACT**

**To provide for control over gaming; and to provide for matters connected therewith.**

**BE IT ENACTED** by the Provincial Legislature of the Province of Mpumalanga, as follows:

**ARRANGEMENT OF SECTIONS**

**SECTION**

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(1) In this Act, unless the context otherwise indicates -

**“Attorney General”** means a person appointed in terms of the Attorney General Act, 1992 (Act no 92 of 1992) to the office of Attorney General and includes a person appointed as Deputy Attorney General.

**“Auditor-General”** means the state institution established in terms of section 181 of the Constitution;

**“bingo hall”** means the premises upon which the game of bingo is played under a bingo operator licence;

**“Board”** means the Mpumalanga Gaming Board established under section 2;

**“casino”** means the business premises upon which gaming is conducted under a casino licence, and, in the event of more than one area on a business premises being utilised for gaming, “casino” shall mean such areas;

**“casino game”** means any game, played with playing cards, dice, gaming machines or gaming devices or any other device used to bring about the result of a wager by determining win or loss for money, property, cheques, credit or anything of value (other than an opportunity to play a further game), including, without derogating from the generality of the foregoing, roulette, bingo, twenty-one, black-jack, *chemin de fer* and baccarat; but excluding any lottery;

**“Chairperson”** means a person appointed as Chairperson in terms of section 4;

**“chief executive officer”** means the chief executive officer appointed in terms of section 10(1)(a);

**“competent authority”** means the responsible Member or the Board, as the case may be, by whom any function in terms of this Act is to be performed;

**“Constitution”** means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

**“Executive Council”** means the Executive Council of the Province;

**“gaming device”** means any equipment or mechanical, electro-mechanical or electronic device, component or machine or gaming machine, used remotely or directly in connection with a casino game;

**“gaming”** means the playing of any casino game;

**“gaming machine”** means any electronic, electro-mechanical or mechanical device, contrivance or machine which, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine, or any other person, to receive cash or anything of value (other than an opportunity to play a further game);

**“Government”** means the Mpumalanga Provincial Government;

**“inspector”** means an inspector appointed under section 62

**“licence”** means a licence referred to in section 23;

**“licensed premises”** means any premises on which a casino game or related activity is conducted under a licence in terms of this Act;

**“local authority”** means any “local government body” as defined in section 1 of the Local Government Transition Act, 1993 (Act No. 209 of 1993), and any transitional council established under that Act which exercises local government functions to the exclusion of any such local government body;

**“lottery”** means a lottery as defined in section 1 of the Lotteries Act, 1997 (Act No. 57 of 1997);

**“Member of the Executive Council”** means the Member of the Executive Council responsible for financial affairs in the Province;

**“opportunity to play a further game”** means an opportunity which cannot be distributed or transferred to the person who has won such opportunity or to any other person, for any purpose other than to use such opportunity without any interruption to continue playing the type of game in respect of which the opportunity was won, and excludes an opportunity which can in any manner, whether directly or indirectly, be converted into money, property, cheques, credit or anything of value, or be so converted in terms of any scheme, arrangement, system, plan or device which the responsible Member may from time to time by notice in the *Provincial Gazette* declare not to be an opportunity to play a further game;

**“police officer”** means a member of the South African Police Service as established by section 5 of the South African Police Service Act, 1995 (Act No. 68 of 1995 )

**“political office-bearer”** means a member of Parliament, a member of a provincial legislature, a diplomatic representative of the Republic who is not a member of the public service, a member of a house or council of traditional leaders, a member of the Volkstaat Council, a member of a municipal council and any official of a political party, alliance or movement;

**“prescribe”** means prescribe by regulation, and “prescribed” has a corresponding meaning;

**“prize”** means any movable or immovable property whether corporeal or incorporeal;

**“Province”** means the Province of Mpumalanga as referred to in section 103 of the Constitution;

**“Provincial Gazette”** means the *Provincial Gazette* of the Province;

**“Provincial Legislature”** means the Provincial Legislature of the Province as contemplated in section 104 of the Constitution;

**“Republic”** means the Republic of South Africa as referred to in section 1 of the Constitution;

**“responsible Member”** means the Member of the Executive Council responsible for the administration of this Act; and

**“third party”** means any person who furnishes goods or renders services to the holder of a licence, or any lender, creditor, debtor other than a patron to whom credit has been extended in terms of this Act, lessor and lessee to the holder of a licence;

**“this Act”** includes any regulation or rule made or issued thereunder.

(2) Where in this Act any functionary is required to take a decision “in consultation with” another functionary, such decision shall require the concurrence of such other functionary.



## CHAPTER 1

## MPUMALANGA GAMING BOARD

### 2. Establishment of Mpumalanga Gaming Board.

There is hereby established a Board to be known as the Mpumalanga Gaming Board which shall be a juristic person.

### 3. Functions of Board.

The Board shall -

- (a) perform such functions assigned to it in terms of this Act;
- (b) perform such functions assigned to it in terms of any other law;
- (c) advise the responsible Member or furnish a report or recommendations to the responsible Member on any matter referred to the Board by the responsible Member for consideration and arising from the application of this Act or relating to the control over gaming in the Province.

### 4. Composition of Board.

- (1) The members of the Board shall be appointed by the responsible Member in consultation with the Executive Council, and shall, subject to subsections (2) and (4), consist of -
  - (a) a chairperson, who shall be a person with applicable knowledge or experience with regard to matters connected with the functions of the Board;
  - (b) one member who is qualified to be admitted to practice as a legal practitioner in the Republic and has, for a cumulative period of at least five years after having so qualified, practised as a legal practitioner or performed services related to the application or administration of the law;
  - (c) one member who is qualified as a chartered accountant in the Republic and has, for a cumulative period of at least five years after having so qualified, practised as a chartered accountant;
  - (d) one member who shall have proven business acumen in the tourism industry;
  - (e) a person representing the Department of Economic Affairs and Gaming of the Province, designated by the responsible Member;
  - (f) a person representing the Department of Finance and Central Services of the Province, designated by the Member of the Executive Council;
  - (g) with due regard to regional interests in the Province, not more than four members who -
    - (i) shall not be in the full-time service of the State, the Province, or a local authority;
    - (ii) shall have proven business acumen or applicable knowledge or experience in the field of community and socio-economic development; and
    - (iii) are fit and proper to represent the community at large.
  - (h) A deputy Chairperson, appointed from amongst the Members of the Board referred to in paragraphs (b), (c), (d) and (g).
- (2) The chief executive officer of the Board shall *ex officio* be a member of the Board, but he shall have no voting rights at meetings of the Board.



- (3) The Deputy Chairperson, shall preside at such meetings where the Chairperson is absent or is unable to perform his or her duties or refuses or fails to act.
- (4) The Board shall, subject to section 9 of the Constitution, be broadly representative of the South African community

**5. Eligibility to be appointed as member of Board.**

- (1) A person shall not be appointed or remain a member of the Board -
  - (a) unless he or she -
    - (i) is a natural person;
    - (ii) is a citizen of the Republic and ordinarily resident therein; and
    - (iii) is a fit and proper person;
  - (b) if he or she -
    - (i) whether personally or through his or her spouse, an immediate family member referred to in subparagraph (ii), partner or associate -
      - (aa) has or acquires a direct or indirect financial interest in any gaming activity; or
      - (bb) has any interest in any business that may conflict or interfere with the proper performance of his or her functions as a member of the Board;
    - (ii) is related to a family member within the second degree affinity or the third degree by consanguinity, who has or acquires a direct or indirect financial interest in any gaming activity;
    - (iii) is a political office-bearer;
    - (iv) is an unrehabilitated insolvent;
    - (v) has at any time been removed from an office of trust on account of misconduct; or
    - (vi) has at any time been convicted, whether in the Republic or elsewhere -
      - (aa) of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Corruption Act, 1992 (Act No. 94 of 1992), or any offence involving dishonesty; or
      - (bb) of an offence under this Act or any other similar law.
    - (vii) with the exception of a member of the Board contemplated in section 4(1)(e) and (f), is in the full time service of the State, provincial or local authority.
- (2)(a) If any member of the Board during his or her term of office is disqualified in terms of subsection (1), or acquires, or whose family member acquires, an interest which is likely to be an interest as contemplated in subsection (1)(b)(i) or (ii), he or she shall as soon as practicable after he or she has been disqualified or after the acquisition of such interest, or after he or she has become aware of such information, in writing declare such information to the responsible Member.
- (b) If the responsible Member, after receiving the information from a member of the Board as contemplated in paragraph (a) is of the opinion that such member is disqualified in terms of subsection (1) to remain a member of the Board, he or she shall, subject to section 8(2), terminate the term of office of such member in terms of section 8(1)(b).

## 6. Procedure of appointment of Board.

- (1) The members of the Board referred to in section 4(1)(a), (b), (c), (d) and (g) shall not be appointed unless the responsible Member in respect of such members has invited interested parties through the media and by notice in the *Provincial Gazette* to nominate candidates, within 14 days of the invitation in the media and the publication of such notice, for consideration by the responsible Member: Provided that the invitation through the media shall include an invitation in at least one newspaper circulating in the Province.
- (2) A person shall, prior to his or her appointment as a member of the Board, submit to the Member a written, sworn or confirmed statement in which he or she declares his or her financial interests and whether or not he or she has any interests as contemplated in section 5(1)(b)(i) and (ii).
- (3) (a) The members of the Board shall not be appointed unless the responsible Member has, at least 30 days prior to the appointment of the members of the Board and in the manner envisaged in subsection (1), published the names of the persons he or she intends to appoint as member of the Board and the date on which such appointments are intended to be made.
  - (b) Any person who desires to object to the appointment of any person to the Board, may, not later than 14 days before the date on which the appointment of the members of the Board is intended to be made, lodge with the responsible Member in writing an objection stating the ground or grounds which, according to such a person disqualifies the person to be appointed, from being appointed as a member to the Board.

## 7. Tenure of office.

A member of the Board shall, subject to section 8, hold office for such period, not exceeding three years, as the responsible Member may determine at the time of his or her appointment and a member of the Board shall be eligible for reappointment at the expiration of his or her term of office.

## 8. Termination of office and filling of vacancies.

- (1) The responsible Member shall, after he or she has afforded a member the opportunity to state his or her case, terminate the term of office of any member if -
  - (a) there are good reasons for doing so, and it is in the best interest of the Board and the proper control and regulation of gaming;
  - (b) he or she is disqualified to remain a member of the Board in terms of section 5(1); or
  - (c) he or she has been absent from more than two consecutive meetings of the Board without prior leave of the Chairperson.
- (2) If the responsible Member terminated the office of a member of the Board under subsection (1), he or she shall disclose such termination by way of notice in the *Provincial Gazette* within 14 days after the date of such termination.
- (3) The responsible Member shall, subject to sections 5, 6 and 7, fill a casual vacancy on the Board for such period, not exceeding three years, as the responsible Member may determine at the time of such appointment.

## 9. Remuneration and allowances of members of Board.

- (1) Members of the Board or persons co-opted respectively in terms of section 19 who are not in the full-time service of the State may, in respect of their services, be paid such remuneration and allowances

from the funds of the Board as may be determined by the responsible Member after consultation with the Member of the Executive Council.

- (2) The remuneration and allowances of the members of the Board may differ according to the different offices held by them or the different functions performed by them.

#### **10. Staff of Board.**

- (1) The Board shall, subject to its directions and control, in the exercise of its powers and the performance of its functions and this Act, be assisted by -
- (a) subject to sections 5(1)(a)(i) and (iii) and 5(1)(b), a suitably qualified and experienced person as chief executive officer, appointed by the Board in consultation with the responsible Member or seconded in terms of subsection (3), for the purpose of assisting the Board in the performance of all financial, administrative and clerical responsibilities pertaining to the functions of the Board, and shall in respect thereof be accountable to the Board; and
- (b) such staff, appointed by the Board or seconded in terms of subsection (3), as may be necessary to enable the Board to perform its functions: Provided that a person shall not be appointed by the Board in terms of this paragraph or remain a member of the staff of the Board if he or she is subject to any disqualification as referred to in sections 5(1)(a)(i) and (iii) and 5(1)(b).
- (2) The persons appointed by the Board in terms of subsection (1) shall from the funds of the Board be paid such remuneration and allowances and shall receive such other employment benefits and be appointed on such terms and conditions and for such periods, as the Board, in consultation with the responsible Member may determine.
- (3) The Board may, in the exercise of its powers and the performance of the functions contemplated in subsection (1), at its request and after consultation with the Provincial Administration of the Province, be assisted by officers of the said Provincial Administration seconded to the service of the Board in terms of any law regulating such secondment.
- (4)(a) Any function or power which the Board may perform or exercise in terms of this Act, with the exception of the functions and powers contemplated in sections 23, 28, 33A, 33B, and 47 may be delegated (whether generally or specifically) to the chief executive officer, a committee of the Board, or any other member of the staff of the Board.
- (b) Any delegated function so performed or delegated power so exercised shall be deemed to have been performed by the Board.

#### **11. Transparency and confidentiality.**

- (1) The Board shall, subject to subsection (2), function in a transparent and open manner.
- (2) No member of the Board or staff of the Board, no person contemplated in sections 18 and 19, and no inspector shall, except on the order of a court of law or on the instructions of the responsible Member after prior written notice to the Board and subject to section 14 of the Constitution disclose -
- (a) any document or information or the identity of any person, which the Board has determined not to be open to public inspection or to be divulged as contemplated in section 26A(2); and
- (b) any document or information which has been furnished to the Board by any regulatory or law enforcement authority on condition of confidentiality.

#### **12. Position of public trust.**

- (1) In order to ensure the independence and integrity of the Board -

- (a) a member of the Board or of the staff of the Board or the spouse of a member of the Board or of the staff of the Board to whom such member is legally married, shall not -
    - (i) apart from any remuneration received by virtue of the office he or she holds, directly or indirectly receive anything of value from any person that may conflict or interfere with the proper performance of his or her functions or benefit in any manner from the office that he or she holds;
    - (ii) participate in any gaming in the Province, or at any establishment outside the Province, which is owned or operated by a person who holds any licence in terms of this Act: Provided that such a person may participate in such gaming if it is necessary for the performance of his or her functions under this Act;
  - (b) a member or former member of the Board shall not solicit or accept employment from a licensee or an applicant for a licence in terms of this Act within one year after the termination of the term of office of such a member of the Board, without the prior approval of the Board;
  - (c) a member of the Board or of the staff of the Board shall, before commencing to exercise the functions of his or her office, take the oath or make the affirmation as determined by the responsible Member.
- (2) The provisions of subsection (1)(a) and (b) shall apply *mutatis mutandis* in respect of the responsible Member.
- (3) (a) A member of the Board shall not vote, attend or in any other manner participate in the proceedings at any meeting or hearing of the Board if, in relation to any matter before the Board -
- (i) he or she or his or her immediate family member contemplated in section 5(1)(b)(ii), partner or business associate is a direct member or partner of, or has a controlling interest or any financial or other interest in, the business of the applicant or any person who made representations in relation to the application of a licence; or
  - (ii) he or she has any interest which precludes him or her from performing his or her functions as a member of the Board in a fair, unbiased and proper manner.
- (b) If at any stage during the course of any proceedings before the Board it appears that a member of the Board has or may have any interest contemplated in paragraph (a) -
- (i) that member shall forthwith and fully disclose the nature of his or her interest and leave the meeting or hearing so as to enable the remaining members of the Board to discuss the matter and determine whether that member is precluded from participating in the proceedings at such meeting or hearing by reasons of a conflict of interests; and
  - (ii) such disclosure and the decision taken by the remaining members of the Board regarding such determination, shall be recorded in the minutes of the proceedings in question.
- (c) If any member of the Board fails to disclose any interest contemplated in paragraph (a) or if, having such interest, he or she attends or in any manner whatsoever participates in the proceedings at the meeting or hearing concerned, the relevant proceedings shall be null and void: Provided that no decision in terms of this Act relating to the granting, amendment, renewal, transfer, suspension, revocation or withdrawal of a licence or registration, or the transfer of a licensed business to new premises, shall thereby be invalid if such decision is ratified by a subsequent decision of the Board, properly taken in terms of this Act.

### 13. Funds of Board.

- (1) The funds of the Board shall consist of -

- (a) money appropriated by the Provincial Legislature for that purpose;
  - (b) any amounts payable to the Board in terms of this Act; and
  - (c) other money lawfully paid to the Board.
- (2) The Board shall in each financial year, at a time determined by the responsible Member, submit a statement of the estimated income and expenditure of the Board for the following financial year for his or her approval.
  - (3) The Board may in any financial year submit supplementary statements of the estimated expenditure of the Board for that financial year to the responsible Member for his or her approval: Provided that such approval shall only be granted in consultation with the Member of the Executive Council.
  - (4) Any money standing to the credit of the Board at the close of the Board's financial year shall be paid into the Exchequer Account defined in section 1 of the Mpumalanga Exchequer Act, 1994 (Act No. 1 of 1994), unless the responsible Member in consultation with the Executive Council has authorised the Board to retain such funds in order to finance specific projects of the Board.

#### **14. Accountability, audit and annual report.**

- (1) The chief executive officer shall, subject to the Mpumalanga Exchequer Act, 1994 (Act No. 1 of 1994) -
  - (a) be charged with the responsibility of accounting for moneys received or paid out for or on account of the Board; and
  - (b) cause the necessary accounting and other related records to be kept.
- (2) The records referred to in subsection (1)(b) shall be audited by the Auditor-General.
- (3) The Board shall -
  - (a) report to the responsible Member at least once every year on its activities, and the responsible Member shall cause such report, including the annual audited financial statements of the Board, to be tabled promptly in the Provincial Legislature of the Province;
  - (b) submit the report referred to in paragraph (a) to the National Gambling Board established by the National Gambling Act, 1996 (Act No. 33 of 1996), within 14 days after it is submitted to the responsible Member;
  - (c) submit to the responsible Member quarterly reports, which reports shall deal with the state of affairs, the activities and operations, and the financial position of the Board;
  - (d) not enter into any agreement, excluding an agreement in respect of the daily operations of the Board and its staff, that has financial implications or implied financial implications without the written consent of the responsible Member;
    - (a) the reports referred to in paragraph (a) shall -
      - (i) set out the functions and objectives of the Board as contemplated in this Act;
      - (ii) state the extent to which the Board has achieved its set objectives for the period concerned;
      - (iii) contain relevant performance information regarding the economic, efficient and effective application of resources;

- (iv) indicate the amount of money received from the Province and any other commitment furnished by the State; and
- (v) contain the detailed personnel establishment and composition of the Board;
- (b) the responsible Member shall cause internal audits to be conducted in order to promote –
  - (i) the safeguarding and control of the assets of the Board;
  - (ii) compliance with this Act or any other Act of Parliament or the Provincial Legislature governing the activities of the Board; and
  - (iii) the economical and efficient management of the resources of the Board and the effective performance of the functions of the Board, unless the responsible Member, on the recommendation of the Board, is of the opinion that the benefits to be derived from internal auditing do not justify the cost thereof; and
- (g) the responsible Member shall appoint a chartered accountant registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), to conduct the internal audits of the Board.

#### **15. Meetings of Board.**

- (1) (a) Meetings of the Board shall be held on such dates and at such times and places as the Board may from time to time determine: Provided that the Board shall hold one meeting at least once in every three months.
- (b) The Chairperson may at any time on reasonable notice convene an extraordinary meeting of the Board to be held at a time and place determined by him or her:  
Provided that no decision in terms of this Act relating to the granting, amendment, renewal, transfer, removal or revocation of a licence or certificate, shall be taken at an extraordinary meeting.
- (2) The proceedings at a meeting of the Board shall, in so far as it has not been prescribed, be determined by the Board.
- (3) The quorum for a meeting of the Board shall be a majority of the members of the Board.
- (4) A decision of the Board shall be taken by a majority of the votes of the members present at a meeting of the Board, and in the event of an equality of votes on any matter, the Chairperson shall have a casting vote in addition to his or her deliberative vote.
- (5) No decision of the Board shall be invalid merely by reason of a vacancy in the Board or the fact that any person who is not entitled to sit as a member of the Board sat as such a member of the Board when the decision was taken: Provided that the decision was taken by the required majority of the members of the Board then present and entitled to sit as members of the Board.
- (6) Any meeting of the Board convened for the purpose of -
  - (a) considering representations or objections in relation to any application for a licence made in terms of this Act, shall be accessible to the public: Provided that the Chairperson may in his or her discretion, and if the Board is of the opinion that any person whose presence is not desirable at the meeting concerned, direct that such a person may not attend the meeting or shall leave the meeting; and

- (b) deliberations with a view to making decisions and to voting thereon in respect of any matter at a meeting, shall take place behind closed doors.

#### **16. Committees of Board.**

- (1) The Board may from time to time appoint a committee to exercise the powers and perform the functions delegated to it by the Board.
- (2) A committee shall consist of -
- (a) such members of the Board as the Board may designate; or
- (b) such members of the Board as the Board may designate and such other persons as the Board may co-opt in terms of section 19.
- (3) The Board shall designate the chairperson of a committee.
- (4)(a) A committee shall perform its functions and exercise its powers subject to the provisions of this Act and such directives of the Board as are not in conflict with such provisions.
- (b) Any delegated power so exercised or function so performed shall, subject to section 10(4)(a), be deemed to have been performed by the Board.

#### **17. Minutes.**

- (1)(a) Minutes of the proceedings referred to in section 15(6)(a) of every meeting of the Board shall be kept and be retained at the offices of the Board.
- (b) Any person may obtain copies of the minutes contemplated in paragraph (a) or any part thereof against payment of the prescribed fees.
- (2)(a) Separate minutes of the proceedings referred to in section 15(6)(b) of every meeting of the Board shall be kept and retained in a like manner.
- (b) The minutes contemplated in paragraph (a) or any document in which an advice, report or recommendation by the Board is contained, shall not be disclosed, except to -
- (i) the responsible Member;
- (ii) any person who requires it for the performance of his or her functions in terms of this Act; and
- (iii) any other person -
- (aa) with the approval of the Board; or
- (bb) in terms of an order of a competent court or under any law.

#### **18. Consultation by Board.**

- (1) The Board may consult any person, organisation or institution with regard to any matter deemed necessary by the Board to enable the Board to perform its functions.



- (2) The remuneration and allowances determined by the Board, if any, and the terms and conditions of a person so consulted, shall, subject to section 14(3)(c) be contained in a written agreement entered into for that purpose between the Board and that person so consulted.

**19. Co-opting of persons.**

- (1) If the Board is of the opinion that a particular person is able to assist the Board in the consideration of a particular matter by the Board, the Board may co-opt that person for that purpose.
- (2) A person so co-opted shall not be entitled to vote at any meeting of the Board or a committee of the Board.
- (3) The provisions of section 9(1) shall *mutatis mutandis* apply in respect of such a person so co-opted.

**20. Investigations, hearings or enquiries by Board.**

- (1) The Board may, subject to this section, conduct an investigation, hearing or enquiry into any matter falling within the scope of its functions.
- (2) For the purpose of any investigation, hearing or enquiry in terms of subsection (1), the Board may, by written notice, summon any person who is or who may be affected by or is concerned in the consideration of a particular matter by the Board, to appear before the Board -
- (a) to give evidence; or
- (b) to produce any book, document or thing which is in his or her possession or under his or her control and which in the opinion of the Board relates or may relate to a matter to be considered thereat:

Provided that at any investigation, hearing or enquiry held by the Board the person applying for a licence or the transfer or removal of a licence in terms of this Act, or any person objecting to the granting of such an application or the person who is the subject of the investigation, hearing or enquiry, as the case may be, shall, if he or she so requests, be entitled to appear before the Board and to call witnesses.

- (3) A notice referred to in subsection (2) shall be signed by a member of the Board, shall be served by a member of the staff of the Board or by a sheriff, by delivering a copy thereof to the person concerned or be leaving it at such person's last known place of residence or business.
- (4) A person who has received a notice in terms of subsection (2), shall personally appear before the Board on the date and time and place set out in the notice: Provided that if such a person is not legally competent to so appear before the Board, any person who by law is competent to act on his or her behalf or any person authorised thereto by the Board, may so appear on his or her behalf.
- (5) The provisions of subsection (4) shall apply *mutatis mutandis* to any corporate body, organisation or institution.
- (6) The Board may call and examine any person present at the investigation, hearing or enquiry, whether or not he or she has been summoned to attend an investigation, hearing or enquiry under subsection (2), and may inspect and retain for a reasonable period any book, document or thing, the production of which was required under that subsection.
- (7) The Board may require from any person appearing before the Board at an investigation, hearing or enquiry in terms of subsection (1) to give his or her evidence on oath or affirmation, and the member of the Board, presiding at the investigation, hearing or enquiry may administer the oath or accept an affirmation from any such person.



- (8) The law relating to privilege as applicable to a person subpoenaed to give evidence or to produce any book, document or thing before a court of law shall apply in relation to the examination of any such person or the production of any book, document or thing under subsection (2) or (6).
- (9) Any person who appears before the Board at an investigation, hearing or enquiry, shall be entitled to be represented by his or her legal representative.



## CHAPTER 2

### LICENSING

#### 21. National norms and standards.

No licence shall be granted under this Act unless the Board takes cognisance of -

- (a) the provisions of section 146 of the Constitution; and
- (b) the guidelines made by the National Gambling Board established under the National Gambling Act, 1996 (Act No. 33 of 1996).

#### 22. Disqualification for licences in general.

(1) A licence shall not be granted to any person, including a juristic person -

- (a) unless he, she or it -
  - (i) is a fit and proper person;
  - (ii) is a person of good character and integrity and whose prior activities, reputation, habits and associations do not pose a threat to the public interest; and
  - (iii) is a person of good financial standing;
- (b) if he or she -
  - (i) is an unrehabilitated insolvent;
  - (ii) is a political office-bearer;
  - (iii) is related to the responsible Member or a member of the Board within the second degree by affinity or the third degree by consanguinity;
  - (iv) has in the Republic or elsewhere in the preceding 10 years been convicted of any offence, unless -
    - (aa) the Board is of the opinion that the offence was of such a nature that it does not imply that such a person is unsuitable to hold a licence; or
    - (bb) the conviction and sentence have been set aside by a competent court; or
    - (cc) such a person has received a grant of amnesty or free pardon, for an offence which would otherwise have disqualified that person from holding a licence;
  - (v) is a minor on the date of the consideration of the application concerned; and
  - (vi) is the spouse of a person contemplated in subparagraphs (i), (ii), (iii), and (iv);
- (c) unless the Board is satisfied that -
  - (i) the State, or any organ of the State, or any organisation with which the State or any other state is concerned, a political party or any official of a political party does not hold any financial interest in any activity of the applicant for which a licence is required or the premises on which a casino is to be conducted;

- (ii) the granting of such a licence will not bring into existence or aggravate any dominant and over concentrated market-share or any restrictive practices, acquisitions and monopoly situations as contemplated in the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), in the gaming industry or a branch thereof; and
- (iii) the granting of such a licence will not result in the establishment of an unduly large gaming industry in the Province, having regard to the number of inhabitants of the Province and their financial means and the number of licences already granted in terms of this Act.

(2) If a person who is in terms of subsection (1) disqualified to hold a licence -

- (a) (i) in the case of a person referred to in subsection (1)(a), (b)(i), (iv), (v), and (vi), has a direct or indirect financial interest of five percent or more in a company, close corporation, partnership, trust or any other body corporate;
- (ii) in the case of a person referred to in subsection (1)(b)(ii) and (iii), has any direct or indirect financial interest in a company, close corporation, partnership, trust or any other body corporate;
- (b) is a beneficiary under a trust who receives or is entitled to more than five percent of the proceeds or assets of the trust; or
- (c) is a manager of a company, close corporation, trust, partnership or corporate body,

such company, close corporation, trust, partnership or corporate body shall also be disqualified to hold a licence :

Provided that the applicant, prior to disqualification, be given a reasonable opportunity to rectify the disqualifying circumstances.

- (3) In the application of subsection (1)(b)(iv), “preceding” means preceding the date of the application concerned.

### **23. Kinds of licences.**

- (1) The Board may, subject to the provisions of this Act, grant the following licences in respect of gaming, namely -
  - (a) casino licence;
  - (b) gaming machine operator licence;
  - (c) gaming machine site licence;
  - (d) bingo operator licence;
  - (e) manufacturer, maintenance or supplier licence.
- (2) Any licence referred to in subsection (1) shall be in writing and in the form determined by the Board.
- (3) A licence grants to the holder thereof such rights and privileges and subjects him or her to such obligations and liabilities as may by virtue of this Act be regulated thereby or ensue from the holding thereof.
- (4) The maximum number of any kind of licence that may be granted by the Board, may be prescribed: Provided that the maximum number of casino licences that may be granted by the Board, shall at any given time be as determined by the National Gambling Act, 1996.

## 24. Applications.

- (1) Any person may apply for a licence referred to in section 23: Provided that -
  - (a) any person whose application has been refused on any ground referred to in section 22, or whose licence has been revoked on any ground referred to in section 33A, may not reapply for a licence, within a period of twelve months from the date of such refusal or revocation, and any person who has a direct or indirect interest of five percent or more in the business or premises of such applicant or licensee may not apply for a licence within twelve months from the date of such refusal or revocation, if such person was the direct or effective cause of such refusal or revocation; and
  - (b) any person whose application has been refused more than once on any ground referred to in section 22, or whose licence has been revoked more than once on any ground referred to in section 33A, may not reapply for a licence within a period of three years from the date of the latest refusal or revocation, and any person who has a direct or indirect interest of five percent or more in the business or premises of such applicant or licensee, may not apply for a licence within three years from the date of the latest refusal or revocation, if such person was the direct or indirect or effective cause of such refusal or revocation.
- (2) Any application for a licence shall -
  - (a) be lodged with the chief executive officer in the prescribed or determined manner;
  - (b) be accompanied by-
    - (i) certified copies of a notice by the applicant, published in the *Provincial Gazette* and a newspaper circulating in the area in which the premises where the gaming is to take place, is situated; and
    - (ii) such other documents and information determined by the Board.
- (3) An applicant may in the application concerned identify any document or information included in the application which in the opinion of the applicant is confidential or should for any reason not be disclosed to the public, and show cause why **the Board may determine** that such document or information should not be open to public inspection.
- (4) An application for a licence shall, subject to the provisions of this Act, be considered by the Board and the Board may thereafter -
  - (a) refuse the application; or
  - (b) grant the application.

## 25. Application and investigation fees.

- (1) Any person who submits an application to the Board in terms of this Act, shall -
  - (a) on the submission of such an application, pay to the Board the prescribed fee; and
  - (b) be liable for and pay to the Board all reasonable direct expenses incurred by the Board, if any, to conduct the investigations referred to in section 27: Provided that the Board may before conducting such investigations require from an applicant any security for the payment of such expenses.
- (2) Any person who holds a licence, certificate of suitability or certificate of approval in terms of this Act, shall, notwithstanding any other amount of money payable to the Board in terms of this Act, be liable for and pay to the Board all reasonable direct expenses incurred by the Board, if any, to conduct the

investigations referred to in section 27: Provided that the Board may, before conducting such investigations, require from such holder of a licence, certificate of suitability or certificate of approval, the payment of such expenses.

## **26. Objections.**

- (1) Any person who wishes to object to any application made for any licence in terms of this Act, may, not later than 30 days after the date of lodgement of the application as reflected in the notice referred to in section 24(2)(b)(i), lodge an objection in writing with the chief executive officer.
- (2) The chief executive officer shall forthwith notify the applicant and supply the applicant with a copy or details, as the case may be, of -
  - (a) any objections lodged with the Board in terms of subsection (1); and
  - (b) any matter or fact whatsoever which may, in the opinion of the Board, constitute a ground for an objection against the application of the applicant,

and invite the applicant to reply to such objection, if he or she so chooses, within a period of 14 days of the date of such notification.

- (3) A person lodging any objection may show cause why **the Board may determine** under section 26A(2)(b) that his or her identity should not be divulged.

## **26A. Application and objections to be open to public inspection**

- (1) Any application, objections and response lodged in terms of sections 24 and 26 shall, subject to subsection (2), be open to public inspection by interested persons during the normal office hours of the Board for the prescribed period from date of lodgement of the application as reflected in the notice referred to in section 24(2)(b)(i) and the Board shall, at the request of any interested person, and on payment of such fees as may be prescribed, furnish him or her with a copy of, or extract from, any such application, representations, response or information.
- (2) The Board may determine that -
  - (a) any document or information relating to the financial capacity of any person participating in an application, to the names of prospective employees or the business plans of an applicant, shall not be open to public inspection, providing such document or information can be separated from the remainder of the application and is marked confidential; and
  - (b) the identity of any person who lodged an objection to an application, shall not be divulged to any other person.

## **27. Investigations and police reports.**

- (1)(a) In order to determine whether or not a licence, certificate of suitability or certificate of approval should be granted to an applicant in terms of this Act, the Board may, subject to any other law, gather such information from any source or person regarding the suitability of the applicant to hold such a licence, certificate of suitability or certificate of approval and the suitability of the premises in respect of which the application has been made.
- (b) In order to determine the continued suitability of the holder of a licence, certificate of suitability or certificate of approval in terms of this Act, the Board may, subject to any other law, gather such information from any source or person regarding the continued suitability of the holder of such a licence, certificate of suitability or certificate of approval and the suitability of the licensed premises in respect, if applicable.

- (2) For the purpose referred to in subsection (1), the chief executive officer may ask the South African Police Service for a report stating -
- (a) particulars of any convictions recorded against the applicant referred to in subsection (1)(a), the licence or certificate holder referred to in subsection (1)(b) or any person who is or will be involved in the business in respect of whom the Board deems it necessary to obtain the police report;
  - (b) such matters as may be prescribed; and
  - (c) such other matters which ought, in the opinion of the South African Police Service, to be taken into consideration in respect of the application, licence or certificate concerned.
- (3) The report contemplated in subsection (2) shall be furnished to the chief executive officer within one month or such extended period approved by the Board.

## **28. Temporary licences in respect of incomplete premises.**

- (1) If an application for a licence is granted by the Board in respect of premises not yet erected, or premises requiring any structural alteration, addition or reconstruction to be effected so as to make them suitable for the purposes for which they will be used under the licence, the Board may, upon being furnished with the required forfeitable guarantee, issue a temporary licence to the applicant concerned, subject to the compliance of such conditions or requirements, referred to in the temporary licence, with regard to those premises as the Board may determine, within such period as may likewise be determined and referred to.
- (2) The Board may, in consultation with the responsible Member, at any time after the issue of such a temporary licence, on application by the applicant concerned -
- (a) extend the period determined under subsection (1); and
  - (b) extend or further extend the period determined under subsection (1) or the period so determined and extended under paragraph (a) of this subsection, as the case may be, in respect of premises not yet erected at the time of the issue of the temporary licence, if the Board is satisfied that sufficient grounds exist for such extension or further extension.
- (3) The period determined under subsection (1) or the period so determined and extended under subsection (2)(a), as the case may be, shall not be longer than 24 months, and the period extended or further extended under subsection (2)(b), as the case may be, shall not be longer than a further 12 months for each such extension.
- (4) When the Board is satisfied that the premises in respect of which a licence has been granted, have been substantially completed in accordance with the plan thereof approved by the Board, the conditions and requirements determined by the Board have been complied with and the premises are suitable for the purposes for which they will be used under the licence concerned, the Board shall issue the licence to the applicant concerned.
- (5) If the licence is not issued before the expiration of the period determined under subsection (1), extended under subsection (2)(a) or further extended under subsection (2)(b), as the case may be, the temporary licence shall lapse, the application for the licence shall be deemed not to have been granted and the guarantee referred to in subsection (1) shall be forfeited.
- (6) The provisions of this Act shall, subject to subsection (1), *mutatis mutandis* apply to temporary licences, and in such application a reference in this Act to a licence shall, where applicable, also be construed as a reference to a temporary licence.

## **29. Casino licence.**

- (1) No person shall submit any proposal or apply for a casino licence other than in response to a notice published in the *Provincial Gazette* and the media by the Board, after consultation with the responsible Member, inviting applications and which notice -
  - (a) shall state the number of licences to be issued and the areas in which these casinos are to be situated;
  - (b) shall state development and other requirements;
  - (c) may set the amount of the payment in respect of the submission of proposals and amounts contemplated in section 52 or invite applicants to tender for such payments;
  - (d) shall state the evaluation criteria to be applied.
- (2) The Board may only grant a casino licence after consultation with the responsible Member, and if the Board is satisfied that the applicant -
  - (a) has appropriate knowledge or experience, or is able to acquire such knowledge or experience, to operate a casino;
  - (b) shall have and maintain sole and exclusive legal possession of the licensed premises for which the licence is to be granted; and
  - (c) has met all applicable requirements set by the Board.
- (3) A casino licence shall, subject to this Act, authorise the playing in or on the licensed premises or such part of the licensed premises as is specified in the licence, of any prescribed casino game or any casino game specified in the licence.

### **30. Gaming machine operator licence.**

- (1) No person may apply for a gaming machine operator licence other than in response to a notice published in the *Provincial Gazette* and the media by the Board, inviting applications and which notice may state the evaluation criteria to be applied and any other requirements.
- (2) A gaming machine operator licence shall not be granted by the Board -
  - (a) unless the Board is satisfied that the applicant -
    - (i) has appropriate knowledge and experience, or is able to acquire such knowledge and experience, to operate gaming machines; and
    - (ii) meets the requirements as prescribed or determined by the Board;
  - (b) for the operation of more than the prescribed number of gaming machines.
- (3) A gaming machine operator licence shall authorise, subject to the provisions of section 31 and any conditions imposed under section 34, the operation of any prescribed gaming machine or any gaming machine specified in the licence, on the licensed premises of the holder of a gaming machine site licence, and for such purposes the holder of such a gaming machine operator licence may enter into an agreement with the holder of such a gaming machine site licence for the placement of such gaming machines on the premises concerned.
- (4) The holder of a gaming machine operator licence shall link all the gaming machines in respect of which the licence has been granted, to an electronic monitoring system if so required by the Board in terms of section 35.

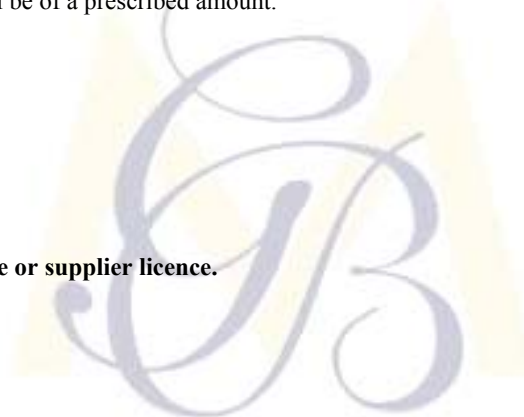
### **31. Gaming machine site licence.**

- (1) No person may apply for a gaming machine site licence other than in response to a notice published in the *Provincial Gazette* and the media by the Board, inviting applications and which notice may state the evaluation criteria to be applied and any other requirements.
- (2) A gaming machine site licence shall not be granted by the Board -
  - (a) except to a person who meets the requirements as prescribed or determined by the Board;
  - (b) for the operation and keeping of more than five gaming machines for any one gaming machine site licence; and
  - (c) unless the Board is satisfied that the premises in respect of which the licence is to be granted will not be and are not primarily utilised for gaming: Provided that this paragraph shall not apply to premises in respect of which a bingo operator licence has been issued.
- (3) A gaming machine site licence shall, subject to this Act, authorise the operation and keeping in or on the licensed premises or such part of such premises as is specified in the licence, of any prescribed gaming machines or gaming machines specified in the licence: Provided that -
  - (a) the maximum charge per play for playing on any such gaming machine shall not exceed the prescribed amount;
  - (b) the prize in respect of any one game played by means of any such gaming machine shall not in the aggregate exceed the prescribed amount;
  - (c) there shall be displayed on any such gaming machine the value of the maximum prize prescribed under paragraph (b) which can be won by playing a game once by means of such a gaming machine; and
  - (d) any such gaming machine shall be placed in an area of the licensed premises to which no person under the age of 18 years shall have access to.

### **32. Bingo operator licence.**

- (1) No person may apply for a bingo operator licence other than in response to a notice published in the *Provincial Gazette* and the media by the Board, inviting applications and which notice may state the evaluation criteria to be applied and any other requirements.
- (2) A bingo operator licence shall not be granted by the Board, unless the Board is satisfied that the applicant meets the requirements as prescribed or determined by the Board.
- (3) A bingo operator licence shall, subject to this Act, authorise the playing in or on the licensed premises specified in the licence, of the game of bingo: Provided that the maximum charge per play for playing a game of bingo once shall be of a prescribed amount.

### **33. Manufacturer, maintenance or supplier licence.**





- (1) No person may apply for a manufacturer, maintenance or supplier licence other than in response to a notice published in the *Provincial Gazette* and the media by the Board, inviting applications and which notices may state the evaluation criteria to be applied and any other requirements.
- (2) Any person, desiring to operate, carry on or conduct any form of manufacture, selling, distribution, import, marketing, maintenance or repair of any gaming device shall apply to the Board for the relevant licence.
- (3) The holder of a casino licence, a gaming machine operator licence, gaming machine site licence or a bingo operator licence may, notwithstanding the provisions of subsection (2) -
  - (a) with the approval of the Board, dispose of by sale in a manner approved by the Board, any or all of its gaming devices; and
  - (b) maintain or repair to the extent approved by the Board, any or all of its gaming devices.
- (4) In the event of the death, insolvency, liquidation or the placing under judicial management of the licence holder referred to in subsection (3) or a declaration that such licence holder is incapable of handling his or her own affairs -
  - (a) the administrator of the deceased or insolvent estate; and
  - (b) the judicial manager, curator or liquidator, may, notwithstanding the provisions of subsection (2), dispose of by sale in the manner approved by the Board, any or all of the gaming devices of such licence holder.
- (5) A manufacturer, maintenance or supplier licence shall not be granted by the Board, unless the Board is satisfied that the applicant has appropriate knowledge and experience, or is able to acquire such knowledge and experience, to conduct business under the licence.
- (6) The relevant manufacturer, maintenance or supplier licence shall authorise -
  - (a) the manufacture, selling, distribution, import, marketing, maintenance or repair of the types and models of gaming devices which meet the requirements set and approved by the Board; and
  - (b) the supply of gaming devices or services to licence holders.

### **33A. Suspension or revocation of licence.**

- (1) The Board may at any time suspend, for such period as the Board may determine, or revoke from such date as the Board may determine, any licence, if -
  - (a) any information contained in any application made by the licence holder for the purpose of obtaining the granting, renewal, transfer or removal was at the time when the information was furnished, false in any material respect or was subject to any material omission with the intention to mislead the Board;
  - (b) the licence holder is in terms of section 22 disqualified from holding a licence;
  - (c) the licence holder, an employee of the licence holder or any other person acting on his or her behalf has failed to comply with any term or condition of the licence or any provision of this Act, or has not complied with such term, condition or provision within 30 days, or such further period as the Board in writing may allow, after delivery of a written notice by the Board to the licence holder requiring such failure to be remedied;
  - (d) the licence holder has, without the prior written consent of the Board, failed to carry on business under the licence for a period of at least three consecutive months;

- (e) the licence holder fails to pay any amount prescribed in terms of this Act within the prescribed period;
  - (f) the licence holder fails to pay out forthwith any prize legitimately won through any gaming conducted under the licence; and
  - (g) the licence holder fails to comply with section 47(2).
- (2) The Board may at any time revoke any order of suspension or revocation issued in terms of subsection (1) if the reasons for such suspension have been remedied to the satisfaction of the Board.
  - (3) The Board shall inform the licence holder in writing of any suspension or revocation of the licence in terms of subsection (1).
  - (4) A casino licence shall only be suspended or revoked by the Board after consultation with the responsible Member.
  - (5) When a licence is suspended or revoked in terms of subsection (1), no licence fee, or any portion thereof shall be refunded.
  - (6) Where the Board proposes to revoke a licence, the Board shall serve a written notice on the licensee stating -
    - (a) that the Board proposes to revoke the licence;
    - (b) the ground or grounds for revocation;
    - (c) that the licensee may within 30 days after the date of the written notice -
      - (i) make written representations about the matter to the Board; or
      - (ii) notify the Board in writing of the intention of the licensee to make oral representations; and
    - (d) the effect of subsection (7).
  - (7) If, within a period mentioned in subsection (6)(c), the Board receives neither written presentations nor written notification of the intention of the licensee to make oral representations, the revocation shall take effect at the end of that period.

**33B. Transfer, removal and amendment of licence.**

- (1)(a) A licence granted under this Act shall, subject to this section, not be transferable to another person;
  - (b) the gaming and other activities authorised under such licence shall not be removable from the licensed premises concerned to other premises; and
  - (c) no licence or licence condition may be amended in any way whatsoever,
 unless the Board has approved such transfer, removal or amendment, in writing, prior to it being implemented.
- (2) If the holder of a licence -
  - (a) desires to transfer such licence to another person such licence holder and such other person shall, subject to sections 24 to 27, make a joint application to the Board for such transfer in the manner determined by the Board;

- (b) desires to remove the gaming and other activities authorised under such licence, from the licensed premises to any other premises, whether permanently or temporarily, such licence holder shall, subject to sections 24 to 27, make an application to the Board for such removal in the manner determined by the Board; or
  - (c) desires to have a licence or any conditions to the licence amended in any way whatsoever, such licence holder shall, subject to sections 24 to 27, make an application to the Board for such removal in the manner determined by the Board.
- (3) An application for a transfer of a licence, removal of the gaming and other activities authorised under such licence or amendment of the licence or any condition to the licence in terms of subsection (2) shall be considered by the Board and the Board may thereafter -
- (a) refuse the application; or
  - (b) grant the application, conditionally or unconditionally.
- (4)(a) A licence shall not be transferred to a person who is disqualified or otherwise incompetent in terms of this Act to hold the licence concerned; and
- (b) the gaming and other activities authorised under such licence shall not be removable from the licensed premises concerned to other premises unless the Board is satisfied that the other premises are, or will on completion, be suitable for the purposes for which they will be used under the licence.
- (5) In the case of a casino licence the Board shall only grant an application in terms of subsection (2) after consultation with the responsible Member.
- (6) The provisions of sections 24 to 27 shall *mutatis mutandis* apply to an application in terms of this section.



### CHAPTER 3

#### CONDITIONS

#### 34. General conditions of licences.

- (1) The Board may in respect of any kind of licence impose such conditions to a licence as the Board considers appropriate, and without derogating from the generality of the foregoing in particular include conditions -
  - (a) relating to the games that may be played;
  - (b) relating to the method of operation of any game;
  - (c) for the purpose of ensuring that the operation of any gaming accords with decency, dignity, good taste and honesty;
  - (d) requiring the keeping of books, accounts, records and other information relating to the operation of any gaming;
  - (e) requiring certain minimum standards in relation to the premises on which gaming is to take place;
  - (f) requiring the submission to the Board of such reports and returns relating to the operation of gaming as the Board may from time to time require;
  - (g) relating to the days on which and hours during which gaming may be carried on;
  - (h) in the case of a casino licence, relating to the installation and maintenance of surveillance systems;
  - (i) relating to the provision by the licensee of a guarantee, as determined by the Board, for the liabilities of the licensee in relation to -
    - (i) gaming levies payable in terms of this Act; and
    - (ii) gaming debts payable by the licensee; and
  - (j) relating to the business relationships and associations of the holder of a licence, any shareholder of such licence holder and any employee of such licence holder.
- (2) The Board may at any time after issuing a licence impose any condition which it is competent to impose under subsection (1) and suspend, withdraw or amend any conditions by a notice delivered or tendered to the holder of a particular licence.
- (3) Where the Board proposes to suspend, withdraw or amend any condition under subsection (2), the Board shall serve a written notice on the licensee stating -
  - (a) that the Board proposes to suspend, withdraw or amend, as the case may be, any condition under subsection (1);
  - (b) that the licensee may, within 30 days after the date of the written notice -
    - (i) make written representations about the matter to the Board; or
    - (ii) notify the Board in writing of the intention of the licensee to make oral representations; and
  - (c) the effect of subsection (4).

- (4) If, within the period mentioned in subsection (3)(b), the Board receives neither written representations nor written notification of the intention of the licensee to make oral representations, such suspension, withdrawal or amendment of a condition, as the case may be, shall take effect at the end of that period.
- (5) Any condition imposed under subsection (1), or suspended, withdrawn or amended under subsection (2) in respect of a licence -
  - (a) shall, in the case of a casino licence, be effected after consultation with the responsible Member; and
  - (b) may not be effected retrospectively.

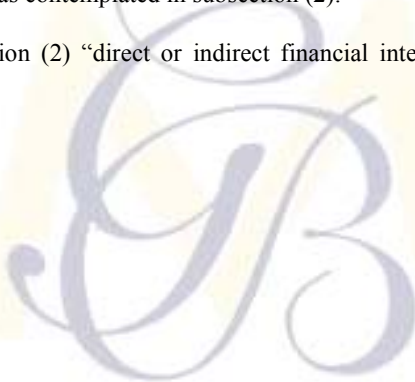
**35. Electronic monitoring system for gaming machines.**

- (1) The Board may in respect of a casino licence, a gaming machine operator licence and a gaming machine site licence, require from any such licence holder to link any gaming device to a central electronic monitoring system for purposes of the monitoring and detecting of significant events associated with each gaming device, including a system for continuous on-line real time recording, monitoring and control of any significant game play transaction as may be prescribed or determined by the Board.
- (2) The Board may -
  - (a) require from any licence holder referred to in subsection (1), to conduct such electronic monitoring system; or
  - (b) on application, approve any other person to conduct, on behalf of such licence holder, such electronic monitoring system, subject to the requirements determined and conditions imposed by the Board.
- (3) For purposes of this section “electronic monitoring system” means any electronic or computer or communications system or device that is so designed that it may be used, or adapted, to send or receive data from gaming devices in relation to the security, accounting or operation of gaming devices.

**36. Financial interests in business of licensee.**

- (1) No person may hold or acquire an interest in a licence as agent or nominee for an undisclosed principal or beneficial owner.
- (2) A licensee shall not permit any other person to procure any direct or indirect financial interest of five percent or more in the business to which the licence relates, unless the Board has, granted prior consent that such a person may procure such an interest in that business.
- (3) The Board shall not grant consent under subsection (2) where the person who is the subject of the application, is disqualified in terms of section 22 to hold a licence.
- (4) The provisions of sections 24 to 27 shall, where applicable, *mutatis mutandis* apply to a person who wishes to procure an interest as contemplated in subsection (2).
- (5) For the purposes of subsection (2) “direct or indirect financial interest” shall have the meaning as prescribed from time to time.

**36A. Suitability of third parties.**



- (1) The Board may –
- (a) prohibit a licensee from contracting with any third party until such time as such third party has applied for a certificate of suitability in the manner determined by the Board and has been granted such certificate of suitability; and
  - (b) require from any third party with which a licensee has contracted, to apply to the Board, in the manner and within such time as determined by the Board, for a certificate of suitability, and if such certificate of suitability is not granted, the Board may require the termination of the contract or association between the licensee and the third party.
- (2) The provisions of sections 24(4), 25 and 27 shall *mutatis mutandis* apply to an application contemplated in subsection (1).

### **37. Gaming devices.**

The holder of a casino licence, a gaming machine operator licence, a gaming machine site licence or a bingo operator licence shall -

- (a) not use or allow any game to be played on a gaming device other than a gaming device which has been supplied by the holder of a manufacturer, maintenance or supplier licence and which is identical in all material aspects to a type and model that has been approved by the Board and has been registered with the Board as prescribed or determined; and
- (b) keep such records and information as may be prescribed in respect of each gaming device.

### **38. Books, accounts and records.**

The holder of a licence shall keep such books, accounts and records as may be prescribed, specified in the licence and determined in the rules of the Board.

### **39. Control of entry to certain premises.**

- (1) Subject to the provisions of sections 61 to 64 of this Act, the holder of a licence (excluding a manufacturer, maintenance or supplier licence) or an employee of such a licence holder may -
- (a) refuse to admit any person to the licensed premises;
  - (b) request any person who is in any part of the licensed premises, to leave the premises;
  - (c) request any police officer to remove or assist in removing from the licensed premises any person contemplated in paragraph (a) or (b) or to remove from the licensed premises any person who refuses or fails to comply with a request contemplated in paragraph (a) or (b).
- (2) The Board may, on the grounds prescribed and in the manner prescribed, establish and maintain a list of persons who are to be excluded or rejected from the licensed premises specified in the list, or who are to be prohibited from participating in the gaming as specified in the list.

### **40. Advertisement.**

- (1) Subject to any regulations made under section 85 and the provisions of subsection (2), it shall be lawful to advertise any gaming which may lawfully be conducted under this Act.
- (2) The holder of a licence, any person acting on his or her behalf or any other person shall not conduct any advertising with regard to gaming -

- (a) at or in close vicinity of any school or other institution or place where persons under the age of 18 years are the dominant frequenters; and
- (b) in any newspaper, newsletter, magazine or periodical, or in any broadcast or transmission on radio, television or through any other medium, which is mainly aimed at persons under the age of 18 years.

**41. Credit.**

The holder of a licence (excluding a manufacturer, maintenance or supplier licence), or an employee of such a licence holder, shall not extend any credit in any form to any person in connection with or for the purpose of gaming, except as in the prescribed manner.

**42. Rules of certain games.**

- (1) The holder of a casino licence shall in respect of any game for which no rules have been made by the Board under section 84, make rules relating to the method of playing of such a game: Provided that such rules shall be approved by the Board.
- (2) All rules made in terms of subsection (1) shall at all times be available where any such game is played and be produced to any player on demand.

**43. Assistance to customers.**

The holder of a licence (excluding a manufacturer, maintenance or supplier licence) shall -

- (a) at the request of any customer make available for examination a copy of the rules of gaming in respect of any particular casino game; and
- (b) display prominently within the licenced premises such advice or information regarding any casino game as may be prescribed.

**44. Duration of licence.**

- (1) Any licence granted under section 24(4) shall, subject to being renewed, be valid as from the date of the issue thereof until the date on which -
  - (a) the holder thereof abandons it in writing;
  - (b) it is revoked by the Board under section 33A.
- (2) Where a licence is suspended under section 33A, the holder of such licence shall not exercise any right or privilege conferred by such licence during the period of suspension.

**45. Licence and certificate fees.**

- (1) There shall be charged and payable in respect of any licence or certificate of suitability granted or renewed under this Act the prescribed licence or certificate fees, which shall be in addition to any other amounts or levies payable under this Act.
- (2) The licence fees prescribed in terms of subsection (1) may make different provision in relation to different types of licences.
- (3) Any licence holder who fails to pay any licence fees referred to in subsection (1) on or before the date on which he or she becomes liable to pay such licence fees, shall in addition to such licence fees pay the prescribed penalty: Provided that the amount of such penalty shall not exceed twice the amount of the licence fee applicable to the licence concerned.



**45A. Allocation of fees.**

Notwithstanding any provision to the contrary contained in this Act, all fees, including but not limited to application fees, licence fees and certificate fees but excluding investigation fees paid to the Board in terms of this Act, shall be paid by the Board into the Provincial Revenue Fund within 14 days after receipt and verification of the correctness thereof: Provided that the verification of such fees received shall be commenced with forthwith upon receipt of such fees.

**46. Duty to display licence.**

A licence holder shall, at all times prominently display his or her licence on the licensed premises.

**46A. Duty to produce licence or certificate.**

A licence holder, employee of the licence holder or a person acting on behalf of the licence holder shall, on demand of an inspector or police officer, produce the licence or certificate concerned.

**47. Renewal of licences.**

- (1) A licence shall, subject to the provisions of this Act, and the conditions under which it was granted, remain in force and shall on application by the licence holder be renewed by the Board annually on production of the licence for the preceding year and on payment of the licence fees provided for in section 45.
- (2) An application for the renewal of a licence in terms of subsection (1) shall be submitted to the Board not later than 90 days prior to the date on which the licence becomes renewable.

**48. Repealed.****49. Repealed.****50. Repealed.****51. Gaming levy.**

- (1) Every holder of a licence (except a manufacturer, maintenance or supplier licence) shall be liable to, at such intervals as may be prescribed, pay a gaming levy, which gaming levy shall be calculated on such basis and at a rate as may be prescribed, and be payable in the manner and before the date as prescribed: Provided that different rates may be so prescribed in respect of different types of licences.
- (2) Any payment of the gaming levy referred to in subsection (1) shall be accompanied by a return in the form determined by the Board.
- (3) Notwithstanding anything to the contrary contained in any other law, there shall be no period of grace for the payment of the gaming levy referred to in subsection (1), and if such gaming levy is not paid on or before the prescribed date referred to in subsection (1), the licence may be suspended by the Board in terms of section 33A until the gaming levy and the penalties payable in terms of subsection (4), have been paid.
- (4) Any licence holder who fails to pay the gaming levy on or before the date prescribed referred to in subsection (1), shall in addition to such gaming levy, pay a penalty as prescribed: Provided that the total amount of such penalty shall not exceed twice the total amount of the gaming levy payable.
- (5) Anything prescribed in terms of this section shall be prescribed in consultation with the Member of the Executive Council.



- (6) The gaming levy payable in terms of this section shall be collected by the Board and such levies shall be paid into the Provincial Revenue Fund within 14 days after receipt and verification of the correctness thereof: Provided that the verification of such levies shall be commenced with forthwith upon receipt of such levies.

**52. Payment in respect of exclusivity.**

- (1) The Board may, in consultation with the responsible Member, require as a condition for granting a casino licence for the first time, a one-time payment, or the development of additional facilities, in consideration of guaranteeing to such licence holder, exclusivity in respect of any determined type of gaming in a determined area and for a determined period of time: Provided that the Board may, after consultation with the responsible Member, extend such period of exclusivity against such further payment as may be tendered by such licence holder.
- (2) Any payment or development in terms of subsection (1) shall be made or conducted, as the case may be, for the benefit of the Province at the time and in the manner determined by the Board after consultation with the responsible Member.



**CHAPTER 4****EMPLOYEES****53. Requirement for certain employees.**

- (1) Subject to subsection (2) and section 59, no person, otherwise than determined by the Board, shall be employed in any business relating to gaming if such person is not the holder of a certificate of approval issued in terms of section 55(5).
- (2) The responsible Member may prescribe any occupation to be an occupation for purposes of subsection (1).

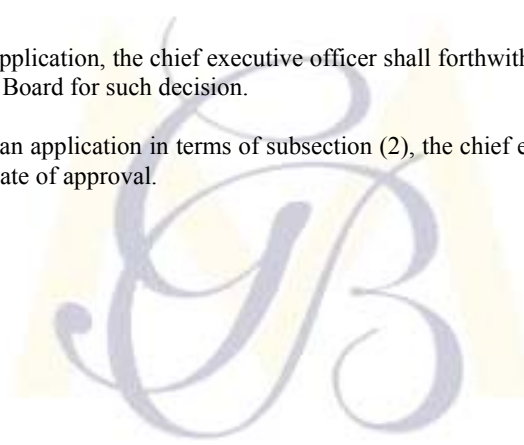
**54. Application for certificate.**

An application for a certificate of approval shall be made to the chief executive officer in the prescribed form and shall be accompanied by -

- (a) a complete set of fingerprints of the applicant taken in the prescribed or determined manner;
- (b) such documents, particulars of information as may be prescribed or determined; and
- (c) the prescribed application fees.

**55. Consideration of applicants.**

- (1) The Board shall consider an application in terms of section 56 and shall have due regard to -
  - (a) the age, character, reputation and financial and employment background of the applicant;
  - (b) any offences for which the applicant has been convicted and of which dishonesty is an element; and
  - (c) any other matter which may be relevant to establish whether the applicant is a suitable person to be so employed.
- (2) If the Board is satisfied that the applicant is a suitable person to be so employed, the Board shall grant the application: Provided that the Board may impose such conditions to a certificate as the Board considers appropriate.
- (3) The Board shall not refuse an application without giving the applicant the opportunity of being heard or presenting evidence.
- (4) If the Board refuses an application, the chief executive officer shall forthwith notify the applicant of the reasons furnished by the Board for such decision.
- (5) Where the Board grants an application in terms of subsection (2), the chief executive officer shall issue to the applicant a certificate of approval.

**56. Register of employees.**

The chief executive officer shall keep a register in which he or she shall enter the name and prescribed or determined particulars of each person to whom a certificate of approval has been issued under section 55(5), or suspended or withdrawn under section 58.

**57. Duration of certificate.**

- (1) A certificate of approval issued under section 55(5) shall be valid as from the date of the issue thereof until the date on which -
  - (a) the holder thereof, in writing and accompanied by the certificate, surrenders the certificate to the chief executive officer;
  - (b) the certificate is withdrawn by the Board under section 58;
  - (c) the certificate lapses if the certificate was issued for a specific period.
- (2) Where a certificate of approval is suspended under section 58, the holder of such certificate shall not be so employed during the period of suspension.

**58. Suspension or withdrawal of certificate.**

- (1) The Board may, subject to subsection (2), at any time suspend, for such period not exceeding six months, as the Board may determine, or withdraw, from such date as the Board may determine, a certificate of approval, if -
  - (a) any information contained in an application for such certificate was at the time when the information was furnished, false in any material respect or was subject to any material omission;
  - (b) since the issue of the certificate, the holder of the certificate has been convicted of an offence under this Act or of any other offence reflecting on his or her suitability to be so employed;
  - (c) the holder of the certificate has acted in contravention of the provisions of section 59; or
  - (d) the holder of the certificate is no longer a suitable person to be so employed.
- (2) The Board shall not suspend or withdraw a certificate of approval, unless the holder thereof has, by notice of not less than 30 days, been given an opportunity of being heard by the Board and of presenting evidence: Provided that any certificate of approval may be suspended with immediate effect pending the outcome of the hearing contemplated in this subsection.
- (3) The Board may at any time revoke the suspension of a certificate of approval if the Board is satisfied that the reasons for which the suspension was imposed have been remedied and that it would be just to revoke the suspension.

**59. Employment before issue of certificate.**

Notwithstanding the provisions of section 53, where an application for a certificate of approval has been made and the Board is of the opinion that -

- (a) a decision in relation to the application may not be made for some time;
- (b) the operation of the business in respect of which the licence concerned was granted will be seriously prejudiced or disadvantaged by the delay in the employment of the applicant; and
- (c) the commencement of the employment of the applicant will not prejudice the integrity and proper operation of the business in respect of which the licence concerned was granted,

the Board may grant permission in writing to the applicant to be so employed before the determination of the application, subject to such terms, conditions and restrictions as the Board considers appropriate in a particular case.

**60. Restrictions applicable to employees.**

No person who is required to hold a certificate of approval in terms of section 53(1), shall in any establishment licensed in terms of this Act, or any other establishment outside the Province at which gaming takes place and with which he or she is associated -

- (a) participate in any gaming in the Republic: Provided that such a person may participate in such gaming if it is necessary for the performance of his or her functions as such an employee; or
- (b) solicit or receive any tip, gratuity, consideration, or other benefit from any player or customer in that establishment other than in the manner prescribed or determined by the Board.



## CHAPTER 5

### POLICE OFFICERS AND INSPECTORS

#### **61. Powers of police to enter licensed premises.**

(1) Notwithstanding anything to the contrary contained in any other law, a police officer of or above the rank of inspector may on reasonable grounds and when he or she deems it necessary, with a warrant issued by a Magistrate or Justice enter licensed premises for purposes of -

- (a) carrying out such investigations and of taking such steps as he or she may consider necessary for the prevention of an offence;
- (b) the investigation of an offence;
- (c) the investigation of the conduct of any person therein; and
- (d) determining whether the conditions referred to in this Act are being complied with,

and may be accompanied and assisted in such investigations by a police officer below the rank of inspector.

(2) Any police officer entering a licensed premises under subsection (1) shall within 14 days of such entry submit a written report thereof to the Board.

#### **61A. Circumstances in which premises may be searched without a search warrant.**

A police officer may without a search warrant search any premises for the purposes contemplated in section 61-

- (a) if the person in charge of the premises consents to the search, or if the person who may consent to the search of the premises consents to such search; or
- (b) if he or she on reasonable grounds believes –
  - (i) that a search warrant will be issued to him or her under section 61(1) if he or she applies for such warrant; and
  - (ii) that the delay in obtaining such warrant would defeat the object of the search.

#### **62. Appointment of inspectors by Board.**

- (1) The Board may appoint any suitably qualified person as an inspector to perform, subject to the control and directions of the Board, any or all of the functions assigned to an inspector in terms of section 63.
- (2) Each inspector appointed under subsection (1) shall be furnished with a certificate signed by or on behalf of the Board and stating that he or she has been appointed as an inspector: Provided that if his or her appointment as inspector is limited to any particular function or functions, his or her certificate shall state such limitation.
- (3) Whenever an inspector appointed under subsection (1) performs a function under this Act in the presence of any person affected thereby, the inspector shall on demand by such person produce to him or her the certificate referred to in subsection (2).

**63. Functions and powers of inspectors.**

(1) An inspector may, for the purposes of this Act -

- (a) without previous notice, at all reasonable times, enter upon any licensed premises which are occupied or used for the purposes of any gaming, or any activity concerning gaming or any other premises on which it is suspected that -
  - (i) a casino or any other gaming or any activity concerning gaming is being conducted without the authority of a licence;
  - (ii) persons are being allowed to participate in any gaming or to play any gaming machine; or
  - (iii) any gaming machine or any equipment, device, object, book, record, note or other document used or capable of being used in connection with the conducting of a casino or any other form of gaming or any activity concerning gaming by any person, is kept and,

after having informed the person who is then in charge of the premises of the purpose of his or her visit, make such investigation and enquiry as he or she may think necessary;

(b) in any premises referred to in paragraph (a) -

- (i) require the production of any licence or written permission or authorisation that any person is required to hold under this Act;
- (ii) question or search any person who is on or in such premises, and investigate any activities in connection with the conducting of any gaming; and
- (iii) examine or inspect any gaming device, equipment, device, object, book, record, note or other document referred to in paragraph (a) and make a copy thereof or an extract therefrom;

(c) require from any person in charge of any premises referred to in paragraph (a) -

- (i) to point out any equipment, device or object referred to in that paragraph which is in his or her possession or custody or under his or her control;
- (ii) to produce for the purpose of examination or of making copies or extracts, all books, records, notes or other documents referred to in that paragraph which are in his or her possession or custody or under his or her control;
- (iii) to provide any information in connection with anything which has been pointed out or produced in terms of subparagraph (i) or (ii); and

(d) seize and remove any gaming machine, equipment, device, object, book, record, note or other document referred to in paragraph (a) which in his or her opinion may furnish proof of a contravention of any provision of this Act or leave it on the premises concerned after marking it for the purpose of identification.

(2) An inspector may, upon written authorisation by the Attorney-general, or a public prosecutor authorised thereto by the Attorney-general, inspect or make copies of any account of any person at any financial institution which account may, in the opinion of the Attorney-general, afford evidence of the commission of an offence in terms of the provisions of this Act, or may be of value in the investigation of an alleged or suspected offence in terms of the provisions of this Act.

(3) When performing any function in terms of subsection (1), an inspector may be accompanied by and avail himself or herself of the services of an assistant or interpreter or a police officer.

- (4) Nothing in this section shall preclude any inspector appointed and authorised in terms of the National Gambling Act, 1996 (Act No. 33 of 1996) to perform any of the above-mentioned functions and powers in the Province.

**64. Resistance against entry.**

- (1) A police officer or inspector who has the power to enter any premises may use such force as may be reasonably necessary to overcome any resistance against such entry, including the breaking of any door or window: Provided that such police officer or inspector shall first audibly demand admission to the said premises and announce the purposes for which he or she seeks to enter the premises.
- (2) The proviso to subsection (1) shall not apply where the police officer or inspector concerned is on reasonable grounds of the opinion that any article which is the subject of the investigation may be destroyed or disposed of if the provisions of the said proviso are complied with.

## CHAPTER 6

### FURNISHING OF REASONS, REVIEWS AND APPEALS

**65. Reasons for decisions by competent authority.**

- (1) A person who has made any application, objection or representation in terms of this Act and who feels aggrieved by a decision made by the competent authority in connection with the application, objection or representation, may make application to the competent authority that the competent authority furnish reasons for that decision.
- (2) The competent authority shall, after receipt of the last-mentioned application, within the prescribed time and in the prescribed manner furnish its reasons for the decision concerned.

**66. Repealed**

**67. Repealed**

**68. Repealed**

## CHAPTER 7

### JUDICIAL AND RELATED MATTERS

**69. Financial interests.**

A contract in terms of which a financial interest is procured in conflict with section 36(1) or (2) shall be void.

**70. Relinquishing or forgoing of certain rights, privileges, obligations and liabilities.**

Unless this Act specifically or by necessary implication permits such a provision, a contract which contains a provision whereby a person purports to relinquish or forgo a right, privilege, obligation or liability in terms of this Act, shall be void irrespective of whether the contract was concluded before or after the commencement of this Act.

**71. Service of process.**

In any judicial proceedings instituted against the competent authority, the service at the offices of the Board and at the office of the State Attorney if it is, or the branch of that office that is, situated in the area of jurisdiction of the court concerned, of any process or any document whereby proceedings are instituted, shall be sufficient service on the competent authority.

**72. Intermediation of State Attorney.**

The competent authority may, in any judicial proceedings contemplated in section 71 and when instituting judicial proceedings, appoint the State Attorney to intermediate.

**73. Costs.**

The costs incurred by the competent authority in connection with any judicial proceedings contemplated in section 71 shall, unless the court concerned orders the costs to be borne by the opposite party or by the competent authority *de bonis propriis*, be paid out of the Provincial Revenue Fund.

**CHAPTER 8****GENERAL****74. Prohibition in respect of gaming.**

No person shall -

- (a) participate in gaming, gamble or wager on the result of any event or contingency with any other person, other than with the holder of a licence issued in terms of this Act or any other Act, who is authorised by such licence to participate in such gaming, gamble or accepts wagers on the event or contingency concerned within the Province: Provided that this section shall not prevent a licence holder from participating in gaming, gambling or accepting wagers from the public in accordance with the conditions of his or her licence;
- (b) without the required licence referred to in paragraph (a), permit any gaming, gambling or wagering on the result of any event or contingency in or at any place under his or her control or in his or her charge; or
- (c) participate in gaming, gamble or wager on the result of any event or contingency at any place referred to in paragraph (b) or visit any such place with the object of participating in gaming, gambling or wagering on the result of any event or contingency or partaking in any activity concerning the foregoing.

**75. Improper use of the word “casino”.**

No person shall without the written consent of the Board, trade or conduct or advertise a business under a name or title of which the word “casino” forms a part, unless he or she is the holder of a casino licence.

**76. Prohibition of certain persons from entering licensed premises.**

- (1) No person under the age of 18 years shall enter any licensed premises or partake in any gaming or handle or operate any gaming device.
- (2) No licensee or employee of a licensee shall permit any person who is under the age of 18 years, and no parent or guardian of a person under the age of 18 years shall permit such person, to enter or remain in the licensed premises or partake in any gaming or handle or operate a gaming device.



- (3) Where the court that has convicted a person of any offence is of the opinion that by reason of the nature of the offence or the circumstances under which it was committed it is desirable in the interests of public order, public morals or fair play, that such person should not be permitted to enter any licensed premises, the court may issue a written order prohibiting him or her from entering any such licensed premises specified in the order for a period to be stated in the order.
- (4) Where a court makes an order under subsection (3) the Clerk of the Magistrates Court or the Registrar of the High Court shall submit a copy of the order to the chief executive officer who shall cause a copy thereof to be delivered to the licensees of all licensed premises named in the order.

**77. Prohibition of certain devices, machines, contrivances or instruments**

The responsible Member may, on the recommendation of the Board, by notice in the *Provincial Gazette*, prohibit the keeping or use at any place or class of place specified in the notice, or at any place or class or kind of place other than a place or kind of place so specified -

- (a) of all devices, machines, contrivances, or instruments resembling or having anything in common with any gaming device, described in such notice; or
- (b) of all devices, machines, contrivances or instruments of any class or kind described in such notice which in his or her opinion can, whether or not through the alteration thereof, in any manner be used for playing a casino game.

**78. Prohibition in respect of manufacture, sale, distribution, import, marketing, altering and modification of gaming equipment and devices.**

No person shall -

- (a) operate, manufacture, sell, distribute, import or market any cards, tokens, dice, game or gaming device which is intended to be used in violation of any provisions of this Act;
- (b) alter, or otherwise modify any gaming device or any associated equipment in a manner that -
  - (i) affects the result of a wager by determining win or loss; or
  - (ii) alters or effects the normal criteria of random selection which determines the outcome of a casino game;
- (c) provide any person with information or a device to cheat in any casino game, knowing that the information so conveyed or the device so provided may be used to violate any provision of this Act.

**79. Cheating and cheating devices.**

- (1) No person shall -
  - (a) allow anyone to conduct, carry on or operate any cheating or cheating device;
  - (b) conduct, carry on, operate, deal or expose for play any casino game or games played with cards or through any device, or any combination of such games and devices, which have in any manner been marked or tampered with or placed in a condition or operated in a manner the result of which tends to deceive players or the public or tends to alter the normal random selection of criteria or the normal chance of the game which could determine or alter the result of such game.
  - (c) knowingly make use of any counterfeit chip or token, or contravene the rules of any game or interfere in any way with any gaming device or any other device used for gaming with the intention of

obtaining any pecuniary advantage, directly or indirectly, whether for himself or herself or any other person.

- (2) For purposes of this section and section 78, “cheating” means -
- (a) to alter the criteria which determine the result of a casino game;
  - (b) to alter the criteria which determine the amount or frequency of payment in a casino game; or
  - (c) any scheme, arrangement, system or plan which the responsible Member may from time to time by notice in the *Provincial Gazette* so declare to be cheating.

### **80. Offences in general.**

Any person who -

- (a) contravenes or fails to comply with any provision of this Act or any regulation made under section 85 or rule made under section 84;
- (b) makes any false statement in any application or return under this Act;
- (c) contravenes any condition of a licence;
- (d) on any licensed premises conducts any gaming, other than such gaming which that person is authorised to conduct by the licence granted for that premises, or keeps any gaming device which such person is not authorised in terms of the licence to keep on such premises, or conducts any casino game otherwise than in accordance with the rules of such game;
- (e) hinders or obstructs any police officer or inspector in the performance of his or her functions under this Act.
- (f) fails to comply with an order made under section 76 or knowingly permits such person to enter the licensed premises;
- (g) having been summoned to give evidence at an investigation, hearing or enquiry under section 20(2), without sufficient cause, fails, to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the investigation, hearing or enquiry or until excused by the Board from further attendance, or to produce any book, document or thing in his or her possession or custody or under his or her control, which he or she has been summoned to produce;
- (h) having been summoned under section 20(2) or called under section 20(6) -
  - (i) without sufficient cause refuses to take the oath or to make an affirmation as a witness after he or she has been directed by the member of the Board presiding at the enquiry to do so, or refuses to testify, or, subject to section 20(8), refuses or fails to answer fully and satisfactorily to the best of his or her knowledge and belief any question lawfully put to him or her; or
  - (ii) after having taken the oath or having made affirmation, gives false evidence before the Board at any enquiry on any matter, knowing such evidence to be false or not knowing or believing it to be true;
- (i) gives an explanation or information to a police officer or inspector which is false or misleading, knowing it to be false or misleading;
- (j) falsely represents himself or herself to be an inspector;

- (k) without the consent in writing of the inspector or police officer concerned, removes from the place where it has been left by the inspector or police officer, or tampers with, destroys or makes alterations to, anything seized by such inspector or police officer in the performance of his or her functions;
- (l) without a licence or without the prior consent of the Board is in the possession of a gaming device, other than playing cards or dice;
- (m) is in control or in charge of any place specified in any notice under section 77 which any device, machine, contrivance or instrument contemplated by such notice is found,

shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

## **81. Repealed.**

### **81A. Declarations of forfeiture.**

- (1) Whenever any person is convicted of an offence under this Act, the court convicting him or her shall, in addition to any punishment which that court may impose in respect of the offence, declare -
  - (a) all monies, documents, books and records, equipment, devices, machines, contrivances, instruments or gaming devices (hereinafter referred to as the property) -
    - (i) by means of which the offence was committed;
    - (ii) which was used in the commission of the offence; or
    - (iii) which was found in the possession of the convicted person.
  - (b) any vehicle, vessel, aircraft, container or other object which was used -
    - (i) for the purpose of or in connection with the commission of the offence;
    - (ii) for the storage, conveyance, removal or concealment of any money, documents, books and records, equipment, devices, machines, contrivances, instruments or gaming devices by means of which the offence was committed or which was used in the commission of the offence;

and which was seized under section 63(1)(d) or is in the possession or custody or under the control of the convicted person, to be forfeited to the Board.

- (2) Anything forfeited under subsection (1) shall, if it was seized under section 63(1)(d), be kept or, if it is in the possession or custody or under the control of the convicted person, be seized and kept -
  - (a) for a period of 30 days from the date of the declaration of forfeiture; or
  - (b) if any person referred to in section 81B(1) has within the period contemplated in paragraph (a) made an application to the court concerned regarding his or her interest in such thing, until a final decision has been rendered in respect of any such application.

### **81B. Interest of other parties.**

- (1) A declaration of forfeiture shall not affect any interest which any person other than the convicted person may have in the property, vehicle, vessel, aircraft, container or object in question, if he or she proves -
  - (a) in the case of any property referred to in paragraph (a) of section 81A(1) -

- (i) that he or she did not know that such property was being used or would be used for the purpose of or in connection with the commission of an offence in the Province;
- (b) in the case of any vehicle, vessel, aircraft, container or object referred to in paragraph (b) of section 81A(1) -
  - (i) that he or she did not know that the vehicle, vessel, aircraft, container or object in question was used or would be used as contemplated in the said paragraph (b); or
  - (ii) that he or she could not prevent such use.
- (2)(a) Subject to the provisions of subsection (1), the court concerned or, if the presiding judicial officer concerned is not available, any judge or judicial officer of that court may at any time within a period of three years from the date of the declaration of forfeiture, on the application of any person other than the convicted person who claims that he or she has any interest in the property, vehicle, aircraft, container or object in question, inquire into and determine any such interest.
  - (b) If a court referred to in paragraph (a) finds -
    - (i) that the property, vehicle, vessel, aircraft, container or object is wholly owned by the applicant, the court shall set aside the declaration of forfeiture in question and direct that the property, vehicle, vessel, aircraft, container or object, as the case may be, be returned to the applicant or, if the Board has disposed of it direct that the applicant be compensated by the Board to the extent to which the Board has been enriched by the disposal;
    - (ii) that the applicant has an interest in the property, vehicle, vessel, aircraft, container or object -
      - (aa) the court shall direct that the property, vessel, aircraft, container or object, as the case may be, be sold by public auction and that the applicant be paid out of the proceeds of the sale an amount equal to the value of his or her interest therein, but not exceeding the proceeds of the sale; or
      - (bb) if the Board has disposed of the property, vessel, aircraft, container or object in question, the court shall direct that the applicant be compensated by the Board in an amount equal to the value of his or her interest therein, but not exceeding the enrichment of the Board by the disposal.
- (3) Any person aggrieved by a determination made by the court under subsection (2), may appeal against the determination as if it were a conviction by the court making the determination, and such appeal may be heard either separately or jointly with an appeal against the conviction as a result of which the declaration of forfeiture was made, or against a sentence imposed as a result of such conviction.

#### **81C. Evidence in respect of declaration of forfeiture and certain interests.**

In order to make a declaration of forfeiture or to determine any interest under section 81B(2), the court may refer to the evidence and proceedings at the trial or hear such further evidence, either orally or by affidavit as it may deem fit.

#### **81D. Vicarious responsibility.**

- (1) When a manager, agent or employee of the holder of a licence, performs or neglects to perform any act which would constitute an offence in terms of this Act for the holder concerned to perform or neglect to perform, that holder shall be deemed himself or herself to have performed or neglected to perform that act, unless he or she satisfies the court that

- (a) he or she neither connived at or permitted the act or omission by the manager, agent or employee concerned;
  - (b) he or she took all reasonable steps to prevent the act or omission; and
  - (c) an act or omission, whether lawful or unlawful, of the nature charged on no condition and under no circumstances fell within the scope of the authority or employment of the manager, agent or employee concerned.
- (2) For the purposes of subsection (1)(b), the fact that a holder issued instructions whereby any act or omission of that nature is prohibited shall not in itself be sufficient proof that he or she took all reasonable steps to prevent the act or omission.

**81E. Punitive gaming levies.**

- (1)(a) Where a person is convicted in terms of section 74(1)(b), the Board shall estimate the amount such person would, in the opinion of the Board, have been liable to pay as gaming levies in terms of section 51 had he been the holder of a licence, and the Board shall forthwith notify such person in writing of the amount so estimated.
- (b) The amount contemplated in paragraph (a) shall be estimated in respect of a period of not more than 3 years calculated retrospectively from the date of conviction of the person concerned.
- (c) The amount estimated in terms of paragraph (a) shall be paid by the person convicted in the manner prescribed in terms of section 51(1) within 21 days from the date of the notice contemplated in paragraph (a).
- (d) The provisions of section 51(4) shall *mutatis mutandis* apply in respect of a person who is liable to pay gaming levies under this section.

**82. Competency to impose penalties.**

Notwithstanding any law to the contrary, a magistrate shall have jurisdiction to impose any penalty prescribed by this Act.

**83. Prohibition of activities in Province in relation to gaming outside Province.**

No person shall be exempt from liability under any provision of this Act in respect of any act omission or anything authorised or permitted by him or her to be performed in the Province in connection with any gaming, merely by reason that the management, conduct or business of or concerning such gaming is in whole or part carried on at some place outside the Province.

**84. Rules.**

- (1) The Board may make rules, not inconsistent with the provisions of this Act, relating to the exercise of its powers and the execution of its functions, including -
  - (a) any matter pertaining to an application for a licence;
  - (b) the management and control of licensed premises and licence holders;
  - (c) rules for the playing of any form of gaming.
- (2) Not less than one month before any rule is made under this, the Board shall cause the text thereof to be published in the *Provincial Gazette* together with a notice declaring its intention to make that rule and

inviting interested persons to furnish any comments thereon or any representations which they wish to make in regard thereto, to the Board.

**85. Regulations.**

- (1) Subject to this section, the responsible Member may, in consultation with the Board, by notice in the *Provincial Gazette* make regulations regarding -
  - (a) any matter pertaining to the functions of the Board;
  - (b) any matter pertaining to an application for a licence;
  - (c) the management and control of licensed premises;
  - (d) the commissions or other charges which the holder of the licence may charge;
  - (e) the stakes for which any casino game may be played;
  - (f) any matter which in terms of this Act is required to or may be prescribed;
  - (g) in general, any matter in respect of which it is necessary or expedient to make regulations for achieving the objects of this Act.
- (2) A regulation made under this section may for a contravention thereof or failure to comply therewith, prescribe a fine or imprisonment for a period not exceeding two years or both such fine and such imprisonment.
- (3) Different regulations may be made under this section in respect of different kinds of licences, licences of the same kind which differ in respect of their characteristics, different categories of persons or different areas.
- (4) Any regulation made under this section with regard to fees and levies as contemplated in section 45 and 51 respectively, shall be made with the approval of the Legislature of this Province.
- (5) Not less than one month before any regulation is made under this section, the responsible Member shall cause the text thereof to be published in the *Provincial Gazette* together with a notice declaring his or her intention to make that regulation and inviting interested parties to furnish any comments thereon or any representations which they may wish to make in regard thereto, to the responsible Member.
- (6) The provisions of subsection (5) shall not apply in respect of any regulation which, after the provisions of that subsection have been complied with, has been amended by the responsible Member, in consequence of comments or representations received in pursuance of such compliance.

**85A. Disciplinary competencies of Board.**

If any licensee contravenes or fails to comply with any provision of this Act, the Board may, after conducting an investigation, hearing or enquiry, impose on the licensee a fine not exceeding R1 000 000 for any one such contravention.

**86. Application of Act.**

Save for the provisions of the National Gambling Act, 1996 (Act No. 33 of 1996) or as may otherwise be provided for in this Act, nothing contained in any other law relating to gaming shall apply in respect of any gaming conducted in the Province.

**87. Gaming debts enforceable.**

Any gaming debt lawfully incurred by a person after the commencement of this Act in the course of legal gaming shall, notwithstanding provisions of any law or the common law, be enforceable in a court of law.

**88. Short title and commencement.**

- (1) This Act shall be called the Mpumalanga Gaming, 1995, and shall come into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.
- (2) Different dates may be so fixed in respect of different areas in the Province.
- (4) Different dates may be so fixed in respect of different sections of this Act.

