

WESTERN CAPE GAMBLING AND RACING ACT, 1996 (ACT 4 OF 1996)

as amended by

Western Cape Gambling and Racing Amendment Act, No 4 of 1997
Western Cape Second Gambling and Racing Amendment Act, No 10 of 1997
[29 August 1997]
Western Cape Third Gambling and Racing Amendment Act, No 11 of 1997
[5 November 1997]
Western Cape Fourth Gambling and Racing Amendment Act, No 8 of 1998
[1 June 1998]
Western Cape Fifth Gambling and Racing Amendment Act, No 9 of 1998
[1 June 1998]
Western Cape Sixth Gambling and Racing Amendment Act, No 4 of 1999
[1 April 1999]
Western Cape Seventh Gambling and Racing Amendment Act, No 5 of 1999
[1 April 1999]
Western Cape Eighth Gambling and Racing Amendment Act, No 10 of 2000
[15 September 2000]
Western Cape Ninth Gambling and Racing Amendment Act, No 11 of 2000
[15 September 2000]
Western Cape Tenth Gambling and Racing Amendment Act, No 9 of 2001
[1 January 2002]
Western Cape Eleventh Gambling and Racing Amendment Act, Act, No 8 of 2002
[2 December 2002]
Western Cape Twelfth Gambling and Racing Amendment Act, No 1 of 2003
[30 June 2003]
Western Cape Thirteenth Gambling and Racing Amendment Act, No 3 of 2003
[1 July 2003]
Western Cape Fourteenth Gambling and Racing Amendment Act, No 7 of 2003
[1 April 2004]
Western Cape Fifteenth Gambling and Racing Amendment Act, No 4 of 2006
[1 December 2006]

To provide for the establishment of a gambling and racing board; to provide for the licensing of persons conducting gambling and for the licensing of persons engaged in gambling and the manufacture and sale of gambling machines and gambling devices; to provide for the restriction, regulation and control of gambling; to provide for taxes on gambling and fees for applications and investigations; to repeal the Horse Racing and Betting Ordinance, 1968, and to provide for matters incidental thereto.

[Long title substituted by sec 1 of Act 1997 w e f 29 August 1997.]

ARRANGEMENT OF SECTIONS

[Arrangement of Sections amended by sec 2 of Act 4 of 1997 w e f 29 August 1997 and by s 2 of Act 4 of 2006 w e f 1 December 2006.]

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PREAMBLE

WHEREAS gambling and racing can contribute to the economy of the province of Western Cape;

AND WHEREAS the growth and success of gambling and racing are dependent on public confidence and trust that gambling and racing are conducted honestly and competitively and free from criminal or corruptive elements;

AND WHEREAS it is necessary to ensure the health, safety, general welfare and good order of the inhabitants of the Province;

AND WHEREAS it is recognised that public confidence and trust and the health, safety, general welfare and good order of the inhabitants of the Province are dependent upon the strict regulation of all persons, premises, practices, associations and activities relating to gambling and racing;

AND WHEREAS it is recognised that opportunities for gambling and racing entail particular risks and dangers to the inhabitants of the Province, which justify the imposition of appropriate restrictions, regulations and controls;

AND WHEREAS no applicant for a licence or for an approval in respect of gambling or racing has any right to a licence or approval;

[Preamble amended by sec 3 of Act 4 of 1997 w e f 29 August 1997.]

(English text signed by the Premier)
(Assented to 22 May 1996)

BE IT THEREFORE enacted by the Provincial Legislature of the Province of Western Cape, as follows:

CHAPTER I : DEFINITIONS

Definitions

1.(1) In this Act the following words and expressions shall have the following meanings, unless the context indicates otherwise:

“Amusement game” means any game, other than bingo or a game similar to or derived from a game normally played in a casino or on a slot machine, played with or by means of an amusement machine which, upon payment of money, a token or a similar object, is available to be played and which enables the player to win a prize; provided that such prize shall not be in the form of cash, tokens, credit or any negotiable instrument, but shall be limited to non-cash prizes with a retail value not exceeding the amount prescribed by regulation in terms of the National Act;

[Definition of “Amusement game” inserted by s 3(d) of Act 4 of 2006 w e f 1 December 2006]

“Amusement machine” means any machine or device, other than a gambling device, on or by means of which an amusement game may be played;

[Definition of “Amusement machine” inserted by s 3(d) of Act 4 of 2006 w e f 1 December 2006]

“Applicant” means any person who or entity which requests the Board or any of its members, employees, appointees or delegates to exercise a power in terms of this Act, and in the case of a company, corporation, association, partnership or trust, includes each director, member, partner, beneficiary or trustee thereof;

[Definition of ‘Applicant’ substituted by s 1(a) of Act 10 of 1997 w e f 29 August 1997.]

“Associate” means

- (a) an employer;
- (b) a partner in terms of a partnership agreement;
- (c) a co-shareholder of a private company contemplated in section 20 of the Companies Act, 1973 (Act No. 61 of 1973);
- (d) a co-member of a Close Corporation contemplated in section 2 of the Close Corporations Act, 1984 (Act No. 69 of 1984); and
- (e) a person to whom another person has granted or from whom another person has received a general power of attorney;

[Definition of “Associate” inserted by s 3(e) of Act 4 of 2006 w e f 1 December 2006]

“Authorised officer” means a person authorised in terms of section 12;

“Bet” or “betting” means an activity described in section 1(3) below;

[Definition of “Bet” or “betting” amended by s 3(f) of Act 4 of 2006 w e f 1 December 2006]

“Bingo” means a game, including a game played in whole or in part by electronic means –

- (a) that is played for consideration, using cards or other devices –
 - (i) that are divided into spaces each of which bears a different number, picture or symbol; and
 - (ii) with numbers, pictures or symbols arranged randomly such that each card or similar device contains a unique set of numbers, pictures or symbols;

- (b) in which an operator or announcer calls or displays a series of numbers, pictures or symbols in random order and the players match each such number, picture or symbol on the card or device as it is called or displayed; and
- (c) in which the player who is first to match all the spaces on the card or device, or who matches a specified set of numbers, pictures or symbols on the card or device, wins a prize,

or any other substantially similar game declared to be bingo in terms of section 6(4) of the National Act;

[Definition of "Bingo" substituted by s 3(g) of Act 4 of 2006 w e f 1 December 2006]

"Bingo licence" means any licence issued in terms of section 48;

"Board" means the Western Cape Gambling and Racing Board established in terms of section 2.

"Bookmaker" means a person who directly or indirectly lays fixed-odds bets or open bets with members of the public or other bookmakers, or takes such bets with other bookmakers;

[Definition of "Bookmaker" substituted by s 3(h) of Act 4 of 2006 w e f 1 December 2006]

"Bookmaker licence" means any licence issued in terms of section 55;

"Casino" means premises where gambling games are played, or are available to be played, but does not include premises in which—

- (a) only bingo and no other gambling game is played or available to be played;
- (b) only limited payout machines are available to be played;
- (c) limited payout machines and bingo, but no other gambling game, are played or available to be played; or
- (d) only social gambling is conducted in terms of this Act;

[Definition of "Casino" substituted by s 3(i) of Act 4 of 2006 w e f 1 December 2006]

"Casino operator licence" means any licence issued in terms of section 45;

"Central securities depository" means a central securities depository as defined in the Custody and Administration of Securities Act, 1992 (Act No. 85 of 1992);

[Definition of "Central securities depository" inserted by s 3(j) of Act 4 of 2006 w e f 1 December 2006]

"Chairperson" means the person appointed chairperson of the Board in terms of section 3(3);

[Definition of "Chairperson" amended by s 3(k) of Act 4 of 2006 w e f 1 December 2006]

"Chief Executive Officer" means the Chief Executive Officer of the Board appointed in terms of section 9;

"Consideration" means:

- (a) money, merchandise, property, a cheque, a token, a ticket, electronic credit, credit, debit or an electronic chip, or similar object; or
- (b) any other thing, undertaking, promise, agreement or assurance, regardless of its apparent or intrinsic value, or whether it is transferred directly or indirectly;

[Definition of "Consideration" substituted by s 3(l) of Act 4 of 2006 w e f 1 December 2006]

"Contingency" means an event or occurrence of which the outcome is uncertain or unknown to a person until it happens;

[Definition of "Contingency" inserted by s 3(m) of Act 4 of 2006 w e f 1 December 2006]

“Depository institution” means a depository institution as defined in the Custody and Administration of Securities Act, 1992 (Act No. 85 of 1992);

[Definition of “Depository institution” inserted by s 3(m) of Act 4 of 2006 w e f 1 December 2006]

“Development application” means an application for a casino operator licence in respect of a casino to be developed in conjunction with ancillary facilities such as hotels, conference centres, restaurants, sports facilities, business facilities, holiday accommodation, game parks, residential facilities and all other facilities intended to form an integral part of a casino development;

[Definition of ‘Development application’ substituted by s 1(b) of Act 10 of 1997 w e f 29 August 1997.]

“Distributor licence” means any licence issued in terms of section 51;

“Employment licence” means a licence referred to in section 27(l) and (m);

[Definition of “Employment licence” inserted by s 3(n) of Act 4 of 2006 w e f 1 December 2006]

[Definition of “Event or contingency” deleted by s 3(o) of Act 4 of 2006 w e f 1 December 2006]

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

“Family member” means a person’s –

- (a) spouse; or
- (b) child, parent, brother or sister, whether such a relationship results from birth, marriage or adoption;

[Definition of “Family member” inserted by s 3(p) of Act 4 of 2006 w e f 1 December 2006]

“Financial interest”, means-

- (a) a right or entitlement to share in profits or revenue;
- (b) a real right in respect of property of a company, corporation or business;
- (c) a real or personal right in property used by a company, corporation or business; or
- (d) a direct or indirect interest in the voting shares, or voting rights attached to shares of a company or an interest in a close corporation;

[Definition of “Financial interest” substituted by s 3(q) of Act 4 of 2006 w e f 1 December 2006]

“Fixed odds bet” means a bet on one or more contingencies in respect of which the odds are agreed at the time the bet is placed;

[Definition of “Fixed odds bet” substituted by s 3(r) of Act 4 of 2006 w e f 1 December 2006]

“Gambling” or “gambling activity” means any activity described in section 1(2) below, but excludes social gambling;

[Definition of “Gambling” or “gambling activity” substituted by s 3(s) of Act 4 of 2006 w e f 1 December 2006]

“Gambling business” means any business of which gambling forms any part;

“Gambling device” means equipment or any other thing, excluding currency, that is used directly in the conduct of a gambling activity, or which, at the time of its manufacture, was designed to be used, in determining the result of a gambling activity, and without derogating from the generality of the foregoing, shall include –

- (a) a slot machine, and
- (b) such computerised or similar software used by a licence holder in the conduct of any gambling activity as the Board may determine to be a gambling device;

[Definition of ‘Gambling device’ substituted by s 4(b) of Act 4 of 1997 w e f 29 August 1997 and by s 1(a) of Act 4 of 1999 w e f 1 April 1999 and by s 3(t) of Act 4 of 2006 w e f 1 December 2006].]

“Gambling employee licence” means any licence issued in terms of section 57;
“Gambling establishment” means any premises or part thereof in or on which gambling takes place;

“Gambling game” means any activity described in section 1(5) below;

[Definition of “Gambling game” substituted by s 4(c) of Act 4 of 1997 w e f 29 August 1997, by s 1(a) of Act 11 of 2000 w e f 15 September 2000 and by s 3(u) of Act 4 of 2006 w e f 1 December 2006]

“Gambling machine” means any mechanical, electrical, video, electronic, electro-mechanical or other device, contrivance, machine or software, other than an amusement machine, that—

- (a) is available to be played or operated upon payment of a consideration; and
- (b) may, as a result of playing or operating it, entitle the player or operator to a pay-out, or deliver a pay-out to the player or operator;

[Definition of “Gambling machine” substituted by s 3(v) of Act 4 of 2006 w e f 1 December 2006]

“Institutional investor” means a publicly traded investor in shares on a recognised stock exchange which are held for investment purposes only;

[Definition of “Institutional investor” inserted by s 3(v) of Act 4 of 2006 w e f 1 December 2006]

“Internet” has the meaning set out in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

[Definition of “Internet” inserted by s 3(v) of Act 4 of 2006 w e f 1 December 2006]

“Junket” means a visit or an excursion to a casino by one or more persons who receive complimentary services such as transport, food and lodging as an inducement to gamble at the casino, which is arranged by a third party;

“Junket agent” means any person who, for commission, a share in gambling profits or any other consideration, in conjunction with the holder of a casino operator licence plans or organises a junket;

“Key employee licence” means any licence issued in terms of section 56;

“Licence” means any licence referred to in section 27;

“Licensed premises” means any premises in or on which gambling or racing or any related activity is conducted under a licence in terms of this Act:

[Definition of “Licensed race course” deleted by s 3(w) of Act 4 of 2006 w e f 1 December 2006]

“Limited payout machine” means a gambling machine outside of a casino in respect of the playing of which the stakes and prizes are limited as prescribed by regulations made in terms of the National Act;

[Definition of “Limited payout machine” substituted by s 3(x) of Act 4 of 2006 w e f 1 December 2006]

[Definition of “Limited gambling machine operator licence” deleted by s 3(y) of Act 4 of 2006 w e f 1 December 2006]

[Definition of “Limited gambling machine premises licence” deleted by s 3(z) of Act 4 of 2006 w e f 1 December 2006]

“Manufacturer licence” means any licence issued in terms of section 50;

“National Act” means the National Gambling Act, 2004 (Act No. 7 of 2004);

[Definition of “National Act” inserted by s 3(aa) of Act 4 of 2006 w e f 1 December 2006]

“Open bet” means -

- (a) a bet, other than a totalisator bet, taken by a bookmaker on one or more contingencies, in which no fixed-odds are agreed at the time the bet is placed; or

- (b) a bet in respect of which the payout is determined after the outcome of the contingency on which such a bet is struck became known, with reference to dividends generated by a totalisator;

[Definition of "Open bet" substituted by s 3(bb) of Act 4 of 2006 w e f 1 December 2006]

"Operator licence" means a licence referred to in section 27 (a), (b), (d), (i) and (k);

"Organ of state" has the meaning set out in section 239 of the Constitution of the Republic of South Africa, 1996;

[Definition of "Organ of state" inserted by s 3(cc) of Act 4 of 2006 w e f 1 December 2006]

"Partner" means any party to a partnership agreement, entered into with the intention of making a profit;

[Definition of "Partner" inserted by s 3(cc) of Act 4 of 2006 w e f 1 December 2006]

"Person" includes a partnership, association, trust, or a juristic person established by or in terms of any law;

[Definition of "Person" inserted by s 3(cc) of Act 4 of 2006 w e f 1 December 2006]

"Player" or "patron" means any participant, other than the holder of a licence issued in terms of this Act, in a gambling activity;

[Definition of "Player" substituted by s 3(dd) of Act 4 of 2006 w e f 1 December 2006]

"Political office bearer" means-

- (a) a member of the National Assembly, the National Council of Provinces or the National Cabinet;
- (b) a member of a provincial legislature;
- (c) a member of a municipal council or local authority;
- (d) a diplomatic representative of the Republic who is not a member of the public service;
- (e) a member of a house, or council of traditional leaders, or
- (f) a national or provincial office bearer of a political party;

[Definition of "Political office bearer" substituted by s 3(ee) of Act 4 of 2006 w e f 1 December 2006]

"Premises" means any site, place or location and includes land and any building, structure, vehicle, ship, boat, vessel, aircraft or container;

[Definition of "Premises" substituted by s 3(ff) of Act 4 of 2006 w e f 1 December 2006]

"Premises licence" means any licence referred to in section 27(c), (dA), (j) and (kA);

[Definition of "Premises licence" inserted by section 1(b) of Act 4 of 1999 w e f 1 April 1999 and substituted by s 1(c) of Act 11 of 2000 w e f 15 September 2000.]

"Prescribed" means prescribed by regulation in terms of this Act;

"Property" means any movable, immovable, corporeal or incorporeal property of any nature;

[Definition of 'property' substituted in the Afrikaans text by sec 1(d) of Act 4 of 1997 w e f 29 August 1997.]

"Province" means the province of Western Cape;

"Public servant" means a person employed within an organ of state or within a court, or a judicial officer;

[Definition of "Public servant" inserted by s 3 (gg) of Act 4 of 2006 w e f 1 December 2006]

"Publicly traded investor" means an investor which is listed on a recognised stock exchange and which is an investor in shares listed on a recognised stock exchange;

[Definition of "Publicly traded investor" inserted by s 3 (gg) of Act 4 of 2006 w e f 1 December 2006]

"Race" means any horse race over a defined or agreed course held for the entertainment of the public and members of any association or club, but does not include-

- (a) any race in the nature of a public trial gallop at which no betting takes place, held under the management and control of the holder of an operator licence, and
- (b) any race or contest of a private nature at which no betting takes place;

[Definition of "Race" substituted by s 3(hh) of Act 4 of 2006 w e f 1 December 2006]

[Definition of "Race course licence" deleted by s 3(ii) of Act 4 of 2006 w e f 1 December 2006]

"Responsible Member" means the member of the Executive Council responsible for the administration of this Act;

"Route operator" means a person to whom a route operator licence has been issued, in terms of section 46;

[Definition of "Route operator" inserted by s 3(jj) of Act 4 of 2006 w e f 1 December 2006]

"Route operator licence" means any licence issued in terms of section 46;

[Definition of "Route operator licence" inserted by s 3(jj) of Act 4 of 2006 w e f 1 December 2006]

"Rules" means the rules made by the Board in terms of section 82;

"Site" means any premises licensed for the placement of one or more limited pay-out gambling machines contemplated in section 47;

[Definition of "Site" inserted by s 3(kk) of Act 4 of 2006 w e f 1 December 2006]

"Site licence" means any licence issued in terms of section 47;

[Definition of "Site licence" inserted by s 3(kk) of Act 4 of 2006 w e f 1 December 2006]

"Slot machine" means any mechanical, electrical, video, electronic or other device, contrivance or machine used in connection with a gambling game which, upon insertion of money, a token or a similar object therein, or upon payment, whether directly or indirectly, by or on behalf of a player of any consideration whatsoever that is required, is available to be played or operated and the playing or operation of which, whether by reason of the skill of the player or operator or the application of the element of chance or both, may deliver to the person playing or operating the machine cash, tickets, receipts or tokens to be exchanged for cash or merchandise or any thing of value whatsoever, other than unredeemable free games, or may entitle such person to receive such cash, tokens, merchandise or thing of value, whether the pay-off is made automatically from the machine or in any other manner whatsoever. Notwithstanding the above, a "slot machine" shall include any machine, apparatus or device which -

- (a) has the capacity to provide as a prize, reward or consideration for successfully playing the game concerned, more than one coin, token or other consideration sufficient in value to enable the player, by inserting or in any manner procuring the insertion into such machine or the registration thereby of such coins, tokens or other consideration, to play more than one further game, or the opportunity to play more than ten further games immediately without the insertion of another coin, token or other consideration;

- (b) offers a game, the outcome of which is determined or displayed by way of reels, whether mechanical or video-generated, or is operated on any similar principle;
- (c) is an incomplete machine, device or apparatus which was a slot machine, but has been subsequently modified, or which is, or was intended to be made into a slot machine, including but not limited to any such machine, device or apparatus to which there is affixed an identification plate bearing the manufacturer's serial number, or
- (d) has been declared by the responsible Member by notice in the *Provincial Gazette*, to be a slot machine;

[Definition of 'Slot machine' substituted by s 4(e) of Act 4 of 1997 w e f 29 August 1997 and by s 1(b) of Act 11 of 2000 w e f 15 September 2000.]

"Social gambling" means-

- (a) the playing of a gambling game, other than the operation of a slot machine and other than any other gambling game involving the use, operation or possession of a gambling device, in a private dwelling, a church, school or community hall, a club house belonging to a genuine sports club or such other place as the Board may from time to time approve, which is not operated or conducted for profit and where no person directly or indirectly receives any form of remuneration or compensation for operating, conducting, carrying on, maintaining or providing such gambling game;
- (b) the playing of bingo, authorised in terms of section 67(1)(c), for the purpose of genuine fund-raising by a church, a school, a sports club or an entity duly registered in terms of the Fund-Raising Act, 1978 (Act 107 of 1978), or such other entity as the Board may from time to time determine, where no person other than a person referred to in this paragraph directly or indirectly makes any profit or receives any form of remuneration or compensation for operating, conducting, carrying on, maintaining or providing such gambling game, and in accordance with the procedures and subject to the conditions which the Board may from time to time determine, and
- (c) the playing of an amusement game;

[Definition of 'Social gambling' substituted by s 4(f) of Act 4 of 1997 w e f 29 August 1997 and by s 1(a) of Act 11 of 2000 w e f 15 September 2000 and paragraph (c) amended by s 3(II) of Act 4 of 2006 w e f 1 December 2006]

"Spouse" means a person's—

- (a) partner in a marriage;
- (b) partner in a customary union according to indigenous law; or
- (c) partner in a relationship in which the parties live together in a manner resembling a marital partnership or customary union;

[Definition of "Spouse" substituted by s 3(mm) of Act 4 of 2006 w e f 1 December 2006]

"Take-back bet" means any bet taken by a licensed bookmaker with any other licensed bookmaker or licensed totalisator carrying on business within the Republic of South Africa, where such bet is solely for the *bona fide* purpose of covering the whole or any portion of his or her commitment in respect of any bet

or bets laid or to be laid by him or her, provided that any such bet or bets are taken on the outcome of the same event or contingency, and for the purposes of this definition "commitment" means the amount which such licensed bookmaker will have to pay out or which he or she anticipates to pay out in respect of such bet or bets, irrespective of the stakes held by him or her in respect of such bet or bets;

[Definition of 'Take-back bet' inserted by s 4(g) of Act 4 of 1997 w e f 29 August 1997.]

"Temporary licence" means any licence issued in terms of section 36.;

[Definition of "Totalisator" deleted by s 3(nn) of Act 4 of 2006 w e f 1 December 2006]

"This Act" includes the Schedules and any regulation or rule made or issued thereunder;

"Unredeemable free game" means an opportunity, won by successfully playing a game, to play a further game without the payment of any consideration normally required to play such game, which cannot be redeemed by, distributed or transferred to the person who has won such opportunity or any other person for any other purpose than to use such opportunity without interruption to continue playing the type of game in respect of which the opportunity was won, on the same machine, device or apparatus as that on which the opportunity was won, and which excludes an opportunity which can, in any manner, be converted into money, property, cheques, credit, prizes, eligibility for other prizes or anything of value, and

[Definition of 'Unredeemable free game' inserted by s 1(e) of Act 11 of 2000 w e f 15

September 2000 and amended by s 3(oo) of Act 4 of 2006 w e f 1 December 2006]

"Winning bet" means any bet where the person who placed or took the bet correctly predicted the result of the contingency or in respect of which the bet was placed.

[Definition of "Winning bet" substituted by s 3(pp) of Act 4 of 2006 w e f 1 December 2006]

(2) An activity is a gambling activity if it involves –

- (a) placing or accepting a bet or wager in terms of subsection (3);
- (b) placing or accepting a totalisator bet, in terms of subsection (4); or
- (c) making available for play, or playing bingo or another gambling game as contemplated in subsection (5).

[Subsection (2) inserted by s 3(qq) of Act 4 of 2006 w e f 1 December 2006]

(3) A person places or accepts a bet or wager when that person –

- (a) being a player, stakes money or anything of value on a fixed-odds bet, or an open bet, with a bookmaker on any contingency; or
- (b) being a bookmaker –
 - (i) accepts a stake of money or anything of value on a fixed-odds bet, or an open bet, from a player on any contingency; or
 - (ii) stakes money or anything of value on a fixed-odds bet, or an open bet, with another bookmaker on any contingency;
- (c) stakes or accepts a stake of money or anything of value with one or more other persons on any contingency; or
- (d) expressly or implicitly undertakes, promises or agrees to do anything contemplated in paragraph (a), (b) or (c).

[Subsection (3) inserted by s 3(qq) of Act 4 of 2006 w e f 1 December 2006]

(4) A person places or accepts a totalisator bet when that person stakes money or anything of value on the outcome of an event or combination of events by means of –

- (a) a system in which the total amount staked, after deductions provided for by law or by agreement, is divided among the persons who made winning bets in proportion to the amount staked by each of them in respect of a winning bet; or
- (b) any scheme, form or system of betting, whether mechanically operated or not, that is operated on similar principles.

[Subsection (4) inserted by s 3(qq) of Act 4 of 2006 w e f 1 December 2006]

(5) An activity is a gambling game if –

- (a) it meets the following criteria:
 - (i) it is played upon payment of any consideration, with the chance that the person playing the game might become entitled to, or receive a pay-out; and
 - (ii) the result might be determined by the skill of the player, the element of chance, or both; or
- (b) it is a bet or wager in terms of subsection (3), that is placed in a casino in relation to an activity that meets the criteria in paragraph (a).

[Subsection (5) inserted by s 3(qq) of Act 4 of 2006 w e f 1 December 2006]

(6) Despite subsection (5), for all purposes of this Act, none of the following activities is a gambling game:

- (a) a bet or wager in terms of subsection (3), other than a bet or wager contemplated in subsection (5)(b);
- (b) a totalisator bet in terms of subsection (4); or
- (c) an amusement game.

[Subsection (6) inserted by s 3(qq) of Act 4 of 2006 w e f 1 December 2006]

(7) Subject to paragraph (b), a pay-out is:

- (a) any money, merchandise, property, a cheque, credit, electronic credit, a debit, a token, a ticket or anything else of value won by a player –
 - (i) whether as a result of the skill of the player or operator, the application of the element of chance, or both; and
 - (ii) regardless of how the pay-out is made.
- (b) Neither of the following is a pay-out:
 - (i) An opportunity to play a further game; or
 - (ii) a prize given to a participant or team of participants in a sporting event in respect of the participant's or team's performance in that event.
- (c) The result of a gambling game –
 - (i) is an opportunity to play a further game if the player is afforded the opportunity to continue without interruption playing the type of game –
 - (aa) in respect of which the opportunity was won; and
 - (bb) on the machine on which the opportunity was won; but
 - (ii) is not an opportunity to play a further game if the opportunity can in any manner, whether directly or indirectly, be –

- (aa) distributed or transferred to the person who has won such an opportunity or to any other person, or
- (bb) converted into money, property, a cheque, credit or any other thing of value; or
- (cc) converted in terms of any scheme, arrangement, system, plan or device prescribed in terms of the National Act.

[Subsection (7) inserted by s 3(qq) of Act 4 of 2006 w e f 1 December 2006]

CHAPTER II: WESTERN CAPE GAMBLING AND RACING BOARD

Establishment of Western Cape Gambling and Racing Board

2. (1) A Board is hereby established, to be known as the Western Cape Gambling and Racing Board.

(2) The right to carry on any gambling or racing or activities incidental thereto in any manner, whether directly or indirectly, within the Province shall, subject to subsection (4), vest exclusively in the Board.

[Subsection (2) substituted by s 5(a) of Act 4 of 1997 w e f 29 August 1997.]

(3) The Board shall be a juristic person and shall have the right and capacity to conduct and participate in legal proceedings and conduct all its business in its own name.

(4) The main object of the Board shall be to control all gambling, racing and activities incidental thereto in the Province subject to this Act and any policy determinations of the Executive Council relating to the size, nature and implementation of the industry.

[Subsection (4) substituted by s 1 of Act 11 of 1997 w e f 5 November 1997.]

(5) The Board shall have all powers that are necessary to achieve its main object and perform its functions under this Act, including the powers set out in section 12.

(6) Any policy determination of the Executive Council in terms of subsection (4) shall be published in the *Provincial Gazette* for general information.

[Subsection (6) added by s 5(b) of Act 4 of 1997 w e f 29 August 1997.]

Composition of Board

3. (1) The Board shall consist of seven members appointed on a part-time basis by the Executive Council in accordance with the prescribed procedure, which shall provide for public participation in the nomination of candidates for appointment; provided that the standing committee of the Provincial Legislature responsible for this Act shall evaluate all candidates as to their suitability for appointment.

[Subsection (1) substituted by s 2 of Act 11 of 1997 w e f 5 November 1997
and amended by s 4 of Act 4 of 2006 w e f 1 December 2006.]

(2) The members of the Board shall be eligible persons who have appropriate knowledge or experience; provided that appointments to the Board shall be made with gender sensitivity.

(3) The responsible Member shall designate one of the members as chairperson and another as vice-chairperson of the Board.

(4) The vice-chairperson shall act as chairperson of the Board when the chairperson is absent or unable to act as chairperson, and when both the chairperson and vice-chairperson are absent or unable to act as chairperson, the members present at the meeting shall elect one of their number to preside at such meeting by majority vote.

(5) Before being appointed a member of the Board the candidate shall submit to the responsible Member an affidavit in which such candidate declares that he or she-

- (a) is eligible for such appointment, and
- (b) is not disqualified from such appointment.

(6) The Executive Council or the responsible Member shall at any time be entitled to call for proof to his or her satisfaction of the continued eligibility of any member or prospective member of the Board, or to undertake or cause to be undertaken any investigation or enquiry in that regard.

Eligibility for appointment as member or employee of Board

4. In order to be eligible for appointment as a member or an employee of the Board a person shall-

- (a) be a natural person;
- (b) have attained the age of twenty-five years or, in the case of an employee of the Board, the age of eighteen years;
- (c) be a citizen of the Republic and ordinarily resident in the Province;
- (d) be a fit and proper person as contemplated in section 28(a)(i);
- (e) be of good financial standing, and
- (f) not be disqualified under section 5.

Disqualification from appointment as member or employee of Board

5.(1) The following persons shall be disqualified from being appointed, continuing or acting as members of the Board or as employees of the Board:

- (a) anyone who has at any time been convicted of an offence in terms of this Act or any similar law;
- (b) anyone who at any time, whether in the Republic or elsewhere, has been convicted of theft, fraud, forgery, the uttering of a forged document, perjury or any offence under the Corruption Act, 1992 (Act 94 of 1992), or any offence of which dishonesty is an element;

[Paragraph (b) amended in the Afrikaans text by sec 7(a) of Act 4 of 1997 w e f 29 August 1997.]

- (c) an unrehabilitated insolvent or anyone who is subject to any legal disability;

[Paragraph (c) amended in the Afrikaans text by sec 7(b) of Act 4 of 1997 w e f 29 August 1997.]

- (d) anyone who has at any time been removed from any office of trust on account of misconduct or dishonesty;

[Paragraph (d) substituted by s 7(c) of Act 4 of 1997 w e f 29 August 1997.]

- (e) any political office bearer, and

- (f) anyone who, whether personally or through his or her spouse, family member, partner or associate-

- (i) has or acquires a direct or an indirect financial interest in any gambling business or establishment, or

- (ii) has any interest in any business or enterprise that may conflict or interfere with the proper performance of his or her duties as a member or an employee of the Board or in any licence issued under this Act.

[Numbering of subsection (1) inserted by s 5(a) of Act 4 of 2006 w e f 1 December 2006. Paragraph (f) substituted by s 2 of Act 10 of 1997 w e f 29 August 1997 and amended by s 5(b) of Act 4 of 2006 w e f 1 December 2006.]

(2) For the purposes of this section, an indirect financial interest does not include an indirect interest held through any fund or investment if the person holding such interest has no control over the investment decisions made in respect of that fund or investment.

[Subsection (2) inserted by s 5(c) of Act 4 of 2006 w e f 1 December 2006]

Tenure of office

6. A member of the Board shall hold office for such period, not exceeding four years, as the Executive Council may determine at the time of his or her appointment to the Board, and a member of the Board shall be eligible for reappointment at the termination of his or her term of office.

Termination of term of office

7. (1) A vacancy in the office of a member of the Board shall immediately occur when-

- (a) such member dies;
- (b) such member's written resignation is received by the responsible Member;

[Paragraph (b) substituted by s 8(a) of Act 4 of 1997 w e f 29 August 1997.]

- (c) such member becomes disqualified from remaining a member of the Board;

such member is absent from two consecutive meetings of the Board without the prior written leave of the chairperson, or where applicable, the vice-chairperson;

such member's term of office has expired, and

- such member's term of office is terminated by the Executive Council, provided that the Executive Council shall not terminate a member's term of office unless it considers this to be in the public interest or in the interest of the proper administration of this Act.
- (2) In the event of any vacancy contemplated by paragraphs (a) to (d) or (f) of subsection (1), the unexpired portion of the term of office of the member concerned shall be deemed to have lapsed.

Vacancies

8. In the event of a vacancy contemplated by section 7, the Executive Council shall, in accordance with sections 3(1), 4, 5 and 6, appoint a new member to the Board.

Staff

9. (1) Subject to section 4, the Board shall, in the performance of its functions under this Act, be assisted by-

- (a) a suitably qualified and experienced person who shall be appointed Chief Executive Officer by the Board 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 who shall in respect thereof be accountable to the Board, and
- (b) such other staff as may be necessary to enable the Board to perform its functions.

(2) The staff of the Board shall-

- (a) be appointed by the Board on such terms and conditions as it may determine and shall be remunerated by the Board, provided that such remuneration shall, at the establishment of the Board in terms of this Act, be fixed by the Board in consultation with the responsible Member acting in concurrence with the member of the Executive Council responsible for finance, and
- (b) perform their functions and duties subject to the directions and control of the Board.

(3) The Board may, in the performance of the functions contemplated in subsection (1), be assisted by officers of the Provincial Administration: Western Cape or members of the South African Police Service established by section 5(1) of the South African Police Service Act, 1995 (Act 68 of 1995) or personnel of other government departments or a council, an institution or a body established by or under any law who are seconded to the service of the Board in terms of any law regulating such secondment or consultants.

[Subsection (3) substituted by s 3 of Act 10 of 1997 w e f 29 August 1997.]

(4) An officer, member or consultant referred to in subsection (3) shall, in the performance of his or her functions in terms of this Act be deemed to be an employee of the Board.

Co-opting of persons

10. (1) The Board may, subject to section 4, co-opt any person who, in the opinion of the Board, is able to assist the Board or a committee of the Board in the consideration of a particular matter.

(2) A person co-opted in terms of subsection (1) shall not be entitled to vote at any meeting of the Board or a committee of the Board.

(3) The remuneration of any person co-opted in terms of this section shall be determined by the Board.

[Subsection (3) added by s 9 of Act 4 of 1997 w e f 29 August 1997.]

Committees of Board

11. (1) The Board may from time to time and on such terms as it may determine appoint committees to exercise the powers and perform the functions delegated to them 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;

provided that no committee shall have less than two members.

(3) The Board shall designate the chairperson of a committee.

(4) A committee shall exercise its powers and perform its functions subject to the provisions of this Act and such directives of the Board as are not in conflict with such provisions.

Powers and functions of Board

12. The powers and functions of the Board shall be-

- (1) to invite applications for licences in terms of this Act or, with the exception of licences referred to in section 27(a), (b), (d) and (i), accept such applications without such invitation;

[Subsection (1) substituted by s 10(b) of Act 4 of 1997 w e f 29 August 1997 and by s 4(a) of Act 10 of 1997 w e f 29 August 1997.]

- (2) to consider and dispose of applications for licences in such manner and at such time and place as it may from time to time determine;

[Subsection (2) substituted by s 4(b) of Act 10 of 1997 w e f 29 August 1997.]

- (3) to grant, renew, amend, refuse, transfer, suspend or revoke licences under this Act;

[Subsection (3) substituted by s 4(c) of Act 10 of 1997 w e f 29 August 1997]

and amended by s 6(a) of Act 4 of 2006 w e f 1 December 2006.]

- (4) to impose, amend, suspend or revoke conditions in respect of any licence at any time;

[Subsection (4) substituted by s 10(c) of Act 4 of 1997 w e f 29 August 1997 and by s 4(d) of Act 10 of 1997 w e f 29 August 1997.]

- (4A) to grant, renew, refuse, suspend or revoke national licences in terms of the National Act;

[Subsection (4A) inserted by s 6(b) of Act 4 of 2006 w e f 1 December 2006]

[Subsection (5) deleted by s 6(c) of Act 4 of 2006 w e f 1 December 2006]

- (6) to acquire, hold, hire, let and alienate intellectual, movable and immovable property;
- (7) to open and maintain bank accounts;
- (8) to appoint and dismiss staff and do all things incidental thereto;
- (9) to conclude and perform contracts;
- (10) to participate in or conduct quasi-judicial and administrative proceedings;
- (11) to make and enforce rules for the conduct of its proceedings and hearings;
- (12) to receive, expend and generally administer funds;
- (13) to collect and administer in accordance with the provisions of this Act, taxes, levies, duties and licence fees imposed by or under this Act;
- (14) to make rules governing the licensing, conduct and operation of any gambling activity;

[Subsection (14) substituted by s 10(d) of Act 4 of 1997 w e f 29 August 1997

and amended by s 6(d) of Act 4 of 2006 w e f 1 December 2006.]

- (15) to conduct or cause to be conducted hearings, investigations and enquiries with regard to any matter falling within the scope of its functions;
- (16) to apply to court to place any gambling operation under supervisory management;
- (17) to enter into agreements with or obtain the assistance of any department or organ of state, including the South African Police Service, to conduct or assist it in conducting its investigations;

[Subsection (17) amended by s 10(e) of Act 4 of 1997 w e f 29 August 1997.]

- (18) to obtain information from licence holders and other persons and agencies;
- (19) to conduct an ongoing study of and investigation into gambling and racing throughout the Province and elsewhere in order to ascertain whether there are any deficiencies in this Act and to discover any abuses or violations of the procedures contained in this Act;

[Subsection (19) substituted by s 10(f) of Act 4 of 1997 w e f 29 August 1997.]

- (20) to determine minimum internal control systems for the Board and for licence holders, including accounting and reporting procedures and any other procedures or systems, whether computerised or not;

[Subsection (20) substituted by s 10(g) of Act 4 of 1997 w e f 29 August 1997.]

- (21) to impose penalties for any contravention of, or any failure to comply with, any provision of this Act by any licence holder, which may include fines or the suspension or imposition of conditions relating to any licence issued in terms of this Act;

[Subsection (21) substituted by s 10(h) of Act 4 of 1997 w e f 29 August 1997 and amended by s 1 of Act 1 of 2003 w e f 30 June 2003.]

- (22) to determine fees and charges in respect of hearings, investigations, enquiries and any other function performed by the Board;
- (23) to collect and administer fees and penalties imposed by or under this Act;
- (24) to undertake or cause to be undertaken tests on equipment and gambling devices used or to be used for gambling activities for any of the purposes of this Act and to recover the costs thereof from the owner or operator of such equipment or gambling devices, or from any person at whose instance such tests are undertaken;
[Subsection (24) substituted by s 10(i) of Act 4 of 1997 w e f 29 August 1997.]
- (24A) to determine norms and standards for gambling devices;
[Subsection (24A) inserted by s 10(j) of Act 4 of 1997 w e f 29 August 1997.]
- (25) to issue summonses for the appearance of persons or the production of books, documents or things in connection with applications, hearings, investigations or enquiries under this Act;
[Subsection (25) amended by s 10(k) of Act 4 of 1997 w e f 29 August 1997.]
- (26) to establish field or branch offices;
- (27) to establish and administer funds for the proper administration of this Act;
- (28) to authorise any employee of the Board in writing to exercise the special powers of entry, seizure and enquiry and such other powers as provided for by this Act;
- (29) to consult with any person or employ consultants regarding any matter relevant to the performance of its functions on such terms and conditions as the Board may determine;
- (30) to delegate any of its powers in accordance with section 13, and
- (31) generally to exercise the powers and perform the functions and duties specified in this Act and assigned to it by any other law.

Delegation

13. (1) Save for the powers stipulated in subsection (5), any power or function which the Board may exercise or perform in terms of this Act may be delegated to any of its members, committees or employees, whereupon such power or function may be exercised or performed by the delegate on behalf of the Board.

[Subsection (1) substituted by s 11(a) of Act 4 of 1997 w e f 29 August 1997.]

(2) Any such delegation may be made subject to such terms, conditions and restrictions as may be determined by the Board.

(3) The Board shall not be divested of any power delegated by it.

(4) Any person aggrieved by a decision taken in terms of a delegated power or function shall have a right of appeal to the Board against such decision in the manner and within the time prescribed.

(5) The Board shall not delegate the following powers:

- (a) the powers set out in section 12(2), (3) and (4) (with the exception of licences referred to in section 27 (l) and (m)), and

- (b) the powers set out in section 12(5), (14) and (30).
[Subsection (5) substituted by s 11(b) of Act 4 of 1997 w e f 29 August 1997.]

Special powers of entering, seizure and enquiry

14. (1) In addition to any other powers provided for in this Act, the Board shall have the special powers set out in this section.

(2) The powers conferred by this section shall be exercised-

- (a) by any member of the Board;
- (b) by any person authorised thereto by the Board in terms of section 12(28) (hereinafter referred to as an "authorised officer");
- (c) by any member of the South African Police Service established by section 5(1) of the South African Police Service Act, 1995 (Act 68 of 1995) (hereinafter referred to as a "police officer"), and
- (d) only for the purposes of this Act.

(3) The Chief Executive Officer shall issue to every person authorised under subsection (2) (b) a certificate of authorisation, and in the exercise of his or her powers and the performance of his or her duties the authorised officer shall on demand produce such certificate.

(4) The powers conferred by this section shall be-

- (a) at any time without a warrant to enter any licensed premises and-
 - (i) to inspect those premises;
 - (ii) to examine, or make copies of or take extracts from, any document found in or upon those premises which refers or is suspected to refer to gambling or racing or any activities incidental thereto, and request from the owner or person in charge of those premises or from any person in whose possession or charge that document is, an explanation of any entry therein;
 - (iii) to obtain any information or data which refers or is suspected to refer to gambling or racing or any activities incidental thereto stored on computer by personally operating or instructing the computer or by requesting a competent person on the premises to operate or instruct the computer to produce a computer print-out of any such information or data;
 - (iv) to examine any article or other object found in or upon those premises which is used, or suspected to be used, for or in connection with gambling or racing or any activities incidental thereto, and to request from the owner or person in charge of those premises or any person in whose possession or charge that article or object is, information in regard thereto;
 - (v) to remove, with the consent of the licence holder and against the issue of a receipt, any article, document or object referred to in paragraphs (ii), (iii) or (iv), if such article, document or

object appears to provide or to be able to provide proof of a contravention of a provision of this Act, or if he or she wishes to retain it for further examination or for safe custody; provided that a person from whose possession or charge any document has been taken shall, as long as it is in the possession or charge of the person referred to in subsection (2), upon request be allowed, at his or her own expense and under the supervision of the latter person, to make copies thereof or to take extracts therefrom at any reasonable time, and

- (vi) to question any person found on those premises.

[Subsection (4) amended by s 12(a) of Act 4 of 1997 w e f 29 August 1997 and substituted by s 1(a) of Act 8 of 1998 w e f 1 June 1998.]

- (4A) Any person referred to in subsection (2)(b) or (c) may, in the company of an officer of the South African Police Service of the rank of Inspector or higher, authorised by a warrant and subject to the provisions of any other law-

- (a) enter premises in or on which any article, document or other object connected with or reasonably suspected to be connected with gambling, racing or any activities incidental thereto is, or is reasonably suspected to be, or in or on which it is reasonably suspected that any of the provisions of this Act are being contravened, or which are occupied or used, or reasonably suspected to be occupied or used for the purposes of gambling, racing or any activities incidental thereto;
- (b) in respect of those premises, seize any article, document or object referred to in subsection (4) and do everything set out in subsection (4), which shall apply, with the necessary changes, and
- (c) inspect any account of any person at any bank or other financial institution which may afford evidence of the commission of an offence in terms of this Act.

[Subsection (4A) inserted by s 1(b) of Act 8 of 1998 w e f 1 June 1998.]

- (5) No evidence regarding any questions or answers contemplated in subsection (4) shall be admissible in any subsequent criminal proceedings against a person from whom information in terms of that subsection is acquired if the answer will incriminate him or her, except in criminal proceedings where the person concerned stands trial on a charge contemplated in subsection (6).

[Subsection (5) amended by s 12(b) of 1997 w e f 29 August 1997 and substituted by s 1(c) of Act 8 of 1998 w e f 1 June 1998.]

- (6) Any person who-

- (a) obstructs or hinders a person referred to in subsection (2) in the performance of his or her functions under this section;
- (b) when asked by a person referred to in subsection (2) for an explanation or information relating to a matter within his or her

- knowledge, gives an explanation or information which is false or misleading, knowing it to be false or misleading, or
- (c) falsely represents himself or herself to be a person referred to in subsection (2),
- shall be guilty of an offence.

[Subsection (6) substituted by s 1(d) of Act 8 of 1998 w e f June 1998.]

[Subsections (7) to (12) deleted by s 1(c) of Act 9 of 1998 w e f 1 June 1998.]

[Subsection (13) substituted by s 3 of Act 11 of 1997 w e f 5 November 1997 and deleted by s 1(c) of Act 8 of 1998 w e f 1 June 1998.]

[Subsection (14) deleted by s 1(c) of Act 8 of 1998 w e f 1 June 1998.]

Conflict of interests and public trust

15. (1) A member or an employee of the Board, a member of the Executive Council or a member of the standing committee of the Provincial Legislature responsible for this Act or their family member shall not directly or indirectly receive from any person anything of value that may conflict or interfere with the proper performance of such member's or such employee's duties.

[Subsection (1) amended by s 7(a) of Act 4 of 2006 w e f 1 December 2006]

(2) A member of the Board, the Executive Council or the standing committee of the Provincial Legislature responsible for this Act and their spouse shall not solicit or accept employment from –

- (a) any person who has applied for or been issued with a licence in terms of this Act, or
- (b) any person or entity offering or paying remuneration which is, wholly or in part, financed or subsidised by or derived from any person contemplated in (a)

within four years after the termination of their term of office; provided that in the case of any member of the Board who resigns, the unexpired portion of his or her term of office shall be added to the number of years referred to in the foregoing provision.

[Subsection (2) amended by s 7(b) of Act 4 of 2006 w e f 1 December 2006]

(3) Save as provided in this Act, a member or an employee of the Board, a member of the Executive Council or a member of the standing committee of the Provincial Legislature responsible for this Act and his or her spouse shall not participate in any gambling in this Province or at any other gambling business of a person licenced in this Province.

(4) Any contravention by a member or an employee of the Board or his or her spouse of the provisions of this section shall be deemed to be a disqualification in terms of section 5 of this Act.

[Subsection (4) substituted by s 5 of Act 11 of 1997 w e f 5 November 1997.]

[S 15 substituted by s 13 of Act 4 of 1997 w e f 29 August 1997

and by s 5 of Act 10 of 1997 w e f 29 August 1997.]

Disclosure

15A. (1) A member or an employee of the Board shall immediately make a disclosure to the Board if –

- (a) he or she, or his or her member as defined in section 30(2)(d) holds or acquires any direct or indirect financial interest in any gambling business or establishment;
- (b) he or she, or his or her family member has or acquires any interest in any business or enterprise that may conflict or interfere with the proper performance of his or her duties as a member or an employee of the Board, or in any licence issued under this Act;
- (c) he or she, or his or her family member receives anything contemplated in section 15(1);
- (d) he or she, or his or her family member solicits or accepts employment from a licence holder or an applicant for a licence in terms of this Act, and
- (e) he or she has participated in gambling, or it has come to his or her attention that his or her spouse has participated in gambling, in this Province or at any gambling business contemplated in section 15(3).

[Paragraph (e) substituted by s 5 of Act 11 of 1997 w e f 5 November 1997.

Paragraphs (a) – (e) amended by s 8(a) of Act 4 of 2006 w e f 1 December 2006]]

(2) The Board shall immediately notify the Executive Council of a disclosure by a member of the Board contemplated in subsection (1).

[Section 15A inserted by s 6 of Act 10 of 1997 w e f 29 August 1997.]

(3) For the purposes of this section, an indirect financial interest does not include an indirect interest held through any fund or investment if the person holding such interest has no control over the investment decisions made in respect of that fund or investment.

[Subsection (3) inserted by s 8(b) of Act 4 of 2006 w e f 1 December 2006]

Remuneration and allowances

16. Members of the Board shall be appointed on such terms and conditions and be paid such remuneration and allowances as may be determined by the responsible Member in concurrence with the member of the Executive Council responsible for finance.

[Section 16 substituted by s 14 of Act 4 of 1997 w e f 29 August 1997.]

Confidentiality

17. (1) No member or employee of the Board, including any co-opted person or consultant employed by the Board, shall disclose any information that has come to that person's knowledge by reason of his or her appointment to or employment by the Board and that relates to the business or affairs of the Board, an applicant for a licence or a licence holder, save as set out in this section and section 34(2)(b) and (c).

[Subsection (1) substituted by s 15 of Act 4 of 1997 w e f 29 August 1997, by s 7 of Act 10 of 1997 w e f 29 August 1997 and by s 6 of Act 11 of 1997 w e f 5 November 1997.]

(2) The foregoing prohibition against disclosure shall not apply in respect of-

- (a) disclosures to a judge in relation to pending legal proceedings;
- (b) disclosures in accordance with an order of a competent court;
- (c) disclosures regarding gambling in general which do not refer to the business or affairs of any particular applicant for a licence or licence holder;
- (d) disclosure of information to the Commissioners for Inland Revenue or Customs and Excise;
- (e) disclosure to the responsible Member, and
- (f) disclosure to any person who requires it for the performance of his or her functions under this Act.

Meetings of Board

18. (1)(a) The Board shall meet at least four times in every year in the manner and on such dates and at such times and places as the chairperson may determine.

(b) The chairperson of the Board may at any time convene a special meeting of the Board to be held at a time and place determined by him or her and shall, upon a written request signed by not fewer than three members of the Board, convene a special meeting of the Board to be held within two weeks after the date of receipt of such request, at a time and place determined by him or her.

(2) The procedure at a meeting of the Board shall, in so far as it has not been prescribed, be determined by the chairperson.

(3) The quorum for a meeting of the Board shall be five members.

(4) Any meeting may be adjourned for such time to such venue and for such reasons as the chairperson may deem necessary.

[Subsection (4) substituted in the Afrikaans text by s 16(a) of Act 4 of 1997 w e f 29 August 1997.]

(5) 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 a deliberative vote.

(6) No decision of the Board shall be invalid merely by reason of a vacancy on 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 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.

(7) Save as provided in subsection (8), all meetings of the Board shall be open to the public; provided that the chairperson may direct that any person whose presence in his or her opinion is not desirable at the meeting concerned may be excluded therefrom.

(8) The Board may hold meetings which are not open to the public in connection with any of the following matters:

- (a) investigations into or matters concerning private information in respect of any applicant for a licence;
- (b) possible or alleged criminal violations, regardless of whether such meetings are held with gambling officials of other provinces, states or countries, the Attorney-General or members of the South African Police Service, other police organisations or services or any law enforcement agency;
- (c) when considering any application or deliberating on any hearing, investigation or enquiry, and
- (d) when deliberating on any matter the publication of which may, in the opinion of the Board, enable any applicant for a licence to procure an unfair advantage over any other applicant.

[Subsection (8) amended by s 16(b) of Act of 1997 w e f 29 August 1997 and substituted by s 7 of Act 11 of 1997 w e f 5 November 1997.]

Minutes

19. (1) The proceedings of the Board shall be recorded in such manner as the chairperson may determine and shall, in the event of a vote, reflect each member's vote.

[Subsection (1) substituted by s 17 of Act 4 of 1997 w e f 29 August 1997.]

(2) Minutes shall be kept of meetings of the Board held in public and shall be retained at the offices of the Board.

(3) Any person may obtain copies of the minutes contemplated in subsection (2) against such payment as the Board may from time to time determine.

(4) Separate minutes of meetings which are not open to the public shall be kept and retained in like manner.

(5) The minutes of any meeting which was not open to the public and any document in which any advice, report, comment or recommendation by or to the Board in connection with anything done at such a meeting is contained shall not be disclosed save to the persons and in the circumstances provided for in section 17(2).

Exemption from liability

19A. No act or omission of any member of the Board or any employee of the Board shall render the Board or such member or employee liable for any damages sustained by any person in consequence of such act or omission;

provided that if such act is done in bad faith or if such member or employee has, in connection with such an act or omission in the course of his or her duties or functions not exercised reasonable care and diligence, the Board shall be liable for the damages aforesaid.

[Section 19A inserted by s 18 of Act 4 of 1997 w e f 29 August 1997.]

Funds of Board

20. (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 and for the benefit of the Board.

(2) The Board shall, within the period and in the manner contemplated in the Public Finance Management Act, 1999 (Act 1 of 1999), in each year submit a budget for the following year to the responsible Member for approval by the responsible Member.

(3) The Board may in any financial year make requests for additional funds to the responsible Member for inclusion in the adjustments estimates in accordance with the applicable legislation.

[Subsection (3) substituted in the Afrikaans text by sec 19 of Act 4 of 1997 w e f 29 August 1997 and amended by s 9 of Act 4 of 2006 w e f 1 December 2006.]

(4) Subject to compliance with all applicable national legislation, any revenue of the Board which exceeds the Board's total budget for a particular financial year by more than ten per cent shall be paid into the Provincial Revenue Fund; provided that all surplus revenue received by the Board in terms of subsection (1)(a) shall, within six months of the end of the financial year concerned, be deposited into the Provincial Revenue Fund.

[Date of commencement of s 20 : 24 May 1996. Section 20 amended by s 2 of Act 1 of 2003 w e f 30 June 2003.]

Accounting

21. (1) The Board shall in accordance with the provisions of the Public Finance Management Act, 1999, report to the Provincial Legislature, the responsible Member and any other applicable person or body on its activities and financial affairs.

[Subsection (1) amended by s 3(a) of Act 1 of 2003 w e f 30 June 2003]

(2) The Chief Executive Officer shall cause such accounting and related records to be kept as are necessary to fairly present the state of affairs and activities of the Board and to explain its transactions and financial position.

[Subsection (2) substituted by s 8 of Act 11 of 1997 w e f 5 November 1997 and amended by s 3(b) of Act 1 of 2003 w e f 30 June 2003.]

(3) The financial year of the Board shall be the period extending from 1 April in any year to 31 March in the next succeeding year.

(4) The Board shall, in respect of every financial year, cause annual financial statements to be prepared, audited and submitted in accordance with the provisions of the Public Finance Management Act, 1999.

[Subsection (4) amended by s 3(c) of Act 1 of 2003 w e f 30 June 2003]

- (5) The annual financial statements referred to in subsection (4) shall consist of-
- (a) a balance sheet dealing with the state of affairs of the Board;
 - (b) an income statement;
 - (c) a cash-flow statement;
 - (d) notes to the financial statements, and
 - (e) a report by the members of the Board contemplated in subsection (10).
- (6) The annual financial statements of the Board shall be accompanied by a report of the auditors.
- (7) The annual financial statements referred to in subsection (4) shall, in conformity with generally accepted accounting practice, fairly present the state of affairs of the Board and its activities and its financial position at the end of the financial year concerned, and shall for that purpose be in accordance with and include at least the matters prescribed by Schedule 4 of the Companies Act, 1973, in so far as they are applicable.
- (8) The annual financial statements of the Board shall by means of figures and a descriptive report explain any other matters and information material to the affairs of the Board.
- (9) The responsible Member shall lay the annual financial statements of the Board submitted to him or her in terms of subsection (4) before the Provincial Legislature within fourteen days after receipt thereof, if the Provincial Legislature is then in session or, if it is not then in session, within fourteen days after the commencement of its next ensuing session.
- (10) The members of the Board shall, as part of the Board's annual financial statements, submit to the responsible Member a report with regard to the state of affairs, the activities and the financial position of the Board and the degree to which its objects have been attained and shall also-
- (a) set out the functions and objectives of the Board as determined by law or otherwise;
 - (b) include relevant information regarding the activities of the Board with regard to new gambling developments, changes in the policies of the Board, the state of the gambling industry in the Province, significant hearings and disciplinary actions by the Board and any other matters of significance which the members of the Board consider relevant to an appreciation of the functions and activities of the Board;
 - (c) indicate the amount of money, if any, received from the Province, and
 - (d) furnish details of any significant event which has occurred between the end of the financial year and the date of their report.
- (11) The accounts of the Board shall be audited by the Auditor-General.

Supervisory management and appointment of curator

22. (1) If, as a result of the revocation, suspension or abandonment of any licence referred to in section 27(a), (b), (d) and (i) or as a result of any investigation or enquiry performed in terms of this Act, the Board is of the opinion that it is for

any reason desirable to do so, it may without notice to the licence holder concerned apply to the Cape Provincial Division of the Supreme Court for the appointment of a curator to take control of and to manage the whole or any part of the business of the licence holder.

(2) Upon an application in terms of subsection (1) the court may-

- (a) provisionally appoint a curator to take control of and to manage the whole or any part of the business of that licence holder upon such conditions and for such period as it may deem fit, and
- (b) simultaneously grant a provisional rule calling upon the licence holder to show cause upon a day mentioned in the rule why the appointment of the curator should not be confirmed.

(3) Upon the application of the licence holder, the court may anticipate the return day if not less than forty-eight hours notice of such application has been given to the Board.

(4) If, at the hearing pursuant to the provisional rule, the court is satisfied that it is desirable to do so, it may confirm the appointment of the curator.

(5) The curator shall act under the control of the court and he or she may apply to the court for instructions in regard to any matter arising out of or in connection with the control and management of the business of the licence holder.

(6) The curator shall furnish the Board with such information concerning the affairs of the licence holder as it may from time to time require and shall give the Board notice of any application which he or she intends to make to the court in terms of subsection (5).

(7) The licence holder is entitled to be heard personally or by a representative at any application by the curator in terms of subsection (5) and he or she may himself or herself make an application to the court with reference to the control and management of the business.

(8) The curator is entitled to receive such remuneration out of the funds of the licence holder concerned as the court may direct.

(9) The court may at any time cancel the appointment of the curator on good cause shown.

CHAPTER III: HEARINGS, INVESTIGATIONS AND ENQUIRIES

Powers and procedure

23. (1) The Board may conduct or cause to be conducted-

- (a) hearings, investigations or enquiries in respect of-
 - (i) an application for a licence under this Act;
[Subparagraph (i) substituted by s 20(a) of Act 4 of 1997 w e f 29 August 1997 and by s 8 of Act 10 of 1997 w e f 29 August 1997.]
 - (ii) the revocation or suspension of a licence issued under this Act, and

- (iii) any contravention or alleged contravention of, or any failure or alleged failure to comply with, any provision of this Act on any licensed premises or by the holder of any licence issued in terms of this Act.

[Sub-paragraph (iii) inserted by s 4 of Act 1 of 2003 w e f 30 June 2003 and amended by s 10 of Act 4 of 2006 w e f 1 December 2006]

- (b) investigations and enquiries pertaining to the integrity, character, reputation, prior conduct, habits, associations, financial standing and ability, criminal record, competence, experience and suitability of-

- (i) any applicant for a licence;
- (ii) any person having or wishing to procure a financial interest in a licence issued under this Act or in any gambling or racing or related activity or business;

[Subparagraph (ii) substituted by s 20(b) of Act 4 of 1997 w e f 29 August 1997 and by s 2(a) of Act 4 of 1999 w e f 1 April 1999.]

- (iii) any person contemplated in section 58(3)(c), and

[Subparagraph (iii) inserted by section 2(b) of Act 4 of 1999 w e f 1 April 1999.]

- (iv) any licence holder,

[Subparagraph (iv) previously subparagraph (iii), renamed by s 2(c) of Act 4 of 1999 w e f 1 April 1999.]

if it is of the opinion that this is necessary for the protection of public health, safety, morals or good order or for the achievement of the objectives of this Act.

(2) The Board shall conduct a hearing in respect of an application for a casino operator licence, where any licence is to be revoked or, subject to section 42(3)(b), when a licence is to be suspended.

[Subsection (2) substituted by s 20(c) of Act 4 of 1997 w e f 29 August 1997.]

(3) The procedure to be followed in the conduct of any hearing, investigation or enquiry in terms of subsection (1)(a) and any investigation or enquiry in terms of subsection (1)(b) shall, insofar as it is not prescribed, be determined by the person presiding at such hearing, investigation or enquiry.

[Subsection (3) substituted by s 20(c) of Act 4 of 1997 w e f 29 August 1997.]

(4) The person presiding at a hearing or conducting an investigation or enquiry shall keep or cause to be kept a record of the proceedings at the hearing, investigation or enquiry and of the evidence given thereat.

[Subsection (4) substituted by s 20(c) of Act 4 of 1997 w e f 29 August 1997.]

(5) At any hearing in respect of an application for a licence under this Act, the person applying for such a licence and any person objecting to the granting of such a licence shall be entitled to appear before the Board and to call witnesses in support of the application or objection and to cross-examine any other witness.

Enforcement enquiries

24. (1) The Board may, for the purpose of achieving the objects of this Act, cause to be carried out an enquiry-

- (a) into a contravention or alleged contravention of, or failure or alleged failure to comply with, any of the provisions of this Act or a condition of a licence;
 - (b) in order to determine if any provision of this Act applies to any person, and
 - (c) into the affairs or conduct of any licence holder.
- (2) The Board shall appoint an authorised officer referred to in section 14(2)(b) to carry out any enquiry contemplated by subsection (1).
- (3) (a) An authorised officer who carries out an enquiry in terms of this section shall compile and submit to the Chief Executive Officer a full report of the enquiry.
- (b) The Chief Executive Officer shall refer the report together with his or her recommendations to the Board.
- (4) The Board may, after consideration of the report filed in terms of subsection (3)(b) and the recommendations of the Chief Executive Officer, conduct a hearing in terms of section 23(1) and may, notwithstanding the provisions of section 42(3)(b), without prior notice suspend the licence in question pending the outcome of the hearing.
- (5) The provisions of this section shall be without prejudice to the power of any authority to institute any investigation into or to prosecute any alleged contravention of or failure to comply with any provision of this Act.

Witnesses and evidence

25. (1) For the purposes of any hearing, investigation or enquiry the Board may in writing summon any person who is or may be able to furnish information in relation to a particular matter to appear before it-

- (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 relates or may relate to a matter to be considered at such hearing, investigation or enquiry.

[Subsection (1) substituted by s 21(a) of Act 4 of 1997 w e f 29 August 1997.]

- (2) Compliance with the obligation to produce a book, document or thing in terms of the preceding subsection shall not deprive the holder of any lien claimed with regard to such book, document or thing of any rights as lienholder.
- (3) A person who has received a summons in terms of subsection (1) shall personally appear before the Board on the date and at the time and place set out in the summons; provided that if such a person is not competent so to appear, 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.
- (4) Every person summoned in terms of subsection (1) shall be bound to obey the summons, and any person who, having been duly summoned to attend a hearing, an investigation or enquiry of the Board, without sufficient cause fails to attend personally or by representative as set out in the proviso to subsection (3)

at the time and place specified in the summons or to remain in attendance until excused by the chairperson from further attendance, shall be guilty of an offence.

[Subsection (4) substituted by s 21(b) of Act 4 of 1997 w e f 29 August 1997.]

(5) The provisions of subsections (2) and (3) shall apply with the necessary changes to any corporate body, organisation or institution.

(6) The Board may require from any person testifying at a hearing, an investigation or an enquiry to give evidence on oath or affirmation, and the presiding person may administer the oath or accept an affirmation from any such person.

[Subsection (6) substituted by s 21(b) of Act 4 of 1997 w e f 29 August 1997.]

(7) The law relating to privilege applicable to a person giving evidence or producing 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 at a hearing, an investigation or enquiry held which is open to the public.

[Subsection (7) substituted by s 21(b) of Act 4 of 1997 w e f 29 August 1997.]

(8) Any person may be required to answer any question put to him or her at a hearing, an investigation or enquiry which is not open to the public, notwithstanding that the answer might tend to incriminate him or her, but the answer may not thereafter be used in evidence against such person in a court of law, save on a charge of which giving false evidence is an element.

[Subsection (8) substituted by s 21(b) of Act 4 of 1997 w e f 29 August 1997.]

(9) Any person who appears before the Board at a hearing, an investigation or enquiry, whether as a party or a witness, shall be entitled to be represented by his or her legal representative.

[Subsection (9) substituted by s 21(b) of Act 4 of 1997 w e f 29 August 1997.]

(10) (a) Any person who has been summoned in terms of this section or who has given evidence at a hearing, an investigation or enquiry shall be entitled to the same witness fees as if he or she had been summoned to attend or had given evidence at a civil trial in a magistrate's court held at the place where the hearing, investigation or enquiry is held.

(b) Any fees which may be payable in terms of paragraph (a) shall be paid from the funds of the Board.

[Subsection (6) substituted by s 21(c) of Act 4 of 1997 w e f 29 August 1997.]

CHAPTER IV: LICENSING AND APPROVAL

Right to conduct gambling

26. (1) The grant of any licence under this Act is subject to the provisions of section 2(2).

(2) The rights and duties pertaining to any licence shall be as set out in this Act.

[Subsection (2) substituted by s 22 of Act 4 of 1997 w e f 29 August 1997.]

Kinds of licences

27. The licences under this Act shall be-

- (a) casino operator licences;
- (b) limited gambling machine operator licences;
- (c) limited gambling machine premises licences;
- (d) bingo licences;
- (dA) bingo premises licences;
[Paragraph (dA) inserted by s 3(a) of Act 4 of 1999 w e f 1 April 1999.]
- (e) junket agent licences;
- (f) manufacturer licences;
- (g) distributor licences;
- (h) ...
[Paragraph (h) deleted by s 2(a) of Act 11 of 2000 w e f 15 September 2000.]
- (hA) ...
[Paragraph (hA) inserted by s 3(b) of Act 4 of 1999 w e f 1 April 1999 and deleted by s 2(a) of Act 11 of 2000 w e f 15 September 2000.]
- (hB) national licences, as contemplated in the National Act;
[Paragraph (hB) inserted by s 11 of Act 4 of 2006 w e f 1 December 2006]
- (i) totalisator operator licences;
- (i) totalisator premises licences;
- (k) bookmaker licences;
- (kA) bookmaker premises licences;
[Paragraph (kA) inserted by s 3(c) of Act 4 of 1999 w e f 1 April 1999.]
- (l) key employee licences, and
- (m) gambling employee licences.

National licences

27A. (1) The Board may issue national licences as contemplated in the National Act.

(2) Except as otherwise provided in the National Act, the provisions of this Act shall apply in respect of any national licence issued in terms of the National Act.

(3) Notwithstanding the provisions of this Act, the holder of a national licence shall be entitled to conduct the activities authorised thereby in the Province, as if such licence had been issued in terms of this Act.

[Section 27A inserted by s 12 of Act 4 of 2006 w e f 1 December 2006]

Qualification for licences

28. In order to qualify for a licence-

- (a) a person, other than a company or other body corporate, shall-
 - (i) be a fit and proper person whose character, integrity, honesty, prior conduct, regard for the law, reputation, habits and associations do not pose a threat to the health, safety, morals, good order and

- general welfare of the inhabitants of the Province and to the provisions and policy of this Act, and
 - (ii) not be disqualified under this Act, and
 - (b) a company or body corporate shall-
 - (i) be registered under the relevant laws of the Republic;
 - (ii) be of good financial standing and have adequate means to undertake and sustain the activity for which the licence is required, and
 - (iii) with the necessary changes, comply with paragraph (a).
- [Section 28 substituted by s 13 of Act 4 of 2006 w e f 1 December 2006]

Disqualifications in respect of employment licences

29. A person may not hold an employment licence issued in terms of this Act, if that person –

- (a) does not comply with the requirements of section 28(a)(i);
- (b) is an unrehabilitated insolvent or is subject to any legal disability;
- (c) is a member of the Board, a member of the Executive Council or a member of the standing committee of the Provincial Legislature responsible for this Act, or is a family member of such person;
- (d) is an employee of the Board, or a family member of such person; provided that the Board may condone such disqualification, where it exists in respect of a family member, if it is satisfied that no material conflict of interest will arise by reason of such employment;
- (e) is under the age of 18 years;
- (f) is a public servant or political office bearer;
- (g) is revealed, as a result of investigations or enquiries conducted pursuant to section 30(2), to be disqualified from holding an interest in a licence holder, licensed premises, or the business to which a licence relates;
- (h) is listed on the register of excluded persons contemplated in the National Act;
- (i) is subject to an order of a competent court holding that person to be mentally unfit or deranged;
- (j) has ever been removed from an office of trust on account of misconduct relating to fraud or the misappropriation of money, or
- (k) has been convicted during the previous ten years, in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Corruption Act, 1992 (Act No. 94 of 1992), or an offence in terms of this Act or the National Act, and has been sentenced to imprisonment without the option of a fine, or to a fine exceeding the amount prescribed in terms of the National Act, unless the person has received a grant of amnesty or free pardon for the offence.

[Section 29 substituted by s 14 of Act 4 of 2006 w e f 1 December 2006]

Disqualifications and restrictions in respect of other licences

30. (1) This section does not apply to an employment licence.

(2) A person may not hold a licence referred to in this section, or a financial interest in the holder of such a licence, if that person –

- (a) is a person contemplated in section 29(a), (e), (f), (i), (j) or (k);
- (b) is a legal entity in respect of which the State or any organ of the State or any organisation with which the State is concerned has any financial interest, except as far as taxes are concerned, in any gambling activity; provided that the provisions of this paragraph shall not include an interest held by the State or any organ of the State or any organisation with which the State is concerned, arising out of an arms-length commercial transaction in respect of -
 - (i) a lease, in respect of which the rental payable is not determined by reference to the turnover of, or profit from, any gambling activity;
 - (ii) a sale of property, or
 - (iii) the granting of an option to purchase;
- (c) is an unrehabilitated insolvent, or
- (d) is a family member, other than a brother or sister, of a person who is a member or employee, of a regulatory authority exercising oversight over that licensee;

provided that, in dealing with applications for the grant or renewal of licences or evaluating the suitability of licence holders or persons having a financial interest therein, the Board may, but shall not be obliged to, conduct investigations or enquiries in respect of persons holding a financial interest of less than five percent in the applicant.

(3) The Board must refuse to issue a licence to an applicant if, after conducting the investigations or enquiries contemplated in subsection (2), it has reason to believe that –

- (a) the applicant, any person who holds a financial interest in the applicant, or any manager of the business concerned is a family member, other than a brother or sister, of a person who is a member or employee of that licensing authority; or
- (b) the applicant or any person who holds a financial interest of five percent or more in the applicant is disqualified from holding an interest in a licence holder or the business to which a licence relates, in terms of subsection (2).

(4) For the purposes of this section, a financial interest does not include an indirect interest held in any fund or investment if the person holding that interest has no control over the investment decisions made in respect of that fund or investment.

[Section 30 substituted by s 15 of Act 4 of 2006 w e f 1 December 2006]

Applicants

31. Any person qualified in terms of this Act may apply for a licence under this Act; provided that, in the case of a licence referred to in section 27(a), (b) (d) or (i), a person may only on an invitation by the Board apply for such licence; provided further that-

- (a) any person whose application has been refused because of being disqualified shall not apply for a licence within twelve months of the date of such refusal, or
- (b) any person whose application has been refused more than once because of being disqualified shall not reapply for a licence within three years of the date of the latest refusal.

[Section 31 substituted by s 26 of Act 4 of 1997 w e f 29 August 1997.]

Licence applications

32. (1) Any application for the grant or renewal of a licence shall-

- (a) be lodged with the Chief Executive Officer in the manner and form determined by the Board;
- (b) be accompanied by the documents and information determined by the Board and by the application fee or annual licence and investigation fees specified in paragraph 1 or 2 of Schedule II, as the case may be, which shall not be refundable, and
- (c) be invalid in the event of non-compliance with the foregoing in any respect.

(2) Upon receipt of any valid application for the grant of a licence other than a junket agent licence, a key employee licence or a gambling employee licence, the Chief Executive Officer shall-

- (a) cause a notice of the application to be published in the *Provincial Gazette* and such other printed media as he or she may deem appropriate; provided that this requirement may be dispensed with where applications for premises licences have been received in respect of -
 - (i) premises to which the general public will not have physical access for the purpose of gambling or betting, or
 - (ii) premises already utilised for gambling or betting under the authority of a licence issued by the Board, and

[Paragraph (a) substituted by s 3 of Act 11 of 2000 w e f 15 September 2000.]

- (b) where applicable transmit, subject to section 17, the relevant information necessary to comment on an application to the prescribed interested parties and such other interested parties as he or she may deem appropriate or who may request such information, including the local government in whose area of jurisdiction the establishment to which the application relates is to be situated.

(3) The applicant shall be liable for and pay to the Chief Executive Officer any reasonable costs incurred in connection with the publication and transmission of any notice contemplated by subsection (2).

(4) An application for the grant of a licence shall not -

- (a) be amended, supplemented or substituted, or
- (b) be withdrawn,

without the prior consent of the Board.

[Subsection (4), previously subsection (5), renumbered by s 9(b) of Act 11 of 1997 w e f 5 November 1997. Previous subsection (4) deleted by s 9(a) of Act 11 of 1997 w e f 5 November 1997.]

(5) The Board may upon the withdrawal of an application deem such applicant to be disqualified in terms of section 31.

[Subsection (5), previously subsection (6), renumbered by s 9(c) of Act 11 of 1997 w e f 5 November 1997.]

[S 32 substituted by s 27 of Act 4 of 1997 w e f 29 August 1997.]

Development application

32A. The Board may, notwithstanding the provisions of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), or any other law relating to land use and related matters which fall within the legislative competence of the Provincial Legislature, and notwithstanding the fact that a proposed development will not comply with existing land use provisions or restrictions, grant a development application in respect of any land in the Province.

(2) The Board shall, before finally considering a development application -

- (a) invite comments on or objections to the development application by advertising in the prescribed manner;
- (b) subject to section 17, make the development application available at the office of the Board for inspection by interested persons for a period of at least twenty-one days;
- (c) cause to be delivered to the local authority in whose area of jurisdiction the development is to take place and such other interested parties as may be prescribed a copy of the development application and a notice calling upon the local authority and such other interested parties to furnish the Board with their written comments on the application within at least sixty days of delivery of the notice or within such further period as the Board may determine.

(3) The Chief Executive Officer shall -

- (a) where adverse comment on or objections to the development application are received, submit these to the applicant for comment, and
- (b) submit the development application and all relevant documents, comment and objections to the Board for consideration in terms of this Act.

(4) Any development approved in terms of this section shall during the currency of the relevant licence be deemed to be in accordance with the zoning conditions and land use restrictions applicable to the land in question.

[Section 32A inserted by s 10 of Act 10 of 1997 w e f 29 August 1997.]

Land use on repeal or lapse of casino operator licence

32B. If a casino operator licence is repealed or lapses, the land use of the premises will be deemed to be legal and the subject land shall be deemed to be zoned in accordance with its utilization, as determined by the local authority, on the day after the lapsing of the casino operator licence.

[Section 32B inserted by s 10A of Act 10 of 1997 w e f 29 August 1997.]

Objections and comments

33. (1) Any body which or person who wishes to object to or comment on any application made for a licence under this Act may do so by giving written notice thereof to the Board and setting out the grounds of the objection or comment in the prescribed manner.

(2) The Board may-

- (a) at any time on good cause condone non-compliance with the requirements of subsection (1), and
- (b) of its own motion take cognisance of any matter or thing which in its opinion could render the grant of a licence undesirable.

Liability for costs of and consent to hearings, investigations or enquiries

34. (1) Any person who submits an application under this Act, and any licence holder who or which is the subject of a hearing, an investigation or enquiry under this Act shall be liable for and pay to the Board in the prescribed manner all costs reasonably incurred by or on behalf of the Board in conducting any hearings, investigations or enquiries provided for in this Act.

(2) By submitting an application for a licence the applicant consents that the Board or any member or authorised officer thereof may-

- (a) conduct any hearing, investigation or enquiry pertaining to the integrity, character, reputation, prior conduct, habits, associations, financial standing and ability, criminal record, competence, experience and suitability-
 - (i) of the applicant or, if the licence has been granted, the licence holder;
 - (ii) of any director, officer, shareholder or partner, where the applicant is a company, body corporate or partnership, and
 - (iii) of any person directly or indirectly involved in the affairs of any applicant or, if the licence has been granted, the licence holder;
- (b) disclose any document or information submitted as part of or together with an application to any person in connection with such hearing, investigation or enquiry, and
- (c) obtain from and disclose to any law enforcement or regulatory agency or body anywhere in the world information of and concerning the applicant for purposes of any hearing, investigation or enquiry.

[Section 34 substituted by s 28 of Act 4 of 1997 w e f 29 August 1997.]

Consideration of licence applications

35. (1) All applications for licences shall be considered and disposed of in the manner and according to the procedures determined by the Board.

[Subsection (1) substituted by s 29(a) of Act 4 of 1997 w e f 29 August 1997.]

(2) The Board may conduct or cause to be conducted any hearing, investigation or enquiry authorised by this Act in relation to an application.

[Subsection (2) substituted by s 29(b) of Act 4 of 1997 w e f 29 August 1997.]

(3) The Board shall not approve an application for any licence referred to in section 27(a), (b), (c), (d), (i) (j) or (k)-

(a) unless it is satisfied that-

- (i) the funding of the business for which the licence is required is provided by a reputable person, body or institution;
- (ii) the premises in question are or will on completion be suitable for the purpose for which they will be used under the licence;
- (iii) the development is not undesirable within the specific geographical environment, with reference to social, religious, educational, cultural, economic, environmental, transport and land-use aspects;
- (iv) the applicant has, in the relevant application form submitted to the Board, made full and frank disclosure of all matters prescribed or determined by the Board and the relevant information in respect of the application was made available for public scrutiny;

[Subparagraph (iv) substituted by s 29(d) of Act 4 of 1997 w e f 29 August 1997 and by s 5 of Act 4 of 1999 w e f 1 April 1999.]

- (v) the grant of the licence is not against the public interest and in accordance with the policy and objectives of this Act, and
- (vi) the applicant qualifies in terms of section 29 and is not disqualified in terms of section 30, and

[Subparagraph (vi) substituted by s 11(a) of Act 10 of 1997 w e f 29 August 1997 and amended by s 16 of Act 4 of 2006 w e f 1 December 2006.]

(b) if in the Board's opinion the possibility exists that the grant of the application may cause a monopolistic situation to arise or be aggravated.

[Subsection (3) amended by s 29(c) of Act 4 of 1997 w e f 29 August 1997.]

(4) After consideration of an application and, if applicable, any objections thereto or any hearing, investigation or enquiry in connection therewith, the Board may-

- (a) refuse an application;
- (b) grant an application, or
- (c) postpone the consideration of an application,

subject to any terms and conditions it may see fit.

[Subsection (4) amended by s 29(e) of Act 4 of 1997 w e f 29 August 1997.]

(5) ...

[Subsection (5) deleted by s 11(b) of Act 10 of 1997 w e f 29 August 1997.]

Temporary licences

36. (1) The Board may, subject to the provisions of this Act, the payment of the relevant application fee set out in paragraph 1 of Schedule II and such conditions as it may impose, issue a temporary licence and for the purposes of such licence may approve the use of premises on a temporary basis.

[Subsection (1) substituted by s 30(a) of Act 4 of 1997 w e f 29 August 1997.]

(2) A temporary licence shall be valid for such period as the Board may determine.

(3) The holder of a temporary licence shall pay licence and investigation fees in respect of such licence equal to ten per cent of the annual licence and investigation fees, payable in terms of section 44 for a similar licence, for each month or part thereof for which the temporary licence is issued.

[Subsection (3) added by s 30(b) of Act 4 of 1997 w e f 29 August 1997.]

Conditions applicable to licences

37. (1) The Board may impose conditions in respect of any licence issued under this Act, including conditions-

- (a) relating to the gambling games that may be played or the forms of betting that may be allowed;
- (b) relating to the method of playing any gambling game or the conduct of betting or racing;
- (c) relating to the rules of any gambling game, betting or racing;
- (d) for the purpose of ensuring decency, dignity, good taste and honesty in the playing of any gambling game or the conduct of betting or racing;
- (e) requiring the keeping of books, accounts, records and other information relating to any business or activity provided for in this Act;
- (f) relating to the premises in or on which gambling activities take place including the development and utilisation thereof;
[Paragraph (f) substituted by s 31(a) of Act 4 of 1997 w e f 29 August 1997 and amended by s 17(a) of Act 4 of 2006 w e f 1 December 2006.]
- (g) requiring submission to the Board of reports and returns relating to gambling activities;
[Paragraph (g) substituted by s 31(b) of Act 4 of 1997 w e f 29 August 1997 and amended by s 17(b) of Act 4 of 2006 w e f 1 December 2006.]
- (h) requiring submission to the Board for its approval of any contract for services, goods or property entered into or to be entered into between a licence holder and any other person;
- (i) relating to the days on which and hours during which gambling activities or racing may be carried on;
[Paragraph (i) amended by s 17(c) of Act 4 of 2006 w e f 1 December 2006]

- (j) requiring the payment or delivery to the Board of guarantees, including guarantees relating to the delivery of a proposed development;

[Paragraph (j) substituted by s 31(c) of Act 4 of 1997 w e f 29 August 1997.]

- (k) relating to any equipment or device used or to be used in connection with any gambling activity or racing;

[Paragraph (k) amended by s 31(d) of Act 4 of 1997 w e f 29 August 1997
and amended by s 17(d) of Act 4 of 2006 w e f 1 December 2006.]

- (l) relating to the duration of a licence;

- (m) relating to penalties for failure to comply with conditions pertaining to a development application;

[Paragraph (m) added by s 31(e) of Act 4 of 1997 w e f 29 August 1997.]

- (n) relating to access control, and

[Paragraph (n) added by s 31(e) of Act 4 of 1997 w e f 29 August 1997.]

- (o) necessary or expedient to impose in the interest of gambling or racing or activities incidental thereto.

[Paragraph (o) added by s 31(e) of Act 4 of 1997 w e f 29 August 1997.]

(2) The Board may at any time suspend, withdraw or amend any condition imposed in terms of subsection (1) or impose such further conditions as it may deem necessary or expedient for the purposes of this Act by a notice delivered or tendered to the holder of a licence.

[Subsection (2) substituted by s 31(f) of Act 4 of 1997 w e f 29 August 1997.]

(3) When any further conditions are imposed in terms of subsection (2), the provisions of section 42(3) and (4) shall apply with the necessary changes.

[Subsection (3) added by s 31(g) of Act 4 of 1997 w e f 29 August 1997.]

Electronic monitoring systems

38. (1) The Board may-

- (a) in respect of any licence referred to in section 27(a), (b), (c), (d), (i), (j) or (k) require the licence holder to install, maintain and operate a surveillance system approved by the Board, and
- (b) in respect of any licence referred to in section 27(a), (b), (c), (d), (i), (j) and (k) require any such licence holder to link any gambling device, associated system or accounting system to a central electronic monitoring system approved by the Board, including a system for continuous on-line real-time recording, monitoring and control of such significant gambling transaction as may be determined by the Board.

[Subsection (1) substituted by s 32 of Act 4 of 1997 w e f 29 August 1997.]

(2) The Board may require any licence holder referred to in subsection (1)(b) or, on application, approve any other person, on behalf of any such licence holder, to operate such electronic monitoring system subject to the requirements determined and conditions imposed by the Board.

(3) For the purposes of this section "electronic monitoring system" means an electronic or computer or communications system or device that is so designed that it may be used or adapted to send or receive data concerned with gambling.

Security

39. (1) The Board may, notwithstanding the provisions of section 79, require any applicant for a licence referred to in section 27(a), (b), (d), (i) or (k), before commencing or, in the case of a holder of such a licence, continuing to carry on the business authorised under that licence, to give security for the payment of all taxes, fees and gambling obligations due, or which may become due, under this Act in such amount and form as the Board may determine.

[Subsection (1) substituted by s 33(a) of Act 4 of 1997 w e f 29 August 1997.]

(2) The Board may from time to time order that the amount or value of the security referred to in subsection (1) be increased or decreased, whereupon the licence holder concerned shall, within seven days of the receipt by it of a notification that the Board has so ordered, ensure that the security is increased or decreased in accordance with such order.

[Subsection (2) substituted by s 18(a) of Act 4 of 2006 w e f 1 December 2006]

(3) If any security given in terms of subsection (1) lapses, becomes invalid or is not increased within the period contemplated in subsection (2), the licence concerned shall, notwithstanding the provisions of section 42(3)(a), be deemed to have been suspended in terms of section 42(1) and the licence holder shall not continue to carry on the business authorised under that licence until such security has been reinstated or validated or has been replaced or increased.

[Subsection (3) substituted by s 18(b) of Act 4 of 2006 w e f 1 December 2006]

(4) Any licence holder who contravenes or fails to comply with the provisions of this section shall be guilty of an offence.

(5) If any licence holder fails to pay any taxes, fees or gambling obligations due and payable under this Act, the Chief Executive Officer shall realise the security referred to in subsection (1) and apply any money derived from the realisation thereof for the payment of such taxes, fees or gambling obligations as may be due and payable, whereupon -

- (a) the provisions of subsection (2) shall apply, if the amount of the security so realised is less than half of the security determined by the Board in respect of that licence holder, or
- (b) the provisions of subsection (3) shall apply, if the amount of the security so realised is half or more than half of the total security determined by the Board in respect of that licence holder.

[Subsection (5) substituted by s 33(b) of Act 4 of 1997 w e f 29 August 1997
and amended by s 18(c) of Act 4 of 2006 w e f 1 December 2006.]

(6) Whenever a licence issued in terms of this Act expires or is revoked as provided for in this Act, the Chief Executive Officer shall, after a period of not less than ninety days after the date of such expiration or revocation and after compliance with the provisions of subsection (5), if such provisions are applicable, release the security or the balance of the security.

[Subsection (6) substituted by s 33(b) of Act 4 of 1997 w e f 29 August 1997
and amended by s 18(d) of Act 4 of 2006 w e f 1 December 2006.]

Duration and renewal of licences

40.(1) A licence other than a temporary licence shall, subject to the provisions of this Act and the conditions under which it was granted, be issued for a period of twelve months and shall, subject to compliance with the provisions of this Act, be renewed annually by the Board on production of the licence for the preceding year and on payment of the licence and investigation fees set out in paragraph 2 of Schedule II.

(2) If a licence holder fails to renew his or her licence by the due date the licence shall lapse and the licence holder -

- (a) shall cease the activities authorised by the licence, and
- (b) may apply to the Board for a new licence in accordance with section 32.

(3) The onus shall be upon the licence holder to apply for renewal of his or her licence by making written application to the Board for such renewal no less than three calendar months prior to the date of expiry of the licence currently held by such licence holder.

[Subsection (3) added by s 6 of Act 4 of 1999 w e f 1 April 1999.]

[S 40 substituted by s 34 of Act 4 of 1997 w e f 29 August 1997.]

Restrictions on transferability of licences

[Section 41 Heading substituted by s 19(a) of Act 4 of 2006 w e f 1 December 2006]

41. (1) Subject to the provisions of subsection (1)(a), no licence granted under this Act shall be transferable by the holder thereof to another person, and no premises licence issued in terms of this Act shall be transferable from any premises to which it may relate, to any other premises.

[Subsection (1) substituted by s 7(a) of Act 4 of 1999 w e f 1 April 1999
and amended by s 19(b) of Act 4 of 2006 w e f 1 December 2006.]

(1A) A licence shall be transferred from an existing licence holder to another person only if -

- (a) the transfer of that licence from the existing licence holder to another person is necessary to ensure compliance with the provisions of the National Act;
- (b) the existing licence holder has made written application to the Board for the transfer of its licence, on the grounds set forth in paragraph (a), and
- (c) the Board has approved the application contemplated in paragraph (b).

[Subsection (1A) inserted by s 19(c) of Act 4 of 2006 w e f 1 December 2006]

(2) If there is a change in the circumstances in which or, in the case of any licence holder other than the holder of a premises licence, the place at which the holder of a licence wishes to perform the activities authorised thereby which would require the conditions of the licence to be amended, the holder thereof shall apply to the chief Executive Officer for the amendment of the licence, which application shall be accompanied by the application fee as set out in paragraph 1 of Schedule II; provided that the Board may, on good cause shown, exempt a

licence holder from paying the whole or a portion of such fee and provided further that the Board may, if it deems it necessary, require that the procedure contemplated in section 32(2) be complied with before considering such an application.

[Subsection (2) substituted by s 7(b) of Act 4 of 1999 w e f 1 April 1999.]

(3) If the holder of a premises licence granted under this Act wishes to perform the activities authorised thereby at or on premises other than those in respect of which it holds a licence, such licence holder shall apply for the relevant premises licence, whereupon the provisions of section 32 shall apply with the necessary changes.

[Subsection (3) inserted by s 7(c) of Act 4 of 1999 w e f 1 April 1999.]

(4) A licence holder shall not sell or alienate or cease to operate any business in respect of any part of his or her premises or any part of the development thereon, to which the licence relates, without the prior written consent of the Board.

[Subsection (4) previously subsection (3) added by s 10 of Act 11 of 1997 w e f 5 November 1997 and renumbered s 7(d) of Act 4 of 1999 w e f 1 April 1999.]

[S 41 substituted by s 35 of Act 4 of 1997 w e f 29 August 1997.]

Death or disability of person having an interest in a licence holder

[Section 41A Heading substituted by s 20(a) of Act 4 of 2006 w e f 1 December 2006]

41A. (1) [Subsection (1) deleted by s 20(b) of Act 4 of 2006 w e f 1 December 2006]

(2) Where an interest held in a licensed gambling business by a person who dies or becomes disabled passes by operation of law or otherwise to his or her estate or to any person other than the executor or curator or another person having an interest in the same licence holder, the executor of the estate or such other person shall, within 30 days after the date of death or disability apply to the Board for the appropriate licence.

[Subsection (2) amended by s 20(c) of Act 4 of 2006 w e f 1 December 2006]

(3) The Board may, in its discretion, authorise a person referred to in subsection (2) to continue the operation of the gambling business concerned pending the Board's decision on the application for a licence.

(4) The provisions of this Act relating to an application for a licence shall, with the necessary changes, apply to an application referred to in subsection (2).

[Section 41A inserted by s 36 of Act 4 of 1997 w e f 29 August 1997.]

Suspension or revocation of licences

42. (1) The Board may at any time suspend for such period as the Board may determine or revoke in whole or in part any licence from such date as the Board may determine, if-

- (a) any information furnished by the applicant for the grant, renewal or amendment of the licence, at the time when the information was furnished, was false in any material respect or was subject to any material omission;

- (b) the licence holder is or becomes disqualified from holding a licence under this Act;
- (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 condition of the licence and has not complied with such condition within such period as the Board may allow after delivery of a written notice by the Board to the licence holder requiring such failure to be remedied within a specified period;
- (d) 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 provision of this Act;
- (e) the licence holder has, without the prior written consent of the Board, failed to carry on gambling for a period of thirty consecutive days;
[Paragraph (e) substituted by s 37(a) of Act 4 of 1997 w e f 29 August 1997.]
- (f) the licence holder fails to pay any amount prescribed by or under this Act within the prescribed period;
- (g) the licence holder fails to pay out forthwith or on demand any prize won in a gambling game or any winning bet;
- (h) the licence holder is no longer a fit and proper person to be the holder of the licence in question;
[Paragraph (h) amended by s 37(b) of Act 4 of 1997 w e f 29 August 1997.]
- (i) the licence holder, in the opinion of the Board, conducts gambling or allows gambling to be conducted in a manner which is detrimental to the public health, safety, morals, good order or general welfare of the inhabitants of the Province;
[Paragraph (i) amended by s 37(c) of Act 4 of 1997 w e f 29 August 1997.]
- (j) the licence holder or any person on his or her behalf or in his or her employ uses a gambling device or permits the playing of any gambling game on a gambling device-
 - (i) supplied by or acquired from a person not licensed in terms of section 50 or 51, or
 - (ii) which does not comply with the prescribed norms and standards;
 [Paragraph (j) added by s 37(d) of Act 4 of 1997 w e f 29 August 1997.]
- (k) the licence holder or any person acting on his or her behalf offers, pays, gives or donates anything of value contemplated in subsection (1) of section 15 to any person referred to in that subsection;
[Paragraph (k) added by s 37(d) of Act 4 of 1997 w e f 29 August 1997 and substituted by s 11(a) of Act 11 of 1997 w e f 5 November 1997.]
- (l) the licence holder employs any person contemplated in section 15(2);
[Paragraph (l) added by s 37(d) of Act 4 of 1997 w e f 29 August 1997 and substituted by s 11(a) of Act 11 of 1997 w e f 5 November 1997.]
- (m) the licence holder, without the prior written consent of the Board, sells or alienates or ceases to operate any business in respect of any

part of his or her premises or any part of the development thereon to which the licence relates, or

[Paragraph (m) added by s 11(c) of Act 11 of 1997 w e f 5 November 1997.]

- (n) the holder of an operator licence wilfully or persistently uses or tolerates methods of operation deemed unsuitable by the Board.

Paragraph (n) amended by s (4) of Act 11 of 2000 w e f 15 September 2000.]

- (2) The Board may at any time reinstate any licence suspended under subsection (1), but shall not do so unless the reason for the suspension has ceased to exist.

[[Subsection (2) substituted by s 37(e) of Act 4 of 1997 w e f 29 August 1997.]

- (3) (a) The Board shall, save as provided in paragraph (b), prior to the suspension of a licence, by written notice inform the licence holder of the reasons for the proposed suspension and invite the licence holder to submit to the Board, within fourteen days written reasons why the licence should not be suspended.

(b) Where in the opinion of the Board it is in the public interest to suspend any licence with immediate effect, written notice of the suspension and the reasons therefore shall be given to the licence holder forthwith, and the licence holder shall be entitled to submit to the Board, within fourteen days written reasons why the licence in question should be reinstated.

[Subsection (3) substituted by s 37(e) of Act 4 of 1997 w e f 29 August 1997.]

- (4) While a licence is suspended, the holder thereof shall not, to the extent of the suspension, for the period of suspension be authorised to permit, undertake, participate or engage in the activities specified therein.

- (5) Notwithstanding the suspension or revocation of a licence, no fees, levies, duties or other monies paid in respect thereof or the application therefor shall be refunded.

- (6) The holder of any licence which has been suspended or revoked shall, on receipt of a notification thereof by or on behalf of the Board, within seven days deliver such licence to the offices of the Board.

- (7) Any person who fails to comply with the provisions of subsection (6) shall be guilty of an offence.

- (8) For the purposes of this section “licence” shall, with the necessary changes, include a permit, a registration, a certificate, a finding of suitability, an authorisation or an approval.

[Subsection (8) added by s 12 of Act 10 of 1997 w e f 29 August 1997.]

Duty to produce licences

43. (1) A licence holder, an employee of the licence holder or a person acting on behalf of the licence holder shall, on demand by an authorised officer or a police officer, produce the licence concerned.

- (2) Any licence holder, employee or person acting on behalf of the licence holder who fails to comply with the provisions of subsection (1) shall be guilty of an offence.

New licence application, annual licence and investigation fees

44. (1) The new licence application fees set out in paragraph 1 of Schedule II shall be paid by every applicant for a licence on submission of a new licence application.

(2) The annual licence and investigation fees set out in paragraph 2 of Schedule II shall be paid by a licence holder upon issue of the licence and thereafter annually upon renewal thereof.

[Subsection (2) substituted by s 1 of Act 5 of 1999 w e f 1 April 1999.]

(3)(a) The annual licence fee referred to in subsection (2) shall be paid into the Provincial Revenue Fund.

(b) The new licence application fees referred to in subsection (1) and the investigation fees referred to in subsection (2) shall be paid to the Board.

(4) No fee contemplated by this section shall be refundable.

[Section 44 amended by s 38 of Act 4 of 1997 w e f 29 August 1997 and substituted by s 12 of Act 11 of 1997 w e f 5 November 1997.]

Exclusivity

44A.(1) An exclusivity fee as set out in paragraph 3 of Schedule II, shall be payable by all successful applicants for a casino operator licence should the Board so require, prior to the grant of such licence, in which event the Board shall grant to such licence holder exclusivity to operate a casino within an area and for a period as determined by the Board.

(2) All fees referred to in subsection (1) shall be paid to the Board.

[Section 44A inserted by s 13 of Act 11 of 1997 w e f 5 November 1997.]

Bid Fees

44B.(1) A bid fee, as set out in paragraph 4 of Schedule II payable to the Provincial Administration: Western Cape shall be collected by the Board from all successful applicants for a casino operator licence.

[Subsection (1) substituted by s 1 of Act 10 of 2000 w e f 15 September 2000.]

(2) The bid fees collected by the Board in terms of subsection (1) shall be promptly paid into the Provincial Revenue Fund.

[Section 44B inserted by s 13 of Act 11 of 1997 w e f 5 November 1997.]

Limited gambling machine operator fees

44C. A limited gambling machine operator fee, as set out in paragraph 5 of Schedule II, shall be payable to the Board by the holder of a limited gambling machine operator licence.

[Section 44C inserted by s 13 of Act 11 of 1997 w e f 5 November 1997.]

Casino operator licence

45. (1) A casino operator licence shall only be issued to a company, registered in terms of the Companies Act, 1973.

(2) A casino operator licence is required by every company which permits or conducts gambling in or on any premises in the Province which are not limited gambling machine premises or premises operated under a bingo licence.

(3) For the purposes of subsection (2), gambling does not include the playing of bingo or betting.

(4) A casino operator licence shall attach to the premises specified in the licence, and which shall be developed in accordance with the approved development application.

(5) A casino operator licence shall authorise, subject to any conditions which the Board may impose, the playing in or on the premises or such parts of such premises as are specified in the licence of any gambling game (but not bingo) specified in the licence.

[Subsection (5) substituted in the Afrikaans text by s 39 of Act 4 of 1997 w e f 29 August 1997.]

Route operator licence

[Section 46 Heading substituted by s 21(a) of Act 4 of 2006 w e f 1 December 2006]

46. (1) A route operator licence shall only be issued to a company registered in terms of the Companies Act, 1973.

[Subsection (1) amended by s 21(b) of Act 4 of 2006 w e f 1 December 2006]

(2) A route operator licence is required by every company which permits or engages in the business of operating limited payout machines in or on one or more premises licensed in terms of section 47.

[Subsection (2) substituted by s 40(a) of Act 4 of 1997 w e f 29 August 1997
and amended by s 21(c) of Act 4 of 2006 w e f 1 December 2006.]

(2A) A route operator licence shall attach to the operator specified in the licence.

[Subsection (2A) inserted by s 40(b) of Act 4 of 1997 w e f 29 August 1997
and amended by s 21(d) of Act 4 of 2006 w e f 1 December 2006.]

(3) A route operator licence shall authorise, subject to any conditions which the Board may impose, the operation of approved limited payout machines in or on premises or such parts of such premises as are licensed in terms of section 47.

[Subsection (3) substituted by s 40(c) of Act 4 of 1997 w e f 29 August 1997
and amended by s 21(e) of Act 4 of 2006 w e f 1 December 2006.]

Site licence

[Section 47 Heading substituted by s 22(a) of Act 4 of 2006 w e f 1 December 2006]

47. (1) A site licence is required for any premises in the Province in or on which limited payout machines are placed by the holder of a route operator licence.

[Subsection (1) amended by a 22(b) of Act 4 of 2006 w e f 1 December 2006]

(2) A site licence shall authorise, subject to any conditions which the Board may impose, the keeping and exposing for play in or on the licensed premises or such

part of such premises as is specified in the licence of any limited payout machines operated in terms of section 46.

[Subsection (2) substituted by s 41 of Act 4 of 1997 w e f 29 August 1997
and amended by s 22(c) of Act 4 of 2006 w e f 1 December 2006.]

(3) A site licence shall attach to the premises specified in the licence.

[Subsection (3) inserted by s 22(d) of Act 4 of 2006 w e f 1 December 2006]

(4) The Board shall not grant an application for a site licence unless it is satisfied that -

- (a) the person who or which will be responsible for the operation of the gambling business on the site, and
- (b) subject to the proviso to section 30(2), all persons holding a financial interest of five percent or more in the person contemplated in paragraph (a) comply with the provisions of sections 28 or 29, as the case may be, and 30.

[Subsection (4) inserted by s 22(d) of Act 4 of 2006 w e f 1 December 2006]

Bingo licence

48. (1) A bingo licence shall only be issued to a company registered in terms of the Companies Act, 1973.

(2) A bingo licence is required by every person who, in the Province, permits or conducts the playing of bingo, other than for the purpose of social gambling authorized in terms of section 67(1)(c), in or on one or more premises, specified in such licence, which premises shall be licensed in terms of section 48A.

[Subsection (2) substituted by s 8(a) of Act 4 of 1999 w e f 1 April 1999
and amended by s 23 of Act 4 of 2006 w e f 1 December 2006.]

(3) A bingo licence shall attach to the operator specified in the licence.

[Subsection (3) substituted by s 8(b) of Act 4 of 1999 w e f 1 April 1999.]

(4) A bingo licence shall authorise, subject to any conditions which the Board may impose, the playing of bingo in or on the premises or such part of such premises as are licensed in terms of section 48A.

[Subsection (4) substituted by s 8(c) of Act 4 of 1999 w e f 1 April 1999.]

Bingo premises licence

48A.(1) A bingo premises licence is required in respect of each premises in the Province utilised by the holder of a bingo licence wholly or partially for the purpose of engaging in the business contemplated in section 48(2).

(2) A bingo premises licence shall attach to the premises specified in the licence.

(3) A bingo premises licence shall authorise the utilisation of the premises specified in such licence for the purpose of engaging in the business contemplated in section 48(2).

[Subsection 48A inserted by s 9 of Act 4 of 1999 w e f 1 April 1999.]

Junket agent licence

49. (1) A junket agent licence is required by every person who is directly or indirectly involved in the planning, organisation or operation of a junket for or on behalf of the holder of a casino operator licence issued under this Act.

(2) A junket agent licence shall authorise, subject to any conditions which the Board may impose, the holder of the licence-

- (a) to enter into agreements with the holder of a casino operator licence to provide services to the casino, in or outside the Province, consisting of arranging complimentary transport, food, lodging or similar benefits for one or more persons or groups of persons visiting the casino, and
- (b) to receive commission on, or a share in, gambling profits raised by a junket in the Province as consideration for such services.

Manufacturer licence

50. (1) A manufacturer licence is required by every person who imports, acquires, manufactures, assembles, maintains, repairs, alters, distributes, leases or sells slot machines or any other gambling device or any component thereof for use in this Province, excluding playing cards or dice and such other gambling devices lawfully in use in this Province prior to the coming into operation of this Act, as the Board, with due regard to the compliance of such devices with the applicable norms and standards in respect of gambling devices and the provisions and policy of this Act, may identify.

[Subsection (1) substituted by s 42(a) of Act 4 of 1997 w e f 29 August 1997 and by s 10 of Act 4 of 1999 w e f 1 April 1999.]

(1A) A manufacturer licence shall only be issued to a company registered in terms of the Companies Act, 1973, or a close corporation registered in terms of the Close Corporations Act, 1984.

[Subsection (1A) inserted by s 42(b) of Act 4 of 1997 w e f 29 August 1997.]

(2) The provisions of subsection (1) shall not apply to the holder of a casino operator licence or limited gambling machine operator licence in respect of the maintenance, repair or alteration of any gambling device used by the holder of such licence or in respect of the sale of such device by such licence holder in accordance with this Act.

[Subsection (2) substituted by s 42(c) of Act 4 of 1997 w e f 29 August 1997.]

(2A) A manufacturer licence shall attach to the premises specified in the licence.

[Subsection (2A) inserted by s 42 (d) of Act 4 of 1997 w e f 29 August 1997.]

(3) A manufacturer licence shall authorise the importation, acquisition, manufacture, assembly, maintenance, repair, alteration, distribution, leasing or selling of the types of gambling devices set out in the licence.

[Subsection (3) substituted by s 5 of Act 11 of 2000 w e f 15 September 2000.]

Distributor licence

51. (1) A distributor licence is required by every person who, directly or indirectly imports, acquires, distributes, markets, leases or sells any gambling device or related system, but not playing cards or dice for use in this Province.

[Subsection (1) substituted by s 43(a) of Act 4 of 1997 w e f 29 August 1997.]

(1A) A distributor licence shall only be issued to a company registered in terms of the Companies Act, 1973, or a close corporation registered in terms of the Close Corporations Act, 1984.

[Subsection (1A) inserted by s 43(b) of Act 4 of 1997 w e f 29 August 1997.]

(2) A distributor licence shall authorise the importation, acquisition, distribution, marketing, leasing or selling of types and models of gambling devices approved by the Board or prescribed.

(2A) A distributor licence shall attach to the premises specified in the licence.

[Subsection (2A) inserted by s 43(c) of Act 4 of 1997 w e f 29 August 1997.]

(3) The provisions of this section shall not apply to the holder of a manufacturer licence.

Race course licence

52. ...

[S 52 amended by s 11 of Act 4 of 1999 w e f 1 April 1999 and deleted by s 6 of Act 11 of 2000 w e f 15 September 2000.]

Race course premises licence

52A. ...

[S 52A inserted by s 12 and amended by s 13 of Act 4 of 1999 w e f 1 April 1999 and deleted by sec 7 of Act 11 of 2000 w e f 15 September 2000.]

Totalisator operator licence

53. (1) A totalisator operator licence is required by every person who operates or permits the operation of a totalisator.

(2) A totalisator operator licence shall attach to the operator specified in the licence.

(3) A totalisator operator licence shall authorise, subject to any conditions which the Board may impose, the operation of a totalisator in respect of such contingencies as are consistent with the provisions of the Lotteries Act 1997 (Act 57 of 1997) and the acceptance of stakes in respect of such totalisator in or on premises licensed in terms of section 54.

[Subsection (3) substituted by s 44 of Act 4 of 1997 w e f 29 August 1997 and amended by s 24 of Act 4 of 2006 w e f 1 December 2006.]

Totalisator premises licence

54. (1) A totalisator premises licence is required for any premises in the Province where the holder of a totalisator operator licence accepts stakes in respect of a totalisator.

(2) A totalisator premises licence shall authorise, subject to any conditions which the Board may impose, the acceptance of stakes in respect of a totalisator in or on the premises specified in such licence by the holder of a licence contemplated in section 53.

[Subsection (2) amended by s 25 of Act 4 of 2006 w e f 1 December 2006]

(3) A totalisator premises licence shall attach to the premises specified in the licence.

[Subsection (3) added by s 14 of Act 4 of 1999 w e f 1 April 1999.]

[S 54 substituted by s 45 of Act 4 of 1997 w e f 29 August 1997.]

Bookmaker licence

55. (1) A bookmaker licence is required by every person who, in the Province, engages in the business of directly or indirectly laying or taking bets as defined in section 1, with members of the public or other bookmakers in one or more premises, specified in such licence, which premises shall be licensed in terms of section 55A.

[Subsection (1) substituted by s 46(a) of Act 4 of 1997 w e f 29 August 1997 and by s 15(a) of Act 4 of 1999 w e f 1 April 1999 and amended by s 26(a) of Act 4 of 2006 w e f 1 December 2006.]

(1A) A bookmaker licence shall only be issued to a company registered in terms of the Companies Act, 1973, or a close corporation registered in terms of the Close Corporations Act, 1984.

Subsection (1A) inserted by s 46(b) of Act 4 of 1997 w e f 29 August 1997.]

(2) A bookmaker licence shall attach to the operator specified in the licence.

[Subsection (2) substituted by s 15(b) of Act 4 of 1999 w e f 1 April 1999.]

(3) A bookmaker licence shall authorise, subject to any conditions which the Board may impose, the conduct of the business of a bookmaker in or on the premises by laying and placing fixed odds and open bets, but not totalisator bets.

[Subsection (3) amended by s 26(b) of Act 4 of 2006 w e f 1 December 2006]

Bookmaker premises licence

55A. (1) A bookmaker premises licence is required in respect of each premises in the Province utilised by the holder of a bookmaker licence wholly or partially for the purpose of engaging in the business contemplated in section 55(1).

(2) A bookmaker premises licence shall attach to the premises specified in the licence.

(3) ...

[Subsection (3) deleted by s 27 of Act 4 of 2006 w e f 1 December 2006]

[Section 55A inserted by s 16 of Act 4 of 1999 w e f 1 April 1999.]

Key employee licence

56. (1) A key employee licence is required by every executive or agent of, or any person in the employ of the holder of any licence issued under this Act ("the principal licence") with the exception of licences issued in terms of this section and section 57, who may exercise direct control over gambling operations or the activities authorised by the principal licence or such other person, whom the Board may identify, who may exercise control over any premises where gambling is conducted under this Act.

[Subsection (1) substituted by s 47(a) of Act 4 of 1997 w e f 29 August 1997 and by s 17 of Act 4 of 1999 w e f 1 April 1999.]

(2) Notwithstanding the provisions of subsections (1) and (9), persons employed in any of the following or substantially similar positions by the holders of the licences contemplated in section 27(a), (b), (d) and (f) shall be regarded as key employees for the purposes of this section:

- (a) managers;
- (b) supervisors;
- (c) pit bosses;
- (d) inspectors;
- (e) surveillance personnel, and
- (f) any other position considered by the Board to be that of a key employee generally or in relation to any gambling business in particular.

[Subsection (2) substituted by s 8(a) of Act 11 of 2000 w e f 15 September 2000.]

(3) If the Board considers that an employee of any licence holder is a key employee, it shall serve written notice to that effect upon the licence holder by whom such employee is employed.

(4) The holder of the licence shall within thirty days of receipt of such written notice present to the Board an application in the prescribed form for the licensing of such employee as a key employee or provide adequate proof that such employee is no longer employed by him or her.

(5) An employee who is subject to application for licensing as a key employee in terms of the foregoing may make written representations to the Board to reconsider his or her status within the business concerned, and if the Board thereupon determines that the employee is not a key employee, such employee shall be allowed to withdraw his or her application.

(6) In determining whether or not an employee is a key employee, the Board shall not be restricted by the job title or designation of such employee, but may consider the functions and responsibilities of such employee in making its decision.

(7) Save as may be prescribed, no person required by this Act to hold a key employee licence shall be employed by or assist a licence holder before he or she has obtained the requisite licence.

[Subsection (7) inserted by s 47(b) of Act 4 of 1997 w e f 29 August 1997.]

(8) Failure on the part of the holder of a licence to comply with this section shall be an offence.

[Subsection (8), previously subsection (7), renumbered by s 47(c) of Act 4 of 1997 w e f 29 August 1997.]

(9) For the purposes of this section, “direct control over gambling operations or the activities authorised by the principal licence” shall mean the express, implied or reasonably incidental authority to oversee, monitor or otherwise control any activity in respect of gambling operations which, in the opinion of the Board, may reasonably enable the person on whom such authority is conferred-
to manipulate or alter the selection of criteria which determine the result of any gambling game, event or contingency;

to contravene section 70, or

(c) to misrepresent to any authority the tax liability of the licence holder.

[Subsection (9) added by s 8(b) of Act 11 of 2000 w e f 15 September 2000.]

Gambling employee licence

57. (1) A gambling employee licence is required by every person, excluding a key employee, who, in the Province, is employed by the holder of a principal licence contemplated in section 56, and who is directly involved in the activities performed under such principal licence.

[Subsection (1) substituted by s 18 of Act 4 of 1999 w e f 1 April 1999.]

(2) Notwithstanding the provisions of subsections (1) and (6), persons employed in any of the following or substantially similar positions by the holders of the licences contemplated in section 27(a), (b), (d) and (f) shall be regarded as gambling employees for the purposes of this section:

- (a) cashiers and ticket-sellers;
- (b) counting room personnel;
- dealers and croupiers;
- machine mechanics, and
- security personnel.

[Subsection (2) substituted by s 9(a) of Act 11 of 2000 w e f 15 September 2000.]

(3) If the Board is of the opinion that an employee of any licence holder is a gambling employee, it shall serve written notice to that effect upon the licence holder by whom such employee is employed, whereupon the provisions of section 56(4), (5), (6) and (7) shall apply with the necessary changes.

(4) Save as may be prescribed, no person required by this Act to hold a gambling employee licence shall be employed by or assist any licence holder before he or she has obtained the requisite licence.

[Subsection (4) substituted by s 48 of Act 4 of 1997 w e f 29 August 1997.]

(5) Persons licensed as key employees shall not be required to obtain gambling employee licences.

(6) For the purposes of this section, “direct involvement in the activities performed under the principal licence” shall mean the express, implied or reasonably incidental authority to perform any activity in respect of the gambling operations of the principal licence holder which, in the opinion of the Board, may reasonably enable the person on whom such authority is conferred-

- (a) to manipulate or alter the selection of criteria which determine the result of any gambling game, event or contingency;
- (b) to contravene section 70, or
- (c) to misrepresent to any authority the tax liability of the principal licence holder.

[Subsection (6) added by s 9(b) of Act 11 of 2000 w e f 15 September 2000.]

Gambling employees not requiring licensing

57A. No gambling employee licence shall be required in respect of any person performing any activity contemplated in section 57 in the employ of a licence-holder, if that person performs those activities on less than nine days or part thereof, of which no more than two such days shall be consecutive, per calendar year.

[S 57A inserted by s 3 of Act 8 of 1998 w e f 1 June 1998.]

Register in respect of gambling employees not requiring licensing

57B. Every licence holder which employs an employee on the basis contemplated in section 57A shall, no less than forty-eight hours prior to each performance by that employee of any activity referred to in section 57, enter into or cause to be entered into a register specifically kept on an annual basis for that purpose:

- (a) the full names and identity number of such employee;
- (b) the date on which the activity or service to be performed by that employee will be performed;
- (c) the nature of the activity or service to be performed;
- (d) the location at which that activity or service will be performed;
- (e) the amount of remuneration to be paid to such employee;
- (f) the number of occasions in the calendar year to which the register relates, upon which that employee has performed any activity or service in terms of section 57A for the licence-holder, and
- (g) the date of entry of the particulars required in terms of this section into the register.

[S 57B inserted by s 3 of Act 8 of 1998 w e f 1 June 1998.]

Register to be available for inspection

57C. A register kept by a licence holder in terms of section 57B shall at all times be available for inspection by the Board or any of its authorised officers, and shall be kept by the licence holder for a period of two calendar years from the date on which it was opened.

[S 57C inserted by s 3 of Act 8 of 1998 w e f 1 June 1998.]

Financial interest

58.(1) Any person, other than an institutional investor, a publicly traded investor, a depository institution or a central securities depository, who or which, directly or indirectly, procures a financial interest of five percent or more in the business to which a licence relates shall, within the period and in the manner prescribed or determined by the Board, apply to the Board for approval to hold such interest.

(2) Any publicly traded investor, other than an institutional investor, who, directly or indirectly, procures a financial interest of ten percent or more in the business to which a licence relates shall, within the period and in a manner prescribed or determined by the Board, apply to the Board for approval to hold such interest.

(3) Any institutional investor who, directly or indirectly, procures a financial interest of fifteen percent or more in the business to which a licence relates shall, within the period and in a manner prescribed or determined by the Board, apply to the Board for approval to hold such interest.

(4) The provisions of sections 28, 30 and 32 shall, with necessary changes apply in relation to any application contemplated in subsections (1), (2) and (3).

(5) The Board shall not grant approval under sub-sections (1), (2) or (3) where the person or publicly traded investor or institutional investor making the application is disqualified to hold a licence in terms of this Act.

(6) Where approval is not granted in terms of this section, the person, publicly traded investor or institutional investor shall, within the prescribed period and in the manner prescribed by the Board, dispose of the interest in question.

(7) No person, publicly traded investor or institutional investor shall procure an interest contemplated in sub-sections (1), (2) or (3) as nominee or agent of or otherwise on behalf of any principal or beneficiary if that person has not in writing informed the holder of the licence concerned and the Board of the identity of such principal or beneficiary.

(8) The provisions of this section -

(a) shall not apply to a depository institution or central securities depository in respect of a financial interest held by it on behalf of persons other than itself in securities listed on a stock exchange in South Africa registered as such in terms of the Stock Exchange Control Act, 1985 (Act No. 1 of 1985), but

(b) shall apply to the beneficial holders of the securities contemplated in paragraph (a).

(9) Any person who contravenes sub-sections (1), (2), (3), (6) or (7) shall be guilty of an offence.

Approval of certain contracts

59. (1) Every licence holder shall, prior to entering into any contract with another person for the furnishing of any service, goods or property in respect of which

such person will receive payment, commission or any other consideration based directly or indirectly on earnings or profits from, or turnover in respect of any gambling, furnish the Board with a written submission reflecting-

- (a) the nature of the proposed contract;
- (b) the value or projected value of such contract;
- (c) the identities of all parties to such contract, the date of proposed conclusion of the contract and the proposed contract period, and
- (d) full details of any terms, conditions or similar provisions therein in terms of which the performance by the licence holder, or any aspect of such performance is directly based upon, linked to or in any respect contingent upon, turnover or profits generated by the gambling operations of such licence holder.

(2) Within fourteen days of receipt of a submission contemplated in subsection (1), or at any time it may deem fit, the Board may require the licence holder to submit any such contract to it for approval in the manner prescribed.

(3) A contract entered into by a licence holder in respect of which the provisions of subsection (1), and, where applicable, subsection (2), are not complied with shall be void.

[Section 59 amended by s 49 of 1997 w e f 29 August 1997 and substituted by s 19 of Act 4 of 1999 w e f 1 April 1999.]

Gambling devices

60. (1) The holder of an operator licence shall not use or allow any gambling game to be played or betting to be conducted on or by means of a gambling device other than a gambling device which has been approved by the Board and supplied by the holder of a licence issued under this Act and which complies with the national norms and standards and such further requirements as the Board may from time to time determine.

(2) The holder of an operator licence shall keep such records and information in respect of each gambling device as the Board may from time to time determine.

(3) The holder of an operator licence shall not sell, alienate or supply in any manner whatsoever any gambling device, other than playing cards or dice, to any person other than the holder of a licence issued under this Act or any other similar law.

[S 60 substituted by s 50 of Act 4 of 1997 w e f 29 August 1997.]

Books, accounts and records

61. The holder of a licence shall keep such books, accounts and records and furnish such returns as may be prescribed or, insofar as they are not prescribed, as the Board may from time to time determine.

[S 61 substituted by s 51 of Act 4 of 1997 w e f 29 August 1997 and by s 13 of Act 10 of 1997 w e f 29 August 1997.]

Control of entry to certain premises

62. (1) The holder of any operator licence or any employee of such a licence holder may-

- (a) refuse to admit any person, other than a member of the Board, an authorised officer or a police officer, to the licensed premises;
[Paragraph (a) substituted by sec 52 of Act 4 of 1997 w e f 29 August 1997.]
- (b) request any person other than a member of the Board, an authorised officer or a police officer who is in any part of the licensed premises to leave that part, and
[Paragraph (b) substituted by s 52 of Act 4 of 1997 w e f 29 August 1997.]
- (c) request any police officer to remove or assist in removing from the licensed premises any person contemplated in paragraphs (a) and (b).

Rules of gambling games or betting

63. (1) No gambling game shall be played or betting conducted otherwise than in accordance with the rules approved therefor by the Board.

(2) The holder of any licence shall, in respect of any gambling game or betting authorised by such licence for which no rules have been approved by the Board, make rules relating to the playing of such gambling game or the conducting of such betting and submit such rules to the Board for approval before such gambling game may be played or betting conducted.

(3) The rules of each gambling game or bet shall be displayed in the manner determined by the Board, and a licence holder shall at the request of any player make available for examination a copy of the approved rules of any gambling game or bet.

(4) No gambling game shall pay out less than the prescribed pay-out percentage.
[S 63 substituted by s 53 of Act 4 of 1997 w e f 29 August 1997.]

Fractions and unclaimed dividends

63A. (1) The holder of a totalisator licence shall retain any fractions of an amount of ten cents occurring in the apportionment of amounts payable by such holder.

(2) If any dividend or commitment which is payable by the holder of a totalisator operator licence or bookmaker licence is not claimed within ninety days of the date on which such dividend or commitment became due and payable, such dividend or commitment shall accrue to the holder of such totalisator operator licence or bookmaker licence, as the case may be.

[Section 63A inserted by s 54 of Act 4 of 1997 w e f 29 August 1997.]

CHAPTER V: TAXATION AND FINANCIAL ARRANGEMENTS

Imposition of taxes and levies on gambling and betting

[Section heading amended by s 1 of Act 8 of 2002]

64. (1) From time to time and in the manner prescribed there shall be paid to the Board gambling and betting taxes and levies by the holders of licences as provided for in Schedules III and IV.

[Subsection (1) substituted by s 55(b) of Act 4 of 1997 w e f 29 August 1997, by s 1 of Act 9 of 1998 w e f 1 June 1998 and by s 1 of Act 8 of 2002.]

(2) Unless otherwise prescribed, the taxes and levies contemplated in subsection (1) shall be –

(a) on the bases, at the rates or percentages or in the amounts, and

(b) payable in the manner and at the times

provided for in Schedules III and IV.

[Subsection (2) inserted by section 1 of Act 8 of 2002]

(3) Unless otherwise required in terms of this Act or as otherwise prescribed, the Chief Executive Officer shall pay the taxes and levies contemplated in subsection (1) into the Provincial Revenue Fund within the periods stipulated in Schedule III or IV or as prescribed.

[Subsection (3) inserted by section 1 of Act 8 of 2002]

(4) The recovery of the taxes and levies contemplated by subsection (1), the penalties and interest payable in respect of such taxes and levies, the calculation of such interest, the offences in regard to the evasion of such taxes and levies, the schemes for obtaining undue tax benefits and the powers of the responsible Member to conclude tax agreements shall be as is provided for in Part C of Schedule III.

[Subsection (4) amended and renumbered by s 1 of Act 8 of 2002]

(5) The provisions of Schedules III and IV shall be administered by the Chief Executive Officer on behalf of the Board, and all the powers of the Board under this Act shall be applicable thereto.

[Subsection (5) renumbered by s 1 of Act 8 of 2002]

Tax payable upon conviction

65. Notwithstanding any other provision of this Act, a court convicting a person of a contravention of section 67(1) shall, where applicable, in addition to any penalties it may impose in terms of this Act, order such person to pay the relevant duty or tax which would be due in terms of this Act if such person were the holder of a licence.

CHAPTER VI: GENERAL PROVISIONS

Prohibition in respect of unauthorised race meetings

66. (1) No person shall-

- (a) hold, organise, arrange, attend or in any manner take part in or assist at a race meeting, or
- (b) print, publish, possess, sell or offer for sale or in any manner circulate or distribute a race card in respect of a race meeting,

unless the relevant race meeting takes place on premises licensed in terms of this Act.

[Subsection (1) amended by s 29(a) of Act 4 of 2006 w e f 1 December 2006]

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

[Subsection (2) amended by s 29(b) of Act 4 of 2006 w e f 1 December 2006]

(3)

[Subsection (3) deleted by s 29(c) of Act 4 of 2006 w e f 1 December 2006]

Prohibition in respect of gambling and presumptions relating thereto

67. (1) No person shall without the appropriate licence-

- (a) conduct or permit any gambling activity in or on any premises under his or her control or in his or her charge; or

[Paragraph (a) amended by s 30 of Act 4 of 2006 w e f 1 December 2006]

- (b) be directly or indirectly involved-

- (i) in the operation of any gambling business or establishment;

[Subparagraph (i) substituted by s 14(a) of Act 10 of 1997 w e f 29 August 1997.]

- (ii) in the manufacture, assembly, maintenance, repair or alteration of any slot machine or gambling device (other than playing cards or dice) or any component thereof, and
 - (iii) in the importation, acquisition, distribution, marketing, leasing or selling of any gambling device (other than playing cards or dice) or any component thereof; or

[Subparagraph (iii) amended by s 56(b) of Act 4 of 1997 w e f 29 August 1997.]

- (c) possess a gambling device other than playing cards or dice, provided that the possession of gambling devices without a licence shall not be an offence where the possessor thereof possesses such gambling devices for the sole purpose of demonstration, promotion within the industry, social gambling as contemplated in section 1, or such further similar purpose as the Board may, prior to such possession and upon application by such intended possessor, authorise in writing, and further provided that such gambling devices may be lawfully possessed in terms of this paragraph only for such period and in or on such premises as stipulated by the Board in such authorisation.

[Paragraph (c) added by s 56(c) of Act 4 of 1997 w e f 29 August 1997 and substituted by s 20(a) of Act 4 of 1999 w e f 1 April 1999 and by s 10 of Act 11 of 2000 w e f 15 September 2000.]

[Subsection (1) amended by s 56(a) of Act 4 of 1997 w e f 29 August 1997.]

(2) No person shall without the approval of the Board have any direct or indirect financial interest of five per cent or more in any licensed gambling business or establishment within the Province.

[Subsection (2) substituted by s 56(d) of Act 4 of 1997 w e f 29 August 1997.]

(3) No person shall, without the appropriate licence or without the prior approval of the Board, in any manner share directly or indirectly in the profits of any gambling; provided that where a company or a close corporation is a licensee the shareholders or members of such licensee shall not be precluded from receiving dividends from such licensee as a consequence of their shareholding therein or membership thereof.

[Subsection (3) substituted by s 20(b) of Act 4 of 1999 w e f 1 April 1999.]

(4) No person other than a member of the Board, an authorised officer or a police officer acting in the performance of his or her duties under this Act shall play any gambling game or take part in any betting in or on, or visit, with the object of playing any gambling game or taking part in any betting, any premises which are not licensed under this Act.

[Subsection (4) substituted by s 56(e) of Act 4 of 1997 w e f 29 August 1997.]

(5) Any person who contravenes the provisions of this section shall be guilty of an offence and liable on conviction to a fine not exceeding two million rand or imprisonment for a period of not more than ten years or to both such fine and such imprisonment; provided that, in the event of a second or subsequent conviction, the court may impose a penalty not exceeding twice the amount of such fine.

[Subsection (5) substituted by s 14(b) of act 10 of 1997 w e f 29 August 1997.]

(6) Any person supervising or directing or assisting at or acting as a banker, dealer, croupier or in any like capacity at the playing of any gambling game or the conducting of any betting in or on any premises, other than licensed premises, and any person acting as porter, doorkeeper or servant or holding any other office in or on any such premises where any gambling game is played or betting is conducted shall be deemed to be in control or in charge of such premises.

(7)

[Subsection (7) added by s 14(c) of Act 10 of 1997 w e f 20 August 1997 and deleted by s 20(c) of Act 4 of 1999 w e f 1 April 1999.]

Prohibition in respect of junkets

68. (1) No person shall, for commission, a share in gambling profits or any other consideration, on behalf of the holder of a casino operator licence directly or indirectly plan or organise visits to a casino in the Province by one or more persons who receive complimentary services such as transport, food and lodging, without being in possession of the appropriate licence.

(2) The holder of a casino operator licence shall not enter into any agreement with a junket agent unless such agent is licensed in terms of this Act.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence.

Prohibition in respect of manufacture, assembly, sale, distribution, importation, acquisition, marketing, alteration and modification of gambling devices

69. (1) No person shall, without being in possession of the appropriate licence -

- (a) manufacture, assemble, sell, distribute, import, acquire, market, rent or lease any gambling device other than playing cards of dice, or
- (b) alter or otherwise modify any gambling device or associated equipment in a manner that -
 - (i) affects the result by determining win or loss;
 - (ii) alters or affects the normal criteria of random selection which determines the outcome of a gambling game, and
[Sub-paragraph (ii) amended by s 57(a) of Act 4 of 1997 w e f 29 August 1997]
 - (iii) it no longer complies with relevant norms and standards.
[Sub-paragraph (iii) inserted by s 57(b) of Act 4 of 1997 w e f 29 August 1997]

(2) No person shall alter or modify any software or hardware used in any gambling device or in the operation of any gambling business in the Province without being in possession of the appropriate licence and all software and hardware developed for the gambling industry shall, before being so used, first be screened and tested for compliance with the relevant norms and standards.

[Subsection (2) substituted by s 57(c) of Act 4 of 1997 w e f 29 August 1997.]

(3) No person shall -

- (a) manufacture, assemble, sell, distribute, market, rent or lease any gambling device which does not comply with the relevant norms and standards, or
[Paragraph (a) amended by s 5(a) of Act 1 of 2003 w e f 30 June 2003]
- (b) without the appropriate licence, alter or modify any gambling device or related equipment in any manner;
[Paragraph (b) substituted by s 15(a) of Act 10 of 1997 w e f 29 August 1997 and amended by s 5(b) of Act 1 of 2003 w e f 30 June 2003.]
- (c) alter or modify a gambling device or related equipment in a manner which will cause such device or equipment not to comply with the relevant norms and standards, or
[Paragraph (c) inserted by s 5(c) of Act 1 of 2003 w e f 30 June 2003]
- (d) be in possession of any gambling device or equipment, which has been modified in any manner without documentary proof, reflecting the date of such modification, that such device or equipment has been modified by a person licensed to perform such modification in this Province.

[Paragraph (d) inserted by s 5(d) of Act 1 of 2003 w e f 30 June 2003]

[Subsection (3) inserted by s 15(b) of Act 10 of 1997 w e f 29 August 1997.]

(4) Any person who contravenes the provisions of this section shall be guilty of an offence.

[Subsection (4) previously subsection (3), renumbered by s 15(c) of Act 10 of 1997 w e f 29 August 1997.]

Cheating and cheating devices

70. (1) No person shall-

- (a) knowingly allow anyone to conduct or carry on cheating or to operate any cheating device or provide any person with information or with a device to cheat in any gambling game or betting;
- (b) knowingly conduct, allow or expose for play any gambling game played with cards or with any gambling device which have or has been marked, tampered with, placed in a condition or operated in a manner that tends to deceive players or the public, or to alter the normal random chance of the gambling game, or to determine or alter the result of the gambling game, and
- (c) knowingly make use of any counterfeit chip or token or contravene the rules of any gambling game or interfere in any way with any gambling device or any other device used for gambling with the intention of obtaining any direct or indirect pecuniary advantage, whether for himself or herself or any other person.

(2) For the purposes of this section "cheating" also means-

- (a) the alteration of the selection of criteria which determine the result of a gambling game or the amount or frequency of payment in a gambling game, and
- (b) the use of any scheme, arrangement, system or plan which the Board may from time to time by notice in the *Provincial Gazette* declare to be cheating,

[Paragraph (b) substituted by s 58 of Act 4 of 1997 w e f 29 August 1997.]

and "cheat" has a corresponding meaning.

Reports of cheating and contraventions of the Act

70A(1) The holder of an operator licence shall, within three days of the date of discovery or the first notification to it thereof, inform the Board in writing of any alleged incidence of cheating or of any alleged contravention in or on its gambling establishment or any other gambling establishment operated wholly or in part by the person operating its gambling business, of-

- (a) this Act, or
- (b) any similar law regulating gambling in any jurisdiction.

(2) The written notification contemplated in subsection (1) shall provide details of any action taken, being taken or to be taken by the licence holder in consequence of the alleged cheating or contravention.

[S 70A inserted by s 11 of Act 11 of 2000 w e f 15 September 2000.]

Prohibition of gambling by certain persons

71. (1) No person who is in any way concerned with the management, supervision, control or administration of a gambling business or any gambling

conducted at such business shall participate in gambling at such business or at any other gambling business operated by the same licence holder, save in so far as he or she may be required to do so in the course of his or her employment.

[Subsection (1) substituted by s 59(a) of Act 4 of 1997 w e f 29 August 1997.]

(1A) For the purposes of subsection (1) gambling shall exclude take-back bets.

[Subsection (1A) inserted by s 59(b) of Act 4 of 1997 w e f 29 August 1997.]

(2) No person under the age of eighteen years shall-

- (a) enter any area where gambling takes place;
- (b) take part in any gambling or handle or operate a gambling machine, or
- (c) be entitled to enforce any gambling debt, notwithstanding the provisions of section 79.

(3) No licence holder or employee of a licence holder shall permit any person who is under the age of eighteen years, and no parent or guardian of a person under the age of eighteen years shall permit such person to enter or remain in any area where gambling takes place or to take part in any gambling or to handle or operate a gambling device.

[Subsection (3) substituted by s 59(c) of Act 4 of 1997 w e f 29 August 1997.]

(4) Where the court which 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 interest of public order, public morals or fair play that such person should not be permitted to enter any or specific premises licensed under this Act, the court may issue a written order prohibiting him or her from entering any such premises specified in the order for a period to be stated in the order.

(5) Where a court makes an order under subsection (4), the Clerk of the Court shall submit a copy thereof to the Chief Executive Officer who shall cause a copy thereof to be delivered to the licence holder or licence holders named in the order.

Liability in relation to gambling activities

[Section 72 Heading substituted by s 31 of Act 4 of 2006 w e f 1 December 2006]

72. No person shall be exempt from liability under any provision of this Act in respect of any act or thing done by him or her or authorized or permitted by him or her to be done in the Province in connection with any gambling activity merely by reason of the fact that any aspect of the management or conduct thereof is in whole or in part carried on at some place outside the Province.

[Section 72 amended by s 31 of Act 4 of 2006 w e f 1 December 2006]

Methods of operation

72A(1) The holder of an operator licence shall at all times be responsible for the development, implementation and maintenance of suitable methods of operation

in respect of gambling, racing or betting and activities incidental thereto conducted on all licensed premises on which it conducts any such activity.

(2) If, as a result of any hearing, investigation or enquiry or in consequence of information provided to it by an authorized officer, the Board is satisfied that any method of operation employed by the holder of an operator licence is unsuitable, it may transmit to such licence holder in the prescribed manner written notification setting forth the unsuitable method of operation and calling upon the licence holder to cease or to remedy the unsuitable method of operation.

(3) Willful or persistent use or toleration of methods of operation deemed unsuitable by the Board shall constitute grounds for the revocation or suspension of an operator licence or such other disciplinary action prescribed by or under this Act as the Board may deem fit.

[S 72A inserted by s 12 of Act 11 of 2000 w e f 15 September 2000.]

Unsuitable methods of operation

72B. Any act or omission by the holder of an operator licence or its agents or employees which, in the opinion of the Board, is harmful to the public health, safety, morals, good order and general welfare of the people of the Province, or which may bring discredit on the Province or the gambling industry, may be deemed by the Board to be an unsuitable method of operation, including, without derogating from the generality of the foregoing, the following acts or omissions:

- (a) on licensed premises, permitting persons who appear to be visibly intoxicated to participate in any gambling activity;
- (b) on licensed premises, serving intoxicating beverages to any person participating in any gambling activity who appears to be visibly intoxicated;
- (c) possessing or permitting to remain in or upon any licensed premises any cards, dice, mechanical device or any other cheating device whatsoever, the use of which is prohibited by law, without the prior written approval of the Board;
- (d) on licensed premises, operating or otherwise making use of any cheating or thieving game or device, which may have in any manner been marked, tampered with or otherwise placed in a condition, or operated in a manner, which tends to deceive the public or which tends to alter, manipulate or reverse the normal random selection of criteria determining the results of the game;
- (e) failure by the licence holder to conduct gambling operations in accordance with reasonable standards of custom, decorum and decency;
- (f) except as provided for in this Act, the sale or assignment of any gambling credit instrument by a licence holder, unless the sale is to a publicly-traded or other recognised financial institution pursuant to a written contract submitted to the Board for prior approval, and

- (g) the issue by a licence holder of credit to a patron to enable the patron to satisfy a debt owed to another licence holder or person.

[S 72B inserted by s 13 of Act 11 of 2000 w e f 15 September 2000.]

Restrictions on gambling credit

73. (1) Save as provided for by regulation, a licence holder shall not extend any credit to a player in respect of any gambling game or betting.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence.

Advertising

74. (1) No holder of a licence issued in terms of this Act shall cause or permit any advertisement in respect of any gambling activity to be published otherwise than in the manner prescribed in terms of this Act and the National Act.

[Subsection (1) substituted by s 60 of Act 4 of 1997 w e f 29 August 1997
and amended by s 32(a) of Act 4 of 2006 w e f 1 December 2006.]

(1A) No person shall cause or permit any advertisement relating to any gambling activity to be published in this Province, unless a licence in respect of such activity has been issued –

- (a) in terms of this Act;
- (b) in terms of the law of another province of the Republic, or
- (c) in terms of the law of a jurisdiction outside the Republic; provided that –
 - (i) the advertisement is published or transmitted from outside the Republic and persons resident in the Republic are not the sole or primary audience at which the advertisement is directed, or
 - (ii) the advertisement complies with all requirements prescribed in terms of this Act or the National Act and persons responding to the advertisement will have to travel outside of the Province to participate in the gambling contemplated in the advertisement.

[Subsection (1A) inserted by s 32(b) of Act 4 of 2006 w e f 1 December 2006]

(2) Any person who contravenes the provisions of this section shall be guilty of an offence.

The possession of gambling devices on passenger ships, trains and airplanes

74A. The provisions of section 67(1)(c) shall not apply to the owner of any gambling devices which enter the territory of the Province on any passenger ship, train or airplane or to the person in whose control such devices have been placed; provided that the owner or person in control of such devices, before entering the territory of the Province, shall-

- (a) keep any gambling devices in a manner as not to be available to be played or operated by any person or to be accessible to any member of the general

public while the passenger ship, train or airplane is in the territory of the Province, and

(b) comply with any rules of the Board.

[Section 74A inserted by s 14 of Act 11 of 1997 w e f 5 November 1997.]

Offences and penalties

75. (1) Any person who-

- (a) makes any false statement in any application or return under this Act;
- (b) contravenes any condition of a licence and in the case of a casino operator licence any condition of the concomitant approved development application;
- (c) in or on any licensed premises conducts any gambling game or betting or keeps any gambling device which is not approved under this Act or conducts any gambling game or betting otherwise than in accordance with the approved rules of such gambling game or betting;

(cA) otherwise than in accordance with this Act, uses a computer or permits a computer to be used -

- (a) to enable participation in a gambling activity, or
- (b) by making such computer, whether wholly or partially, available to any member of the public for the purpose of participating in any gambling activity,

whether such gambling activity takes place on the premises where it is offered or by way of internet or other electronic transmission;

(cB) in the Province, distributes or makes available computer software which is designed, or the primary function of which is to enable persons in the Province to link to gambling businesses outside the Province which offer gambling activities by means of the internet;

[Paragraphs (cA) & (cB) inserted by s 33 of Act 4 of 2006 w e f 1 December 2006]

- (d) hinders or obstructs any member of the Board, authorised officer or police officer whilst taking steps for the prevention or investigation of an offence under this Act;
- (e) fails to comply with an order made under section 71(4) or knowingly permits such person to enter the premises or part thereof;
- (f) having been summoned to give evidence at a hearing, an investigation or enquiry under section 23, without sufficient cause fails to attend such hearing, investigation or enquiry at the time and place specified in the summons, or to remain in attendance until the conclusion of the hearing, investigation 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;

[Paragraph (f) substituted by s 61(a) of Act 4 of 1997 w e f 29 August 1997.]

- (g) having been summoned under section 23-
 - (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 the law relating to privilege applicable to a person giving evidence or producing any book, document or thing before a court of law, 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 an affirmation, gives false evidence before the Board at any enquiry on any matter, knowing such evidence to be false or not knowing or not believing it to be true;
- (h) without the appropriate licence (including a temporary licence) or a permit or otherwise than in accordance with the provisions of this Act possesses a gambling device, other than playing cards or dice, or

[Paragraph (h) substituted by s 61(b) of Act 4 of 1997 w e f 29 August 1997, by s 15(a) of Act 11 of 1997 w e f 5 November 1997 and by s 4 of Act 8 of 1998 w e f 1 June 1998.]

- (i) contravenes or fails to comply with, any other provision of this Act
- [Paragraph (i) amended by s 61(c) of Act 4 of 1997 w e f 29 August 1997 and by s 6(a) of Act 1 of 2003 w e f 30 June 2003.]

shall be guilty of an offence and on conviction (unless otherwise expressly provided elsewhere in this Act) be liable to a fine not exceeding two million rand or to imprisonment for a period not exceeding ten years; provided that, in the event of a second or subsequent conviction, the court may impose a penalty not exceeding twice the amount of such fine.

[Subsection (1) amended by s 16 of Act 10 of 1997 w e f 29 August of 1997 and by s 6(a) of Act 1 of 2003 w e f 30 June 2003.]

(2) All fines and penalties imposed in respect of contraventions of, or failures to comply with, any provision of this Act shall accrue to the Provincial Revenue Fund.

[Subsection (2) amended by s 6(b) of Act 1 of 2003 w e f 30 June 2003]

(3) Whenever any person is convicted of any offence in terms of this Act, or pays an admission of guilt fine in respect thereof in terms of section 57 of the Criminal Procedure Act (Act 51 of 1977), all costs incurred by the Board, the Provincial Administration: Western Cape or the South African Police Service, including any costs for the transport or storage of any gambling devices, equipment or any other thing by means of which the offence was committed or which was used in the commission of the offence or found in the possession of such person shall, in addition to any fine or penalty imposed in terms of subsection (1), or paid by such person, be for the account of such person, unless the Court orders otherwise.

[Subsection (3) added by s 15(b) of Act 11 of 1997 w e f 5 November 1997 and by s 2(a) of Act 10 of 2000 w e f 15 September 2000.]

- (4) An admission of guilt fine contemplated in subsection (3) shall be collected by the clerk or registrar of the relevant court and paid into the Provincial Revenue Fund.

[Subsection (4) added by s 2(b) of Act 10 of 2000 w e f 15 September 2000.]

Contraventions of and failures to comply with the Act by licence holders and penalties therefor

75A. (1) If the Board is satisfied, on a balance of probabilities, from evidence adduced at any hearing conducted in terms of this Act or produced as a result of any investigation or enquiry conducted pursuant to this Act, that a provision of this Act has been contravened or has not been complied with by -

- (a) the holder of an operator licence,
- (b) the holder of a licence contemplated in section 27(f) or (g),
- (c) the holder of a licence contemplated in section 27(l) or (m), or
- (d) any person acting or purporting to act in the course and scope of his or her employment by the holder of an operator licence or a licence contemplated in section 27(f) or (g)

the Board may hold any or all such licence holders liable for such contravention, as the case may be, and impose a penalty contemplated in subsection (2).

[Subsection (1) amended by s 34 of Act 4 of 2006 w e f 1 December 2006]

(2) If the Board, on the basis contemplated in subsection (1), finds that any holder of a licence referred to in paragraph (a), (b) or (c) of that subsection or any person referred to in paragraph (d) thereof, has contravened or has failed to comply with a provision of this Act, it may, subject to the proviso hereto, impose on any such holder or person a penalty not exceeding one million rand; provided that in the case of a contravention of, or non-compliance with-

- (a) a provision of this Act (other than a regulation or rule) for which a maximum fine has been expressly provided, the Board shall not impose a penalty in excess of that maximum fine;
- (b) a regulation for which a maximum fine has been prescribed, the Board shall not impose a penalty which exceeds the amount of the prescribed maximum fine, and
- (c) a rule, the Board shall not impose a penalty exceeding five hundred thousand rand, and if a maximum fine has been prescribed for the rule concerned, the Board shall not impose a penalty exceeding the amount of the prescribed maximum fine.

[Section 75A inserted by s 7 of Act 1 of 2003 w e f 30 June 2003]

Competency to impose penalties

76. Notwithstanding any law to the contrary, any Court shall have jurisdiction to impose any penalty provided for by or under this Act.

Forfeiture

77. (1) A court may, upon conviction of a person for any offence in terms of section 67, 69 or 75 and shall, in the event of a contravention of section 67(1)(c), declare to be forfeited to the Province-

- (a) all monies, coins, cheques, bills or promissory notes or other documentation securing or evidencing an undertaking for the payment of money found in or on any unlicensed premises or on any person who was in or on such premises;
- (b) all books, lists, cards, documents or other papers, or any instrument, machine or thing relating to or used or capable of being used in connection with gambling found in or on such premises or on any person who was in or on such premises, or
- (c) any vehicle, vessel or aircraft used in connection with the offence,

which was confiscated in terms of this Act or the Criminal Procedure Act, 1977 (Act 51 of 1977) whereupon the provisions of section 35 of the Criminal Procedure Act shall apply, with the necessary changes, to anything forfeited in terms of this section.

(2) Upon payment by a person of an admission of guilt fine in terms of section 57 of the Criminal Procedure Act in respect of a charge of a contravention of section 67(1)(a), 67(1)(c) or 69(1)(a) of this Act, any item contemplated in subsection (1), which was seized in terms of this Act or the Criminal Procedure Act, shall be forfeited to the Province, whereupon the provisions of section 35 of the Criminal Procedure Act shall apply, with the necessary changes, to anything forfeited in terms of this section.

[Second subsection (2) added by s 14 of Act 11 of 2000 w e f 15 September 2000.]

[S 77 substituted by s 16 of Act 11 of 1997 w e f 5 November 1997.]

(3) The proceeds of the sale of anything declared forfeited under subsection (1) shall be paid into the Provincial Revenue Fund.

[Subsection (2) added by sec 5 of Act 8 of 1998 w e f 1 June 1998.]

Patron disputes

78. (1) If a licence holder refuses payment of alleged winnings to a player and the licence holder and the player are unable to resolve the dispute to the satisfaction of the player, the dispute shall be resolved in accordance with the prescribed procedure.

(2) Whenever it resolves a dispute in accordance with the prescribed procedure, the Board may require that such parties to the dispute as it may specify, shall be responsible for the payment of such reasonable costs incurred by the Board in the investigation of the dispute as it may specify.

[Subsection (2) added by s 3(b) of Act 5 of 1999 w e f 1 April 1999.]

(3) Any resolution made by the Board in terms of this section and in consequence of a hearing conducted in accordance with the prescribed procedure shall constitute a final order of the Board.

[Subsection (3) added by s 3(b) of Act 5 of 1999 w e f 1 April 1999.]]

(4) A final order of the Board may, on application to a court of competent jurisdiction by any party to the dispute, after due notice to any other party or parties thereto, be made an order of court.

[Subsection (4) added by s 3(b) of Act 5 of 1999 w e f 1 April 1999.]

(5) The court to which application is so made may, before making the final order of the Board an order of court, correct in the final order of the Board any clerical mistake or any patent error arising from any accidental mistake or omission.

[Subsection (5) added by s 3(b) of Act 5 of 1999 w e f 1 April 1999.]

(6) A final order of the Board which has been made an order of court may be enforced in the same manner as any judgment or order to the same effect.

[Subsection (6) added by s 3 (b) of Act 5 of 1999 w e f 1 April 1999.]

[S 78 amended by s 3(a) of Act 5 of 1999 w e f 1 April 1999.]

Gambling debts enforceable

79. (1) Any debt lawfully incurred by a person after the commencement of this Act in the course of gambling shall, notwithstanding the provisions of any other law or the common law, be enforceable in a court of law.

[Subsection (1) substituted by s 63(a) of Act 4 of 1997 w e f 29 August 1997.]

(2) Any gambling debt lawfully incurred by the holder of a licence referred to in section 27 after the commencement of this Act shall, notwithstanding the provisions of any other law or the common law, be enforceable in a court of law.

[Subsection (2) amended by s 63(b) of Act 4 of 1997 w e f 29 August 1997.]

Reward for informers

80. The Board may, notwithstanding anything to the contrary in any other law contained, from its funds pay to any person who has furnished information leading to the successful execution of a search warrant, the seizure of gambling devices, or the arrest or conviction of any other person for a contravention of any provisions of this Act, a reward in such amount as the Board may decide.

[Section 80 amended by s 64 of Act 4 of 1997 w e f 29 August 1997 and substituted by s 3 of Act 10 of 2000 w e f 15 September 2000.]

Regulations

81. (1) The responsible Member may make regulations regarding-

- (a) any matter pertaining to the Board;
- (b) any matter pertaining to an application for a licence;
- (c) any matter pertaining to a development application;
- (d) the maximum permissible number of licences of any particular kind that may from time to time be granted in a particular area;
- (e) the maximum number of gambling devices allowed on licensed premises;

- (f) the granting of exclusive rights to the holder of a casino operator licence for any period and in respect of any area;
- (g) any other matter that may be relevant to the establishment of casinos in the Province;
- (h) the manufacture, sale and disposal of gambling devices;
- (i) the management and control of licensed premises;
- (j) the management and control of gambling or racing or related activities;
- (k) the maximum amount that a player may stake per game;
- (l) the maximum amount that a player may win;
- (m) the imposition of any fees, taxes and levies;
- (n) any matter which in terms of this Act is required or permitted to be prescribed, and
- (o) in general, any matter in respect of which it is necessary or expedient to make regulations in order to achieve the objects of this Act;

provided that all regulations, with the exception of paragraph (a), shall be made after consultation with the Board; provided further that any regulation with financial implications shall be made with the concurrence of the member of the Executive Council responsible for finance.

[Subsection (1) amended by s 65(a) of Act 4 of 1997 and s 17(a) of Act 10 of 1997]

(2) ...

[Former subsection (2) deleted by s 17(b) of Act 10 of 1997]

(2) A regulation made under this section may, for a contravention thereof or failure to comply therewith, prescribe a fine not exceeding one million rand or imprisonment for a period not exceeding two years, or both such fine and such imprisonment; provided that in the event of a second or subsequent conviction by a criminal court, such court may impose a penalty not exceeding twice the amount of such fine and double the term of imprisonment.

[Former subsection (3) amended by s 65(c) of Act 4 of 1997; renumbered to (2) by s 17(c) of Act 10 of 1997 and further amended by s 8 of Act 1 of 2003 w e f 30 June 2003]

(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.

[Former subsection (4) renumbered to (3) by s 17(d) of Act 10 of 1997]

(4) Any regulation may be made to apply generally throughout the province or within any defined area or areas thereof or to any specified gambling business or gambling establishment.

[Former subsection (5) inserted by s 65(e) of Act 4 of 1997; renumbered to (4) by s 17(e) of Act 10 of 1997]

(5) The power of the responsible Member to make regulations in terms of this section shall include the power to amend and repeal any regulations so made.

[Subsection (5) inserted by s 6 of Act 8 of 1998]

Rules

82. (1) The Board may by notice in the *Provincial Gazette* make rules not inconsistent with the provisions of this Act relating to the exercise of its powers and the performance of its functions, including-

- (a) any matter pertaining to an application for a licence;
- (b) the management and control of licensed premises and gambling operations,

[Paragraph (b) amended by s 66(a) of Act 4 of 1997]

- (c) rules for the playing of any gambling game or betting;
- (d) internal control measures for licence holders;

[Paragraph (d) inserted by s 66(b) of Act 4 of 1997]

- (e) the books, accounts and records to be kept and returns to be furnished;

[Paragraph (e) inserted by s 66(b) of Act 4 of 1997 and amended by s 18 of Act 10 of 1997]

- (f) any matter which, in terms of this Act, is required or permitted to be determined, and

[Paragraph (f) inserted by s 18 of Act 10 of 1997]

- (g) in general, any matter in respect of which it is necessary or expedient to make rules in order to achieve the objects of this Act.

[Subsection (1) amended by s 66(a) and (b) of Act 4 of 1997 w e f 29 August 1997 and substituted by s 18 of Act 10 of 1997 w e f 29 August 1997.]

(2) Any rule made under subsection (1) may, for a contravention thereof or failure to comply therewith, prescribe penalties, including a fine not exceeding five hundred thousand rand.

[Subsection (2) substituted by s 66(c) of Act 4 of 1997 w e f 29 August 1997 and further amended by s 9 of Act 1 of 2003 w e f 30 June 2003]

(3) Different rules 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.

[Subsection (3) added by s 66(d) of Act 4 of 1997 w e f 29 August 1997.]

Application of Act

83. Save for the provisions of a National Gambling Act as contemplated in section 126(3) of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), or as may otherwise be provided in this Act, nothing contained in any other law relating to gambling or racing or activities incidental thereto shall apply in respect of any gambling or racing or activities incidental thereto conducted in the Province.

[S 83 substituted by s 67 of Act 4 of 1997 w e f 29 August 1997.]

Transitional provisions

84.

[Section 84 deleted by s 35 of Act 4 of 2006 w e f 1 December 2006]

Interim measures relating to possession of gambling devices

84A....

[Section 84A deleted by s 36 of Act 4 of 2006 w e f 1 December 2006]

Interim measures relating to manufacturers of gambling devices

84B....

[Section 84B deleted by s 37 of Act 4 of 2006 w e f 1 December 2006]

Non-proprietary race course licence holder becoming a proprietary race course licence holder

84C....

[Section 84C deleted by s 38 of Act 4 of 2006 w e f 1 December 2006]

Prohibition of certain gambling activities

84D (1) Subject to subsection (3), no person physically present in the Province shall participate in a gambling activity by way of telephone, telefax, interactive television, electronic mail, internet transmission or any related communications medium, except as provided for by the National Act.”;

(2) Subject to subsection (3), no person shall invite, assist or permit another person –

(a) who, to the knowledge of the first-mentioned person, is physically present in the Province, or

(b) whom the first-mentioned person should reasonably suspect to be physically present in the Province,

to participate in a gambling activity which is conducted wholly or partially by way of telephone, telefax, interactive television, electronic mail, internet transmission or any related communications medium, except as provided for by the National Act.

(3) The provisions of this section shall not apply –

(a) to a bet taken by or with a bookmaker or totalisator licensed in any province in the Republic which is authorised by such licence to accept such a bet, or

(b) where a player participates in a gambling activity contemplated in this section on the licensed premises of a person licensed in terms of this Act to offer such gambling activity.

(4) Any person who contravenes a provision of this section shall be guilty of an offence.

[Section 84D inserted by s 39 of Act 4 of 2006 w e f 1 December 2006]

Transitional Provisions

84E (1) Any valid licence certificate issued by the Board prior to the date of coming into operation of the Western Cape Fifteenth Gambling and Racing Amendment Act, 2005 (in this section “the Amendment Act”) in terms of section 46 of the Law shall, notwithstanding the wording thereof and until the date of expiry thereof, be regarded as a route operator licence.

(2) Any valid licence certificate issued by the Board prior to the date of coming into operation of the Amendment Act in terms of section 47 of the Law shall, notwithstanding the wording thereof and until the date of expiry thereof, be deemed to be a site licence.

(3) Any person who, at the time of coming into operation of the Amendment Act, holds a licence, a financial interest in a licence or a certificate of suitability issued in terms of the Law who, as a result of the provisions of the Amendment Act or the National Act, is no longer qualified to hold such licence, financial interest or certificate of suitability, must, within 30 days of the coming into operation of the Amendment Act, report such fact –

- (a) to his or her employer, where such person is the holder of an employee licence and in the employ of the holder of an operator licence;
- (b) to the licence holder in which he or she holds a financial interest; or
- (c) to the licence holder in respect of which such person has been issued with a certificate of suitability,

whereafter such employer or licence holder must, within 30 days of such report, notify the Board of the disqualification.

(4) The provisions of section 31 of the Law shall not apply to anyone who was disqualified for licensing in terms of the Law prior to the coming into operation of the Amendment Act and, who after the coming into operation of the Amendment Act, is not so disqualified.

[Section 84E inserted by s 40 of Act 4 of 2006 w e f 1 December 2006]

Repeal of Laws

85. The laws mentioned in Schedule I are hereby repealed to the extent indicated in the third column thereof.

Short title and commencement

86. (1) This Act shall be called the Western Cape Gambling and Racing Act, 1996, 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.

(3) Different dates may be so fixed in respect of different sections of this Act.

SCHEDULE I

A. Ordinances

Number and year	Short title	Extent of repeal
34 of 1968	Horse Racing and Betting Ordinance, 1968	The whole
16 of 1971	Horse Racing and Betting Amendment Ordinance, 1971	The whole
17 of 1972	Horse Racing and Betting Amendment Ordinance, 1972	The whole
14 of 1973	Horse Racing and Betting Amendment Ordinance, 1973	The whole
5 of 1975	Horse Racing and Betting Amendment Ordinance, 1975	The whole
3 of 1976	Horse Racing and Betting Amendment Ordinance, 1976	The whole
3 of 1980	Horse Racing and Betting Amendment Ordinance, 1980	The whole
19 of 1981	Horse Racing and Betting Amendment Ordinance, 1981	The whole
8 of 1982	Horse Racing and Betting Amendment Ordinance, 1982	The whole
8 of 1983	Horse Racing and Betting Amendment Ordinance, 1983	The whole
9 of 1984	Horse Racing and Betting Amendment Ordinance, 1984	The whole
7 of 1986	Horse Racing and Betting Amendment Ordinance, 1986	The whole

B. Administrator's Proclamations

Number and year	Number of <i>Provincial Gazette</i> and date	Extent of repeal
46/1988	4538 of 1 July 1988	The whole
109/1989	4620 of 20 December 1989	The whole
61/1990	4660 of 14 September 1990	The whole
67/1991	4716 of 30 September 1991	The whole
5/1994	4840 of 28 January 1994	The whole
29/1994	4850 of 31 March 1994	The whole

C. Acts of Parliament

Number and year	Short title	Extent of repeal
51 of 1965	Gambling Act 1965	The whole (other than those provisions relating to lotteries) to the extent that it applies in the Province

SCHEDULE II

Application, licence and investigation fees payable by an applicant or a licence holder in respect of the kinds of licences referred to below:

[Schedule II substituted by s 70 of Act 4 of 1997 w e f 29 August 1997 and amended by s 18 of Act 11 of 1997 w e f 5 November 1997 and by s 4 of Act 5 of 1999 w e f 1 April 1999.]

1. The fees payable in terms of section 32 are as follows:

Kinds of licences	New licence application fee R
Casino operator licence	240 000,00
Limited gambling machine operator licence	120 000,00
Limited gambling machine premises licence	6 000,00
Bingo licence	60 000,00
Bingo premises licence	6 000,00
Junket agent licence	6 000,00
Manufacturer licence	6 000,00
Distributor licence	6 000,00
Race course licence	5 000,00
Race course premises licence	5 000,00
Totalisator operator licence	120 000,00
Totalisator premises licence	6 000,00
Bookmaker licence	6 000,00
Bookmaker premises licence	6 000,00
Key employee licence	240,00
Gambling employee licence	60,00

[Paragraph 1 substituted by s 4(a) of Act 5 of 1999 w e f 1 April 1999 and by s 4(a) of Act 10 of 2000 w e f 15 September 2000.]

2. The fees payable in terms of section 44 are as follows:

Kinds of licences	Annual licence fee R	Investigation fee R
Casino operator licence	120 000,00	3 600,00 per gambling table plus 2 400,00 per slot machine
Limited gambling machine operator licence	60 000,00	1 200,00 per limited gambling machine
Limited gambling machine premises licence	600,00	2 400,00
Bingo licence	2 400,00	6 000,00
Bingo premises licence	600,00	2 400,00
Junket agent licence	240,00	600,00
Manufacturer licence	2 400,00	12 000,00
Distributor licence	2 400,00	12 000,00
... [Deleted]		
... [Deleted]		
Totalisator operator licence	2 400,00	60 000,00
Totalisator premises licence	240,00	600,00
Bookmaker licence	1 200,00	4 800,00
Bookmaker premises licence	240,00	600,00
Key employee licence	60,00	240,00
Gambling employee licence	60,00	60,00

[Paragraph 2 substituted by s 4(b) of Act 5 of 1999 w e f 1 April 1999 and by s 1(b) of Act 10 of 2001 w e f 1 January 2002.]

3. The exclusivity fees payable in terms of section 44A are as follows:

Value of casino development	Exclusivity Fee
Where the value of the casino development does not exceed R175 million	R500 000,00 per annum for a period of ten years escalating annually at the rate applicable in respect of debts to the State as determined by the Minister responsible for National Finance from time to time
Where the value of the casino development exceeds R175 million	R1 000 000,00 per annum for a period of ten years escalating annually at the rate applicable in respect of debts to the State as determined by the Minister responsible for National Finance from time to time

[Paragraph 3 inserted by s 18(a) of Act 11 of 1997 w e f 5 November 1997 and substituted by s 4(c) of Act 10 of 2000 w e f 15 September 2000.]

4. The bid fees payable in terms of section 44B are as follows:

Value of casino development	Bid Fee
Where the value of the casino development does not exceed R175 million (save for the Metropolitan casino development)	R6 124 000,00
Where the value of the casino development exceeds R175 million (save for the Metropolitan casino development)	R12 248 000,00
In respect of the casino located within a radius of 75 kilometres from the Cape Town City Hall (the Metropolitan casino)	R165 346 000,00

[Paragraph 4 inserted by s 18(b) pf Act 11 pf 1997 w e f 5 November 1997 and substituted by s 4(d) of Act 10 of 2000 w e f 15 September 2000.]

5. The limited gambling machine operator fees payable in terms of section 44C are as follows:

Size of limited gambling machine operator	Limited gambling machine operator fee
Where the number of limited gambling machines does not exceed 500 machines per operator	R500 000,00 per annum for a period of ten years escalating annually at the rate applicable in respect of debts to the State as determined by the Minister responsible for National Finance from time to time
Where the number of limited gambling machines exceeds 500 machines per operator but does not exceed 1000 machines per operator	R1 000 000,00 per annum for a period of ten years escalating annually at the rate applicable in respect of debts to the State as determined by the Minister responsible for National Finance from time to time
Where the number of limited gambling machines exceeds 1000 machines per operator	R1 500 000,00 per annum for a period of ten years escalating annually at the rate applicable in respect of debts to the State as determined by the Minister responsible for National Finance from time to time.

[Paragraph 5 inserted by s 18(c) of Act 11 of 1997 w e f 5 November 1997 and substituted by s 4(e) of Act 10 of 2000 w e f 15 September 2000.]

6. All fees set out in this Schedule exclude Value Added Tax.

[Paragraph 6, previously paragraph 3, renumbered by s 18(d) of Act 11 of 1997 w e f 5 November 1997 and substituted by s 4(f) of Act 10 of 2000 w e f 15 September 2000.]

SCHEDULE III

Tax, penalties, etc.

[Schedule III amended by s 2 of Act 9 of 1998 w e f 1 June 1998.]

PART A

Definitions

1. For the purposes of the various parts of this Schedule, unless the context indicates otherwise-

“adjusted gross revenue” means-

- (a) except in regard to any game contemplated in subparagraphs (b), (c), (d), (e) and (f) below, the total amount of all bets accepted in the Province and received by or accruing to a licence holder, including the face value of any credit instrument accepted, and any payment received by or accruing to a betting operator as winnings in consequence of a take-back bet placed by such betting operator, less winnings paid out by a licence holder; provided that a bet shall be deemed to have been accepted by a licence holder at the licensed premises of such licence holder, if acceptance of the bet by the licence holder concludes the transaction;
- (b) in relation to any gambling game in which the licence holder is not a party to a bet, all amounts received by or accruing to the licence holder as compensation for conducting such a gambling game in the Province;

[Paragraph (b) substituted by s 71(a) of Act 4 of 1997 w e f 29 August 1997.]

- (c) in relation to any table games, other than those contemplated in subparagraph (b) above, conducted by a licence holder in the Province, the closing bankroll plus credit slips for cash, chips or tokens returned to the casino cashier, plus drop, plus the face value of coupons, less the opening bankroll and fills to the table;
- (d) in relation to slot machines, other than those contemplated in subparagraphs (e) and (f) below operated by a licence holder in the Province, the drop, less fills to the machine and winnings paid out; provided that the initial hopper load shall not constitute a fill and shall not affect the calculation of adjusted gross revenue;
- (e) in relation to slot machines operated by a licence holder in the Province which are linked via a wide-area progressive system, the drop, less fills to the machine, less any contributions made by the licence holder which are payable in consequence of such wide-area progressive system in respect of such slot machines during the tax period, and less any winnings paid out which are not recoverable from the central fund in terms of the wide-area progressive system;

provided that the initial hopper load shall not constitute a fill and shall not affect the calculation of adjusted gross revenue; provided further that where any surplus amount is distributed from the central fund to a licence holder or where any licence holder withdraws from a wide-area progressive system and in consequence of such distribution or withdrawal recovers or recoups during any tax period any contribution previously deducted under this subparagraph, such contribution so recovered or recouped shall be included in the licence holder's adjusted gross revenue in the tax period in which the contribution is recovered or recouped, and

- (f) in relation to limited gambling machines exposed for play in the Province by the holder of a limited gambling machine operator licence, the total value registered by the electronic monitoring system on the in-meter less the total value so registered on the out meter of each such machine.

[Paragraph (f) inserted by s 1(a)(i) of Act 3 of 2003 w e f 1 July 2003]

"admissible deductions" means-

- (a) the amount of any take-back bet proved to have been placed by a betting operator; provided that the said amount shall not exceed the betting operator's commitment in respect of the bet or bets covered by such take-back bet, and

[Paragraph (a) substituted by s 71(b) of Act 4 of 1997 w e f 29 August 1997.]

- (b) the amount of any debts due to the licence holder which have during the tax period become bad in consequence of any form of insolvency referred to in the Insolvency Act, 1936 (Act 24 of 1936), as amended, on condition that such amount is included in the current tax period or was included in previous tax periods in the licence holder's adjusted gross revenue;

- (c) ...

[Paragraph (c) deleted by s 71(c) of Act 4 of 1997 w e f 29 August 1997.]

"betting operator" means the holder of a bookmaker licence issued under this Act;

"central fund" means a central, common fund established in terms of a wide-area progressive system to ensure that adequate financial provision is made to pay jackpot winnings;

"contribution" means a payment made by a licence holder by virtue of his or her participation in a wide-area progressive system to the central fund of such system for the purpose of making financial provision for the payment of jackpot winnings;

"credit instrument" means any bill of exchange, promissory note, bank draft, postal order, money order or other similar instrument;

"drop" means-

- (a) in relation to table games, other than those referred to in subparagraph (b) of the definition of "adjusted gross revenue", the total amount of money, chips and tokens contained in the drop boxes, and
- (b) in relation to slot machines, the total amount of money and tokens removed from the drop box, or for cash-less slot machines, the amount deducted from players' slot accounts as a result of slot machine play;

"drop box" means-

- (a) in relation to table games, a locked container permanently marked with the game, shift and number corresponding to a permanent number of the table, into which all currency exchanged for chips or tokens or credit instruments at the table and all other documents pertaining to transactions at the table must be placed, and
- (b) in relation to slot machines, a container in a locked portion of the machine or its cabinet used to collect the money and tokens which are retained by the machine and are not used to make automatic payouts from the machine, which container is permanently marked with the number of the machine;

"fills" means-

- (a) in relation to table games, the issue of additional chips to the table, and
- (b) in relation to slot machines, the replenishment of coins or tokens in the hopper;

"gambling operator" means the holder of a casino operator licence, a limited gambling machine operator licence or a bingo licence;

"hopper" means a receptacle within a slot machine which receives until full, coins or tokens inserted into the machine and from which winnings are paid out if there are sufficient coins to do so;

"licence holder" means any person who holds a casino operator licence, a limited gambling machine operator licence, a totalisator operator licence, a bingo licence or a bookmaker licence issued under this Act, or who is required to be licensed as such in terms of this Act;

“month” means any calendar month;

“prescribed rate”, in relation to any interest payable in terms of this Schedule, means such rate of interest as the national Minister of Finance may determine in terms of section 80(1)(b) of the Public Finance Management Act, 1999;

[Definition of “prescribed rate” amended by s 1(a)(ii) of Act 3 of 2003 w e f 1 July 2003]

“progressive slot machine” means a slot machine with a payout that increases automatically over time or as the slot machine or another such machine is played;

“table game” means any gambling game played in a casino with playing cards, dice or any device other than a slot machine;

[Definition of ‘table game’ substituted by s 71(d) of Act 4 of 1997 w e f 29 August 1997.]

“tax” means the gambling tax imposed in terms of section 64;

“taxable revenue” means adjusted gross revenue less admissible deductions as determined under this Act;

“tax period”, in relation to a licence holder, means the tax period as determined in accordance with the provisions of paragraph 2 of Part B of this Schedule;

“wide-area progressive system” means any system approved by the Board whereby one or more designated progressive slot machines which are situated in more than one gambling establishment and which from time to time participate in the system are electronically linked and may be played in order to achieve a stated jackpot amount declared to be progressive; provided that each linked machine must have a substantially similar probability of awarding a progressive jackpot to the gambling patron, and

“winnings” means the total amount of-

- (a) any cash;
- (b) the monetary value stated on every token, chip, voucher or stamp redeemable for money or value, and
- (c) the cost to the licence holder of any asset,

paid or granted by the licence holder to or for the benefit of any person as winnings in consequence of any stake accepted by the licence holder; provided that where any winnings are paid out in the form of an annuity, only the amount of such annuity payment made by the licence holder or the cost of a purchased annuity, where such an annuity is purchased by the licence holder, may be excluded in the determination of adjusted gross revenue.

PART B Gambling tax

1. The gambling tax payable in terms of section 64 by the holder of a casino operator licence, limited gambling machine operator licence and bingo licence, and tax on betting payable by the holder of a totalisator operator licence, shall be calculated as set out in the tables hereunder:

[Section 1 amended by s 2 of Act 9 of 1998]

Casino operator licence

- (a) In respect of the taxable revenue in any tax period, an amount of tax calculated in accordance with the table below:

TAXABLE REVENUE	RATES OF TAX IN RESPECT OF CASINO OPERATOR LICENCE
Where the taxable revenue in the tax period-	
does not exceed R14,2 million	6% of each R1 of the taxable revenue
Exceeds R14,2 million but does not exceed R28,4 million	R852 000 plus 8,5% of the amount by which the taxable revenue exceeds R14,2 million
Exceeds R28,4 million but does not exceed R42,6 million	R2,059 million plus 11% of the amount by which the taxable revenue exceeds R28,4 million
Exceeds R42,6 million but does not exceed R56,8 million	R3,621 million plus 13% of the amount by which the taxable revenue exceeds R42,6 million
Exceeds R56,8 million but does not exceed R71,0 million	R5,467 million plus 15% of the amount by which the taxable revenue exceeds R56,8 million
Exceeds R71,0 million	R7,597 million plus 17% of the amount by which the taxable revenue exceeds R71,0 million

[Paragraph 1(a) amended by s 1(b)(i) of Act 3 of 2003 w e f 1 July 2003 and s 1 of Act 7 of 2003]

Limited gambling machine operator licence

- (b) In respect of the taxable revenue in any tax period an amount of tax calculated in accordance with the table below:

TAXABLE REVENUE	RATES OF TAX IN RESPECT OF GAMBLING MACHINE OPERATOR LICENCE
Where the taxable revenue in the tax period- does not exceed R10 million	10% of each R1 of the taxable revenue
Exceeds R10 million but does not exceed R20 million	R1,0 million plus 12,5% of the amount by which the taxable revenue exceeds R10 million
Exceeds R20 million but does not exceed R30 million	R2,25 million plus 15% of the amount by which the taxable revenue exceeds R20 million
Exceeds R30 million	R3,75 million plus 20% of the amount by which the taxable revenue exceeds R30 million

Bingo licence

- (c) In respect of the taxable revenue in any tax period an amount of tax calculated in accordance with the table below:

TAXABLE REVENUE	RATES OF TAX IN RESPECT OF BINGO LICENCE
Where the taxable revenue in the tax period- does not exceed R2 million	10% of each R1 of the taxable revenue
Exceeds R2 million	R200,000 plus 15% of the amount by which the taxable revenue exceeds R2 million

Tax on betting payable by the holder of a totalisator operator licence

- (a) In respect of the taxable revenue in any tax period an amount of tax calculated at the rate of 6 percent of each R1,00 of taxable revenue.
[Subparagraph (d) substituted by s 1 of Act 10 of 2001 w e f 1 January 2002 and amended by s 2 of Act 8 of 2002]]

Tax period

2. The tax period in respect of the licence holders contemplated in this Part shall be a period of one month ending on the last day of each of the twelve months of the calendar year; provided that any such tax period may, subject to the prior

written approval of the Head: Provincial Treasury, end within ten days before or after such last day; provided further that the first tax period of any licence holder shall commence on the date on which such licence holder becomes licensed under this Act or on the date on which he or she would have become licensed had he or she qualified for licensing.

[Paragraph 2 amended by s 1(b)(ii) of Act 3 of 2003 w e f 1 July 2003]

Alternative means of determining liability for tax

3. (1) If a licence holder fails to keep the records used or required to be used to calculate taxable revenue, the Chief Executive Officer may determine taxable revenue in respect of the period during which such records were not kept by having regard to-

- (a) audits conducted by staff of the Board;
- (b) statistical analysis, or
- (c) any other information in the possession of the Board pertaining to gambling transactions conducted by the licence holder.

(2) If the liability for tax of a licence holder cannot be established as a result of incomplete or inaccurate data being received from or transmitted by an electronic monitoring system, the Chief Executive Officer may determine the taxable revenue of the licence holder in the manner contemplated in subparagraph (1) or by using such other reasonable method as he or she may determine.

(3) Where the Chief Executive Officer has determined a licence holder's liability for tax pursuant to this paragraph, the licence holder shall make payment of the amount of tax so determined within the prescribed period, notwithstanding that an objection or appeal may have been lodged in respect of such determination.

[Paragraph 3 inserted by s 1(b)(iii) of Act 3 of 2003 w e f 1 July 2003]

PART C

Penalty and interest for failure to pay tax when due

1. (1)(a) If any licence holder who is liable for the payment of tax is required to make such payment in the prescribed manner but fails to pay any amount of such payment, the licence holder shall, in addition to such amount of tax, pay-

- (i) a penalty equal to ten per cent of the said amount of tax per tax period or part thereof that the amount remains outstanding; provided that the maximum penalty shall not exceed one hundred per cent of the said amount of tax, and
- (ii) where payment of the said amount of tax is made on or after the first day following the date on which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at the prescribed rate for each day or part thereof in the period reckoned from the said first day until

the date on which payment is received by the Chief Executive Officer; provided that, if the said amount of tax is not paid within forty-five days after the date on which it became payable, the Chief Executive Officer shall give the licence holder fourteen days written notice to effect payment of the said tax, and if such tax is not paid prior to the expiration of the said fourteen days, the Board may suspend or revoke the licence of the said licence holder.

[Subparagraph (a) substituted by s 71(e) of Act 4 of 1997 w e f 29 August 1997 and further amended by s 1(c) of Act 3 of 2003 w e f 1 July 2003.]

- (b) Where any amount of tax has, in relation to any tax period of any licence holder, been refunded to the licence holder in the prescribed manner or has in relation to that period been set off against unpaid tax as prescribed and such amount was in whole or in part not properly refundable to the licence holder, so much of such amount as was not properly so refundable shall for the purposes of subparagraph (a)(i) be deemed to be an amount of tax required to be paid by the licence holder within the said period, and for the purposes of subparagraph (a)(ii), an amount of tax required to be paid by the licence holder during the period in which the refund was made.

(2) Where the Chief Executive Officer is satisfied that the failure on the part of any licence holder to make payment of the tax within the period for payment contemplated in the regulations was not due to an intent to avoid or postpone liability for payment of the tax, the Chief Executive Officer may remit in whole or in part any penalty or interest payable in terms of this paragraph.

Calculation of interest payable under this Act

2. Where-

- (a) any interest is payable under the provisions of paragraph 1(1)(a);
- (b) the rate at which such interest is payable has with effect from any date been altered, and
- (c) such interest is payable in respect of any period or any number of months or any part of a month which commenced before the said date,

the interest to be determined in respect of that portion of such period which ended immediately before the said date or in respect of any such months or any part of a month which commenced before the said date shall be calculated as if the said rate had not been so altered.

Recovery of tax

3. (1) Any amount of tax, licence fee, penalty or interest payable in terms of this Act shall, when it becomes due and payable, be a debt due to the Province and

shall be recoverable for the benefit of the Provincial Revenue Fund by the Chief Executive Officer as hereinafter provided.

(2) (a) If any licence holder fails to pay any tax, licence fee, penalty or interest payable in terms of this Act when it becomes due or is payable by him or her, the Chief Executive Officer may file with the clerk or registrar of any competent court a certified statement setting forth the amount due or payable by that licence holder, and such statement shall thereupon have all the effects of a civil judgment lawfully given in that court in favour of the Chief Executive Officer for a liquid debt of the amount specified in the statement.

(b) The Chief Executive Officer may by notice in writing addressed to the aforesaid clerk or registrar withdraw the statement referred to in subparagraph (a), and such statement shall thereupon cease to have any effect; provided that the Chief Executive Officer may institute proceedings afresh under that subparagraph in respect of any tax, licence fee, penalty or interest referred to in the withdrawn statement.

(c) The Chief Executive Officer may institute proceedings for the sequestration of the estate of any person and shall for the purposes of such proceedings be deemed to be the creditor in respect of any tax, licence fee, penalty or interest payable by such licence holder under the provisions of this Act.

(3) Notwithstanding anything contained in the Magistrates' Courts Act, 1944 (Act 32 of 1944), a statement for any amount whatsoever may be filed in terms of subparagraph (2)(a) with the clerk of the magistrate's court having jurisdiction in respect of the licence holder by whom such amount is payable in accordance with the provisions of this Act.

(4) Where, in addition to any amount of tax or licence fee which is due or payable by any licence holder in terms of this Act, any amount of interest or penalty is payable by the licence holder in terms of paragraph 1(1), any payment made by that licence holder in respect of such tax, licence fee, interest or penalty which is less than the total amount due by him or her in respect of such tax, licence fee, interest and penalty shall, for the purposes of this Act, be deemed to be made-

- (a) in respect of such penalty;
- (b) to the extent that such payment exceeds the amount of such penalty, in respect of such interest, and
- (c) to the extent that such payment exceeds the sum of the amounts of such penalty and interest, in respect of such tax or licence fee.

(5) It shall not be competent for any licence holder in proceedings in connection with any statement filed in terms of subparagraph (2)(a) to question the correctness of any assessment upon which such statement is based, notwithstanding that an objection and appeal may have been lodged against such assessment.

Payment of tax or licence fee pending appeal

4. (1) The obligation to pay and the right to receive and recover any tax or licence fee chargeable under this Act shall not, unless the Chief Executive Officer so directs, be suspended by any appeal or pending the decision of a court of law.

(2) If any assessment is altered on appeal or in conformity with any decision referred to in subparagraph (1) or a decision by the Chief Executive Officer to concede the appeal to the Board, a due adjustment shall be made, amounts paid in excess being refunded with interest at the prescribed rate, calculated from the date proved to the satisfaction of the Chief Executive Officer to be the date on which such excess was received, and amounts short-paid being recoverable with penalty and interest calculated as provided in paragraph 1(1).

Offences and penalties in regard to evasion of tax or fees

5. (1) Any person who with intent to evade payment of any tax or licence fee levied under this Act, or to obtain a refund of any tax or licence fee to which such person is not entitled or with intent to assist any other person to evade the payment of any tax or licence fee payable by such other person or to obtain a refund of any tax under this Act to which such other person is not entitled-

- (a) makes or causes or permits to be made any false statement or entry in any return rendered in terms of the regulations or signs any statement or return so rendered without reasonable grounds for believing such statement or return to be true;
- (b) gives any false answer, whether verbally or in writing, to any request for information made by the Chief Executive Officer or any person duly authorised by the Chief Executive Officer;
- (c) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or authorises the falsification of any books of account or other records;
- (d) makes any false statement for the purpose of obtaining a refund of any tax or licence fee, or
- (e) makes use of any fraud, art or contrivance whatsoever, or authorises the use of such fraud, art or contrivance,

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

(2) Wherever, in any proceedings under this paragraph, it is proved that any false statement or entry has been made by or on behalf of any person in any books of account or other records of any person, that person shall be presumed, until the contrary is proved, to have made that false statement or entry or to have caused or permitted that false statement or entry to be made in any return rendered under the regulations with the intent to evade the payment of any tax or licence fee or to obtain a refund of any tax or licence fee to which the person is not entitled, as the case may be, and any other person who made any such false

statement or entry shall be presumed, until the contrary is proved, to have made such false statement or entry with intent to assist the first-mentioned person to evade the payment of such tax or licence fee or to obtain a refund of such tax or licence fee to which he or she is not entitled.

(3) A conviction for an offence in terms of this paragraph shall not exempt the person convicted from the payment of any tax, licence fee, penalty or interest payable in accordance with the provisions of this Act.

Schemes for obtaining undue tax benefits

6. (1) Notwithstanding any provision of this Act, whenever the Chief Executive Officer is satisfied that any scheme-

- (a) has been entered into or carried out which has the effect of granting a tax benefit to any person, and
- (b) having regard to the substance of the scheme-
 - (i) was entered into or carried out by any means or in a manner which would not normally be employed for genuine business purposes other than the obtaining of a tax benefit, or
 - (ii) has created rights or obligations which would not normally be created between persons dealing at arm's length, and
 - (iii) was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit,

he or she shall determine the liability for any tax imposed under this Act and the amount thereof as if the scheme had not been entered into or carried out, or in such manner as in the circumstances of the case he or she deems appropriate for the prevention or diminution of such tax benefit.

(2) For the purposes of this paragraph-

"tax benefit" includes-

- (a) any reduction in the liability of any person to pay any tax or licence fee imposed by this Act;
- (b) any increase in the entitlement of any person to a refund of any tax or licence fee imposed by this Act, or
- (c) any other avoidance or postponement of liability for the payment of any tax or licence fee imposed by this Act, and

"scheme" includes any transaction, operation, scheme or understanding (whether enforceable or not), including all steps and transactions by which it is carried into effect.

(3) Any decision by the Chief Executive Officer under this paragraph shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the scheme concerned does or would result in a tax benefit, it shall be presumed, until the contrary is proved, that such scheme was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit.

Tax agreements

7. (1) The responsible Member may enter into an agreement with the provincial government of any other province whereby arrangements are made with that government with a view to-

- (a) the prevention, mitigation or discontinuance of the levying of gambling tax or any similar tax under this Act and the Acts of such other province, if the gambling operations are subject to such tax in either the Province or such other province and such operations are also subject to such tax in the other province which is a party to the agreement;
- (b) the regulation or co-ordination of any matter with regard to the levying and collection under this Act and the laws of such other province of gambling tax or any similar tax, or
- (c) the rendering of reciprocal assistance in the administration and collection of gambling tax or any similar tax under this Act and the laws of such other province, or in respect of the execution of the arrangements provided for in any agreement entered into in terms of this paragraph.

(2) As soon as may be possible after the conclusion of any such agreement, the arrangement thereby made shall be notified by the responsible Member by notice in the *Provincial Gazette*, whereupon, until such notice is withdrawn by the responsible Member, the arrangements notified therein shall, in relation to gambling tax in the Province, have effect as if enacted by this Act.

(3) The responsible Member may at any time withdraw any such notice by notice in the *Provincial Gazette*, and the arrangements notified in such earlier notice shall cease to have effect upon a date fixed in such later notice, but the withdrawal of any notice shall not affect the validity of anything previously done thereunder.

(4) As soon as may be possible after the publication in the *Provincial Gazette* of any notice under this paragraph, copies thereof shall be tabled in the Provincial Legislature.

(5) The duty imposed by these paragraphs to preserve secrecy with regard to such tax shall not prevent the disclosure to any authorised officer of the Province mentioned in any notice issued in terms of subparagraph (2) of any information necessary for the proper execution of the agreement notified in such notice.

Treatment of cross-border transactions

8. (1) For the purposes of this paragraph "mobile casino" means a casino which is situated in or on any form of conveyance or vehicle which moves between different localities, including, without being limited to, a vehicle, train or boat.

(2) Where any person derives adjusted gross revenue from conducting any gambling activities in any mobile casino which crosses the borders of the

Province, the tax liability of such person shall be determined in terms of any tax agreement entered into with any other province under paragraph 7; provided that where no tax agreement is applicable, the tax liability of the person shall be as determined by the Chief Executive Officer in terms of section 64, which determination shall be subject to objection and appeal in the prescribed manner.

SCHEDULE IV

Part A

[Part A inserted by s 3(a) of Act 8 of 2002]

Tax on betting (section 64)

[Schedule IV substituted by s 3 of Act 9 of 1998 w e f 1 June 1998 and by s 5 of Act 10 of 2000 w e f 15 September 2000.]

1. The holder of a bookmaker licence shall collect tax from every person who has taken a winning bet with such licence holder in respect of any event or contingency, at the percentage which is prescribed from time to time in Regulations made in terms of section 81.
2. The tax period in respect of the holder of a bookmaker licence shall commence on 00:00 every Monday and end at 23:59 the following Sunday.
3. The holder of a bookmaker licence shall, at the time and in the manner prescribed, submit a return to the Board in respect of betting transactions conducted during the preceding tax period.
4. The holder of a bookmaker licence must make payment of taxes to the Chief Executive Officer at the time and in the manner prescribed.

Part B

Betting Levy

1. The holder of a bookmaker licence shall collect a betting levy from every person who has taken a winning bet with such licence holder in respect of any event or contingency at the prescribed percentage.
2. The betting levy contemplated in paragraph 1 shall be paid in respect of each tax period as defined in Part A.
3. The holder of a bookmaker licence shall, at the time and in the manner and format prescribed, submit a return to the Board regarding the calculation of the betting levy for the preceding tax period.
4. The holder of a bookmaker licence shall make payment of the betting levy to the Chief Executive Officer at the time and in the manner prescribed.
5. Subject to the fulfillment of such conditions as may be prescribed, the Chief Executive Officer shall, in respect of every betting levy paid to the Board and within the prescribed period, pay over the whole or such portion of the betting levy as may be prescribed to the holder of a totalisator operator licence issued by the Board.
6. The provisions of Part C of Schedule III apply, with the necessary changes, to the betting levy payable by a licence holder in terms of this Part.

[Part B inserted by s 3(b) of Act 8 of 2002 w e f 2 December 2002]