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## ONE STEP FORWARD AND TWO STEPS BACK: THE FINAL REPORT OF THE PARLIAMENTARY SUB-COMMITTEE ON GAMBLING

The initiative taken by the national government in 2010 to embark upon a comprehensive review of the legislative and regulatory framework pertaining to gambling in South Africa was, in many respects, a welcome one, inasmuch as it provided a formal mechanism for balanced reflection on the subject. The establishment of the Gambling Review Commission, and the broad mandate conferred upon it, enabled it to track the development of the various sectors of the gambling industry, and the performance of those tasked with its licensing and regulation, from the time of its inception to the present.

Much has occurred in that period, which now spans well over a decade. The licensed casino industry, which commenced its licensed operations off a zero base, is now a fully-fledged sector of the economy, serving a market which is rapidly achieving full maturity. Through sustained and proactive measures applied by CASA members during this time, the casino sector has established itself as the best performing organised sector of the economy in the context of broad-based black economic empowerment, having attained an average B-BBEE Contributor Status of Level 2 on its most recent voluntary collective rating. The ongoing partnership between the casino sector and the National Responsible Gambling Programme ("NRGP"), which finds its genesis in that sector, has ensured that licensed casino operations are conducted within a socially responsible framework which is widely held up as the most pioneering and effective programme of its kind in the world.

These are indeed substantial achievements, which are augmented by the enormous contribution made by licensed casino developments to the local economy of the areas in which they are located, in terms of infrastructure, job creation, skills development and corporate social investment.

The Gambling Review Commission acknowledged many of these successes. It also identified a number of persistent challenges facing the industry, more particularly the absence of uniformity across provincial boundaries in a number of critical areas, the growing tendency towards micro-management of the sector by top-heavy regulatory structures, and the absence of a risk-based approach to the regulation of gambling. These are all ongoing concerns which require focused attention at a policy-making level.

In response to the findings of the Commission, the Parliamentary Portfolio Committee on Trade and Industry established a Sub-Committee on Gambling, which was tasked with considering the conclusions reached by the Commission and making recommendations to the Minister of Trade and Industry regarding possible policy interventions, which would form the bedrock for legislative amendments going forward. On 6 March 2012, the Sub-Committee issued a report detailing its findings and recommendations, many of which deviate fundamentally from the recommendations of the Commission itself and provide valid cause for concern regarding the future of the casino industry.

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**B-BEEE – vital to business philosophy** CASA members regard B-BEEE as an integral part of their business philosophy, values and operational activities as evidenced in our Chairman's letter to the Minister of Trade and Industry, and the Empowerdex verification of a Level 2 B-BEEE Contributor Status below.



17 February 2012

Dr Rob Davies  
Minister of Trade and Industry  
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Dear Minister Davies

### **THE CASINO INDUSTRY AND BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

The members of the Casino Association of South Africa (CASA), which include all but two of the licensed casino operators in the country, regard B-BBEE as an integral part of their business philosophy, values and operational activities.

B-BBEE, and the philosophies underpinning it, is anything but new to the casino industry. It was, in fact, consciously developed as one of the cornerstones of the licensing process when casino licence applications were invited and the licences subsequently awarded. Applicants for casino licences were therefore required to place special emphasis on job creation and shareholding and funding in respect thereof, skills and enterprise development, corporate social investment, and related requirements. Provision was thus made for all facets of B-BBEE, which subsequently came to be entrenched in the B-BBEE Act and the Codes of Good Practice, in the casino licensing process.

The casino industry was one of very few industry sectors in respect of which a meaningful framework was put in place for the promotion of black economic empowerment. The philosophy and objectives underpinning B-BBEE have been wholeheartedly embraced by all casino operators and were taken up in conditions of licence when these were awarded. The conditions constitute binding and legally enforceable contracts between the relevant boards, as organs of state, and the casino operators. It is therefore a matter of record that the casino industry has been a pioneer in the development of this important policy that has now formally become part of South African economic reality.

In this regard I wrote to your predecessor, Mr Mandisi Mpahlwa, in February 2009 setting out the CASA position on B-BEEE. In that letter, I indicated that, immediately after the promulgation of the Codes of Good Practice, CASA commissioned a study by Empowerdex to establish the level of compliance by the casino industry with the Codes. The study revealed that, at that time, the industry was rated at level 6. This appeared to be significantly higher

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**OFFICE OF THE CHAIRMAN**

than the levels achieved by the "large business sector" which was rated at level 8 according to a study commissioned by the Presidential Black Working Group in 2007.

Despite the achievements of the industry in respect of B-BBEE in general, the audit conducted by Empowerdex highlighted which aspects of the Codes required further focus. Therefore, I said, the guidelines provided regarding proper and accurate record-keeping would greatly assist in confirming the achievements of the casino industry. I added that considerable progress had already been made in that regard.

It was also CASA's opinion that the Verification Manual released by the Department of Trade and Industry would also contribute towards creating certainty by emphasising the audit methodology to be followed and related matters. Since the Empowerdex audit, the casino industry embarked upon a concerted strategy fully to align its B-BBEE initiatives and commitments with the requirements of the Codes of Good Practice.

Of importance is the undertaking that CASA made to your predecessor in the letter of 24 February 2009 that, the casino industry, as a further measure of its serious commitment to B-BBEE had set itself a target to attain a Level 4 rating by 2010 and individual companies, members of CASA, had set in train programmes and protocols to achieve this objective. Moreover, as a further indication of the progressive implementation of this policy, it was indicated that the members of CASA undertook to undergo another full industry audit to verify this achievement by no later than April 2011.

Mr Minister, the study referred to above was again conducted by Empowerdex and has now been concluded. It is with some considerable satisfaction that I can inform you that according to the latest rating exercise, CASA members have achieved a level 2 Contributor Status. Details of the rating are contained in the attached letter from Empowerdex.

The casino industry has demonstrably embraced the philosophies underpinning B-BBEE and, as a pioneer in this field, is extremely proud of its achievements in this regard. It has already achieved many of the requirements which are now only being made applicable to other sectors of business. It has made it a priority to continuously improve the B-BBEE status of the sector as a whole which indicates clearly that it is serious about B-BBEE.

Kind regards

  
**JABU MABUZA**  
**CHAIRMAN: CASINO ASSOCIATION OF SOUTH AFRICA**

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# EMPOWERDEX



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24 November 2011

## To Whom It May Concern

Empowerdex has completed a verification of the B-BBEE status of all 35 CASA members. The analysis was conducted on a consolidated national level, a consolidated provincial level and down to a unit-specific level. The methodology for the analysis was taken directly from the B-BBEE Codes of Good Practice as gazetted in terms of Section 9(1) of the Broad-Based Black Economic Empowerment Act 53 of 2003. No other guidelines or methodologies were utilised. The national consolidated casino operations of South African entities achieved a Level 2 B-BBEE Contributor Status.

All documentation and methodological aspects of the verification exercise are available to be presented to any interested parties.

Best Regards,

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# GRC REPORT PROCEEDS TO THE NCOP

On 7 March the Portfolio Committee on Trade and Industry finally completed their assessment of the Gambling Review Committee's (GRC) report on the gambling industry, and has tabled its recommendations to the Minister. The Committee's recommendations follow public hearings, meetings of the working group and the Committee itself.

The GRC report now enters into the next stage of its journey towards being encompassed into a Bill, and consequently now needs to go to the NCOP.

The GRC report was introduced by the dti

to the NCOP's Select Committee on Trade and International Relations (SC) earlier this month (also on March 7). The SC will now review the report, along with all the recommendations suggested by the National Assembly's Portfolio Committee on Trade and Industry (PC). SC members will then need to introduce the report to their individual provinces, hold further public hearings, and report back to the SC on whether they agree with the PC's findings, or if they have further suggestions/recommendations. If they agree with the PC's recommendations, they will go straight back to the Minister and the dti who will put the recommendations into the Gambling Bill.

Should they object, or have additional recommendations, the Report will go back the PC, who will have to decide if they agree with the SC's additional recommendations/changes.

Should they agree, the recommendations will then go back to the Minister and the dti who will put the recommendations into a Bill.

Once the dti has amended the changes into the Gambling Act, it will be introduced to the National Assembly (NA) as an Amendment Bill. Should the NA agree with the Bill, it then begins its journey to become an Act.

## Peermont brings home gold from Vegas

One of Southern Africa's leading gaming and hospitality companies, Peermont Hotels Casinos and Resorts, recently attended the 7th World Game Protection Conference in Las Vegas, USA and clinched two awards including Best Overall.

Hailed as the largest gaming surveillance

conference in the world, more than 350 professionals attended the popular event. The premier event hosted the Golden Dome awards where professionals from around the world entered their best theft and scam incidents captured on video. Footage was then showcased, judged and awarded at the conference.

"In winning gold in the international arena is an honour for us proudly South African surveillance professionals. Peermont executives supply us with excellent tools allowing us to effectively combat crime and bring criminals to justice" commented Surveillance & Security Executive, Steve Vorster.



Caption: Proud to receive their awards in Las Vegas from Willy Allison (Managing Director: World Game Protection, USA)(left), were Jesse Velez (Lead Agent: L'Auberge Du Lac Casino, USA), Greg Harker (Peermont Group Surveillance and Security Manager), Steve Van Slyke (Surveillance Director: Sycuan Gaming Commission, USA) and Darrin Hoke (Surveillance Director: L'Auberge Du Lac Casino, USA).

# ONE STEP FORWARD AND TWO STEPS BACK: THE FINAL REPORT OF THE PARLIAMENTARY SUB-COMMITTEE ON GAMBLING *Continued from page 1*

In the context of responsible gambling, the Sub-Committee expressed the view that the operator of the National Lottery should contribute to the funding of the NRG. This finding is most welcome and can be expected substantially to augment the operating budget of the NRG. However, despite this, the Sub-Committee further recommended that the contributions by all gambling sectors to the NRG should be increased and that the NRG should “broaden its reach by encouraging other organisations to be involved in research, awareness and treatment” and that such organisations “should receive funding from the same pool as the NRG”. These recommendations appear ill-advised, given that the reach and accessibility of the NRG will be exponentially extended if funding from the operator of the National Lottery is forthcoming. In addition, the creation of additional, parallel bodies performing essentially the same functions as the NRG would seem to be ill-conceived, inasmuch as this would require the establishment of operational infrastructure and a duplication of administrative and related costs, which could better be applied to public awareness campaigns, research and the treatment of problem gamblers under the banner of the NRG. Where the emphasis should fall on strengthening the efficacy of the hugely successful NRG, the recommendations of the Sub-Committee foreshadow a fragmented approach to the issue of responsible gambling.

Also in the context of responsible gambling, the Sub-Committee has recommended that the number of slot machines and tables within casinos should be limited by the provincial licensing authorities, in consultation with the National Gambling Board, and that in cases where an “over-allocation” has occurred, a transitional period should be allowed to phase out the additional devices. Furthermore, it recommended that no expansion of casino gaming offerings should be permitted in the absence of a socio-economic impact study, and that any such expansion should be regulated nationally.

These sweeping recommendations presuppose that there is scope for a “one-size-fits-all” approach to the number of gaming devices which may be exposed for play in casinos in the country, while the blanket insistence on the conduct of socio-economic impact study in each and every case directly undermines the discretionary decision-making functions of provincial licensing authorities, which are required to evaluate such applications on their individual merits. This would require an evaluation, in each case, of the reasons for the request from an operational perspective, the extent to which there is an existing demand for additional gaming devices, based on patron activity, the need to ensure product diversity, the number and nature of additional devices requested, the size of the existing offering and its capacity to absorb the increased supply, all of which must certainly be appropriately balanced against the need to ensure that there is not an undue proliferation of gambling devices within the relevant environment. However, the relevant requirements and decisional criteria will inevitably differ from casino to casino, and for that reason a case-by-case assessment of each such application would be required. In addition, the proposed regulation of such applications on a national level fundamentally conflicts with the exclusive jurisdiction vested in provincial licensing authorities to regulate the conduct of licensed operations in their provinces. Even more fundamentally, the recommendations of the Sub-Committee regarding a transitional period for the “phasing out” of additional gaming devices implies that the various provincial licensing authorities and the National Gambling Board are to have the joint authority to reverse legally enforceable decisions already taken and implemented by the relevant provincial licensing authority. This offends fundamentally against the principle of legality and as such is not sustainable in law.

Of further concern is the recommendation of the Sub-Committee that “casino licences should be reviewed every five years

and be re-issued every ten years”. This recommendation departs materially from the original recommendation of the Commission that there should be a five-yearly, holistic review of casino licences in the context of compliance with licence conditions, socio-economic impact, harm-minimisation measures and BBEE compliance, and replaces it with the spectre of a dispensation in terms of which casino licences will be valid for a maximum period of ten years, after which they will expire and require re-issue, notwithstanding the period for which they were issued in the first instance. The possible amendment, at this stage, of the National Gambling Act to provide for a maximum period of duration of 10 years in respect of all casino licences would therefore not only amount to administrative unfairness, but would set up a material conflict between the National Gambling Act and the various provincial gambling acts, and completely disregard the concurrent legislative competence of the national and provincial legislatures in respect of casinos and gambling, as set forth in Schedule 4 to the Constitution.

If the recommendations of the Sub-Committee are implemented, the licensed casino industry in South Africa is likely to find itself in a markedly less favourable position, with additional unwarranted constraints being placed on its functioning, despite the enormous achievements which have marked its development to date. Whereas the overall review of the legislative and regulatory framework provided a unique opportunity to recognise and showcase these achievements, and to pave the way for further constructive, focused growth, by alleviating the challenges posed by heavy-handed over-regulation and an overriding absence of uniformity, the outcome of the process may well have the effect of reversing, rather than promoting, the continued development of the casino industry.





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# SunSquare Montecasino Executive Chef takes pride in being chosen as a MasterChef SA judge

**B**enny Masekwameng, Executive Chef at MondoVino Restaurant, has been chosen as one of three judges for the renowned MasterChef SA reality television programme. Tsogo Sun recently played a part in redefining reality television competition partnership to a complete different level, one we have not seen in South Africa before. The winner of MasterChef SA will receive the 'right of use' of the Tsogo Sun's MondoVino Restaurant (valued at R7million) on the Piazza at Montecasino for a period of two years.

Truly a South African homegrown treasure, Benny was lured into the art of preparing and cooking food by his mother, who

supplied meals to construction workers in Alexandra Township as an additional income. Benny believes it is this early start in his mom's kitchen that set him off on his impressive culinary journey. After graduating in Catering Management at the Natal Technikon, Benny held various positions throughout South Africa and joined Southern Sun Hotels in 2006.

Benny revels in the opportunity to represent Tsogo Sun and South African cuisine at international food festivals and is especially excited about the opportunity to be a judge on MasterChef SA. "I'm so privileged to be chosen as a judge. Now perhaps I can pass along the opportunities and direction I

received in my career and hopefully inspire others with the story of my journey", says Benny.

"At Tsogo Sun we focus on attracting the highest quality personnel in the industry. Our critical assets are our people and the reputation they continue to build. With an increasing emphasis on the ability to be unique in the culinary creativity and food innovation sphere, it is a source of great pride to Tsogo Sun that Benny has been chosen as a MasterChef SA judge and we look forward to following his television debut," says Graham Wood, Managing Director Hotels Tsogo Sun.