



## B-BBEE Amendment Bill 2013

The Broad-Based Black Economic Empowerment (“**B-BBEE**”) Amendment Bill (“**the Amendment Bill**”) was passed by Parliament on 20 June 2013. Whilst CASA supports the broad objectives of the Amendment Bill, we record that it contains certain provisions which are extremely problematic for the casino industry.

Amongst others, the Amendment Bill aims to “Align the [B-BBEE] Act with other legislation impacting on B-BBEE and with the codes of good practice.” Subsection 9(6) of the Bill empowers the Minister, if requested to do so, to permit organs of state or public entities “to specify qualification criteria for procurement and other economic activities” which exceeds those which appear in any Codes published by the Minister in terms of Subsection 9(1).

In the gambling industry, the aforementioned subsection empowers each of the nine provincial licensing authorities (“**PLAs**”) as well as the National Gambling Board (“**NGB**”), in their capacity as public entities, to request the Minister to “permit” them to specify any criteria in relation to B-BBEE (to apply to the holders of gambling licences) which are more onerous than the requirements of the Codes of Good Practice on B-BBEE (“**the Codes**”), whether in their present or their proposed revised form. Consequently CASA members face the prospect that different PLAs and the NGB will seek to determine their own individual “qualification criteria” pursuant to Subsection 9(6), which may potentially result in no fewer than ten different sets of requirements or criteria with which gambling licence holders in different provinces will have to comply. This will certainly go against the stated objective of alignment and uniformity in the application of national government policy on B-BBEE.



In practice, the PLAs have construed Section 10 of the B-BBEE Act, 2003 as conferring upon them the authority to impose conditions on the casino licences issued by them, to the effect that all licence holders should attain defined B-BBEE Contributor Level Statuses within fixed periods of time. The difficulty with conditions of this nature is that the casino licence may be suspended or even revoked entirely if the specified B-BBEE related targets are not met within the stipulated timeframes, and in many cases this may occur as a result of factors entirely beyond the control of the licence holder, such as the transfer of shareholding, particularly in instances where the licence holder is the subsidiary of a listed company.

Secondly, PLAs have imposed additional B-BBEE related licence conditions, over and above the requirements of the current Codes. Examples of this are that, in the context of procurement, gambling licence holders are required to procure a certain specified percentage of its goods and services from small and medium entities within the relevant Province (“**local suppliers**”) and/or entities in which shareholding by previously disadvantaged individuals (“**PDI**s”) equals or exceeds a stipulated minimum. The difficulty with such a condition is that if CASA members are required to allocate defined percentages of their procurement spend to PDI owned suppliers or local suppliers, there is a significant risk that their own B-BBEE contributor statuses will drop significantly in the context of preferential procurement, unless those suppliers have themselves achieved high B-BBEE ratings, which will in turn negatively affect their ability to reach the various B-BBEE ratings stipulated by the PLAs.

The ongoing imposition of mutually irreconcilable conditions in relation to B-BBEE by PLAs (which add to the requirements of the Codes) materially undermines the ability of CASA members to attain the objective of truly broad-based, holistic BEE, in all its facets, in the manner intended by the national government, and stipulated in the Codes. In addition, the overriding objective of achieving uniformity as across governmental bodies in relation to B-BBEE will continue to be sacrificed.

continued on page 3



## Borderless Boundaries and the horse that bolted:

### Online Gambling – South Africa and the world

Almost a decade has passed since the amendment of the National Gambling Act (“the Act”) to make provision for the licensing and regulation of interactive gambling in South Africa. Despite the fact that the Schedule to the Act required a dedicated Committee to table a detailed report on the subject within one year of the date of coming into operation of the Act, and foresaw that the Minister of Trade and Industry would enact legislation on the subject within a further year, the country remains in a state of relative inertia on the issue.

Some 14 years ago, in August 1999, the National Centre for Academic Research into Gaming, commissioned by the National Gambling Board, produced an Interim Report entitled *Project South Africa: Internet Gaming and South Africa: Implications, Costs & Opportunities*. The Report examined the growing phenomenon of internet gaming from a global perspective, and concluded that jurisdictions such as South Africa had “a short window period in which to become the dominant players in this lucrative global business without facing competition from the US industry”. The Report recommended that “South Africa must act quickly in creating the best possible jurisdictional environment for attracting both the suppliers and the customers of Internet gaming”. It stressed that because “more than 98% of those who will patronise South African-based Internet gaming sites will be international consumers ... [the Internet Gaming industry would be] a dollar-earning **export** business” and that “almost all sound strategy relating to its regulation follows from this fact.”

The prospect of vast sums of foreign revenue being channeled into the South African economy from overseas markets was by its very nature premised on the borderless nature of the Internet, which it was foreseen would deliver lucrative, ready-made international markets. These economic opportunities translated into the obvious need to have a horse out of the gate and running before other jurisdictions had entered what was likely to become an increasingly competitive race.

Fourteen years later, South Africa appears no closer to the goal of licensing and regulating online gaming than it was in 1999 or 2004, and a variety of international developments have seen the window of opportunity become increasingly narrower. The Internet gaming industry has indeed developed at the rapid rate predicted, and while the race remains on, there are unlikely to be many outsiders taking the honours. This is largely a result of the paradox which in the past decade has become the quintessential element of the licensed online gaming industry across the globe: while the world as we know it has become smaller because of the reach of the Internet and boundaries have shrunk - if not dissipated entirely - online gaming markets, rather than expanding or becoming more accessible, are increasingly being ring-fenced in accordance with existing geographical boundaries. International examples of this phenomenon abound.

The citizens of an ever-expanding list of countries are legally precluded from participating in online gambling offered under licences issued by foreign

jurisdictions, and a variety of mechanisms have been developed to enforce these restrictions. In Europe, Italy has been at the vanguard of the move towards ring-fencing. Online gambling may be offered in Italy only under authority of an Italian licence, and only in respect of a limited number of games and for a limited period of time. Similarly, the citizens of Sweden, Spain, Estonia, Germany and Greece may participate in online gambling only with operators licensed in their countries, while countries such as France and Cyprus permit their citizens to participate only in online gambling offered by operators licensed in the European Union.

While the United Kingdom currently boasts the most liberal online gambling regime in Europe, this looks set to change soon. Presently, operators in the European Economic Area and white-listed countries (being Antigua and Barbuda, Tasmania, Alderney and the Isle of Man) are able to offer online gambling to citizens of the UK without having been issued a licence in the United Kingdom. The results of this have been less than salutary from a revenue generation perspective, with no fewer than 19 of the 20 largest UK online operators having established themselves offshore. Following the European trend of jealously preserving and exploiting domestic revenue sources, in December 2012, the UK Department of Culture, Media and Sport published the draft Gambling (Licensing and Advertising) Bill, which, if enacted, will abolish the White List and introduce a new regime in terms of which online operators will require a licence issued in the UK in order to offer online gambling to the UK market.

The developments in Europe reflect the dramatic shift in thinking which has underpinned the development of the online gaming industry. Whereas originally the online gambling transaction was widely regarded as taking place where the server maintained by the online gaming operator was located, this view has now given way to a point of consumption approach, in terms of which the transaction takes place, whether in whole or in part, where the player is physically located. This applies equally to South Africa, as recently confirmed by the Supreme Court of Appeal in the matter between Casino Enterprises (Proprietary) Limited [trading as Piggs Peak Casino] and the Gauteng Gambling Board and Others. The inevitable result of this trend has been a shift towards the regulation of online gambling on a national level. In 2012 alone, some 15 European countries revisited their online gambling dispensations, with the changes ranging from the emergence of new markets in Denmark and Spain, to the implementation of website blocking in Estonia and Belgium and payment blocking in Belgium, Estonia, Norway and Spain, while interim measures for the regulation of online gambling have been implemented by policy makers in Ireland.

Parallel to these developments has been the increased vulnerability of online operators established in less tightly regulated markets, such as Costa Rica. While Costa Rica is home to some 450 online operators, it currently has no legislation regulating the operations of the online gambling industry. The absence of the appropriate controls effectively enabled Costa Rican operators to accept online wagers from US citizens, which culminated in the dramatic arrest and subsequent prosecution of the Chief Executive Officer of the Costa Rican-based online operator, BetOnSports, in Texas in 2006.

In the United States, recent moves by individual States to embark upon the regulation of online gambling have resulted in the introduction in Congress of the Internet Gambling Regulation, Enforcement and Consumer Protection Bill, which proposes to vest the regulation of online gambling to the federal government and in so doing, to garner federal tax revenue which would otherwise be sacrificed.

What has become abundantly clear is that online gambling is most certainly no longer the "export business" it originally promised to be. Despite the borderless nature of the Internet (or perhaps because of it) the governments of the world are no longer prepared to permit their economies to be undermined by the redirection of revenues to offshore entities. This is as true for South Africa as it is for other countries, with the Act prohibiting South African citizens from allowing their disposable income to be diverted to offshore online gambling operators. Therefore while individuals, including South Africans, who wish to participate in online gambling are not precluded from doing so, they may exercise the choice to do so only with operators who are licensed within the physical boundaries of their own countries. Although the Internet is borderless, the boundaries have been drawn, with the result that, ironically enough, patronising an online casino will soon be no different, in its economic effect, from visiting a land-based casino.

The window of opportunity identified in 1999 has all but closed, and the horse which was to have led the race has bolted the stable. It remains to be seen whether a licensed online gambling industry will be established in South Africa, and if so, when. Either way, prospective online gambling operators will be faced with depleted markets which will shrink exponentially as time goes by. The race, such as it was, has already been run.

## B-BBEE Amendment Bill 2013

continued from page 1

Furthermore, in conjunction with their licensed casinos, CASA members operate hotels, resort properties, timeshare facilities, restaurants and conferencing and other tourist facilities, as part and parcel of the integrated resorts required to be put in place in order to qualify for their casino licences. The import of Subsections 10(3) and (4), is that the tourism-related components of casino developments should be measured only against the requirements of the Tourism Sector Code. This will create significant difficulties for CASA members, as the various PLAs require CASA members to be evaluated against the generic scorecard set up by the Codes.

In the circumstances, CASA members will be required to comply with the generic scorecard, the Tourism Sector Code as well as the casino licence conditions related to B-BBEE for each casino development albeit the casino development has the same shareholders, directors, personnel and revenues.

We fear that the overarching objective of uniformity in the application of national government policy on B-BBEE will similarly be lost if the required degree of clarity is not provided regarding the above provisions. This will also materially undermine the ability of CASA members to attain the objective of truly broad-based, holistic BEE, in all facets, in the manner intended by the national government, and stipulated in the Codes.



**THEMBA NGOBESE**  
Chief Executive Officer



# SIBAYA CASINO PLACES IMPORTANCE ON LIFE SKILLS

Under the management of Sibaya Casino's Corporate Social Investment committee, Sibaya Casino & Entertainment Kingdom donated R91 000 to OneVoice South Africa. Sibaya Casino acknowledges the real importance of the upliftment of life skills amongst high school pupils and this funding has been utilised to implement a Life Skills programme for the Grade 10 pupils in Dr DL Dube School in Kwamashu, facilitated by OneVoice SA.

OneVoice South Africa (OVSA) is a vibrant and unique non-governmental organisation, which uses innovative and creative ways of actively engaging young people on critical health and lifestyle issues.

After sitting in on a life skills lesson, it is very clear that the Grade 10 pupils at Dr DL Dube School will benefit greatly from this programme. The programme is being facilitated by an extremely inspirational

young woman who presents and explains very real life situations.

Sibaya Casino regards education as a vital component to focus on as the schooling years are an especially important time in a child's life, laying down the foundation for the remainder of their professional careers. It is the skills learnt in these years which can never be recovered.



Left to Right: Ntsikelelo Nyuswa, Jabulisile Biyela, Zama Shabalala, Mandy Dlamini, Amahle Madikizela (OneVoice SA Facilitator), Siyabonga Ntombela.



Left to Right: Ntsikelelo Nyuswa, Jabulisile Biyela, Elaine Manca, Zama Shabalala, Mandy Dlamini, Tsaone Mabelane, Amahle Madikizela, Thivashnie Reddy, Siyabonga Ntombela.





It was a proud moment for these two Peermont Education Trust Lesedi Programme students Nthabiseng Machete and Johanna Dikobe when they graduated in the electrical field at a ceremony at Emperors Palace. While deciding on the rather unusual career, for the fairer sex, of becoming electricians, these two young women have excelled with Nthabiseng having achieved her NQF level 4 qualification and Johanna her NQF level 2 certificate.



It was a proud moment for these Peermont Education Trust Lesedi Programme students from Boksburg and Vosloorus, Jimmy Makhubo, Motsusi Mokake, Lehlogonolo Manganye and Brian Williams when they graduated in the hospitality and electrical fields at a ceremony at Emperors Palace. The programme, a BBEE vehicle created by Emperors Palace, has assisted over 500 deserving young people from the disadvantaged areas of Ekurhuleni further their education since 2005.



These youngsters from Tsakane and Duduza, in the front, Decent Mathabela, Xolane Zwane, Boitumelo Makoopo and Lerato Kobeng and at the back, Doctor Maseko, Sifiso Mthombeni and Bongani Sibiyi can all afford to smile as they can look forward to a brighter future thanks to the opportunities afforded them by the Peermont Education Trust. The group were among 59 students that recently completed skills courses and trades through the Trust's Lesedi Programme and graduated in the hospitality and electrical fields at a ceremony at Emperors Palace.



As part of its youth upliftment programme the Peermont Education Trust has assisted over 500 deserving young people from the disadvantaged areas of Ekurhuleni further their education since 2005. The learners to complete skills courses and trades through the Trust's Lesedi Programme in the hospitality and electrical fields graduated at a ceremony at Emperors Palace. Here the graduates from Tembisa, in the front, Zanele Mtomboti, Karabo Mashamaite, Pontsho Betha, Boitumelo Modise, Katleho Masoeu and Mampho Ndlovu and at the back, Innocent Ngomane, Njabulo Skosana, Siphon Mkabinde and Kagiso Molefe are all smiles as they can now look to a brighter future.

# Arisha Stanley to steer Golden Horse Hotel gracefully into new era

**Arisha Stanley has been appointed to steer the Golden Horse Hotel gracefully into a new era. Her appointment as the hotel's new General Manager comes after Tsogo Sun's acquisition of the hotel at the beginning of May 2013.**

**S**tanley is charged with managing the hotel's evolution into a four star Southern Sun Hotel. Various upgrades and enhancements will be made at the hotel to bring it to standard before it is officially rebranded. These include the completion of an up-market restaurant / coffee shop; the installation of WiFi; a new Guest Business Centre, a new entrance, and aesthetic changes to the rooms. Every room will be equipped with a mini bar fridge, a safe, 26 TV channel line-up, and complimentary tea/coffee making facilities. The conference centre will also undergo minor changes.

Stanley is the right woman for the job. She has over 14 years experience in the hospitality industry having started her career as a hotel school trainee at the Holiday Inn Johannesburg International, now the Southern Sun OR Tambo, in 1998. During her career, she has gained invaluable experience in some of Tsogo Sun's most prestigious hotels, including the Beverly Hills Hotel in Umhlanga where she worked first as receptionist, then as Assistant Food and Beverage Manager, and then as Front Office Manager.

While she was there, the Beverly Hills Hotel won Southern Sun Hotel of the Year for



two consecutive years, and she deputized in the absence of the General Manager. Her attention to detail, professionalism, management style and work ethic was quickly identified and she was appointed as Assistant General Manager at the new Garden Court Umhlanga in 2010. This, she describes, as an extremely challenging role.

Arisha was part of the inaugural team at the Garden Court Umhlanga when it opened.

It was an extremely challenging role since they were tasked with opening the hotel and putting the right people and procedures in place. It was a highly successful opening and they managed to win the Hotel of the Year Award in the Garden Court Hotel's Awards Programme in their first year of operation.

She says she has been fortunate to be part of winning teams during her time at Tsogo Sun and has had the privilege of mentorship from some of the company's finest and strongest managers. Stanley knows that the task ahead of her is a challenging one. But, she is tackling it with enthusiasm.

Arisha is very excited about leading the Golden Horse Hotel into a new era and to bringing it up to Southern Sun's high standards of service and accommodation. Her success comes from taking on any opportunity to learn something new.

The Golden Horse Hotel will be rebranded as a four star Southern Sun Hotel from the 1<sup>st</sup> of September 2013, and like all the properties in Tsogo Sun's portfolio, will be marketed under the group's Sun Burst brand. Tsogo Sun's portfolio now includes 14 casinos and over 90 hotels incorporating the Deluxe, Southern Sun Hotels, SunSquare, Garden Court, StayEasy and Southern Sun Resorts hotels.