

POSITION PAPER ON ELECTRONIC BINGO TERMINALS (“EBTs”)

01 JULY 2014

1. Gambling Licences and Applicable Requirements

The Government of the Republic of South Africa legalised gambling in South Africa in 1995. The provincial legislatures were guided as regards the categories of the gambling licences which were to be offered to gambling operators and of the types of gambling games that could be offered to the public for play under each gambling licence. The provincial gambling legislation and other policy directives also specified the particular requirements to be met in order to obtain each of the designated forms of gambling licence. Amongst others, the following gambling licences were offered:

- 1.1 *casino licences*, which permitted the holders thereof the right to offer, to the public for play, slot/gambling machines and table games. The requirements applicable for purposes of obtaining a casino licence were extensive, typically including security of tenure of the premises on which the casino was to be built, a graded hotel with a predetermined minimum number of rooms, a conference and convention facility with a predetermined minimum size, other leisure and entertainment facilities, minimum requirements on ownership of the proposed casino licensee by Black people, creation of jobs, evidence of economic and community benefits, and so forth;
- 1.2 *bingo licences*, which permitted the holders thereof the right to offer, to the public for play, the game of bingo using bingo cards and/or electronic bingo stations. More recently, the provincial gambling legislation has been amended and continues to undergo amendment to cater for EBTs in the definition of the term “bingo”. The applicable requirements for obtaining bingo licences were fewer and less substantial than those which applied to casino licences. In contrast to paragraph 1.1 above, an applicant for a bingo licence is subject only to requirements relating to the ownership of the proposed bingo licensee by Black people, the creation of jobs and evidence of economic and community benefits; and

1.3 *limited pay out machines ("LPMS")*, which permitted the holders thereof the right to offer, to the public for play, slot/gambling machines outside of casinos with a maximum bet of R5 (five Rand) and a maximum payout of R500, 00 (five hundred Rand). The requirements specified for applicants for LPM licences were similar to those of bingo licences.

2. The nature and functionality of EBTs

The issue which arises in connection with EBTs is that the essential nature and function of these machines do not materially differ from those of machines which are, in terms of the relevant legislation, conventionally classified as slot/gaming machines. In particular, it is evident that the key characteristics of EBTs, such as the appearance, presentation and manner of play, are substantially the same as those which define ordinary slot/gambling machines.

The fact that EBTs function essentially as slot/gaming machines is corroborated by the positioning and framing of the marketing and advertising which operators of EBTs associate with EBTs. For example, certain advertisements relating to EBTs do not associate EBTs with bingo activities; rather, these types of machines have been depicted in casino-type environments, with accompanying images of slot/gambling machines or otherwise associated with casino-type activities.

Accordingly, the perception which EBT operators (i.e. holders only of bingo licences) seek to create in relation to EBTs is fully aligned with the actual nature and function of those machines: EBTs are, effectively, slot/gambling machines.

In addition, the question of whether EBTs effectively constitute slot/gambling machines was tested and confirmed in the North Gauteng High Court of South Africa (*formerly Transvaal Provincial Division*), under case number 17891/06 in the matter between *Akani Egoli (Pty) Limited and [other casino operators in Gauteng] versus The Chairperson of the Gauteng Gambling Board and Others*.

3. Casino versus Bingo Licences

In emphasising the extent of the considerable differences, in the respective requirements attendant upon holders of casino licences versus holders of bingo licences, it bears mention that:

- 3.1 casino licensees engaged in a competitive bidding process, for the limited number of casino licences (which total 40). By contrast, the number of bingo licences which can be awarded is not limited in terms of gambling laws in South Africa;
- 3.2 casino licensees have been required to invest substantial capital in their casino facilities, which include hotels, restaurants, conference and convention facilities, cinemas, theatres, and so forth. Bingo operators, on the other hand, are not required to satisfy significant capital expenditure requirements; and
- 3.3 casino licensees undertook extensive casino bid commitments in order to secure their casino licences in the aforementioned bidding process. In comparative terms, bingo licensees have limited to no requirements in this regard.

4. EBTs operated in the context of Bingo Licences

The issue that arises from the facts set out above is quite apparent: in terms of the applicable legislation, machines that function as slot/gambling machines are permitted to be offered to the public for play only by the holders of casino licences.

In the circumstances, the concerns that arise would include the following:

- 4.1 Holders of bingo licences, by operating EBTs, are effectively operating slot/gambling machines without holding the requisite casino licence and without satisfying the particular requirements stipulated for purposes of holding a casino licence;
- 4.2 EBT operators can, thereby, obtain the benefit of engaging in the operation of a casino, without satisfying the obligations which the Legislature has expressly stipulated therefor;

- 4.3 Allowing the holder of a bingo licence to operate EBTs will, in effect, enable that party to circumvent the requirements which should apply to that operator's conduct;
- 4.4 In addition, permitting EBTs to be operated in the context of bingo operations amounts to a clear subversion of the applicable legislative framework in respect of these forms of activity; and
- 4.5 Furthermore, condoning such conduct establishes an inconsistent approach to slot/gambling machines, and results in an inconsistent application of the applicable legislation, which discriminates unfairly – and substantially – against licensed casino operators which have met the applicable requirements for operating slot/gambling machines.

5. Conclusion

- 5.1 We respectfully submit that the commendable achievements made by the legalised gambling industry, and our members' continued substantial economic and social contributions, enabled by Government in attaining a structured and well-regulated gambling industry based on sound policy that was introduced by the new gambling dispensation of 1995, should not now be subverted by permitting a proliferation of non-contributory EBT facilities.
- 5.2 We support the recommendations of the Gambling Review Commission that EBTs should not be introduced (and that provincial and national legislation should be aligned). If, however, EBTs are to be introduced, then we would support the recommendations of the National Gambling Board that electronic bingo should be regulated within a national regulatory framework that imposes investment conditions on bingo, as with other gambling modes, and must provide for limitations in terms of the number of bingo halls, seats and locations within which they can be offered. Ideally, bingo halls incorporating EBTs should not be situated in the same catchment area(s) as any existing casino, in order to avoid stimulating any undue proliferation of gaming activities within a specific area. Furthermore, we support the 2012 recommendations of Parliament's Subcommittee on Gambling to the effect that EBTs should not be permitted to retain any look, feel or sound similar to slot machines.

5.3 We submit that 'high-stakes gambling' should be limited to casino-licensed premises only, and that any 'larger' facilities ought to be subject to the same capital expenditure, corporate social investment and other requirements that are imposed on casino operators.