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Departement van Ekonomiese
Ontwikkeling en Toerisme

**TO : Mr. M W MKHIZE
HEAD: DEPARTMENT OF ECONOMIC DEVELOPMENT AND TOURISM**

**FROM : Mr. T N FAKUDE
SENIOR MANAGER: LEGAL SERVICES**

**SUBJECT : A SUMMARY AND CLAUSE BY CLAUSE ANALYSIS OF THE DRAFT MPUMALANGA
ECONOMIC REGULATOR BILL, 2017**

1. PURPOSE

To provide a summary and a clause by clause analysis of the draft Mpumalanga Economic Regulator Bill, 2017 (hereinafter referred to as "the Bill").

2. BACKGROUND

- 2.1 The Executive Council, at its sitting of 30 October 2016, resolved to support the proposed merger of regulatory authorities responsible for the gambling and liquor industries within Mpumalanga and pursuant thereto, the draft Mpumalanga Economic Regulator Bill, 2007 has been crafted.
- 2.2 The Bill is the enabling legislation focusing primarily on the establishment a single regulatory public entity tasked with the responsibility of administering gambling, as a Schedule 4 concurrent national and provincial legislative competence as well as liquor licensing functions as a Schedule 5 exclusive provincial competence.
- 2.3 The Bill, invariably necessitates the amendment of the current legislative framework insofar as it relates to the constitution, appointment, powers and functions of governance structures that were established in terms of the Mpumalanga Gambling Act, 1995 and the Mpumalanga Liquor Licensing Act, 2006.

3. THE DRAFT BILL

- 3.1 The purpose of the Bill, as contained in the preamble, is to provide for the establishment of the Mpumalanga Economic Regulator ("MER") and for the oversight thereof by a Board; to regulate the gambling and liquor industry in Mpumalanga; to confer powers and functions upon the Regulator; to provide for transitional arrangements; and to provide for matters incidental thereto. The MER, to be headed by a Board as the Accounting Authority shall be responsible for the regulation of gambling and liquor industries in Mpumalanga.
- 3.2 **Section 1** of the Bill contains the definition and meaning of words within the context of the Bill.

- 3.3 **Section 2** provides for the establishment of the MER as a juristic person and **Section 3** provides a list of the current laws which the Regulator is tasked with administering, namely:
- regulation of the gambling industry in the Province in terms of the Mpumalanga Gambling Act, 1995;
 - payment of gambling levies in terms of the Mpumalanga Gambling Levies Act; 2007 and
 - regulation of the liquor industry in the Province in terms of the Mpumalanga Liquor Licensing Act, 2006.
- 3.4 **Section 4** provides for the specific powers and functions conferred on the Regulator in terms of the aforementioned pieces of legislation.
- 3.5 **Section 5** provides for the establishment and composition of the Board and in a nutshell it provides that a Board of between nine and eleven Members eligible to vote at board meetings shall be appointed by the responsible Member, in consultation with the Executive Council. It further provides for the designation of a Chairperson and a deputy Chairperson by the responsible Member, from amongst the Members appointed in accordance with paragraphs (c), (d), (e), (f) and (g). Section 5 further provides for the type of skills and experience required for appointment to the Board and they range from qualifications such as an admitted legal practitioner and an accountant of not less than five years cumulative experience. Other relevant considerations include proven business acumen in and knowledge of the gambling and liquor industries, regional interests in the Province, as well as knowledge or experience in the field of community and socio-economic development.
- Subsection (2) provides that the Chief Executive Officer of the Regulator shall serve as an *ex officio* Member of the Board, without voting rights at meetings of the Board.
- 3.6 **Section 6** provides the criteria for eligibility to be appointed as member of Board and no person shall be appointed unless he or she is a fit and proper South African citizen and most importantly, no person who has a direct or indirect financial or controlling interest in any gambling activity or liquor industry may be appointed to the Board of the Regulator. A person who is a political office-bearer; an unrehabilitated insolvent, or has at any time been removed from an office of trust on account of misconduct; or has at any time been convicted of *inter alia*, theft, fraud, forgery or any offence involving terrorism or dishonesty shall not be eligible for appointment to the Board of the Regulator.
- 3.7 **Section 7** prescribes the procedure for appointment which includes inviting interested parties through the media (at least one newspaper circulating in the Province) and by notice in the *Provincial Gazette*, to nominate candidates for consideration by the responsible Member. Subsection (3) affords any interested parties the right to lodge written objections, at least 14 days prior to the intended date of appointment, to the responsible Member stating the grounds why a nominated person is disqualified from serving in the Board.
- 3.8 **Section 8** stipulates that the term of office shall not exceed two consecutive terms of 5 years except for Members appointed in accordance with section 5(1) (g), (h) and (i) as representatives of the Departments entrusted with the responsibility for gambling and liquor in the province, provincial treasury and provincial safety, security and liaison, respectively.

- 3.9 **Section 9** provides the grounds upon which one's Board membership may, before the expiration of a member's term of office, be terminated by the responsible Member, in consultation with the Executive Council and they are *inter alia*, on account of one's improper conduct or unfitness for the functions of his or her office. In terms of subsection (2), absence from two consecutive board meetings without the prior consent of the Chairperson also constitutes a ground for disqualification.
- 3.10 **Section 10** provides for the remuneration and allowances of Board Members and of critical importance in this regard is the provision that Members, (other than full time employees of an organ of state) shall be paid such remuneration and allowances from the funds of the Board as may, by prior Notice in the *Provincial Gazette*, be determined by the responsible Member, in consultation with the Member of the Executive Council responsible for financial matters.
- 3.11 **Section 11** provides for the staff of the Regulator including the appointment of a suitably qualified person as Chief Executive Officer by the Board, in consultation with the responsible Member. The term of office is five years and he or she is eligible for re-appointment. Subsection (3) provides for secondment of staff from any organ of state in consultation with the responsible Member and subsection (4) provides for delegation of authority to the CEO, a committee of the Board, or any other member of the staff of the Regulator.
- 3.12 **Section 12** provides for transparency and confidentiality in the conduct of Board Members and in order to ensure the independence and integrity of the Board, **section 13** prescribes a list of conduct from which Board Members or their immediate family members are prohibited from engaging in. Prohibited conduct range from receiving any remuneration by virtue of the office he or she holds, directly or indirectly receive anything of value from any person that may conflict or interfere with the proper performance of his or her functions as a Member of the Board. In terms of subsection (1) (b), a member or former Member of the Board is prohibited from soliciting or accepting, without the prior approval of the Board, employment from a licensee or an applicant for a licence in terms of the Mpumalanga Gambling Act or Mpumalanga Liquor Licensing Act within one year after the termination of the term of office of such a member of the Board.
- 3.13 **Section 14** provides for the funding of the Regulator which shall consist of funds appropriated by the Provincial Legislature for that purpose, any amounts payable to the Regulator in terms of the Mpumalanga Gambling Act, Mpumalanga Gambling Levies Act or the Mpumalanga Liquor Licensing Act and other funds lawfully paid to the Regulator. Subsection (4) prescribes that any money standing to the credit of the Regulator in respect of the appropriated budget at the close of the Regulator's financial year shall be paid into the Provincial Revenue Fund, unless the responsible Member, in consultation with the Executive Council has authorised the Regulator to retain such funds in order to finance specific projects of the Regulator.
- 3.14 **Section 15** provides for procurement, accountability, audit and annual reports. In a nutshell the PFMA and Treasury Regulations are applicable without exception. Subsection (2) provides that the Regulator shall, subject to the PFMA, 1999 be charged with the responsibility of accounting for funds received or paid out for or on account of the Regulator. Subsections (3) and (4) relates to the Regulator's responsibilities insofar as the prompt tabling of annual reports to the A-G and Provincial Legislature are prescribed in accordance with Treasury Regulations.
- 3.15 **Section 16** provides for the conduct of Board meetings, including the convening of special or extra-ordinary meetings, the quorum for a Board meeting and the fact that the Chairperson has a casting and deliberative vote in the event of an equality of votes on any matter.

- 3.16 **Section 17** provides that the Board may from time to time appoint a committee to exercise the powers and perform the functions delegated to it by the Board and **section 18** provides for the recording and subsequent management of Board minutes.
- 3.17 **Section 19** provides that the Board may co-opt any person to the Board or a committee of the Board for the purpose of providing assistance to the Board in the consideration of a particular matter by the Board or a committee of the Board.
- 3.18 **Section 20** provides the manner in which the Regulator shall, pursuant to the execution of its powers, conduct investigations, hearings or enquiries. In a nutshell it provides that the Board may, subject to the relevant legislation, by written notice, summon any person who is or who may be affected by or is concerned in the consideration of a particular matter by the Board, to appear before the Board to give evidence, to be questioned and to produce relevant information.
- 3.19 **Section 21** provides for a schedule of laws to repealed or amended upon the commencement of this Bill, to the extent indicated in the third column of the Schedule.
- 3.20 **Section 22** provides for transitional measures and of particular relevance is the provision that the Premier shall *inter alia*, stipulate, by notice in the *Provincial Gazette*, a date upon which the Regulator shall take transfer of the personnel and the assets, and further assume the liabilities, rights and obligations of the Mpumalanga Gambling Board as well as a date upon which the Regulator shall take transfer of the personnel and the assets, and further assume the liabilities, rights and obligations of the Mpumalanga Liquor Authority.
- 3.21 Subsection (3) provides that all persons employed by the Mpumalanga Gambling Board and Mpumalanga Liquor Authority shall, from the applicable dates stipulated by the Premier in terms of either subsection (1) or subsection (2), and with due regard to section 197 of the Labour Relations Act, 1995, deemed to be employed by the Regulator at the same salary and salary scale and on the same terms and conditions of employment than those which governed such person's previous employment with either the Mpumalanga Gambling Board or the Mpumalanga Liquor Authority, as the case may be. Subsection (4) provides that the Regulator shall, for all intents and purposes, become the successor in title to both the MGB and MLA on the date stipulated by the Premier by Notice in the *Provincial Gazette*, as contemplated in subsection (1) and (2).
- 3.22 **Section 23** provides for the short title of the Bill and stipulates that its coming into operation shall be in accordance with a date fixed by the Premier by notice in the *Provincial Gazette*.

For your information

Mr. T N FAKUDE
SENIOR MANAGER: LEGAL SERVICES
DATE: _____ / _____ /2017

