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**CONTENTS**

	<i>Gazette</i>	<i>Page</i>
	<i>No.</i>	<i>No.</i>
<b>OFFICIAL NOTICES • AMPTELIKE KENNISGEWINGS</b>		
1	Mpumalanga Economic Regulator Bill, 2017: Invitation for comments.....	2775 3

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**OFFICIAL NOTICES • AMPTELIKE KENNISGEWINGS**

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**OFFICIAL NOTICE 1 OF 2017****DEPARTMENT OF ECONOMIC DEVELOPMENT AND TOURISM****MPUMALANGA ECONOMIC REGULATOR BILL, 2017**

I, Sikhumbuzo Eric Kholwane, Member of Executive Council responsible for Finance, Economic Development and Tourism in the Mpumalanga Province, hereby gives notice and invites comments on the draft Mpumalanga Economic Regulator Bill, 2017.

Interested parties are hereby invited to submit written submissions of the proposed Bill within thirty calendar days from date of publication to:

Mr. M W Mkhize

Head: Department of Economic Development and Tourism

Private Bag x 11215

**Mbombela**

1200

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\_\_\_\_\_  
**Mr. SE KHOLWANE (MPL)**

**MEC: FINANCE, ECONOMIC DEVELOPMENT AND TOURISM**

**DATE:** \_\_\_\_/\_\_\_\_/\_\_\_\_

PROVINCE OF MPUMALANGA

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**MPUMALANGA ECONOMIC REGULATOR BILL 2017**

DRAFT BILL FOR PUBLIC COMMENT ONLY

**MPUMALANGA ECONOMIC REGULATOR BILL, 2017**

**To provide for the establishment of the Mpumalanga Economic Regulator 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.**

**BE IT ENACTED** by the Provincial Legislature of Mpumalanga, as follows:

**Definitions.**

1. (1) In this Act, unless the context otherwise indicates –

“**Chairperson**” means a person designated as Chairperson or acting Chairperson in terms of section 5(1)(a) or (b);

“**Chief Executive Officer**” means the Chief Executive Officer appointed in terms of section 11(1)(a);

“**committee**” means a committee of the Board appointed in terms of section 17;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**Department**” means the Department responsible for economic development in the Province;

“**Executive Council**” means the Executive Council of the Province as referred to in section 132 of the Constitution;

“**family member**” means a person’s –

(a) spouse; or

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

“**financial year**” means the period commencing on the first day of April in any year to the thirty-first day of March in the ensuing year, both days inclusive;

“**Government**” means the Mpumalanga Provincial Government;

“**Mpumalanga Gambling Act**” means the Mpumalanga Gambling Act, 1995 (Act No. 5 of 1995);

“**Mpumalanga Gambling Levies Act**” means the Mpumalanga Gambling Levies Act, 2007 (Act No. 5 of 2007);

“**Mpumalanga Liquor Licensing Act**” means the Mpumalanga Liquor Licensing Act, 2006 (Act No. 5 of 2006);

“**organ of state**” has the meaning set out in section 239 of the Constitution;

“**political office-bearer**” means –

(a) a member of the National Assembly, the National Council of Provinces or the 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;

3

(e) a member of a house, or council of traditional leaders; or

(f) a national or provincial office bearer of a political party;

“**Premier**” means the Premier of the Province referred to in section 125 of the Constitution;

“**prescribed**” means prescribed by regulation in terms of this Act;

“**Province**” means the Province of Mpumalanga as referred to in section 103(1)(f) of the Constitution, or any part thereof;

“**Provincial Gazette**” means the *Provincial Gazette* of the Province;

“**Provincial Legislature**” means the Provincial Legislature of the Province as referred to in section 104 of the Constitution;

“**Regulator**” means the Mpumalanga Economic Regulator, an entity established in terms of section 2;

“**Republic**” means the Republic of South Africa referred to in section 1 of the Constitution;

“**responsible Member**” means the Member of the Executive Council responsible for the administration of this Act; and

“**spouse**” means a person’s –

- (a) partner in 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.

(2) Where in this Act any functionary is required to take a decision in consultation with another functionary, such decision shall require the concurrence of such other functionary.

#### **Establishment of the Mpumalanga Economic Regulator.**

2. The Mpumalanga Economic Regulator is hereby established as a juristic person.

#### **Objects of the Regulator.**

3. The objects of the Regulator are to –

- (a) regulate the gambling industry in the Province in terms of the Mpumalanga Gambling Act;
- (b) regulate for the payment of gambling levies in terms of the Mpumalanga Gambling Levies Act; and
- (c) regulate the liquor industry in the Province in terms of the Mpumalanga Liquor Licensing Act.

#### **Powers and functions of the Regulator.**

4. The Regulator shall –

- (a) exercise the powers and perform such functions assigned to it in terms of this Act;
- (b) exercise the powers and perform the functions of the Mpumalanga Gambling Board as set out in section 3 of the Mpumalanga Gambling Act;
- (c) exercise the powers and perform such functions of the Mpumalanga Gambling Board as set out in sections 2 and 4 of the Mpumalanga Gambling Levies Act;
- (d) exercise the powers and perform the functions of the Mpumalanga Liquor Authority as set out in section 6 of the Mpumalanga Liquor Licensing Act; and
- (e) advise the responsible Member and the Executive Council or furnish a report or

4

recommendations to the responsible Member and the Executive Council on any matter referred to the Regulator by the responsible Member and the Executive Council for consideration and arising from the application of this Act or relating to the control over the gambling and liquor industries in the Province.

**Establishment and composition of the Board.**

5. (1) Members of the Board shall be appointed by the responsible Member in consultation with the Executive Council, and shall be no less than nine and not more than eleven members and shall, subject to subsections (2) and (3), consist of –

- (a) a chairperson, designated by the responsible Member from amongst the Members of the Board referred to in paragraphs (c), (d), (e), (f) and (g), who shall be a person with applicable knowledge or experience with regard to matters connected with the functions of the Board;
- (b) a deputy Chairperson, designated by the responsible Member from amongst the Members of the Board referred to in paragraphs (c), (d), (e), (f) and (g);
- (c) one member who is qualified to be admitted to practice as a legal practitioner in the Republic and has, for a cumulative period of at least five years after having so qualified, practised as a legal practitioner or performed services related to the application or administration of the law;
- (d) one member who is qualified as an accountant in the Republic and has, for a cumulative period of at least five years after having so qualified, practised as an accountant and who shall be registered as a member of a relevant professional body;
- (e) one member who shall have proven business acumen in and knowledge of the gambling industry;
- (f) one member who shall have proven business acumen in and knowledge of the liquor industry;
- (g) a person representing the Department entrusted with the responsibility for gambling and liquor in the Province, designated by the responsible Member;
- (h) a person representing the Department responsible for financial affairs in the Province, designated by the responsible Member in consultation with the Member of the Executive Council representing that Department;
- (i) a person representing the Department responsible for community safety, security and liaison in the Province, designated by the responsible Member in consultation with the Member of the Executive Council representing that Department; and
- (j) with due regard to regional interests in the Province, not more than two members who shall have proven business acumen or applicable knowledge or experience in the field of community and socio-economic development and who are fit and proper to represent the community at large.

(2) The chief executive officer of the Board shall *ex officio* be a member of the Board, but he or she shall have no voting rights at meetings of the Board.

(3) The Deputy Chairperson shall preside at such meetings where the Chairperson is absent or is unable to perform his or her duties or refuses or fails to act and shall carry out the duties of the Chairperson in the event that the Chairperson is unable to perform his or her duties or refuses or fails to act.

(4) The Board shall, subject to section 9 of the Constitution, be broadly representative of the South African Community.

**Eligibility to be appointed as member of Board.**

6. (1) A person shall not be appointed or remain a member of the Board –

- (a) unless he or she –

- (i) is a natural person;
  - (ii) is a citizen of the Republic and ordinarily resident therein; and
  - (iii) is a fit and proper person;
- (b) if he or she –
- (i) whether personally or through his or her spouse, a family member, partner or associate –
    - (aa) has or acquires a direct or indirect financial or controlling interest in any gambling activity; or
    - (bb) has or acquires a direct or indirect interest within the liquor industry; or
    - (cc) has any interest in any business or enterprise that may conflict or interfere with the proper performance of his or her functions as a member of the Board;
  - (ii) is related to a family member, who has or acquires a direct or indirect financial or controlling interest in the gambling or liquor industries;
  - (iii) is a political office-bearer;
  - (iv) is an unrehabilitated insolvent;
  - (v) has at any time been removed from an office of trust on account of misconduct; or
  - (vi) has at any time been convicted, whether in the Republic or elsewhere –
    - (aa) of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under Chapter 2 or 3 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), an offence under the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004, (Act No. 33 of 2004), or any offence involving dishonesty; or
    - (bb) of an offence under this Act or any other similar law;
  - (vii) with the exception of a member of the Board contemplated in section 5(1)(g), (h) and (i), is in the full time employ of an organ of state, unless he or she obtains the prior written approval of the executive authority, accounting officer or accounting authority of that organ of state.
- (2)(a) If any member of the Board during his or her term of office is disqualified in terms of subsection (1), or acquires, or whose family member acquires, an interest which is likely to be an interest as contemplated in subsection (1)(b)(i) or (ii), he or she shall as soon as practicable after he or she has been disqualified or after the acquisition of such interest, or after he or she has become aware of such information, in writing declare such interest to the responsible Member.
- (b) Upon receipt of information from a member of the Board as contemplated in paragraph (a) that such member is disqualified in terms of subsection (1) to remain a member of the Board, the responsible Member shall, subject to section 9(2), terminate the term of office of such member in terms of section 9(2)(d).



**Procedure of appointment of Board.**

7. (1) The members of the Board referred to in section 5(1)(a), (b), (c), (d), (e), (f) and (j) shall not be appointed unless the responsible Member, in respect of such members has invited interested parties through the media and by notice in the *Provincial Gazette* to nominate candidates, within 21 days of the invitation in the media and the publication of such notice, for consideration by the responsible Member: Provided that the invitation through the media shall include an invitation in at least one newspaper circulating in the Province.

(2) A person shall, prior to his or her appointment as a member of the Board, submit to the responsible Member, a written, sworn or confirmed statement in which he or she declares his or her financial interests and whether or not he or she has any interests as contemplated in section 6(1)(b)(i) and (ii).

(3) (a) The members of the Board shall not be appointed unless the responsible Member has, at least 30 days prior to the appointment of the members of the Board and in the manner envisaged in subsection (1), published the names of the persons he or she intends to appoint as members of the Board and the date on which such appointments are intended to be made.

(b) Any person who desires to object to the appointment of any person to the Board, may, not later than 14 days before the date on which the appointment of the members of the Board is intended to be made, lodge with the responsible Member in writing an objection stating the ground or grounds which, according to such a person disqualifies the person to be appointed, from being appointed as a member to the Board.

(4) The responsible Member may, in the event of a vacancy on the Board, and with due regard to sections 6, 7 and 8, appoint a temporary member of the Board until such vacancy has been duly filled as contemplated in sections 7 and 8: Provided that the term of office of any such temporary member may not exceed a period of three months in respect of any specific vacancy on the Board.

(5) The responsible Member may, in the event of all the positions on the Board being vacant, and with due regard to sections 5 and 6, appoint persons as temporary members to constitute an interim Board until such vacancies have been duly filled as contemplated in sections 7 and 8: Provided that the term of office of such interim Board may not exceed a period of six months.

**Term of office.**

8. (1) A member of the Board shall, subject to section 9, hold office for such period, not exceeding five years, as the responsible Member may determine at the time of his or her appointment and a member of the Board shall, subject to section 6 and 7, be eligible for reappointment at the expiration of his or her term of office.

(2) A person other than members of the Board appointed in terms of section 5(1)(g), (h) and (i), may not be appointed to serve more than two terms as a member of the Board.

**Termination of office and filling of vacancies.**

9. (1) A member may at any time resign from the Board upon one month's written notice tendered to the responsible Member who shall forthwith inform the Executive Council and the Board accordingly.

(2) Subject to the provisions of subsection (3) of this section, the appointment of any member may, before the expiration of a member's term of office, be terminated by the responsible Member, in consultation with the Executive Council –

(a) on account of his or her improper conduct;

(b) on account of unfitness for the functions of his or her office;

(c) on the ground of a permanent infirmity of mind or body which renders him or her incapable of discharging the functions of his or her office or discharging them properly; or

(d) that he or she is or has become disqualified in terms of section 6.

- (3) Notwithstanding the provisions of section 5, 6 or 7 and subsection (2) of this section, a person's appointment as member of the Board may be terminated by the responsible Member, in consultation with the Executive Council, if such person has been absent from two consecutive meetings of the Board without prior consent of the Chairperson.
- (4) The responsible Member may not terminate the appointment of a member in terms of subsection (2) or (3) unless the responsible Member, after having afforded the relevant person an opportunity to state his or her case and having duly considered the matter, including any representations made, explanations given or evidence tendered by such person, is satisfied that the termination of his or her appointment is justified in the circumstances.
- (5) For the purposes of subsection (2)(a) the non-compliance by a member with any provision of this Act, inter alia, constitutes improper conduct.
- (6) The office of an appointed member becomes vacant –
- (a) when he or she dies;
  - (b) when his or her written resignation tendered to the responsible Member or the Board in terms of subsection (1) becomes effective;
  - (c) when his or her appointment is terminated in terms of this section; or
  - (d) if he or she is absent from three consecutive meetings of the Board without the prior consent of the Chairperson, or, in the case of the Chairperson being absent from three consecutive meetings of the Board, without the prior consent of the Board.
- (7) Subject to section 5(1), a vacancy on the Board shall be filled in accordance with sections 5, 6 and 7 by the appointment of another member as soon as may be reasonably practicable after the occurrence of such vacancy, and any member so appointed remains in office for the unexpired portion of his or her predecessor's term of office.

#### **Remuneration and allowances of members of Board.**

10. (1) Members of the Board or persons co-opted in terms of section 19 who are not in the full time employ of an organ of state may, in respect of their services, 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.

(2) The remuneration and allowances of the members of the Board may differ according to the different offices held by them or the different functions performed by them.

#### **Staff of the Regulator.**

11. (1) The Regulator shall, subject to its directions and control, in the exercise of its powers and the performance of its functions and this Act, be assisted by –

- (a) a suitably qualified and experienced person as Chief Executive Officer, who is *mutatis mutandis* subject to section 6, appointed by the Board in consultation with the responsible Member for such period and on such terms and conditions as the Board may determine or seconded in terms of subsection (3), for the purpose of assisting the Board in the performance of all financial, administrative and clerical responsibilities pertaining to the functions of the Regulator, and shall in respect thereof be accountable to the Board: Provided that the Chief Executive Officer may be so appointed for a period not exceeding five years and upon the expiration of the his or her term of office, he or she is eligible for re-appointment; and

8

(b) such staff, appointed by the Chief Executive Officer or seconded in terms of subsection (3), as may be necessary to enable the Regulator to perform its functions: Provided that a person shall not be appointed by the Chief Executive Officer in terms of this paragraph or remain a member of the staff of the Regulator if he or she is *mutatis mutandis* subject to any disqualification as referred to in section 6.

(2) The Chief Executive Officer and staff appointed by the Chief Executive Officer in terms of subsection (1) shall from the funds of the Regulator be paid such remuneration and allowances and shall receive such other employment benefits and be appointed on such terms and conditions and for such periods, as the Board, in consultation with the responsible Member must determine: Provided that the responsible Member may, from time to time, determine by prior Notice in the Provincial Gazette the remuneration, allowances and benefits of the Chief Executive Officer in consultation with the Member of the Executive Council responsible for financial matters: Provided further that subsequent to the consultation, the responsible Member shall obtain Executive Council approval for the determination.

(3) The Regulator may, in the exercise of its powers and the performance of the functions contemplated in subsection (1), at its request and after consultation with the responsible Member, be assisted by officers of any organ of state seconded to the service of the Regulator in terms of any law regulating such secondment.

(4)(a) Any function or power which the Board may perform or exercise in terms of this Act may be delegated, whether generally or specifically, to the Chief Executive Officer, a committee of the Board, or any other member of the staff of the Regulator.

(b) Any delegated function so performed or delegated power so exercised shall be deemed to have been performed by the Board.

(5) Whenever the office of the Chief Executive Officer is vacant or the Chief Executive Officer is incapacitated or refuses or fails to act, the powers, rights and functions of the Chief Executive Officer shall be exercised and performed by any person designated as the acting Chief Executive Officer by the Board in consultation with the responsible Member: Provided that no such person shall be the acting Chief Executive Officer for a period exceeding six months.

(6) While a person designated as contemplated in subsection (5), so acts, he or she shall have the powers and discharge the functions of the Chief Executive Officer.

#### **Transparency and confidentiality.**

12. (1) The Regulator shall, subject to subsection (2) and the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), function in a transparent and open manner.

(2) No member of the Board or staff of the Regulator, no person contemplated in section 19, and no inspector shall, except on the order of a court of law or on the instructions of the responsible Member after prior written notice to the Regulator and subject to section 14 of the Constitution disclose –

(a) any document or information or the identity of any person, which the Regulator has determined not to be open to public inspection or to be divulged; and

(b) any document or information which has been furnished to the Regulator by any regulatory or law enforcement authority on condition of confidentiality.

#### **Position of public trust.**

13. (1) In order to ensure the independence and integrity of the Board –

(a) a member of the Board or of the staff of the Regulator or the spouse of a member of the Board or of the staff of the Regulator, shall not –

(i) apart from any remuneration received 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 or benefit in any manner from the office that he

or she holds;

- (ii) participate in any gambling in the Province, or at any establishment outside the Province, which is owned or operated by a person who holds any licence in terms of this Act: Provided that such a person may participate in such gambling if it is necessary for the performance of his or her functions under this Act;
- (b) a member or former member of the Board shall not solicit or accept 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, without the prior approval of the Board;
- (2) (a) A member of the Board shall not vote, attend or in any other manner participate in the proceedings at any meeting or hearing of the Board if, in relation to any matter before the Board –
- (i) he or she or his or her family member contemplated in section 6(1) (b)(i) or (ii), partner or business associate is a direct member or partner of, or has a controlling interest or any financial or other interest in, the business of the applicant for a gambling or liquor licence or any person who made representations in relation to the application of a gambling or liquor licence or a proposed contract which the Regulator considers entering into; or
  - (ii) he or she has any interest which precludes him or her from performing his or her functions as a member of the Board in a fair, unbiased and proper manner.
- (b) If at any stage during the course of any proceedings before the Board it appears that a member of the Board has or may have any interest contemplated in paragraph (a) –
- (i) that member shall forthwith and fully disclose the nature of his or her interest and leave the meeting or hearing so as to enable the remaining members of the Board to discuss the matter and determine whether that member is precluded from participating in the proceedings at such meeting or hearing by reasons of a conflict of interests; and
  - (ii) such disclosure and the decision taken by the remaining members of the Board regarding such determination, shall be recorded in the minutes of the proceedings in question.
- (c) If any member of the Board fails to disclose any interest contemplated in paragraph (a) or if, having such interest, he or she attends or in any manner whatsoever participates in the proceedings at the meeting or hearing concerned, the relevant proceedings may by resolution of the Board and on good cause shown, be declared null and void either partially or in full, and the Board may hold such member personally liable for any losses or damage suffered by the Regulator, resulting from such member's non-compliance with paragraph (a) of this subsection.

#### **Funds of the Regulator.**

14. (1) The funds of the Regulator shall consist of –

- (a) money appropriated by the Provincial Legislature for that purpose;
- (b) any amounts payable to the Regulator in terms of the Mpumalanga Gambling Act, Mpumalanga Gambling Levies Act or the Mpumalanga Liquor Licensing Act; and
- (c) other money lawfully paid to the Regulator.

(2) The Regulator shall submit to the responsible Member, at least six months before the start of the financial year or at any other time as agreed to between the responsible Member and the Regulator, a budget of estimated revenue and expenditure for that financial year for consideration, approval or rejection by the responsible Member.

(3) The Regulator shall not budget for a deficit and shall not accumulate surpluses unless the prior written approval of the Provincial Treasury has been obtained.

(4) 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.

**Procurement, accountability, audit and annual report.**

**15.** (1) When procuring any supply or service, or hiring or letting anything or acquiring or granting any right or acquiring or disposing of any asset for or on behalf of the Regulator as contemplated in section 4, the Board shall ensure that such procurement is effected in accordance with, and duly complies with –

(a) the regulations made or instructions issued by the National Treasury in respect of an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective as contemplated in section 76(4)(c) of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

(b) the instructions issued by the Provincial Treasury as contemplated in section 18(2)(a) of the Public Finance Management Act, 1999, in respect of an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;

(c) the appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective as established by the Board, as contemplated in section 51(1)(a)(iii) of the Public Finance Management Act, 1999; and

(d) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and the Broad-based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).

(2) The Regulator shall, subject to the Public Finance Management Act, 1999 –

(a) be charged with the responsibility of accounting for moneys received or paid out for or on account of the Regulator; and

(b) cause the necessary accounting and other related records to be kept.

(3) The records referred to in subsection (1)(b) shall be audited by the Auditor-General.

(4) The Regulator shall –

(a) report to the responsible Member least once every year on its activities, and the responsible Member shall cause such report, including the annual audited financial statements of the Regulator, to be tabled promptly in the Provincial Legislature of the Province;

(b) submit to the responsible Member quarterly reports, which reports shall deal with the state of affairs, the activities and operations, and the financial position of the Regulator;

(c) not enter into any agreement, excluding an agreement in respect of the daily operations of the Regulator and its staff, that has financial implications or implied financial implications without the written consent of the responsible Member;

(d) the reports referred to in paragraph (a) shall –

(i) set out the functions and objectives of the Regulator as contemplated in this Act;

(ii) state the extent to which the Regulator has achieved its set objectives for the period concerned;

(iii) contain relevant performance information regarding the economic, efficient and effective application of resources;

(iv) indicate the amount of money received and any other commitment furnished by the State; and

(v) contain the detailed personnel establishment and composition of the Regulator;

- (e) the Regulator shall cause internal audits to be conducted in order to promote –
- (i) the safeguarding and control of the assets of the Board;
  - (ii) compliance with this Act, the Mpumalanga Gambling Act, the Mpumalanga Gambling Levies Act, the Mpumalanga Liquor Licensing Act or any other Act of Parliament or the Provincial Legislature governing the activities of the Regulator; and
  - (iii) the economical and efficient management of the resources of the Regulator and the effective performance of the functions of the Regulator; and
- (f) if the internal audit function is not outsourced, the Regulator shall appoint a chartered accountant registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), to conduct the internal audits of the Board.

#### **Meetings of Board.**

16. (1) (a) Meetings of the Board shall be held on such dates and at such times and places as the Board may from time to time determine: Provided that the Board shall hold one meeting at least once in every three months.
- (b) The Chairperson may at any time on reasonable notice convene a special or extraordinary meeting of the Board to be held at a time and place determined by him or her.
- (2) The proceedings at a meeting of the Board shall, in so far as it has not been prescribed, be determined by the Board.
- (3) The quorum for a meeting of the Board shall be a majority of the members of the Board.
- (4) 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 his or her deliberative vote.
- (5) No decision of the Board shall be invalid merely by reason of a vacancy in 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 of the Board 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.
- (6) Any meeting of the Board convened for the purpose of –
- (a) considering representations or objections in relation to any application for a gambling or liquor licence, shall be accessible to the public: Provided that the Chairperson may in his or her discretion, and if the Board determines that any person whose presence is not desirable at the meeting concerned, direct that such a person may not attend the meeting or shall leave the meeting; and
  - (b) deliberations with a view to making decisions and to voting thereon in respect of any matter at a meeting, shall take place behind closed doors.

#### **Committees of Board.**

17. (1) The Board may from time to time appoint a committee to exercise the powers and perform the functions delegated to it by the Board.
- (2) A committee shall consist of –
- (a) such members of the Board as the Board may designate; or

12

- (b) such members of the Board as the Board may designate and such other persons as the Board may co-opt in terms of section 19.
- (3) The Board shall designate the chairperson of a committee.
- (4)(a) A committee shall perform its functions and exercise its powers subject to the provisions of this Act and such directives of the Board as are not in conflict with such provisions.
- (b) Any delegated power so exercised or function so performed shall, subject to section 11(4)(a), be deemed to have been performed by the Board.

**Minutes.**

18. (1)(a) Minutes of the proceedings referred to in section 16(6)(a) of every meeting of the Board shall be kept and be retained at the offices of the Regulator.
- (b) Any person may obtain copies of the minutes contemplated in paragraph (a) or any part thereof against payment of the prescribed fees.
- (2)(a) Separate minutes of the proceedings referred to in section 16(6)(b) of every meeting of the Board shall be kept and retained in a like manner.
- (b) The minutes contemplated in paragraph (a) or any document in which an advice, report or recommendation by the Board is contained, shall not be disclosed, except to –
- (i) the responsible Member;
  - (ii) any person who requires it for the performance of his or her functions in terms of this Act; and
  - (iii) any other person –
    - (aa) with the approval of the Board; or
    - (bb) in terms of an order of a competent court or under any law.

**Co-opting of persons.**

19. (1) The Board may co-opt any person to the Board or a committee of the Board for the purpose of assisting the Board in the consideration of a particular matter by the Board or a committee of the Board.
- (2) A person so co-opted shall not be entitled to vote at any meeting of the Board or a committee of the Board.
- (3) The provisions of section 10(1) shall *mutatis mutandis* apply in respect of such a person so co-opted.

**Investigations, hearings or enquiries by Board.**

20. (1) The Board may, subject to this section, conduct an investigation, hearing or enquiry into any matter falling within the scope of its functions.
- (2) For the purpose of any investigation, hearing or enquiry in terms of subsection (1), the Board may, 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 –
- (a) to give evidence;
  - (b) to be questioned; and
  - (c) to produce such book, document or object:



13

Provided that at any investigation, hearing or enquiry held by the Board the person applying for a licence or the transfer or removal of a licence in terms of the Mpumalanga Gambling Act or the Mpumalanga Liquor Licensing Act, or any person objecting to the granting of such an application or the person who is the subject of the investigation, hearing or enquiry, as the case may be, shall, if he or she so requests, be entitled to appear before the Board and to call witnesses.

(3) A notice referred to in subsection (2) shall be served by a member of the staff of the Board, by delivering a copy thereof to the person concerned by means of personal delivery, registered mail, facsimile transmission or email.

(4) A person who has received a notice in terms of subsection (2), shall personally appear before the Board on the date and time and place set out in the notice: Provided that if such a person is not legally competent to so appear before the Board, 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.

(5) The provisions of subsection (4) shall apply *mutatis mutandis* to any corporate body, organisation or institution.

(6) The Board may call and examine any person present at the investigation, hearing or enquiry, whether or not he or she has been summoned to attend an investigation, hearing or enquiry under subsection (2), and may inspect and retain for a reasonable period any book, document or thing, the production of which was required under that subsection.

(7) The Board may require from any person appearing before the Board at an investigation, hearing or enquiry in terms of subsection (1) to give his or her evidence on oath or affirmation, and the member of the Board, presiding at the investigation, hearing or enquiry may administer the oath or accept an affirmation from any such person.

(8) The law regarding privilege, as applicable to a witness summoned in a criminal case in the Magistrates Court shall apply in relation to the questioning of a person in terms of subsection (2) or (6).

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

#### **Repeal of Laws.**

21. The laws mentioned in the Schedule are hereby repealed or amended upon the commencement of this Act to the extent indicated in the third column of the Schedule.

#### **Transitional arrangements.**

22. (1) The Premier shall 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 established by the Mpumalanga Gambling Act.

(2) The Premier shall 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 Liquor Authority established by the Mpumalanga Liquor Licensing Act.

(3) All persons employed by the Mpumalanga Gambling Board and Mpumalanga Liquor Authority are, 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.

(4) Arising out of and subject to the provisions of subsections (1) and (2), the Regulator shall become the successor-in-title to the Mpumalanga Gambling Board and Mpumalanga Liquor Authority and –



- (a) becomes the owner of all movable and immovable property of the Mpumalanga Gambling Board and Mpumalanga Liquor Authority;
  - (b) is substituted as litigating party for the Mpumalanga Gambling Board and Mpumalanga Liquor Authority, in all pending litigation, including arbitrations, labour disputes and mediation, as if the Regulator had been the litigant at the time the cause of action arose;
  - (c) is substituted as contracting party for the Mpumalanga Gambling Board and Mpumalanga Liquor Authority in all contracts as if the Regulator had been the contracting party at the time of contracting; and
  - (d) is deemed to have issued all financial instruments of the Mpumalanga Gambling Board and Mpumalanga Liquor Authority.
- (5) Anything done by or in respect of the Mpumalanga Gambling Board and Mpumalanga Liquor Authority is deemed to have been done under this Act, by the Regulator, if applicable.
- (6) The Members of the Board and the Chief Executive Officer of the Mpumalanga Gambling Board and the other staff of the Mpumalanga Gambling Board and the Mpumalanga Liquor Authority shall forthwith, upon request, fully and duly assist the Board of the Regulator in the exercise and performance of any of its powers and functions in terms of this Act.
- (7) Decisions of the Mpumalanga Gambling Board and the Mpumalanga Liquor Authority in force immediately before the commencement of this Act remain in force until amended, replaced or repealed by the Regulator.

**Short title and commencement.**

- 23.** (1) This Act is called the Mpumalanga Economic Regulator Act, 2017, and comes into operation on a date fixed by the Premier by notice in the *Provincial Gazette*.
- (2) Different dates may be so fixed in respect of different provisions of this Act.

**SCHEDULE**

No. and year of Act	Short Title	Extent of repeal or amendment
Act No. 5 of 1995	Mpumalanga Gambling Act, 1995	1. The repeal of sections 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20. 2. The amendment of section 1 as follows:  (a) by the substitution for the definition of "Board" of the following definition:  <u>"Board" means the Mpumalanga Economic Regulator established by section 2 of the Mpumalanga Economic Regulator Act, 2017;</u>  (b) by the deletion of the definition of "Chairperson"; and  (c) by the substitution for the definition of "chief executive officer" of the following definition:  <u>"chief executive officer" means the chief executive officer appointed in terms of section 11(1)(a) of the Mpumalanga Economic Regulator Act, 2017.</u>

Act No. 5 of 2006	Mpumalanga Liquor Licensing Act, 2006	<p>1. The repeal of sections 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and</p> <p>2. The amendment of section 1 by the substitution for the definition of "Authority" of the following definition:</p> <p><u>"<b>Authority</b>" means the Mpumalanga Economic Regulator established by section 2 of the Mpumalanga Economic Regulator Act, 2017;"</u></p>
Act No. 5 of 2007	Mpumalanga Gambling Levies Act, 2007	<p>1. The amendment of section 1 by the substitution for the definition of "Board" of the following definition:</p> <p><u>"<b>Board</b>" means the Mpumalanga Economic Regulator established by section 2 of the Mpumalanga Economic Regulator Act, 2017;"</u></p>

DRAFT BILL FOR PUBLIC COMMENT ONLY



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