



Standing Committee on Finance, Economic Opportunities and
Tourism
Western Cape Provincial Parliament
(Attention: Ms Z Adams)
Email: zadams@wcpp.gov.za

EBrand our ref
your ref
29 May 2020 date

Dear Madam

Western Cape Nineteenth Gambling and Racing Amendment Bill

1. We act for Tsogo Sun Holdings Limited ('**Tsogo**').
2. Tsogo owns three of the five licensed casino operators in the Western Cape, being Caledon Casino, Garden Route Casino and Mykonos Casino.
3. Tsogo hereby submits its comments in respect of the amendments proposed in the Nineteenth Western Cape Gambling and Racing Amendment Bill ('**the Amendment Bill**') published in the Western Cape Provincial Gazette on 24 April 2020.
4. In correspondence dated 15 May 2020 from its attorneys, Tsogo requested information and documentation necessary to enable it to comment meaningfully on the Amendment Bill. A copy of the correspondence is attached marked "**A**". This information is required because the Amendment Bill seeks to put in place a regime whereby the Board is in future to be funded apparently exclusively from revenue raised from holders of route operator licences and casino operator licences. In order to assess whether the fees proposed in the Bill are rationally connected to the Amendment Bill's objects, it would at very least be necessary to have regard to the information and documents requested. Tsogo also requested a short extension to file its submissions following receipt of the information and documentation requested.
5. Tsogo is awaiting a response in respect of its request for information and documentation, as per the attached communication received from the provincial legislature marked "**B**". Tsogo makes these preliminary submissions under reservation of its rights to supplement same when it receives the requested information and documentation.
6. These submissions are set out as follows:
 - 6.1. First, Tsogo comments on the previous aborted public participation process in respect of exactly the same piece of draft legislation. Tsogo respectfully requests that its previous submissions be read together with these submissions.

- 6.2. Second, Tsogo comments on the harsh and unsympathetic timing of the Amendment Bill (and other draft legislation), which is published during a national State of Disaster and seemingly without appreciation for the economic hardships faced by the gambling industry as a result thereof.
- 6.3. Finally, Tsogo makes an alternative proposal for revenue raising.

THE ABORTED PUBLIC PROCESS IN RESPECT OF THE 2019 AMENDMENT BILL

7. On 2 May 2019 an exact replica of the Amendment Bill was published (the '**2019 Amendment Bill**'). At that time, Tsogo directed correspondence to the Provincial Parliament requesting further information and documentation in order to enable it to engage with the substance of the 2019 Amendment Bill. Tsogo's request was never responded to.
8. Nevertheless, on 31 May 2019 Tsogo made detailed submissions in respect of the 2019 Amendment Bill. A copy of Tsogo's submissions are attached marked "**C**" (its request for information referred to in the paragraph above is an annexure to that letter). In those submissions, and in summary, Tsogo objected to the imposition of the casino operator fee on *inter alia* the following bases:
 - 8.1. On the information then available, there is no basis for the introduction of the casino operator fees proposed in the 2019 Amendment Bill at least because the proposed fees are *prima facie* not rationally connected to the objective of making the Board financially self-sufficient.
 - 8.2. The 2019 Amendment Bill is arbitrary and irrational in that it purports to make route operators and casino operators liable for the payment of fees to sustain the Board for the regulation of the gaming and betting industry, without for example, bookmaker licensees making any contributions.
 - 8.3. It appears that the true intention is the introduction of a money Bill, and effect must be given to the form not the substance of the 2019 Amendment Bill, by following the correct statutory procedures provided for the introduction of a money Bill.
9. Tsogo requests that its aforementioned submissions made in respect of the 2019 Amendment Bill, as contained in Annexure "C", be read together with these submissions.
10. Following the aforementioned unresponsive engagement process, the Western Cape Parliament essentially republished the 2019 Amendment Bill for comment, in the form of the Amendment Bill. There are no discernable differences between the two documents.
11. This raises concerns about the meaningfulness of the previous consultation process in respect of the 2019 Amendment Bill. It shows that Tsogo's previous comments and attempts at meaningful engagement were, it seems, simply ignored.
12. It also shows that the submissions made by other interested parties were treated with similar derision.

13. Nevertheless, Tsogo remains hopeful for a productive engagement with the parliamentary portfolio committee, this time around. In this vein, while these engagements take place during a time when the gaming industry is at its knees and unable to trade, and while Tsogo stands by its previously expressed concerns about the legality and rationality of the Amendment Bill, these submissions conclude with an alternative proposal which Tsogo believes would assist the provincial parliament in its stated effort to raise revenue while at the same time rebuilding the gaming industry post lockdown.

THE DISASTROUS TIMING OF THE PROPOSED CASINO OPERATOR FEE (AND OTHER FURTHER TAXES) DURING EXTREMELY CHALLENGING TIMES FOR THE GAMBLING INDUSTRY

14. The classification of the COVID-19 pandemic as a national disaster, on 15 March 2020, in terms of section 23(1)(b) of the Disaster Management Act 57 of 2002, and the lockdown which has followed means that as at the date of these submissions, casinos have not been operating for more than two and a half months. Casinos will also not be allowed to operate within Level 3 of the lockdown, which comes into effect on 1 June 2020. It is not apparent when casinos will be allowed to operate and what restrictions will be imposed on operations. It is expected that casinos will not be allowed to trade at full capacity again for months to come. The inability to trade has caused and will continue to cause severe financial distress for casino operators and the financial stress on the gaming industry will reverberate long after the lockdown has ended.
15. On 24 April 2020, and in order to protect and preserve as many jobs as possible, the casino industry, through the Casino Association of South Africa (CASA) addressed a letter to the Western Cape Gambling and Racing Board (**'the Board'**). A copy of the letter is attached marked "D". In that letter, CASA appeals to the Board on behalf of the casino operators in the Western Cape for leniencies during these challenging time, in the forms of a reduction of gaming taxes/levies, a reduction in the quantum of the required bank guarantees for gaming taxes/levies, credit on the current annual licence fee, a moratorium on new RFPs, a limitation on the number of internal audits in an effort to contain costs, understanding in respect of the licensees' ability to comply with certain licence conditions, and other dispensations and recognitions. Similar correspondence was also addressed to the Department of Trade and Industry and the National Gambling Board, jointly by all sectors of the gaming industry.
16. The purpose of the aforementioned correspondence was, in the spirit of Ubuntu, to overcome the devastating challenges brought about by the Covid-19 pandemic and to allow the casino industry to continue to be an industry that makes significant contributions to the provincial economy.
17. Despite the aforesaid appeals for reprieve, none has been forthcoming. During the lockdown casinos have been required to continue to pay their annual licence renewal fees, despite their inability to trade on those licences.

18. Against the aforementioned background, the publication of the Amendment Bill during a declared state of National Disaster brings about a justifiable skepticism about whether true appreciation is shown for the immense and unprecedented challenges facing the industry.
19. If enacted, the Amendment Bill will amend the Western Cape Gambling and Racing Act, 4 of 1996 ('**the Act**') *inter alia* in the following respects:
- 19.1. Section 44D is inserted into the Act to provide that the holders of casino licences are liable to pay "*casino operator fees*" in accordance with a new paragraph 5A to Schedule II to the Act of between R2,805m to R7,150m (depending on the original value of the casino development); and
- 19.2. Schedule II to the Act is amended such that limited payout machine ('**LPM**') operator fees in terms of section 44C of the Act are payable, of between R3,905m to R5,858m (based on the size of the limited gambling machine operator and seeing that no route operator has less than 500 LPMs).
20. Tsogo's concern is particularly valid, because the proposed casino operator fees is a set amount based on the original value of the casino development. The amount is payable annually, irrespective of whether the casino traded at all, and irrespective of the casino's actual revenue and despite the current extremely challenging economic climate and the legislated ban on the operation of licensed casinos. The irrationality of the mechanism for the calculation of the casino operator fee is illustrated by the fact that Caledon Casino will have to pay the same casino operator fee as Grand West Casino, whilst Caledon generates less than 10% (R186m per annum) of the Grand West Casino revenue (R2.14bn per annum). Caledon casino's R46m EBITDA is also less than 10% of the Grand West Casino's EBITDA of R831m. The proposed fee that would apply to Caledon casino, would therefore be almost 20% of its historical pre-Covid EBITDA. The only rational basis for charging fees of this nature should be based on turnover or GGR.
21. The proposed casino operator fees are significant. Tsogo estimates that if the proposed LPM operator fees and casino operator fees are implemented as per the Amendment Bill, the Board will generate at least: (i) an additional approximately R9,763,000 per annum in LPM operator fees; and (ii) an additional approximately R22,715,000 per annum in respect of the five casino operator licensees
22. In other words, fees generated from the new casino operator fees and the limited gaming machine operator fees alone would exceed approximately **R32,478,000** if the Amendment Bill comes into force.
23. When combined with annual licence fees of approximately R2,343,741, **this amounts to additional revenue to the Board of at least R34,821,741.**
24. Furthermore, its concerns are underscored by the publication of the draft 21st Amendment Bill on 11 May 2020, which contemplates yet a further new tax to be imposed on casinos, called an exclusivity tax. The contemplated exclusivity taxes are based on each casino's taxable revenue. Since Tsogo does not have insight into the taxable revenue of other casinos, it is not possible for to quantify the financial impact of those taxes, although clearly it would be substantial.

25. Accordingly, when combined with:

25.1. the various existing annual fees, investigation fees and gaming taxes levied under the Act;

25.2. the 1% VAT increase of 1 April 2018, absorbed by the casinos; and

25.3. the further proposed exclusivity taxes on casinos contemplated in terms of the draft 21st Amendment Bill;

the proposed casino operator fee places significant and unwarranted economic hardship on Tsogo, and the casino operators in the province, in an extremely challenging economic climate.

AN ALTERNATIVE PROPOSAL

26. The casino industry, through CASA, has appealed for support from the Board and from government during the National State of Disaster. No support or reprieve has been forthcoming. Tsogo remains hopeful that it can work together with the Board and the Western Cape government to rebuild the gambling industry after the State of Disaster ends.

27. The industry's ability to rebuild itself successfully, and to continue to be a valued source of income for the provincial fiscus, depends on a number of external factors all outside of its control, but within the control of the provincial government.

28. The process of rebuilding the industry will be considerably hindered if the proposed casino operator fees are imposed on casinos in the form contained in the Amendment Bill.

29. The rebuilding of the gambling industry will also be significantly hampered if new forms of gambling are introduced at a time where the existing industry requires revival. Under a distressed market, where the existing operators are not able to operate at all (and would not be able to operate at full capacity for the foreseeable future), it would be irresponsible and destabilize the industry to the brink of possible ruin if additional licences were to be granted in such a sensitive time.

30. Tsogo simultaneously appreciates the revenue-raising efforts of the Provincial Legislature and acknowledges that the rebuilding of the gambling industry requires reciprocity, adaptability and a combined effort by all involved in the industry to rebuild not only the gaming industry but the provincial economy.

31. Tsogo would welcome an opportunity to engage with the Provincial Legislature in respect of a proposal that seeks to rebuild the existing gaming industry and to stop the decline of the industry.

32. The proposal is that the legislature assist in rebuilding the industry by temporarily insulating the industry from new forms of gambling (in particular, bingo licences) for the next five years. In exchange, the proposal is that the legislature consider imposing on each casino a legislated fee of 0.5% of gross gaming

revenue (GGR) per annum for the next five years, while the existing industry revives. We would be grateful to engage with the government in respect of such proposal.

CONCLUSION

For the aforementioned reasons, Tsogo objects to the amendments set out in the Amendment Bill. As mentioned above, Tsogo's rights to supplement these submissions upon receipt of further information remains reserved.

Tsogo has made an alternative proposal in the spirit of a coordinate effort to revive the economy and rebuild the existing industry and is hopeful for fruitful engagement on this proposal.

Yours faithfully,

EDWARD NATHAN SONNENBERGS

Per:

ESTI BRAND

(transmitted electronically and therefore without signature)

Annexure A

ENSafrica

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The Standing Committee on Finance, Economic Opportunities
and Tourism, Western Cape Provincial Parliament
Attention: Ms Z Adams
Per Email: zadams@wcpp.gov.za

E Brand/bb/0459608 our ref
your ref
15 May 2020 date

Dear Madam

Request for information and extension in respect of the Western Cape Nineteenth Gambling and Racing Amendment Bill

1. We act for Caledon Casino, Garden Route Casino and Mykonos Casino, which are licensed casino operators in the Western Cape and are owned by Tsogo Sun Holdings Limited ('Tsogo Sun') (collectively, 'our clients').
2. Tsogo Sun also has a financial interest of 20% in both SunWest International (Pty) Ltd and Worcester Casino (Pty) Ltd, trading as Grandwest Casino and Golden Valley Casino, the other two licensed casinos in the Western Cape. Tsogo Sun therefore has a material interest in the casino industry in the Western Cape.
3. We refer to the publication of the Western Cape Nineteenth Gambling and Racing Amendment Bill which was published on 24 April 2020, inviting interested parties to submit comments thereon by 29 May 2020.
4. The Bill, inter alia, provides for the introduction of "*casino operator fees*" which shall be payable to the Western Cape Gambling and Racing Board ('the Board').
5. The memorandum to the Bill states that "*operator fees*" are primarily proposed to be levied in order to "*promote and facilitate the financial self-sufficiency of the Board*". In other words, casino operators (and route operators) are required to fund the Board's activities.
6. Our clients are not in a position to make meaningful comments in relation to the Bill without access to important information and documentation. This information and documentation had previously been sought by our clients, when the same Bill was published for comment in 2019. No response was received and our clients were forced to comment on the Bill in the absence of vital information.
7. Prior to commenting on the Bill this time around, our clients again seeks to be provided with the following information, and where applicable, documentation:

- 7.1. Firstly, has it been decided that the Board will in future be funded solely by fees payable by licensees? If not, what proportion of its funding will come from the Western Cape Government? If yes, why is this considered to be a good model and would it not undercut the independency of the Board as the provincial regulator of gambling?
 - 7.2. Second, for purposes of proposing the amounts in the Bill, has the Board and/or the Provincial Department concerned furnished your offices with a forecast of its budgeted expenditure for the coming financial year?
 - 7.3. If so, we would be grateful to receive a copy to better understand how the operator fees were determined.
 - 7.4. Third, why have other categories of licensees been excluded from having to pay operator fees if the purpose of these fees is to fund the Board's operations?
 - 7.5. Fourth, has the Board in determining the proposed fees, considered the annual fees payable to the Board by licensees, i.e. annual renewal fees, licence renewal application fees, annual investigation fees and collection fees earned on gambling taxes?
 - 7.6. Finally, the proposed "annual casino operator fee" is a strange model/concept which, as far as we are aware, does not exist in other gaming jurisdiction in South Africa or internationally. Why is this model/concept introduced in the Western Cape and are there any other jurisdictions where a similar fee exists?
8. Kindly furnish us with the above information as soon as reasonably possible. As noted, our clients require this information to make meaningful submissions on the Bill.
 9. Finally, we request a short extension of the time period for furnishing submissions. We ask that you afford us a period of at least three weeks from the date on which we are furnished with the above information.

Yours faithfully,
EDWARD NATHAN SONNENBERGS

Per:

E BRAND
(sent electronically, unsigned)

Esti Brand

From: Zaheedah Adams <zadams@WCPP.GOV.ZA>
Sent: 18 May 2020 08:40 AM
To: Esti Brand
Subject: RE: Request for information and extension in respect of the Western Cape Nineteenth Gambling and Racing Amendment Bill

Good day Ms Brand,

Thank you for the input in respect of Tsogo Sun and Vukani Gaming. I have asked Ms Claire Horton to respond to your requests for information. In terms of the extension for submission of comments, that should be fine. The Standing Committee on Finance, Economic Opportunities and Tourism will also be embarking on a public participation process, in as far as COVID-19 regulations will allow, where we will also be requesting submissions.

Kind regards,

Zaheedah Adams
 Procedural Officer

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Wes-Kaapse Provinsiale Parlement
 Western Cape Provincial Parliament
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From: Esti Brand [mailto:ebrand@ensafrica.com]

Sent: Friday, 15 May 2020 13:31

To: Zaheedah Adams <zadams@WCPP.GOV.ZA>

Subject: Request for information and extension in respect of the Western Cape Nineteenth Gambling and Racing Amendment Bill

Dear Ms Adams,

Please find attached a letter for your urgent attention.

Yours sincerely,

Esti Brand



Esti Brand
Senior Associate
Dispute Resolution



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level 1 BBBEE rating

Coronavirus (COVID-19) in these times of uncertainty it is good to know you are not alone
be well | be safe

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31 May 2019

Mr M Sassman
Western Cape Provincial Parliament
Cape Town

Cell: 083 629 5721
e-mail: jan.delange@tsogosun.com

Per e-mail: msassman@wcpp.gov.za

Dear Sir

Proposed casino operator fees in terms of the Western Cape Nineteenth Gambling and Racing Amendment Bill

This letter is written on behalf of Caledon Casino, Garden Route Casino and Mykonos Casino, which are licensed casino operators in the Western Cape and are owned by Tsogo Sun Holdings Limited ('Tsogo Sun'). For ease of reference, all the aforementioned entities will collectively be referred to as 'Tsogo'. Please note that Tsogo Sun also has a financial interest of 20% in both SunWest International (Pty) Ltd and Worcester Casino (Pty) Ltd, trading as Grandwest Casino and Golden Valley Casino, the other two licensed casinos in the Western Cape. Tsogo Sun therefore has a material interest in the casino industry in the Western Cape.

On 2 May 2019 the Western Cape Government published a notice in the Western Cape Provincial Gazette calling for submissions by 31 May 2019 on the proposed amendments contained in the Nineteenth Western Cape Gambling and Racing Amendment Bill ('**the Amendment Bill**').

For the reasons set out in the introductory paragraph, Tsogo has a material and substantive interest in the amendment proposed in the Amendment Bill.

On 20 May 2019, Tsogo directed correspondence to your offices requesting further information and documentation in order to enable it to engage with the substance of the Amendment Bill and furnish meaningful comment on the proposed amendments contained therein as part of the public consultative process. A copy of Tsogo's letter is attached marked "**A**".

In that correspondence, Tsogo requested information regarding the budgets and forecasts of the Western Cape Gambling and Racing Board ('**the Board**'). This is because the Bill seeks to put in place a regime whereby the Board is in future to be

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Directors: JA Copelyn (Chairman)* J Booysen (Chief Executive Officer) RB Huddy (Chief Financial Officer)
MSI Gani** MJA Golding* BA Mabuza (Lead Independent)* VE Mphande* JG Ngcobo* Y Shaik*
(*Non-Executive Director *Independent Director)
Company Secretary: GD Tyrrell

funded apparently exclusively from revenue raised from holders of route operator licences and casino operator licences. Tsogo also requested a short extension to file its submissions following receipt of the information and documentation requested.

Unfortunately, Tsogo has not yet received a response to the letter and is accordingly compelled to make submissions on the Amendment Bill without access to information that is fundamental to the proposed amendments. Tsogo therefore makes these submissions under reservation of its rights to supplement them should it receive the requested documentation and information and, if necessary, to challenge the enactment of the Amendment Bill as being procedurally irrational and unfair.

Submissions

1. According to the explanatory memorandum to the Amendment Bill: *"[i]t is important that the costs of the Board are defrayed, that it is financially self-sufficient and that the industry pays for its own regulation"*, and that as a result *"the prescribed annual licence fees will now be payable to the Board instead of the Western Cape Government. Casino operator fees and limited gambling machine operator fees will also be payable to the Board"*.
2. It is also stated that the *"objective"* of the Bill is to *"amend the Act in order to promote and facilitate the financial self-sufficiency of the Board"* through the introduction of *"a new casino operator fee"* and through the amendment of *"certain provisions relating to limited gambling machine operator fees"* which are stated to be necessary to *"[contribute] towards defraying the costs of the Board, promoting and facilitating its financial self-sufficiency, and is consistent with the principle that the industry pays for its regulation"*.
3. If enacted, the Amendment Bill will amend the Western Cape Gambling and Racing Act, 4 of 1996 (**'the Act'**) *inter alia* in the following respects:
 - 3.1. Section 44(3) of the Act will be amended so as to provide that new licence application fees and annual licence and investigation fees shall be payable to the Board and no longer to the Provincial Revenue Fund.
 - 3.2. Section 44D is inserted into the Act to provide that the holders of casino licences are liable to the Board for *"casino operator fees"* in accordance with a new section 5A to Schedule II to the Act.



- 3.3. Schedule II to the Act is amended such that limited payout machine ('LPM') operator fees in terms of section 44C of the Act are payable based on the size of the *"limited gambling machine operator"*.
4. The Bill marks a significant departure from the position under the Act. Its intended effect is to raise revenue for the Provincial Revenue Fund, by funding the Board so that the Western Cape Government is no longer responsible for funding it out of gaming taxes, levies and fees collected from licensees, and for the excess to be paid into the Provincial Revenue Fund.
 5. In this regard, the Amendment Bill is in effect a money Bill, and must follow the prescribed legislative process.
 6. This is particularly clear from section 20(4) of the Act, which states that any revenue of the Board which exceeds the Board's total budget for a particular financial year by more than ten percent shall be paid into the Provincial Revenue Fund. It is submitted that the proposed amendments, if enacted, will so significantly raise the revenue of the Board, that a substantial portion will be paid over to the Provincial Revenue Fund.
 7. Under the Act as it currently stands, annual license fees are payable into the Provincial Revenue Fund – i.e. to the Western Cape Government – on the basis that a licence is a concession granted by the Western Cape Government. This has been the case since the inception of the Act. The collection of new license application fees and annual investigation fees has always been payable to the Board, given that it is the Board that is responsible for processing new license applications and conducting annual investigations, thus incurring administrative costs. Indeed, this is why the annual investigation fees payable by Tsogo, for example, are calculated with reference to the number of its gaming tables and slot machines.
 8. The proposed amendment entirely subverts this statutory scheme. The Bill proposes to make the annual licence fees in respect of various categories of licensees payable to the Board and not the Western Cape Government. In this regard, the annual licence fees payable for the previous financial year are set out in the table below:



Kinds of licences	Annual licence fee
	R
Casino operator licence	228 021,00
Limited gambling machine operator licence	114 016,00
Limited gambling machine premises licence	1 137,00
Bingo licence	4 561,00
Bingo premises licence	1 137,00
Junket agent licence	463,00
Manufacturer licence	4 561,00
Distributor licence	4 561,00
Totalisator operator licence	4 561,00
Totalisator premises licence	463,00
Bookmaker licence	2 286,00
Bookmaker premises licence	463,00
Key employee licence	123,00
Gambling employee licence	123,00



9. The calculations below are based on the fees as it stood in the previous financial year. The current fees applicable to the current financial year are as published in the Western Cape Provincial Gazette on 26 March 2019, which are substantially more than the previous years' fees.
10. As matters stand, there are five licensed casinos operating within the Board's jurisdiction, and the Board therefore stood to receive an additional R1,140,105 in revenue from annual licence fees.
11. There are currently two route operator licensees (one of which is Vukani), and the Board would accordingly have received a further R228,032 in revenue in annual licence fees.
12. The Board's 2017/2018 Annual Report reflects that in the relevant period there were 413 licensed LPM sites (there may be more now) from which the Board would have received an additional sum of at least approximately R470,000 in annual licence fees.
13. There are 13 licensed manufacturers (as per the Board's website), meaning that it stood to receive a further approximately R60,000, and 46 licensed bookmakers, translating to an additional approximately R105,000 per annum in additional licence fees.
14. It is estimated that the tote operator annual licence fee will raise an additional approximately R4,561 for the Board. In this regard, there are numerous bookmaker and tote premises licences in the Western Cape. In the Board's 2017/2018 Annual Report it is stated that for the relevant period there were 153 bookmaker premises, (equating to an additional approximately R70,000 in revenue), and 56 tote premises (equating to an additional approximately R26,000 in revenue).
15. In other words, on a conservative estimate of annual licence fees alone, the Board's revenue is set to increase by approximately R2,450,000 per annum as a consequence of the proposed amendment to section 44(3) of the Act. This excludes annual licence fees payable in respect of "key employees" and "gambling employees" in all industry sectors, which is likely to be a substantial number.
16. In addition to revenue raised from annual licence fees, the Bill proposes that the Board will also in future raise revenue from "operator fees", which are significant



annual fees payable by casinos and route operators set in the proposed amendments to Schedule II to the Act.

17. Tsogo estimates that if the proposed LPM operator fees and casino operator fees are implemented as per the Bill, the Board will generate at least: (i) an additional approximately R7,800,000 per annum in LPM operator fees (and more than this if route operators exceed 1000 LPMs); and (ii) an additional approximately R18,370,000 per annum in respect of the five casino operator licensees (on the assumption that the annual casino operator fee of R7,150,000 would be payable only in respect of GrandWest, with the remaining four collectively paying R11,220,000).
18. In other words, fees generated from casino and LPM licence holders alone would exceed approximately R26,170,000. When combined with annual licence fees of approximately R2,450,000, this amounts to additional revenue of at least R28,620,000. This is before the annual fee increases which have historically been in the order of 6% per annum.
19. The Board's 2017/2018 Annual Report states that it received approximately R19 million from the Western Cape Government in funding for the relevant period to make up for a shortfall in its revenue collection.
20. In other words, the effect of the Bill is to raise revenue from licensees in an amount that exceeds the Board's revenue shortfall by at least **R9 million per annum.**
21. This is wholly inconsistent with the stated object of the Bill, namely to raise revenue simply to defray expenses and make the Board financially self-sufficient. Put differently, the object of the Bill should clearly not be for the Board to generate profits at the expense of the industry. This would in any event be an irrational and unlawful objective. Taking into account section 20(4) of the Act, the real object of the Bill is to raise revenue for the Provincial Revenue Fund and in addition to that, make the Board profitable by 10% of the revenue received.
22. As mentioned, Tsogo has not been furnished with any information about the Board's budgeted or forecasted expenditure. In order to assess whether the fees proposed in the Bill are rationally connected to the Bill's objects, it would at very least be necessary to have regard to the Board's projected expenditure. However, as explained, based on the Board's expenditure for the 2017/2018,



the Bill is *prima facie* irrational insofar as it proposes to raise revenue far in excess of the Board's requirements.

23. We note further that a significant portion of the revenue to be raised for the Board is attributable to the introduction of LPM and casino operator fees.
24. The basis for the determination of the proposed casino operator fees is the initial value of the casino development, which is the same basis on which exclusivity fees were calculated. We point out that section 44A read with paragraph 3 of Schedule II of the Act calculates exclusivity fees on principally the same basis for a period of ten years. Since exclusivity fees have expired, this proposed casino operator fee clearly introduces a substitute for the "exclusivity fee" under the guise of "casino operator fees". In fact, the proposed "casino operator fee" even goes further than the exclusivity fees in that it proposes the payment thereof for an indefinite period and at a much higher rate than the initial exclusivity fees.
25. It is Tsogo's respectful view that the introduction of the "casino operator fee" is nothing else than the reintroduction of the concept of exclusivity, the latter which cannot be honoured by the Board.
26. The proposed "annual casino operator fee" is a strange model/concept which is not present in other gaming jurisdictions in South Africa, nor is it, as far as we know, present in any other international gaming jurisdiction. The rationality of the proposed fee is questionable specifically when consideration is given to the fact that all licensees currently already pay substantial annual licensing, renewal and application fees, as well as annual investigation fees. Furthermore, we also assume that the Provincial Government pays the Board a collection fee for the gaming taxes that it collects from licensees. It is our strongly held view that the financial sustainability of the Board is already, or should, to a large extent be covered by these fees and/or a collection fee earned on gambling taxes. In this regard we wish to highlight the combined gaming taxes and fees paid during the 2019 financial year by the three casinos owned and operated by Tsogo Sun in the Western Cape:

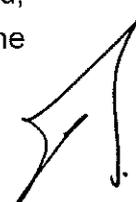
- 26.1. Gaming taxes: R45 165 233
- 26.2. Annual application and investigation fees: R6 146 484
- 26.3. Annual licence renewal fees: R681 652



27. As mentioned above, the annual fees set out in the table above had increased. The 5.1% inflationary increase of the fees have not been countered by similar inflationary adjustments to the taxable revenue amounts in the tax tables in Part B of Schedule III of the Act since the last increase of gambling taxes effected on 1 September 2013. This has resulted in fiscal drag and an effective increase in taxes every year, which places additional financial burdens on casinos.
28. Given the oppressive cumulative effect the "casino operator fee" with the other fees and recent increases in gaming taxes in the Western Cape (as well as the recent increase of VAT by 1% which has to be absorbed by casinos) on existing licensees and the profitability of its operations, Tsogo strongly urges the Provincial Legislature to reconsider the introduction of the proposed casino operator fee.
29. Moreover, there appears to be no rational basis for the fact that route operators and casino operators have been singled out under the Amendment Bill to shoulder the bulk of the revenue to be raised for the Board. Insofar as the Amendment Bill purports to raise revenue for the Board as an industry regulator, it is arbitrary and irrational that fees are levied against route and casino operators and no other categories of licensees. In this regard, the proposed casino operator fees are very substantial and, when combined with the various annual and investigation fees and gaming taxes levied under the Act, place significant and unwarranted financial constraints on Tsogo in an extremely challenging economic climate.
30. What is furthermore concerning to Tsogo is that the new structure proposed in the Amendment Bill negates the ability of the Board to act in an impartial manner when assessing applications by casino operators and route operators which will directly result in an increase of revenue to the Board. This may incentivize the Board to act in a manner that would result in an increase in the Board's own revenue stream, rather than in an impartial manner as it is supposed to do.

Conclusion

31. Tsogo submits that, on the information presently available, there is no basis for the introduction of the casino operator fees proposed in the Amendment Bill – both because the fees were intended only to operate for the exclusivity period, and because the proposed fees are *prima facie* not rationally connected to the objective of making the Board financially self-sufficient.

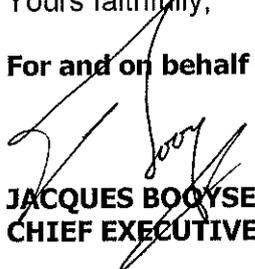


32. Moreover, the Amendment Bill is arbitrary and irrational in that it purports to make route operators and casino operators liable for the payment of fees to sustain the Board for the regulation of the entire gaming industry.
33. Finally, viewed overall, it is apparent that the true intention is the introduction of a money Bill, and effect must be given to the form not the substance of the Amendment Bill, by following the correct statutory procedures provided for the introduction of a money Bill.

For the aforementioned reasons, Tsogo objects to the amendments set out in the Amendment Bill. As mentioned above, Tsogo's rights to supplement these submissions upon receipt of further information remains reserved.

Yours faithfully,

For and on behalf of Tsogo Sun Holdings Limited



**JACQUES BOOYSEN
CHIEF EXECUTIVE OFFICER**

20 May 2019

Mr M Sassman
 Western Cape Provincial Parliament
 Cape Town

Cell: 083 629 5721
 e-mail: jan.delange@tsogosun.com

Per e-mail: msassman@wcpp.gov.za

Dear Sir

Proposed casino operator fees in terms of the Western Cape Nineteenth Gambling and Racing Amendment Bill

1. This letter is written on behalf of Caledon Casino, Garden Route Casino and Mykonos Casino, which are licensed casino operators in the Western Cape and are owned by Tsogo Sun Holdings Limited ('Tsogo Sun'). Please note that Tsogo Sun also has a financial interest of 20% in both SunWest International (Pty) Ltd and Worcester Casino (Pty) Ltd, trading as Grandwest Casino and Golden Valley Casino, the other two licensed casinos in the Western Cape. Tsogo Sun therefore has a material interest in the casino industry in the Western Cape.
2. We refer to the Western Cape Provincial Gazette Nr. 8088 of 2 May 2019, in which the abovementioned Bill was published inviting interested parties to submit comments thereon by 31 May 2019.
3. The Bill, inter alia, provides for the introduction of "*casino operator fees*" which shall be payable to the Western Cape Gambling and Racing Board ('the Board').
4. The memorandum to the Bill states that "*operator fees*" are primarily proposed to be levied in order to "*promote and facilitate the financial self-sufficiency of the Board*". In other words, casino operators (and route operators) are required to fund the Board's activities.
5. We are not in a position to make meaningful comments in relation to the Bill without access to important information and documentation. In this regard, we would appreciate if you and/or the Provincial Department concerned provide us with the following information, and where applicable, documentation:
 - 5.1. Firstly, has it been decided that the Board will in future be funded solely by fees payable by licensees? If not, what proportion of its funding will come from the Western Cape Government? If yes, why is this considered to be a good model and would it not undercut the independency of the Board as the provincial regulator of gambling?

Tsogo Sun Holdings Limited (Registration number 1989/002108/06)
 Palazzo Towers East, Montecasino Boulevard, Fourways, 2055 Private Bag X200, Bryanston, South Africa, 2021
 Tel: +27 (0)11 510 7800 Fax: +27 (0)11 510 7245 Web: tsogosun.com

Directors: JA Copelyn (Chairman)* J Booysen (Chief Executive Officer) RB Huddy (Chief Financial Officer)
 MSI Gani* MJA Golding* BA Mabuza (Lead Independent)* VE Mphande* JG Ngcobo* Y Shaik*
 (*Non-Executive Director *Independent Director)
 Company Secretary: GD Tyrrell



- 5.2. Second, for purposes of proposing the amounts in the Bill, has the Board and/or the Provincial Department concerned furnished your offices with a forecast of its budgeted expenditure for the coming financial year?
 - 5.3. If so, we would be grateful to receive a copy to better understand how the operator fees were determined.
 - 5.4. Third, why have other categories of licensees been excluded from having to pay operator fees if the purpose of these fees is to fund the Board's operations?
 - 5.5. Fourth, has the Board in determining the proposed fees, considered the annual fees payable to the Board by licensees, i.e. annual renewal fees, licence renewal application fees, annual investigation fees and collection fees earned on gambling taxes?
 - 5.6. Finally, the proposed "annual casino operator fee" is a strange model/concept which, as far as we are aware, does not exist in other gaming jurisdictions in South Africa or internationally. Why is this model/concept introduced in the Western Cape and are there any other jurisdictions where a similar fee exists?
6. Kindly furnish us with the above information as soon as reasonably possible. As noted, we require this information to make meaningful submissions on the Bill.
 7. Finally, we request a short extension of the time period for furnishing submissions. We ask that you afford us a period of at least three weeks from the date on which we are furnished with the above information.

Yours sincerely

For and on behalf of Tsogo Sun Holdings Limited



JAN DE LANGE
NATIONAL GAMING COMPLIANCE MANAGER

Cc ClaireHorton@westerncape.gov.za

CASA

Casino Association of South Africa

23 April 2020

The Chief Executive Officer
Western Cape Gambling and Racing Board
Via e-mail

Dear Mr Abrahams

COVID-19 PANDEMIC

I write to you on behalf of the casino licensees in your Province, who are members of CASA.

We are deeply concerned regarding the impact of the Covid-19 pandemic ("Pandemic"), the raft of restrictive Regulations issued by Government pertaining to gatherings and the sale of liquor, social distancing measures and implications and the resultant lockdown, on the industry. As you will undoubtedly be aware, the Pandemic and resultant lockdown has placed the industry in an extremely vulnerable position, with no revenues until at least the end of April 2020, that is provided the lockdown is lifted on 30 April 2020. We further believe that even after the total lockdown has been lifted, our industry will continue to operate under severe restrictions for some time to come, with a concomitant impact on our ability to generate gaming revenues.

During this period, the spirit of Ubuntu has been widely adopted and practised across all industries and communities alike, in accordance with the true intention of what our Constitution envisaged and that is that we all largely depend on each other for our successes and failures no matter what the circumstances. Accordingly, it is in this spirit that we address this communication to you as we are ever cognisant of the mutually symbiotic relationship between casinos and regulators.

In a similar approach, casino operators have undertaken to adopt various measures to enforce social distancing practices within their operations should they be permitted to operate from 1 May 2020 including but not limited to the following:

1. Implement strict access control protocols:
 - a. Only holders of loyalty cards will be permitted onto the casino floor to allow for traceability of visitors. This will assist in identifying at which machines or tables an individual has played and who may have been in contact with such person.
2. Implementation of various social distancing measures, including but not limited to:
 - a. Removal of chairs from every second slot machine and turning off/locking every second machine
 - b. Limitation of seating at tables games to ensure adequate social distancing

As such and in order to survive these much needed but stringent measures implemented by government to stem the spread of Covid-19 and more importantly, to protect and preserve as many jobs as possible, the industry is requesting your urgent assistance, as our Regulator.

Set out below is a list of measures which we as an industry propose you as our Regulator consider adopting and implementing in order to assist the industry through these difficult and challenging times:

1. Gaming taxes/levies should be reduced by 50% (and VAT zero rated, for which we request the Board's support at a national level) for a period of twelve months or longer, should the pandemic persist.
2. A 50% reduction in the quantum of our required bank guarantees for gaming taxes/levies. This will assist in curtailing costs during this period .
3. A 50% credit on the current year's licence fees, to be applied towards the amount due for licence fees in the following year.
4. Given the disastrous impact of the Pandemic and restrictive measures implemented by Government, we propose that that a moratorium be placed on the issue of new RFP's and the award of new gaming licences for a period of three years from when the lockdown is ended. This will provide an environment for current operators to renew their operations with limited impact on jobs. Any new licences awarded during this period will only further exacerbate the situation and place further strain on the current operators, inevitably leading to their demise over the medium to long term.
5. Place a limitation on the number of internal audits required to two for the current year (where applicable), in an effort to contain costs.
6. Recognise that the inability of the current licensees to generate sufficient, or even any, revenues will have a significant negative impact on their ability to comply with their licence conditions. The individual casinos will approach you directly in such cases to make the necessary arrangements.
7. Without derogating from the generality of the foregoing, the licensees may also require certain dispensations in respect of regulatory requirements, in which case, again, the individual licensees will approach you directly for such dispensations.
8. It is generally known and common cause that the industry has been in dispute with various provincial gaming boards around the, in our considered and humble view, unlawful proliferation of online casino games which has come at great cost to the casino industry as a whole. The provincial support in recognising and respecting the boundaries around which each segment of the gaming market operate would be most helpful and appreciated.
9. Finally, there are various regulatory issues pending which may have a further detrimental effect on the industry, at a time when it can least afford it. In this regard, we humbly request your support in fending off these issues, such as a national CEMS for casinos and a possible total ban on smoking in casinos. Further to this, the rampant operation of illegal casinos in the country not only deprives government of its due taxes, but also denies the industry the opportunity to preserve and create further sustainable employment in the country. We urge you to support any and all initiatives to mobilise a task team in this regard.

We understand and appreciate that certain of these measures require the input and/or action by the Provincial MEC's, and request that you brief them on these matters to assist us. We will in any event, prepare similar correspondence addressed to the Department of Trade and Industry.

We trust that working together on these proposals as never before, we will be able to overcome these devastating challenges and continue to be an industry that will make significant contributions to the Provincial economy.

Thanking you in anticipation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Booyesen', written over the 'Yours sincerely' text.

JACQUES BOOYSEN
CONSULTANT TO CASA