

Zonke Monitoring Systems (Pty) Ltd

ZMS SUBMISSION PUBLIC HEARINGS ON THE REVIEW OF THE NATIONAL GAMBLING LEGISLATION

Revision Number: 1.0

Draft ☐/Final ☒ as of: **30 Oct 2009**

Printed on: **30 Oct 2009**

Document Owner: **Maketse Hosea Malope (CEO)**

Zonke Monitoring Systems (Pty) Ltd

Private Bag X10016

Sandton, 2146

hoseam@zonkems.co.za

+27 11 880 1000

ZONKE



Approvals

This document requires the following approvals. Signed approval forms are filed by the Document Controller.




| | |
|--|---|
| Document drafted by: | Document reviewed by: |
|  Nivesh Maharaj Legal and Compliance Manager/ ZMS |  Woutrina Cloete Chief Financial Officer/ ZMS |
| 30.10.2009 | 30.10.2009 |
| Document authorised by: | Notes |
|  Maketse Hosea Malope Chief Executive Officer / ZMS | |
| 30.10.2009 | |

Table of Contents

| | |
|--|---|
| 1. PURPOSE | 1 |
| 2. BACKGROUND ON ZONKE MONITORING SYSTEMS (PTY) LTD (ZMS)..... | 1 |
| 3. <i>AD</i> THE SOCIO-ECONOMIC IMPACT OF LEGALISED GAMBLING..... | 1 |
| 4. <i>AD</i> THE EFFECTIVENESS OF THE CURRENT REGULATORY ENVIRONMENT WITH REGARD TO GAMBLING | 2 |
| 5. WAY FORWARD | 6 |
| 6. CONCLUSION | 6 |

1. PURPOSE

To submit to the Honourable Republic of South Africa- Parliament (Portfolio Committee of Trade and Industry, National Assembly) on a call for the Public, Organisations and Stakeholders to submit written comments.

2. BACKGROUND ON ZONKE MONITORING SYSTEMS (PTY) LTD (ZMS)

Zonke Monitoring Systems Pty Ltd (*hereinafter referred to as ZMS*) is the current National Central Electronic Monitoring System Operator, monitoring the Limited Pay-out Machine (LPM) Industry as per Section 27 of the National Gambling Act, Act No.7 of 2004 (the Act) and Regulations thereto.

3. AD THE SOCIO-ECONOMIC IMPACT OF LEGALISED GAMBLING

Whilst it is not necessary to detail the achievements herein, but in terms of the Act, it is most pleasing to note that the National Responsible Gambling Programme (NRGP) has been welcomed by society at large. By inclusion of a toll-free number for this programme, coupled with various sections of the Act i.e. **Section 13:** Restrictions on granting credit to gamblers, **Section 14:** Excluded Persons (applying to a competent court to exclude persons etc), **Section 15:** Restrictions on advertising and promotion of gambling activities and granting discount and **Section 16:** Enforceability of gambling debts and forfeiture of unlawful winnings, this augurs well to curb the appetite for excessive gambling. The Act certainly caters for gambling and the Public Interest in allowing gambling in the Republic.

From a stakeholder perspective, licensing and probity of juristic and natural persons are welcomed, hence gambling is a highly regulated industry. The fiscal revenue for government is very important. It often leads one to focus on the moot point; should legalised gambling be allowed versus the illegal gambling, (which for many years corrupted society).The former, being highly regulated, without a shadow of a doubt prevails.

This is also confirmed with the NGB establishing and maintaining the National Central Electronic Monitoring System; in that every limited-payout machine that is made available for play must be linked to the national central electronic monitoring system and the licensee of that limited-payout machine must pay the prescribed monitoring fees. Further provincial gambling boards have access to all data in the system for its respective province. The detecting and monitoring of significant events associated with limited-payout machines and analysing and reporting of data is welcomed and illustrates responsible regulation.

Further it is submitted that ZMS, as a world class-monitoring company, is always at the forefront of looking at the latest technology advancements. To this end it is respectfully submitted that technology with regards to "excluded persons" and restrictions on same ought to be identified, researched and implemented as per amends of the National Legislation.

We advise, that essentially technology utilised in other countries such as Facial Recognition Software, which enables surveillance and security personnel to efficiently search existing databases to help identify suspected patrons quickly, before potential losses take place, or excluded patrons are allowed to gamble. Further, Surveillance Information Network (S.I.N.) enables the sharing (sending and receiving) of real-time information and alert notifications. ZMS invites the Committee to consult us and other stakeholders in the industry on the advancements and findings of ensuring responsible gambling in various other international jurisdictions as well as products on offer to accommodate this.

4. AD THE EFFECTIVENESS OF THE CURRENT REGULATORY ENVIRONMENT WITH REGARD TO GAMBLING

We specifically refer herein to the fact that National Legislation is subject to conflicting Provincial legislation, be it in the Gambling Legislation or various Municipal By-Laws etc.

When the roll-out of LPM's was first mooted, these machines were seen as a way to provide opportunities in the gambling industry for small businesses and especially the historically disadvantaged.

The roll out of LPM's should also be seen in the context of the Liquor Act, 2003 (Act No. 59 of 2003) and provincial legislation based on it, which had the intention of legalising the many unlicensed taverns in the country.

The mechanism of utilising route operators to provide funding for this industry and requiring a single national monitoring system meant that small players could enter the industry with little up-front capital contribution. The machines would in turn provide additional income to licensed taverns and allow entrepreneurs to upgrade their premises and provide them with additional income. The stakes and payouts were also limited in order to ensure that, for members of the public, playing on LPM's was a recreational rather than a money making activity.

Unfortunately a number of factors have slowed the roll-out of machines to sites operated by previously disadvantaged taverners. In addition, the introduction of interactive gambling can be expected to have a negative effect on the LPM industry and it is indeed unfortunate that it was seen fit to roll out this industry, which will again benefit the big players with large amounts of money to invest, before the hurdles affecting the LPM industry have been removed.

Where some provinces have acted positively and introduced regulations requiring that a minimum percentage of LPM's are on sites, situated in areas operated by businesses controlled by historically disadvantaged persons, the inability of such persons to obtain LPM licenses as a result of the factors set out below has affected the entire roll-out process, and has a negative affect on the Route Operator proposed roll-out plan.

The main hurdles affecting the LPM industry, which will be set out more fully hereunder, are the following:

- (a) Zoning;

- (b) The Businesses Act, 1991 (Act No. 71 of 1991) ("the Businesses Act"); and
- (c) Liquor licenses.

ZONING

Section 56(a)(ii) of the National Gambling Act, 2004 (Act No. 7 of 2004) ("effectively provides that a LPM site may not be licensed unless it is appropriately zoned. This section reads:

"A licensing authority—

(a) must refuse to issue a licence if the licensing authority considers that—

...

(ii) the use of the proposed premises for the proposed activity would be contrary to existing zoning laws or rights;"

This provision has a serious effect on the roll-out of limited gambling machines to sites in former black areas such as those which formally fell under Proclamation R293 of 1962.

Many of these areas have never been zoned and consequently municipalities are refusing to deem these to be appropriately zoned. Many taverns such as those in most of Mdantsane in the Eastern Cape thus cannot receive limited pay-out gambling machines because there is no zoning. Notwithstanding that, the premises concerned have been operated as taverns for many years and government policy on liquor licensing suggests such premises should be licensed.

In addition to this, many taverns are operated from residential areas and municipalities seem reluctant to allow those premises to continue to be used for business, notwithstanding their business use for many years.

In addition to the above, even where the municipality may consider a zoning departure, the process for this is long and costly, with no certainty of success.

POSSIBLE SOLUTION TO ZONING ISSUE

It is suggested that the absolute prohibition on the issue of LPM site licenses to businesses which are not appropriately zoned be uplifted and that the provincial gambling board rather take into account the comments of the local authority in this regard. In addition, any tavern which has been operating for longer than 10 years should be eligible for a licence even if the premises are not appropriately zoned.

One way to achieve this would be to pass the following amendment to section 56 of the National Gambling Act as follows:

"The following section is hereby substituted for section 56 of the principal Act:

"Licence requirements, acquisitions and transfers

56 (1). Subject to subsection (2), [A] a licensing authority—

(a) must refuse to issue a licence if the licensing authority considers that—

(i) the proposed activity would be inconsistent with this Act or applicable provincial law; or

(ii) the use of the proposed premises for the proposed activity would be contrary to existing zoning laws or rights; and

(b) may refuse to issue a licence if the provincial licensing authority considers that the proposed site—

(i) is an unsuitable location for the proposed activity, having regard to this Act and applicable provincial law; or

(ii) does not satisfy the requirements in terms of section 17.

(2) Notwithstanding the provisions of subsection (1)(a)(ii), a provincial licensing authority may issue a licence in respect of the operation of a maximum of 5 limited payout machines to a site which does not meet zoning requirements where-

(a) the comments of the local authority concerned have been considered;

(b) the site has been used as a tavern or continuously in the 10 years preceding the date of application for the licence; and

(c) in terms of discriminatory legislation which existed prior to 1994, the area in which the premises are located was designated for the use of black people, indian people or coloured people.

THE BUSINESSES ACT

The difficulty with this Act, the administration of which has been assigned to the provinces in terms of the Interim Constitution, is that it requires that all premises on which three or more coin operated machines are operated, must obtain a business licence from the local authority in terms of the Act. This requirement is stipulated in Item 2(d) of Schedule 1 of the Businesses Act.

The problem here is that this involves duplication as the LPM site, still needs a gambling licence issued by the provincial gambling board.

More importantly, several local authorities have no capacity to issue such licenses, while some local authorities approached were not even aware of the existence of the Businesses Act.

Where Gambling Boards have insisted on business licenses, the roll-out of LPM's has been slowed or even stopped as a result of operators being unable to obtain such business licenses, either speedily, or, in some cases, at all, because of lack of capacity at a municipal level.

This aspect again has the greatest impact in smaller municipalities and especially in less developed areas such as the former Transkei areas of the Eastern Cape, where the majority of taverners are most likely to be historically disadvantaged.

PROPOSED SOLUTION TO THE ISSUE OF THE BUSINESSES ACT

It is recommended that the Businesses Act be amended, to exclude gambling electronic equipment. It is indeed too cumbersome for stakeholders to be licensed by the Gambling Board as well as comply with this Act. It must be born in mind that this Act was promulgated, before the various National and Provincial Gambling Legislation.

One difficulty with this Act is its assignment to the various provinces. This would suggest that, instead of the issue being resolved by amending the Act in Parliament, each province needs to amend its assigned version of the Businesses Act and that Parliament has no power to make such amendment (the decision of the Constitutional Court in Western Cape Provincial Government and Others: In Re DVB Housing (Pty) Ltd v North West Provincial government and Another 2001(1) SA 500 (CC) at 512-513. Useful guidance in this regard is also given by the South African Law Reform Commission in its Project 25: Report on the Repeal of the Black Administration Act 38 of 1927).

The above issue is further illustrated by the situation in Mpumalanga, which repealed the assigned Businesses Act and enacted the Mpumalanga Businesses Act, 1996 (Act No. 2 of 1996). The provisions of this Act are almost identical to those of the Businesses Act in requiring premises operating three or more coin operated machines to hold a business licence.

In the case of the Businesses Act and similar legislation simplification could be achieved using the mechanism of the MinMEC or National Gambling Policy Council and for this body to recommend to MEC's to pass the appropriate amendments.

LIQUOR LICENSES

In some provinces legislation or Gambling Board requests for proposals require businesses operating limited gambling machines to have liquor licenses.

Again, capacity problems and with respect inefficiencies regarding liquor licensing have resulted in many existing taverns either being unlicensed or temporarily authorised to operate pending the decision on their applications. Further many owners purchase businesses from previous owners and do not have their names on the licence, hence proper citation is not met. Their application for transfer to their name is often delayed. Where permanent licenses have been insisted on, this has again delayed the roll-out of LPM's, and, as with the two above issues, this problem particularly affects businesses in areas which were allocated to black persons during apartheid, wherein taverns are operated by the historically disadvantaged, and no licence existed.

Whilst the provincial legislation or gambling boards requests the permanent liquor licences, taverns operate their primary business with a temporary licence, wherein a permanent

liquor licence is still to be processed and finalised. These results in a prolonged wait and the secondary business of limited payout machine will suffer tremendously.

With specific reference to legislation in the Eastern Cape jurisdiction, where the principal business of a potential site is of such a nature that it requires a liquor registration completed in the Eastern Cape Liquor Act, 2003 (Act No. 10 of 2003) or the National Liquor Act, 2003 (Act No. 59 of 2003), the Board will not award a site licence to the applicant concerned unless it has lawfully obtained a relevant permanent liquor registration, as no site licence will be issued to a person or enterprise who or which only holds a temporary registration contemplated in section 71 (6), (7) and (8) of the Eastern Cape Liquor Act, 2003. In addition to this, licences held in the name of the business and transferred at the sale of the business, is not allowed as it is not in the name of the natural person.

PROPOSED SOLUTION TO THE LIQUOR LICENCE ISSUE.

It is suggested that this issue be considered by the Committee, the National Gambling Policy Council and that, where necessary, provinces or provincial gambling boards amend their regulations or requests for proposals to allow limited payout machine site licences to be issued to applicants operating taverns (primary business) who can prove that they have submitted an application for a liquor licence. Any such licenses could be made subject to conditions that the licence will terminate should the liquor licence application prove unsuccessful. It is important to note that this provision mostly appears to affect taverners. Provinces issuing limited payout gaming machine licenses presently do issue limited payout gambling machine licenses to businesses such as bookmakers, who generally do not hold liquor licence.

5. WAY FORWARD

We advise that the Committee must advise other regulatory authorities to comply with various legislation. It is interesting to note that many stakeholders have not complied with the Businesses Act, as other regulatory authorities have not requested them to do so. Further, to date we have learnt that the process of a liquor licence can take from 3 (three) months up to 2 (two) years. The Liquor Boards, need to fast track the process of liquor licence registration, as many PDI businesses are cannot enjoy the benefit of the LPM Industry.

The Gambling Boards should be commended for ensuring compliance to all applicable legislation; however other regulators need to also ensure such compliance. This will certainly augur well for circumventing delays.

6. CONCLUSION

ZMS thanks the Committee and trusts these proposals shall be received with a favourable response. Please do not hesitate to contact ZMS should there be any queries, with regards to our comment herein.

END OF DOCUMENT