



## **GUIDELINES FOR LODGING OBJECTIONS TO APPLICATIONS ADVERTISED IN THE MEDIA**

### **1. PURPOSE**

- 1.1 The purpose of these guidelines is to educate the public and interested parties about the procedural requirements applicable when lodging objections and to outline the Board's regulatory competency to adjudicate duly lodged objections.
- 1.2 The Board considered it prudent to adopt these guidelines to educate the public on the procedural elements for lodging objections and to make the adjudication process known to all interested parties.

### **2. APPLICATION**

These guidelines apply in respect of objections to applications that have been duly advertised pursuant to Section 33 of the Western Cape Gambling and Racing Act, 1996, (hereinafter referred to as "the Act") read with Regulation 33 of the Regulations passed in terms of the Act.

### **3. INTRODUCTION**

- 3.1 The Board is charged with the licensing and regulation of the gambling industry in the Province of the Western Cape. The Board's mandate to perform this role is derived from both provincial and national legislation.
- 3.2 As part of this mandate, the Board gives effect to a number of statutory processes that requires public participation.
- 3.3 These guidelines outline the procedural requirements applicable where the public wishes to lodge comments and/ or objections to an application, pursuant to an advertisement duly advertised in accordance with the legislative requirements.
- 3.4 The Chief Executive Officer requires Applicants to advertise applications in the following media publications:
  - Government Gazette
  - An English publication

- An Afrikaans publication, and
- A local publication in the area where the intended licensed gambling activity will be situated.

3.5 Hard copies of the application details as advertisement are also placed at the entrance to the premises being applied for as well as public facilities, such as libraries and local community halls as determined by the Board on a case by case basis.

3.6 The advertisement calls on members of the public and interested parties to lodge comments and objections within 21 days from the date of the advertisement.

3.7 Section 35 of the Act permits the Board to give special consideration to certain factors or institutions in the surrounding environment considered vulnerable to the effects of gambling. Objections or comments from such institutions are considered in a more serious light and we also outline procedural elements that apply when these institutions lodge objections or comments below.

3.8 The applicable legislative provisions are set out below. There are national Regulations that applies to Limited Payout Machines (LPMs), in addition to the provisions set out below. This document however constitutes procedural guidelines for all categories of licences that is subject to the comment and objections procedure. Those provisions have therefore been taken into account in the compilation of this document.

#### **4. LEGISLATIVE FRAMEWORK**

4.1 The applicable legislative provisions have been reproduced below:

##### **4.1.1 SECTIONS 32, 33 AND 35 OF THE ACT:**

###### ***32. Licence applications***

*(2) Upon receipt of any valid application for the grant of a licence other than a junket agent licence, a key employee licence or a gambling employee licence, the Chief Executive Officer shall-*

*(a) cause a notice of the application to be published in the Provincial Gazette and such other printed media as he or she may deem appropriate; provided that this requirement may be dispensed with where applications for premises licences have been received in respect of-*

*(i) premises to which the general public will not have physical access for the purpose of gambling or betting, or*

*(ii) premises already utilised for gambling or betting under the authority of a licence issued by the Board, and*

*(b) where applicable transmit, subject to section 17, the relevant information necessary to comment on an application to the prescribed interested parties and such other interested parties as he or she may deem appropriate or who may request such information, including the local government in whose area of jurisdiction the establishment to which the application relates is to be situated.*

*(3) The Applicant shall be liable for and pay to the Chief Executive Officer any reasonable costs incurred in connection with the publication and transmission of any notice contemplated by subsection (2).*

### **33. Objections and comments**

*(1) Any body which or person who wishes to object to or comment on any application made for a licence under this Act may do so by giving written notice thereof to the Board and setting out the grounds of the objection or comment in the prescribed manner.*

*(2) The Board may-*

*(a) at any time on good cause condone non-compliance with the requirements of subsection (1), and*

*(b) of its own motion take cognisance of any matter or thing which in its opinion could render the grant of a licence undesirable.*

### **35. Consideration of licence applications**

*(1) All applications for licences shall be considered and disposed of in the manner and according to the procedures determined by the Board.*

*(3) The Board shall not approve an application for any licence referred to in section 27(a), (b), (c), (d), (i) (j) or (k)-*

*(a) unless it is satisfied that-*

*(i) the funding of the business for which the licence is required is provided by a reputable person, body or institution;*

*(ii) the premises in question are or will on completion be suitable for the purpose for which they will be used under the licence;*

*(iii) the development is not undesirable within the specific geographical environment, with reference to social, religious, educational, cultural, economic, environmental, transport and land-use aspects;*

*(iv) the Applicant has, in the relevant application form submitted to the Board, made full and frank disclosure of all matters prescribed or determined by the Board and the relevant information in respect of the application was made available for public scrutiny;*

*(v) the grant of the licence is not against the public interest and in accordance with the policy and objectives of this Act, and*

*(vi) the Applicant qualifies in terms of section 29 and is not disqualified in terms of section 30, and*

*(b) if in the Board's opinion the possibility exists that the grant of the application may cause a monopolistic situation to arise or be aggravated.*

*(4) After consideration of an application and, if applicable, any objections thereto or any hearing, investigation or enquiry in connection therewith, the Board may-*

*(a) refuse an application;*

*(b) grant an application, or*

*(c) postpone the consideration of an application, subject to any terms and conditions it may see fit.*

## **4.1.2 REGULATIONS 8, 9 AND 10 OF THE REGULATIONS PASSED IN TERMS OF THE ACT:**

### **8. Advertising of application**

*Upon receipt of a valid application for the grant of a licence specified in section 32(2) of the Law, the Chief Executive Officer shall publish for objections or comment in the Provincial Gazette and any other printed media he or she considers appropriate, the following information:*

*(a) the name of the Applicant;*

*(b) if the Applicant is a company or other corporate body, the names of all persons who have a financial or other interest of five per cent or more in the Applicant;*

*(c) the type of licence applied for;*

*(d) the address and the premises from which the Applicant intends to operate;*

*(e) the address where objections to or comment on the application may be submitted;*

*(f) the closing date for the submission of such objections or comment to the Board, which date shall not be less than twenty-one days from the date of publication, and*

*(g) the address where the applications may be inspected and where the comments or objections should be delivered or mailed to.*

**9. Transmission of information to interested parties and public inspection**

*(1) Upon receipt of a valid application for a licence other than a licence referred to in section 27(e), (l) and (m), the Chief Executive Officer shall transmit to the relevant local authority a copy of the advertisement in terms of regulation 8 and any information pertaining to the application which in his or her opinion will enable the local authority to consider and comment upon the application.*

*(2) In the case of a development application, the advertisement and information referred to in subregulation (1) shall also be transmitted to –*

- (a) the provincial department responsible for housing, local government and planning;*
- (b) the provincial department responsible for transport, and*
- (c) the provincial department responsible for environmental affairs.*

*(3) The Chief Executive Officer shall not transmit any information in terms of subregulations (1) and (2) which in his or her opinion is confidential or irrelevant for purposes of comment.*

*4) All applications shall, subject to sub regulation (3), be open for inspection by interested persons at the Board's offices during normal office hours for a period of twenty-one days from the date of publication of the notice contemplated in section 32 of the Law.*

**10. Objections and comment**

*(1) Any person wishing to object to or comment on an application submitted to the Board shall do so in writing within twenty-one days of publication of the notice referred to in regulation 8 or a further period determined by the Board and shall specify in writing –*

- (a) the application to which the objection relates;*
- (b) in the case of an objection, the grounds on which the objection is founded;*
- (c) in the case of comment, full particulars and facts to substantiate the comment, and*
- (d) the name, address and telephone number of the person submitting the objection or offering the comment.*

*(2) On receipt of an objection to or adverse comment on an application, the Board shall submit the objection or adverse comment to the Applicant, who may reply to it in writing within twenty-one days after having received it or within a further period determined by the Board*

**5. OBJECTIONS BY PLACES OF WORSHIP AND EDUCATIONAL INSTITUTIONS**

- 5.1 Section 35 of the Act requires the Board to have special regard to inter alia the social, religious, educational and land use aspects of the surrounding geographical environment to determine the desirability of licensing the specific activity / premises applied for.
- 5.2 For purposes of these guidelines, a place of worship shall bear the following meaning: It is an establishment or location where a group of people (congregants) gather to perform acts of religious study, honour or devotion. It includes a church, mosque, synagogue or any other place of worship in the wide sense.
- 5.3 An educational facility shall in this context encompass all educational institutions recognised in South Africa, including, but not limited to preschool, primary, secondary, tertiary and vocational educational facilities, to the extent that any of the institution's learners are minors (below the age of 18 years), irrespective whether it is private or public facilities.
- 5.4 The Board require Applicants to obtain written comments/inputs from places of worship and all educational institutions (henceforth jointly referred to as "these institutions") situated within 100m radius (Erf boundary to Erf boundary) from the proposed premises being applied for the conduct or operation of a gambling activity.

- 5.5 The comments from these institutions must be submitted as part of the application process. An application is considered incomplete in the event of non-compliance.
- 5.6 The Board's auditors conduct site inspections as part of the application process to verify whether Applicants complied with this requirement.
- 5.7 Where a place of worship or educational institution elects not to submit any comment or objection, the Applicant must submit written proof of having served a written notification of the intended application to the WCGRB, in the form of a written acknowledgement, preferably on the institution's official letterhead.
- 5.8 In the event of no response received from these institutions within a period of 30 days from the date of receipt of the Applicant's notification that it intends to apply to the Board for the requisite licence, the Board deems such institution as not having any objection to the proposed gambling activity.
- 5.9 It is important for potential objectors from the institutions mentioned in this category to note the following:
- 5.9.1 The Board is required to balance the constitutional rights of these institutions (the rights to freedom of religion, belief and opinion and education) with the constitutional right of Applicants to freedom of trade, occupation and profession.
- 5.9.2 It is important for an institution to fully motivate how and why the conduct of the gambling activity will have a negative impact on the operations of such institution. The Applicant is, in terms of due process, afforded the opportunity to comment or submit evidence to rebut the submission by that institution. It may be prudent to include clear examples of historical events or where scientific, physiological or psychological averments are made, that these be sufficiently linked to affected persons or subjects to enable the Board to make clear inferences.
- 5.9.3 The Board will consider the submissions of both the objector and the Applicant to arrive at a fair and justifiable decision, taking into account all factors placed before it.

## **6. GROUNDS OF OBJECTION**

- 6.1 Gambling is a legalised activity, meaning that both provincial and national legislation provides for the licensing of persons and entities wishing to participate in legalised gambling.
- 6.2 Moral objections from individuals and religious institutions can therefore not be upheld by the Board. An objection that merely states that one is opposed to gambling without much will not be viewed with much favour.
- 6.3 In order to meaningfully participate in the Board's advertising process, interested parties are encouraged to read the Act and learn more about the Board's powers and the matters pursuant to which objections may be lodged. These are outlined in Sections 28, 30, 31 and 35 of the Act.
- 6.4 Examples of what constitute valid grounds for objection include, but are not limited to, (a) whether the Applicant has a criminal history involving dishonesty ; (b) whether the granting

of the licence is undesirable in light of the social, cultural or land-use aspects of the surrounding neighbourhood; (c) whether the Applicant business is going to interfere with a place of worship or educational institution; and (d) whether it gives easy access to under-aged children.

- 6.5 As a general guideline, objections must be premises/site- or person-specific.
- 6.6 Site/ premises specific objections are objections based on the suitability of the location for the proposed gambling activity. Here one would look at the social, geographical and economic factors of the surrounding neighbourhood and also whether the site meets the requisite legal requirements, such as zoning or business licensing. Site/ Premises specific objections would also include contentions of poor management, untoward and/or socially unacceptable behaviour or criminal activities at site level.
- 6.7 Person-specific objections are aimed at the suitability of the Applicant or persons associated with the business for licensing. Here one would look at whether the natural persons meet the requirements of sections 28, 30 and 31 of the Act. Where objections contain allegations of criminal conduct, the SAPS-report of the Applicant will also be verified and where necessary, inputs are sourced from specific police stations where allegations warrant such confirmation(s) or follow-ups.

## **7. PUBLIC HEARINGS**

- 7.1 Public hearings are conducted pursuant to Section 23 of the Act to give the public the opportunity to voice their objections, and to give Applicants the opportunity to respond to those objections.
- 7.2 The Board convenes public hearings where substantive person- or site/ premises specific objections were received. The Board also considers it to be in the public interest to convene a public hearing where an over-whelming number of substantive objections were received from members of the community.
- 7.3 It is important to note that the purpose of convening public hearings is to afford members of the public and any interested parties an opportunity to make verbal submissions to the Board and for the Applicant to interrogate the evidence presented at the public hearing.
- 7.4 The Board determines on a case-by-case basis whether or not a public hearing is warranted, depending on the information submitted during the public participation process.
- 7.5 Public hearings have substantial cost implications for the Applicants and the public and interested parties are encouraged to attend public hearings. It may also provide greater insight into the regulation of the particular gambling activity.

## **8. OUTCOME OF THE BOARD'S DECISION**

8.1 The Office of the Board will convey the outcome of the Board's decision to all parties that submitted comments and/ or objections to a particular application, provided clear contact details have been provided when the comments or objections were lodged.

8.2 The Board is an administrative body and its decisions are final. Interested parties can therefore not engage the Board with a view to changing its decision as it has exercised its office. This is also referred to as the *functus officio doctrine*.