

**POLICY REGARDING THE IMPLEMENTATION OF BROAD-
BASED BLACK ECONOMIC EMPOWERMENT IN THE
GAMBLING AND RACING INDUSTRY
IN THE WESTERN CAPE**

OF

THE WESTERN CAPE GAMBLING AND RACING BOARD

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A. INTRODUCTION

1. This Policy applies to Casino, Route Operator, Bookmaker, Manufacturer and Totalisator licence holders in the Western Cape.
2. Many of the existing gambling and racing licences were issued decades ago in terms of the Western Cape Gambling and Racing Act 4 of 1996 (“**the WCGRA**”). They were issued before the commencement of the Broad-Based Black Economic Empowerment Act 53 of 2003 (“**the B-BBEE Act**”) and the National Gambling Act 7 of 2004 (“**the NGA**”).
3. This raises the question of how broad-based black economic empowerment (“**B-BBEE**”) can be promoted in the gambling industry by way of licence conditions. The difficulty is that, as stated above, many licences were issued and conditions were imposed before the B-BBEE Act and the NGA came into force. Guidance on this issue has been provided by the judgment of the Supreme Court of Appeal (“**SCA**”) in the matter of Tsogo Sun Caledon (Pty) Ltd and Others v Western Cape Gambling and Racing Board and Another (89/2021) [2022] ZASCA 102 (24 June 2022).
4. Against this background, the purpose of this Policy of the Western Cape Gambling and Racing Board (“**the Board**”) is to:
 - 4.1. Set out the B-BBEE-objectives of the Board for the gambling and racing industry in the Western Cape; and

- 4.2. Outline the processes to be undertaken quarterly and annually aimed at meeting those objectives in legally compliant and a procedurally and substantively fair manner.
5. This Policy is not law but is aimed at guiding decision-making by the Board and its delegated authorities.

B. THE LEGAL AND POLICY FRAMEWORK

6. There are three B-BBEE Codes which applies to the gambling and racing industry in South Africa:
 - 6.1. the Tourism B-BBEE Sector Code applies to casinos;
 - 6.2. the ICT B-BBEE Sector Code applies to Manufacturers; and
 - 6.3. the Generic B-BBEE Codes, as amended¹, apply to the remainder of the gambling and racing industry.
7. The status of the B-BBEE Codes is set out in the B-BBEE Act: Section 10(1) of the B-BBEE Act provides that *“Every organ of state and public entity must apply any relevant code of good practice issued in terms of this Act in determining qualification criteria for the issuing of licences, concessions or other authorisations in respect of economic activity in terms of any law”*.

¹ Codes of Good Practice on Broad-Based Black Economic Empowerment, 2013 GenN 1019 of 2013 published in GG 36928 of 11 October 2013.

8. Section 10 of the BEE Act imposes a binding obligation on organs of state and public entities to apply the Codes in determining qualification criteria inter alia for issuing licenses. An exemption is necessary if an organ of state or public entity does not wish to apply the Codes.
9. The Board intends to apply this Policy together with the applicable Code when determining the qualification criteria for the evaluation of applications for new licences, as well as the renewal of licences.
10. As stated above, some of the licences issued under the WCGRA preceded the BEE Act and section 10 of the latter did not apply when the licences were originally issued. These licences also preceded section 53(1) of the NGA, which deals with the commitments to black economic empowerment. This means that in some instances no B-BBEE commitments were required and no B-BBEE conditions were imposed when the licences were originally issued.
11. In terms of section 40 of the WCGRA, licences need to be renewed annually. When determining whether to renew a licence or not, the Board intends to apply section 53(2) of the NGA. It is so that section 53(1) did not apply when those licences were originally issued, but the transitional provisions,² which form part of the NGA, indicate that the NGA applies, from its commencement, to pre-existing provincial licenses. The very specific provisions in section 53 of the NGA relating to black economic empowerment would accordingly apply to the old licences issued by the Board under the WCGRA.

² Item 2(2) in the Schedule to the NGA (transitional provisions).

12. Section 53(2) of the NGA will be applied in the following manner:

12.1. This Policy, to be adopted after consultation with the licence holders and the public, will guide decision-making regarding the process and outcome of the applications for new licences and the renewal of licences. This Policy will not be applied in a blanket fashion or as a hard rule. This Policy merely provide guidance of what the Board believe to be achievable as far as B-BBEE is concerned for various categories of licence holders in the gambling and racing industry in the Western Cape. Notwithstanding its application to the industry as a whole, this Policy will be applied flexibly and on a case-to-case basis.

12.2. In order to apply the Policy on a case-by-case basis, the Board shall consult individually with licence holders, at least once annually before their licence expires, i.e. at the time their licence renewal application is due. In this consultation, the Board shall extract from the original licence application, the licence holder's commitments to black economic empowerment, if any. To avoid a duplication of this process going forward, the Board shall, in consultation with each licence holder record what their bid commitments were at the initial award of the licence and negotiate the need to, at each renewal, revisit the original bid commitments, as they would not change year on year. It is recognised that the actual B-BBEE achievements will change year on year and that will be addressed through the B-BBEE verification and exemption process as per the Codes and B-BBEE Act.

- 12.3. In the context of licence holders' historic bid commitments, a commitment to black economic empowerment means a commitment to one or more of the pillars set out in the Generic Codes adopted the B-BBEE Act, as amended. The commitments will then be evaluated along with the licence holders' achievements in respect of those commitments. If both the B-BBEE commitments and the achievements are satisfactory the licence holder will be informed accordingly.
- 12.4. If the commitments and / or achievements are not satisfactory, further and different conditions may be considered in respect of B-BBEE and the licence holder will be informed accordingly. The Board will then in an individual consultation process consider whether further or different conditions are necessary and if so, reasonable and justifiable conditions may be imposed to the extent necessary to address B-BBEE as we know it today. For instance, if the original commitments of a licence holder do not relate to all pillars of B-BBEE or the level of achievement in respect of each pillar, then a reasonable and justifiable condition relating to these aspects may be imposed. If considered necessary, an overall contributor level status may also be imposed. This will nevertheless only be done after an individual assessment of the licence holder is undertaken in order to determine what the nature of the condition should be.
- 12.5. The Board intends adopting a progressive approach, taking into account the current B-BBEE compliance level of each licence holder, as well as their unique, individual business plans and circumstances.

C. DELEGATIONS: QUARTERLY AND ANNUAL REVIEW PROCESSES

13. The Board has established the following Sectoral Committees in terms of section 12 of the WCGR Act:

13.1. The Horseracing Committee that engages with Bookmakers, Totalisator and Manufacturers;

13.2. The Casino Committee that engages the Casino Operators; and

13.3. The LPM Committee that engages the LPM Operators.

14. The Sectoral Committees consider matters delegated by the Board as stipulated in their Terms of Reference.

15. The Sectoral Committees will review licence holders' B-BBEE quarterly reports concerning their quarterly and annual B-BBEE targets, achievements, Corporate Social Investment ("CSI") projects and preferential procurement spend. The Committees also conduct oversight by, amongst others, CSI site visits.

16. The Sectoral Committees' powers are limited to making recommendations to the Board and they have no decision-making powers.

D. B-BBEE CODES AND RECOGNITION LEVELS FOR DIFFERENT SECTORS OF THE GAMBLING INDUSTRY

17. As explained above, the following Codes find application to the gambling and racing industry:

17.1. The Generic Codes and Generic Scorecard, as reproduced below, must be applied by the Bookmaker, Totalisator and Route Operator industries.

Generic Scorecard:

Element	Weighting	Code series reference
Ownership	25 points	100
Management Control	19 points	200
Skills Development	20 points (Plus 5 Bonus points)	300
Enterprise and Supplier Development	40 points (Plus 4 Bonus points)	400
Socio-Economic Development	5 points	500
Total	109 (118) point	

17.2. The Recognition levels contained in the Generic Scorecard are as follows:

B-BBEE Status	Qualification	B-BBEE Recognition Level
Level One Contributor	≥100 points on the Generic Scorecard	135%
Level Two Contributor	≥95 but <100 points on the Generic Scorecard	125%
Level Three Contributor	≥90 but <95 points on the Generic Scorecard	110%
Level Four Contributor	≥80 but <90 points on the Generic Scorecard	100%
Level Five Contributor	≥75 but <80 points on the Generic Scorecard	80%

Level Six Contributor	≥70 but <75 points on the Generic Scorecard	60%
Level Seven Contributor	≥55 but <70 points on the Generic Scorecard	50%
Level Eight Contributor	≥40 but <55 points on the Generic Scorecard	10%
Non-Compliant Contributor	<40 points on the Generic Scorecard	0%

17.3. The Tourism Sector Codes and Scorecard, as reproduced below, must be applied by Casino Operators.

Large Enterprise Scorecard:

Element	Weighting	Code series reference
Ownership	27 points	TSC100
Management Control	19 points	TSC200
Skills Development	20 points	TSC300
Enterprise and Supplier Development	40 points	TSC400
Socio-Economic Development	5 points	TSC500

Qualifying Small Enterprise Scorecard:

Element	Weighting	Code series reference
Ownership	26 points	TSC601

Management Control	15 points	TSC602
Skills Development	25 points	TSC603
Enterprise and Supplier Development	30 points	TSC604
Socio-Economic Development	5 points	TSC604

17.4. The Tourism Sector Codes' Recognition levels in terms of the Large Enterprise- and Qualifying Small Enterprise Scorecard are as follows:

B-BBEE Status	Qualification	B-BBEE Recognition Level
Level One Contributor	≥100 points on the Scorecard	135%
Level Two Contributor	≥95 but <100 points on the Scorecard	125%
Level Three Contributor	≥90 but <95 points on the Scorecard	110%
Level Four Contributor	≥80 but <90 points on the Scorecard	100%
Level Five Contributor	≥75 but <80 points on the Scorecard	80%
Level Six Contributor	≥70 but <75 points on the Scorecard	60%
Level Seven Contributor	≥55 but <70 points on the Scorecard	50%
Level Eight Contributor	≥40 but <55 points on the Scorecard	10%
Non-Compliant Contributor	<40 points on the Scorecard	0%

17.5. The ICT Sector Codes and Scorecard, as reproduced below, must be applied by the Manufacturer licence holders.

Element	Weighting	Code series reference
Ownership	25 points	AICT100
Management Control	23 points	AICT200
Skills Development	20 points	AICT300
Enterprise and Supplier Development	50 points	AICT400
Socio-Economic Development	12 points	AICT500

17.6. The ICT Sector Codes' Recognition levels are as follows:

B-BBEE Status	Qualification	B-BBEE Recognition Level
Level One Contributor	≥120 points on the ICT Scorecard	135%
Level Two Contributor	≥115 but <120 points on the ICT Scorecard	125%
Level Three Contributor	≥110 but <115 points on the ICT Scorecard	110%
Level Four Contributor	≥100 but <110 points on the ICT Scorecard	100%
Level Five Contributor	≥95 but <100 points on the ICT Scorecard	80%
Level Six Contributor	≥90 but <95 points on the ICT Scorecard	60%
Level Seven Contributor	≥75 but <90 points on the ICT Scorecard	50%
Level Eight Contributor	≥55 but <75 points on the ICT Scorecard	10%
Non-Compliant Contributor	<55 on the ICT Scorecard	0%

- 17.7. An Exempt Micro Enterprise (“**EME**”) is an entity with an annual turnover of R10 million or less. An EME is deemed to have a B-BBEE Status of “*Level Four Contributor*” having a B-BBEE Recognition Level of 100%. An EME which is 100% black-owned measured using the flow-through principle, qualifies for elevation to “*Level One Contributor*” having a B-BBEE Recognition level of 135%. An EME which is at least 51% black-owned, measured using the flow-through principle, qualifies for elevation to “*Level Two Contributor*” having a B-BBEE recognition level of 125%. In order to qualify, EME is only required to obtain a sworn affidavit or certificate issued by the Companies and Intellectual Property Commission (CIPC) on an annual basis, confirming its annual turnover of R10 million or less and its percentage black ownership.
- 17.8. A Qualifying Small Enterprise (“**QSE**”) is an entity with a turnover of R10 million or more but less than R50 million. A QSE is measured in terms of the QSE scorecard. Black ownership is measured and either Skills Development or Enterprise and Supplier Development. The QSE Scorecard is reproduced below:

Element	Weighting	Code Series 600
Framework		600
Ownership	25 points	601
Management Control	15 points	602
Skills Development	25 points	603

Enterprise and Supplier Development	30 points	604
Socio-Economic Development	5 points	605

E. B-BBEE COMPLIANCE CRITERIA FOR DIFFERENT SECTORS OF THE GAMBLING INDUSTRY

18. In order for the Sector Committees to perform their function of evaluating B-BBEE commitments and achievements, all licence holders shall-

18.1. Submit quarterly reports to the relevant Sector Committee of the Board, in such format as determined by the Committee, outlining the licence holder's:

18.1.1. Commitments to B-BBEE as reflected in the licence holders' current licence conditions.

18.1.2. Achievements as measured against those commitments.

18.1.3. Targets and achievements as measured in terms of the applicable B-BBEE scorecard.

18.1.4. CSI contributions and the recipient beneficiaries.

18.1.5. Training and job-creation initiatives.

- 18.1.6. Challenges experienced or anticipated regarding the implementation of B-BBEE.
- 18.2. In the case of Bookmaker licence holders, they will submit bi-annual reports to the relevant Sector Committee of the Board, in such format as determined by the Committee, outlining the information as referenced in paragraphs 18.1.1 to 18.1.6 above.
- 18.3. Submit annually with its licence renewal application, which is due three months prior to expiry of the licence, a plan setting out the licence holder's B-BBEE strategy and objectives for the new one-year licence cycle ahead, including annual and quarterly targets for each of the five pillars of the applicable B-BBEE Code.
- 18.4. Attend such meetings of the relevant Sectoral Committee of the Board at such times or intervals determined by the said Committee.
- 18.5. Conduct such scheduled and/or ad hoc audits as the relevant Sectoral Committee or the Board may require in relation to any aspect of B-BBEE in relation to licensed operations.
- 18.6. Generally, in the conduct of its operations, endeavour to comply with the elements and objectives of the Codes of Good Practice on BBBEE and the BBBEE Act, 2003, as amended from time to time and such licence conditions as the Board may, after consultation with the licence holder, impose.

19. As a policy objective, the Board has set the following targets for licence holders regarding B-BBEE:

19.1 Casino Operator licence holders should achieve a minimum overall rating of Level 4 in terms of the B-BBEE recognition levels as per the Tourism Sector Codes and Scorecard.

19.2 Route Operator licence holders should achieve a minimum overall rating of Level 4 in terms of the B-BBEE recognition levels as per the B-BBEE Codes and Generic Scorecard.

19.3 Bookmaker and Totalisator Operator licence holders should achieve a minimum overall rating of Level 5 in terms of the B-BBEE recognition levels as per the B-BBEE Codes and Generic Scorecard.

19.4 Manufacturer licence holder shall achieve a minimum overall rating of Level 5 in terms of the B-BBEE recognition levels as per the Generic or ICT Scorecard, whichever is applicable.

20. The Board recognises that specialist verification agencies are accredited in terms of the B-BBEE Act to evaluate and certify the B-BBEE levels of measured entities. In general, the Sector Committees shall only place reliance on the evaluation certificates issued by such agencies for purposes of applying this Policy.

F. CONCLUSION

21. The Board's implementation of B-BBEE in the gambling and racing industry shall be guided by this Policy.

22. Whilst this Policy is aimed at achieving transformation and black economic empowerment in the Western Cape, this has to be done in a legal, fair and transparent manner. This Policy seeks to achieve its objective in legal and fair manner and by enhancing open consultation and industry engagement.

23. This Policy shall be preceded by a public consultation process, prior to its final adoption by the Board. A notice and comment process shall be followed in terms of the Promotion of Administrative Justice Act 3 of 2000 and the Regulations on Fair Administrative Procedures, 2002 (GN R1022 of 2002, GG 23674 of 31 July 2002).

End