



DISCUSSION DOCUMENT ON THE TRANSFORMATION POLICY FOR THE GAMING AND BETTING INDUSTRY IN THE PROVINCE OF KWAZULU-NATAL

1. INTRODUCTION

The KwaZulu-Natal Gaming and Betting Board (“the Board”) has, in its capacity as both an organ of state as well as a public entity, committed itself to promote Broad-Based Black Economic Empowerment (“B-BBEE”) and Socio Economic Development within the province of KwaZulu-Natal (“KZN”).

This document is intended to serve as an initial discussion document towards the development of a transformation policy for the Horseracing and Betting Industry for the Province of KZN. As such this document aims to:

- Outline the overall context of the regulation of B-BBEE as it applies in South Africa with particular focus on the Licensed Operators within the Horseracing and Betting Industry;
- Outline the mandate given to the Board as set out in section 6 of the KwaZulu-Natal Gaming and Betting Act (“the Act”)¹;
- Outline the overall context of regulation of transformation as it impacts Horseracing and Betting Industry within KZN;
- Evaluate the Horseracing and Betting Industry in South Africa within the context of Broad-Based Black Economic Empowerment;
- Propose a recommendation for the setting of minimum standards and guidelines for the Horseracing and Betting Industry as a starting point toward transforming this sector as mandated by the Provincial Government.

2. DEFINITION OF TERMS

The Act:	Means the KwaZulu-Natal Gaming and Betting Act, Act 08 of 2010;
Black Economic Empowerment:	Means the practice, laws and regulations employed by the state and organs of state to enhance business opportunities for enterprises that are predominantly owned or operated by Previously Disadvantaged Individuals;
Black South African:	Means all Africans, Coloureds and Indians who are South African;

¹ Act No. 8 of 2010

Black Empowered Entities:	Means an entity owned by at least 25.1% Black persons and where there is substantial management and control. Ownership refers to economic interest;
Priority Business Enterprise:	Means a business that is at least 26% owned by Individuals who are from the Priority Population Group in terms of equity and voting rights/powers, with a corresponding management representation at all levels;
Priority Population Group:	Means Black Individuals who fall into groups that were not offered a franchise in the national elections before or after the introduction of the 1984 tri-cameral parliamentary system and only received a franchise during 1994;
Control:	Means the authority and power to manage assets, the determination of policies and the direction of business operations. Indicators of control may include: Participation in control structures of a business unit or of the company (such as shareholder meetings, the Board of directors, board subcommittees, and divisional boards, the exercise of voting rights on the board of directors and committees thereof, and controlling equity;
Direct Ownership:	Means ownership of an equity interest together with control over all of the voting rights attaching to that equity interest;
Licensee:	Means a person, whether natural or juristic person, licensed by the KwaZulu-Natal Gaming and Betting Board in terms of the Act;
Ownership:	Means a minimum of 26% percent of the shareholding or membership interest to historically disadvantaged individuals living in KwaZulu-Natal which also includes skills transfer to enable them to operate alone in the future without having to always rely on white owned businesses for their sustenance;
Previously Disadvantaged Individual:	For the purpose of this document it means those persons who are South African citizens who fall into a population group that had no franchise in national elections prior to the introduction of the 1993 Interim Constitutions;
Public Entity:	Means a public entity listed in Schedule 2 or 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999);
Renewal Application:	Means a process where an application is made by a licensee to renew a license or certificate annually or otherwise as prescribed by the Act;
Skills Development:	Skills within the Gambling sector;
SME:	Small and Medium Enterprise – which is a licensee with an annual turnover of R25 million or less and with Black ownership, risk and control of not less than 50%;

This document has been crafted to assist with the development of recommendations for the Board's transformation policy. The status of this document is that of a discussion paper and as such should not be accorded any legal status until such time as a consultation process has been completed. This document

will assist in facilitating discussions that will drive the development of industry guidelines around transformation.

3. Executive Summary

3.1 Background

The Horseracing Industry was the only legalized form of gambling pre 1994 – though it was not regulated by the National Gambling Act². The Horseracing Industry is a well-established industry in South Africa. Though it faces a number of challenges it has been identified as an industry that can contribute positively towards socio-economic development in KZN. Parliament, through the portfolio committee of Trade and Industry appointed a commission to undertake a comprehensive review of the South African gambling industry. The following challenges were highlighted³:

- That there was a need for regulation to be introduced in the Horseracing Sector;
- That there was a need for the development of a regulatory framework that would place the Horseracing sector under direct/indirect control of the Provincial Gambling Authority;
- That there was a need to include the regulation of Horseracing as now set out in the KwaZulu-Natal Gaming and Betting Act 2010; and
- That there was a need to transform the Horseracing and Betting Industry;

There is a clear need for “the economic empowerment of the Previously Disadvantaged Individuals” as well as the “promotion of economic growth, development and employment” in the various gambling sectors.

The Commission further articulated the need for the Horseracing Industry to implement the policy of B-BBEE within the Industry.

3.2 Specific Issues requiring attention

The following issues / questions have been identified as specific issues requiring attention:

- The need to address previous imbalances within the Horseracing and Betting Industry and ensuring that the previously marginalized receive opportunities within this industry;
- Implementation of B-BBEE in line with recommendations made and targets set from a national level;
- Timelines for the implementation of transformation within the sector;
- Addressing issues of funding in respect of the BEE transactions.

3.2.1 *The need to address previous imbalances within the Horseracing and Betting Sector and ensuring that the previously marginalized receive opportunities within this industry;*

There is a clear need to transform the Horseracing and Betting Industry in an effort to address inequalities and to develop an appreciation for and knowledge of horseracing among historically disadvantaged

² Act No. 7 of 2004

³ Gambling Review Report (2011)

communities. This will require target-setting within clearly defined time lines to ensure equitable redistribution of resources and opportunities within this sector.

3.2.2 Implementation of B-BBEE in line with recommendations made and targets set from a national level;

“In general there has been B-BBEE in all gambling sectors with the exception of the bookmaking sector An overarching target of level 2 compliance with BBEE Codes by 2015 has been set for the sector and it has been left to individual provinces to ensure that their licensees meet the targets”⁴

The Board supports the above-mentioned requirements for B-BBEE and is of the view that to address previous imbalances, in particular in respect of ownership, a focus on the elements of ownership, management and control, operational involvement, skills development and skills transfer play a fundamental role. The Board continues to encourage compliance with the elements of Corporate Social Responsibility. The Board recognizes that when looking at Black Economic Empowerment and transformation in this sector one cannot approach B-BBEE as that of a large corporate structure. The recommendations made in clause 7 below support both the B-BBEE and the provincial mandate to bridge the gap. This document in no way supports the deviation from the B-BBEE requirements.

The B-BBEE Act does not stipulate specific policies or criteria to be adopted by public entities for the implementation of transformation.

“In accordance with the Act, every organ of state and public entity must take into account and as far as reasonably possible apply any relevant code of good practice.....”

The Board has adopted the principle of focusing on a Priority Population Group⁵. In this particular case the Board considers Black Africans preferably resident in KZN as a Priority Population Group. This in no way excludes Asians and Coloureds as defined in the BEE Codes of Good Practice. The Board is merely trying to redress current imbalances in the sector.

3.2.3 Timelines for the implementation of transformation within the sector.

During the license renewal period and until a *date determined by the Board*, all licensees be expected to have commenced with the process of transforming their businesses and the licensees that are applying or renewing in terms of Sections 89, 94 or 110 are expected to provide a plan detailing the progress made in respect of their own transformation objectives and how they intend to meet the Board’s requirements.

In the absence of compelling reasons, the Board must have a right to refuse the renewal of a license beyond the date by when all licensees must have complied.

Each application for a license or renewal of a license will be considered on its own merits by the Board.

3.2.4 Addressing issues of funding in respect of the BEE transactions.

⁴ Page 16, the National Gaming Review Report

⁵ Definition “Priority Population Group” – KZN Broad-Based Black Economic Empowerment Strategy

The implementation of the minimum standards for the sector will require funding support for the acquisition of shares. Access to funding is required to fund the transaction and a financial institution and development agency will support in the raising of capital for funding requirements.

3.3 Challenges facing the Horseracing and Betting Industry

Challenges facing this industry include –

- Ownership is dominated by White businesses and sole proprietorships;
- Funding for the acquisition of shares will need to be made available for the potential licensees to acquire interest in the business;
- In the betting business annual turnover is based on betting odds and there are no assets in most cases securing the revenues which raise a potential risk for loan funding as loans will be unsecured;

3.4 Objects and Benefits of Introducing Transformation

The empowerment through ownership, management and control, operational involvement, skills development and skills transfer could potentially introduce previously disadvantaged individuals into the mainstream of Horseracing and Betting Industry. The following benefits can be realized –

- Creating business opportunities for HDIs in the sector;
- Providing growth opportunities in the sector that is facing major challenges in growth;
- Equity participation will ensure the delivery of the provinces mandate and in so doing will assist in ensuring distribution of wealth in the sector;
- Opportunities for HDIs by providing access to finance to persons who otherwise would not qualify for funding;
- Growth in skills base in respect of this sector;
- Knowledge of running a business would assist in sharing commercial know-how in the industry

All of the above objectives would positively contribute to the province's transformation strategy.

3.4 Engagement model

The model or approach adopted by the Board to effect transformation is not of a transformation charter. Though the principles set out in the B-BBEE Act and KZN Transformation strategy is considered, this approach is not what would be classified as a transformation code or Charter.

The Board is implementing its mandate as required by section 6 of the Act.

4. The overall context of the regulation of broad-based black economic empowerment as it applies in South Africa;

The transformation Strategy is in line with the KwaZulu-Natal Provincial B-BBEE strategy and reflects national B-BBEE policies. The transformation position adopted by the Board goes to support such national policy. The Broad Based Black Economic Empowerment⁶ and the Governments BEE strategy aim to

⁶ Act No. 53 of 2003

“address inequalities resulting from the systemic exclusion of the majority of South Africans from meaningful participation in the economy”

The Pillars of Black Economic Empowerment adopted by the Board are in line with the KZN Broad Based Black Economic Empowerment policy and the Black Economic Empowerment Act. The pillars considered by this document include:

- Equity Ownership;
- Management and Control;
- Operational Involvement;
- Skills Development;
- Skills Transfer;
- Corporate Social Responsibility;

The National Gaming Board has recommended that licensees must be **Level 2 BBBEE** compliant by **2015**.

5. The mandate given to the Board as set out in Section 6 of the KwaZulu-Natal Gaming and Betting Act 8 of 2010 and the implications thereof;

The KZNGBB has, in its capacity as both an organ of state as well as public entity committed itself to promote Black Economic Empowerment and Socio Economic Development within the Province. The Act has clearly spelt out a mandate for the Board. The objects of the Board in regard to the Betting Industry are clearly set out in Section 6 of the Act.

Section 6(1)(c) requires the Board to promote opportunities for historically disadvantaged persons to **participate** in the Horseracing and betting industries in the capacity of any persons required to be licensed or registered in terms of section 89,94,110 or 111;

Section 6(1)(d) requires the Board to increase the **ownership stakes** of historically disadvantaged persons in the Horseracing and betting industries

Section 6(1)(e) requires the Board to develop an appreciation for and knowledge of Horseracing amongst all communities, particularly those comprised of historically disadvantaged persons.

The Horseracing and Betting Transformation Fund has been established by Section 137 for the purpose of promoting opportunities for historically disadvantaged persons to enable the Board to meet its objectives.

The Board has taken into consideration the concerns and challenges in regard to transformation in this Industry.

6. The overall context of regulation of transformation as it impacts the Gambling and Betting Sectors within the Province;

The Act came into effect on 1 April 2011 and with this came the obligation to transform the Horseracing and Betting industry. The casinos, rote operators and Bingo licensees are all BEE compliant and the Board continues to monitor levels of compliance as part of license conditions. The Horseracing and

Betting licensees have to play catch-up. It is clear from the research that was conducted by the NGR that without a clear mandate to drive this transformation it would take a long time to achieve the objectives of the Provincial Government.

In response to the Provincial Governments mandate, the board has set out its minimum criteria. Note must be taken that this document serves to address previous inequalities that have caused hindrance to the participation of HDI's in this sector of the economy.

The discussion documents serves to provide clear guidance on how to deal with these inequalities. In summary the document deals with:

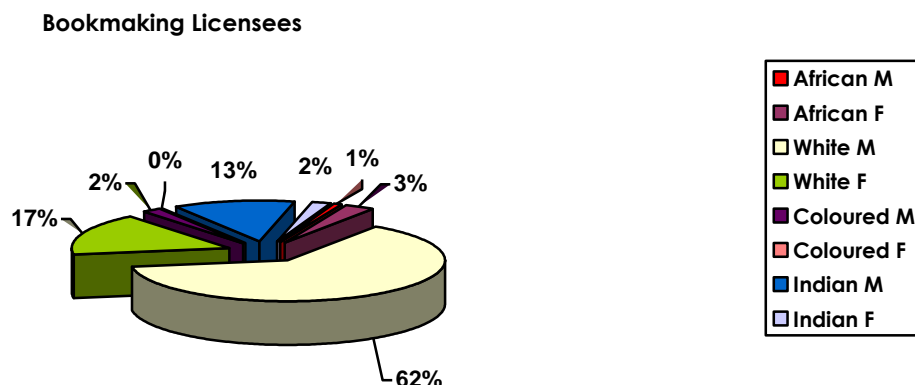
- Direct empowerment of HDI's through the objective of ownership and management and control within the Industry;
- The development of Skills and operational know how through the transfer of skills;
- Continued compliance to BEE codes;

7. Evaluate the Gaming and Betting industry in South Africa within the context of Black Economic Empowerment;

The Board has been given a mandate to transform the industry which it regulates and through the mandate intends to ensure a transformed sector.

7.1 Ownership: BOOKMAKING INDUSTRY

The Board intends to promote the increased ownership by black people in this Industry. The table below outlines the current ownership by licensees within the Sector. An observation can be made that a review of ownership is required. The concern is that there is a 79% ownership of Bookmaking Licensees by white persons.



The BEE targets, sets out the criteria, guidelines and the standards to be adopted by Licensees and applicants for the implementation of the increased ownership stakes in the Horseracing and Betting Industries by Historically Disadvantaged Persons (PDI's). The mandate of the Board as set out in Section 6 of the Act is supportive of the Provinces economic Development strategies. To this end the following were recommended as minimum standards for ownership in the sector.

Recommendation:

It is recommended that the Board increase **ownership by historically disadvantaged persons** and provide a requirement of ownership transfer of shares to HDI's and in this they should support the establishment of Priority Business enterprises and in an effort to address the severe imbalances of ownership as stipulated in the table above, should support the Priority Population Group.

Requirement in Guidelines:

The goal is to ensure a substantial increase in the number of Black people participating in this sector particularly from the priority population groups. The ownership standards as set out below will endeavour to address inequalities that have manifested themselves in the sector. The following is a recommended requirement:

“Determination of ownership and transfer of shares

The process of the transfer of equity ownership should result in the increase in ownership for Black people. Ownership should reflect genuine participation in decision making by Black people. The Board is setting the direct ownership level by Black people at 26%.

- *Each bookmaker will have a target of 26% black ownership in terms of the minimum standards, measured at a holding company level;*
- *The process of transfer of equity may include the forming of corporate entities or partnerships or other types of legal entities;*
- *The ownership must be by way of direct ownership by black people;*
- *Direct ownership will be measured in terms of the following for the purposes of these guidelines:*
- *Measured in three categories involving voting rights, economic interest and economic benefits such as dividends or interest payments;*

For the purposes of this guideline Direct Ownership includes:

- *Direct ownership in the business as a result of a BEE transaction financing;*
- *Broad-based black ownership in terms of demographics of KZN;*
- *A Right to or say in the disposal of any assets, operations, businesses or subsidiaries by the bookmaker operators as a going concern.*
- *Direct shareholding or ownership with control, commensurate with the level of ownership concerned, at subsidiary or divisional level;”*

To ensure equity ownership the Board provided that the holder of the shares should have voting rights and economic benefits. The discussion around ownership should be considered in conjunction with “economic interest” and “flow through” principles. The Board will monitor attempts of any fronting.

Economic Interest –

Economic interest of black people in the enterprise shall be a minimum of 26%. Black people may hold their rights of ownership in an applicant or licensee as direct participation through some form of business such as a company with shares, an individual, a Co-Operative, any form of juristic person recognized under South African law, a partnership or other association of natural persons recognized by law and an Employee Ownership Scheme.

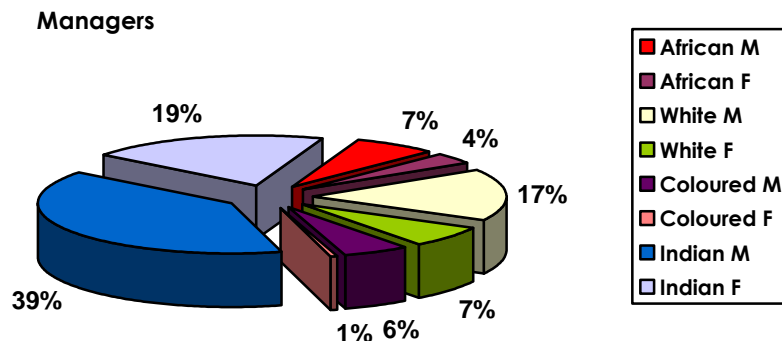
Flow through principle:

When measuring the rights of ownership, only rights held by natural persons are relevant. If the rights of ownership of black people pass through a juristic person, then the rights of ownership of black people in that juristic person are measurable. This principle applies across every tier of ownership in a multi-tiered chain of ownership until that chain ends with a black person holding rights of ownership.

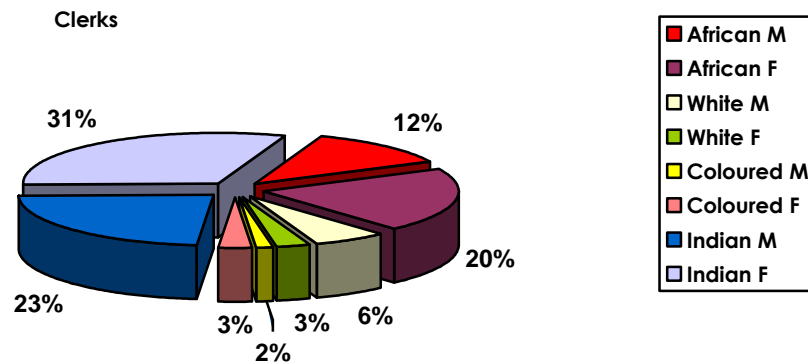
7.2 Management and Control, Operational Involvement, Skills development and Skills transfer

The Horseracing Industry is a labour intensive business with considerable employment opportunities. The industry provides employment to a wide variety including (but not limited to) breeding, training, feeding and races. The Board is focusing on skills transfer and organizational involvement at senior levels. The level of participation of Black people at director and senior management levels needs to be addressed. Control is essential to the development and the ability to contribute to decisions being taken in the entities. As the Bookmaking businesses are not your traditional corporate entities, due to the fact that the Ordinance⁷ precluded the Bookmaking businesses from being corporatized, the Board then looked at the employee statistics as set out below.

As at 29th February 2012, the bookmaking industry employed 625 staff members. The demographics per level are set out below:



⁷ KwaZulu-Natal Ordinance No. 28 of 1957



To address the object increasing the number of Black people who participate in decision making in the industry, the guidelines provided for skills transfer and participation at a decision making level. Due to the type of entities, the “management and control” criteria as set out in the B-BBEE codes of good practice could not be applied in its traditional sense. The Board recommends the following:

Recommendation:

It is recommended that the following address the issues of **management and control, operational involvement, skills development and skills Transfer**. There should not only be financial gain of the black persons but skills transfer should be evident.

- Board recommends that skills transfer needs to include supporting the BEE partner to be able to be an independent bookmaker in the period of maximum of 3 years deadline to be independent bookmaker.
- Have sufficient skill to successfully run independently.
- Skills examples include but are not limited to: the ability to , financially manage betting liabilities and understand the elements of pricing up on an event within the betting industry;

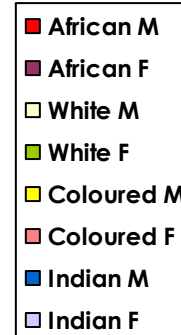
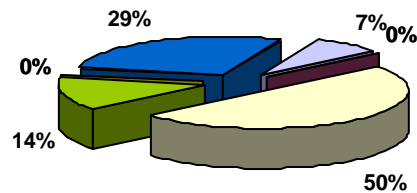
8 TOTALISATOR INDUSTRY

8.1 Management and Control, Operational Involvement, Skills development and Skills transfer

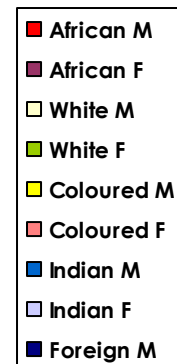
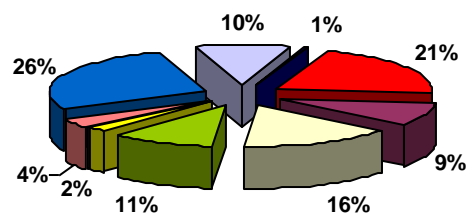
The Board in looking at the management and control of this sector noted that the senior management within the corporate entity that owns the licence to operate a totalisator is predominantly white as indicated below:

As at 31st January 2012, the Totalisator employed 1566 staff members. The demographics per level are set out below:

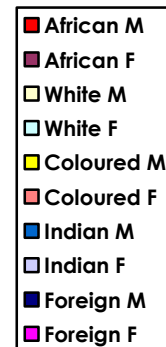
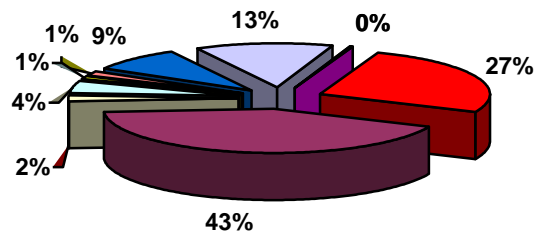
Executive and Senior Management



Middle and Junior Management



Semi and Unskilled Employees



To address this anomaly by increasing the number of Black people who participate in decision making in the industry, the guidelines provide for skills transfer and participation at a decision-making level. The “management and control” criteria as set out in the B-BBEE codes of good practice will not be applied in its traditional sense. The Board recommends the following:

Recommendation:

The issues of **management and control, operational involvement, skills development and skills Transfer** will be addressed in the following manner:

- Board recommends that the level of Directors be set at a minimum of 26% black people by 2015.
- Employment at Senior Management level be set at a minimum 26% black people by 2015.

8.2 Totalisator Agents

The Board in looking at the totalisator and the role of the agent within its setup determined that the percentage HDI agents must reach a minimum of 30% by 2015. The Board will not consider applications for registration of any new agents by non HDI's until the target has been reached.

Current agents will not be affected by these guidelines.

"Our country requires an economy that can meet the needs of all our economic citizens – our people and their enterprises- in a sustainable manner. This will only be possible if our economy builds on the full potential of all persons and communities across the length and breadth of this economy. Governments objective is to achieve this vision of an adaptive economy characterized by growth, employment and equity by 2014¹."

Recommendations have been proposed for the setting of minimum standards and guidelines for the Province in respect of Gaming and Betting Industry as a starting point toward transforming this sector as was mandated to the Board by the Provincial Government.

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