The Complete Wiehahn Report on Gambling in South Africa

—1995—



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FOREWORD

The Lotteries and Gambling Board began its task in August 1994 against the backdrop of a governmental request that it should endeavour to complete its investigations and report on gambling in South Africa within 12 months. The final part of the report was presented to government in July 1995.

The fact that the Board's task was completed 11 months after it started its investigations bears testimony to the solid and dedicated hard work undertaken by the Board's members. As the Report neared completion, it was not uncommon to see people working 18 hours-a-day. Its job being done, the Board was disbanded in October 1995.

That it was a formidable commission is best appreciated when one considers the enormity of the subject, the paucity of up-to-date evidence available and the fact that various forms of gambling (although illegal in some instances) had already been established in the country and were providing an income to operators and employees alike.

The complete Report consists of four parts (each of which was completed and submitted to government during different stages of the Board's activities). It deals with the philosophy of gambling, its history, its principles, various forms of gambling, finances, gambling law, and a myriad other aspects pertaining to "games of chance".

I am pleased to be able to say the Report was given an overwhelming reception. Government hailed it as "very successful and of great value" and it now forms the bedrock on which the gambling industry of South Africa will be built. The Gaming Board of Great Britain found it "an extremely informative document and most impressive", while Dr Mike Gore, a member of the Nevada, New Jersey and Pennsylvania Bar Association in the United States described it as "excellent, and a document to be studied by all persons involved in the gambling industry of South Africa". Compliments were also forthcoming from as far afield ad Scandinavia and Austria.

In fact, interest in the Report was so great that the Government Printer's initial print run of 2 050 copies was sold out in no time and the growing demand for it has necessitated this reprint.

Despite the fact that the report is named after me, it will always remain the product of the input of all board members. They all contributed ideas, thoughts and efforts towards its completion and their enthusiasm and dedication afforded me great inspiration. I will always be indebted to both their support and their camaraderie.

My sincere thanks and appreciation are also extended to Mr Ian Stiff (editor of many of my previous reports and submissions to government) for once again contributing his talents and editing the Report in a manner I respect as both efficient and highly competent.

It must also be said that this reprint of the Report would not have been possible without the financial support of Akani Egoli (Pty) Ltd, Emerald Safari Resorts (Pty) Ltd, Global Resorts (Pty) Ltd and Sun International (Pty) Ltd. I am most grateful to them for their kind assistance in this project.

Finally, I would like to extend my heartfelt thanks to Mr Chris Fismer (the minister then responsible for matters pertaining to gambling in South Africa) for his support of and interest in the board's work and last, but by no means least, to Beta Printers for their efforts in initiating and producing this reprint.

Prof Nic Wiehahn

Pretoria – July 1998



FRONT: Mr C E Mushwana, Mr E J Jacot - Guillarmod, Dr N E Chinkanda, Prof N E Wiehahn (Chairman), Mr J H de Lange, Dr M A Tshabalala.

MIDDLE: Ms C Ellis (secretariate), Mr T R Ramphele, Mr T M Manyoni, Mr R M Hand (secretariate), Mr R A Bell, Mr A Wilsenach, Mr J A Brazelle, Mr E Molobi, Ms C de Jongh (secretariate).

BACK: Mr J H Viljoen, Mr J J Walsh, Mr A J L Geyser, Mr D C Swanepoel (Secretary), Mr W Vermeulen, Mr J T M Edwards.

INSERT LEFT: Mr D D B Mkhwanazi.

INSERT RIGHT: Mr Z Titus.

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LOTTERIES AND GAMBLING BOARD

PRESENTATION TO THE MINISTER OF JUSTICE

INTERIM REPORT

The Board which you appointed in terms of Section 3 of the Lotteries and Gambling Board Act, 1993 (Act 210 of 1993) and whose terms of reference are set out in the provisions of the abovementioned Act, has the honour to submit herewith an interim report on its enquiry into lotteries and gambling in the Republic of South Africa.

Signed at Pretoria, this 7th day of October 1994.

Prof N. E. WIEHAHN (Chairman)

FOREWORD

The Board, constituted in 1994, consists of nineteen members as reflected in the attached Schedule. Apart from the chairperson, six members are from the private sector, one from the Department of Justice, one from the Department of Finance, and one from the Department of Welfare. The remaining nine members represent the governments of the provinces.

The Board held its first meeting on 29 August 1994 on which occasion the Deputy Minister of Justice, in the opening address, sketched the current situation in the country with regard to lotteries and gambling. He requested the Board to be open and transparent in its activities; give urgent attention to the situation; and be as final as possible in its reporting – even to the extent of including draft legislation on its recommendations.

A senior police officer of the narcotics and gambling bureau also addressed the Board's initial meeting and outlined the difficulties of policing gambling activities in the country. The officer referred to the uncertainty and confusion which in the past had arisen from the unwillingness of some Attorneys-General to prosecute persons charged with unlawful gambling.

The Board appointed four executive committees in terms of Section 5 and 16 of the Act: one for the Board, one for Lotteries and Sports Pools; one for Casinos and Bingo; and, one for Sports Betting and Related Activities. No advisory panels have been appointed as yet and the committees were requested to canvass knowledgeable persons for such panels.

In view of the urgency of the matter the four executive committees held their first meetings soon after the Board meeting. The recommendations of the executive committees appointed in terms of Section 6 have been included in this Interim Report. Further recommendations will be considered for the main report which, if nothing unforeseen happens, will be submitted to Government before the 1995 session of Parliament.

The Board's appointment aroused much interest both nationally and internationally. Vested interests, controversy and confusion caused many interested parties to present submissions covering a wide range of the subject of gambling to the Board. Many requested interviews and the opportunity to present verbal evidence to the Board. Sessions for the purpose of hearing oral evidence from witnesses will be conducted during November 1994. Some of the submissions were relevant to and have been accommodated in the recommendations in this Report. Other submissions will be studied for the purposes of the main report.

As mentioned before, the present state of lotteries and gambling in South Africa is very uncertain and have given rise to much confusion and concern – particularly when legalities are considered. The Board believes an end should be brought

to this situation as soon as possible and, to that end, approved the recommendations in this Interim Report at its second meeting on 3 October 1994. The recommendations are of a fundamental nature and, if accepted by Government, should bring much of the concern to a close.

The Board wishes to express its sincere thanks and appreciation to all those who, through presentations, interviews, telephone calls and discussions have made the submission of this Interim Report possible. Thanks and appreciation are also due to the Secretariate for their contribution to this Report.

PRETORIA

October 1994

LOTTERIES AND GAMBLING IN SOUTH AFRICA

1. INTRODUCTION

1.1 The official policy of the previous Government was to prohibit all forms of gambling except for betting on horse racing in South Africa. This policy was embodied in the provisions of legislation and in particular in the Gambling Act, 51 of 1965 which, to date, prohibits the establishment, commencement, management or conducting of lotteries and sports pools and other forms of gambling or having a financial interest in any of these activities. The Act also prohibits selling, disposing of, purchasing or possessing a ticket in a lottery or sports-pool, or assisting any other person to acquire a ticket in a lottery. The Act further places the burden of proof on any person who is accused of any of these activities.

On the other hand gambling was legalised in the previous TBVC countries where particularly licensed casinos were controlled and at the same time flourished. The licences of these casinos are still valid under the new Constitution of South Africa.

However, many activities of a gambling and like nature have over many years been indulged in by an ever-increasing number of people and this practice has developed. Defence Bonds, officially introduced by the Government at one stage, is an example and still others can be mentioned.

1.2 The Board does not have all the reasons for the comprehesive ban on lotteries, gambling and associated activities as reflected in the Act except to presume that the legislation reflects what the then Government believed to be the religious and moral views of the majority of people and certain organisations.

The Board is aware of the strong opposition against gambling of any kind which still exists in church and other circles and among certain individuals. The Board respects the convictions of these individuals and organisations. They base their arguments, among other things, on religious grounds – gambling is a sin as it does not involve honest labour and is based on luck. Their feeling is that man has been created to earn his bread by the sweat of his brow. Second, those who operate gambling houses become richer from the earnings of those wretched souls who would gamble away their last cent in the vain and desperate hope of gaining something – this is immoral. Third, gambling premises are the breeding grounds of all kinds of social evils: drug peddling; alcoholism; violence; prostitution; and, many other forms of crime.

On these and other grounds, gambling's opponents believe it is the State's obligation to protect society against the evils of gambling by prohibiting it by law and, thus, eradicating it from society.

1.3 The Board fully appreciates these viewpoints and concedes their merits – it would be ideal if all humans could earn all their income just through work and no luck. However, it is an age-old adage that gambling is a trait inherent to human nature. Life is and always will remain a gamble "with prizes sometimes for the imprudent and blanks so often for the wise". There is a view, not necessarily shared by all members of the Board, that even buying shares on a stock market could be a gamble. In Monaco, where no taxes are paid because of its very

lucrative gambling industry, it is said that the strength of the country "is to be found in the weakness of people" – gambling which is strictly controlled and tightly regulated.

The Board believes morals and ethics change with time and that they, as Oscar Wilde observed, consist of "conduct and standards which are approved by most and not violently opposed by the rest at a given time". Government policy of the mid-60s reflected what it believed to be the moral viewpoints of the White population. The Board is of the opinion that whatever personal moral attitudes might have in fact been during the term of office of the previous Government, the majority of people in the new South Africa, even if not strongly in favour of gambling, would certainly not be opposed to it provided it is well controlled, regulated and managed. The exposure of the nation's value system to international influences after South Africa's return to the world community calls for a re-assessment of the people's moral stand on lotteries and gambling.

2. LEGALISATION OF LOTTERIES AND GAMBLING IN SOUTH AFRICA

2.1 Apart from the conclusions above, the following practical aspects have been considered by the Board in support of the view that the time has arrived for the Government to review the country's stance on lotteries and gambling:

2.1.1 The present prohibition contained in the Act has been ineffective mainly because it has been improperly policed and applied. Information supplied by the South African Police Services indicates that approximately 2 000 casinos are operating in the country in flagrant violation of the law and that many other forms of illegal gambling exist. This ineffective policing and the unwillingness of some Attorneys-General to prosecute people charged with illegal gambling, contribute largely to the uncertainty and unacceptable situation in the country. However, the real reason appears to lie deeper: namely, whether a prohibition to the extent contained in the Gambling Act or, for that matter, in any form of legislation, would prevent such a basic human activity as gambling – a folly practised world-wide by millions. The country's experience with some of the provisions of the repealed Immorality Act, (now replaced by the Sexual Offences Act), the Prohibition of Mixed Marriages Act and many other similar laws, has proved that bans of such a nature do not achieve their objectives. To the contrary, not only are they transgressed more than other laws, but like the prohibition on alcohol in America during the 1920s, their lifespan is relatively short. This philosophy was succinctly stated by an American judge in his statement on the prohibition that "no laws, however stringent, can make the idle industrious, the thriftless provident, the drunken sober or the venturer cautious".

This applies equally in South Africa where, according to reliable information, gambling practices are rapidly overtaking the law to the extent that a total ban on gambling would have serious implicatons in many spheres. It is, therefore, preferable that lotteries and gambling be legalised in the Republic of South Africa, but controlled and managed by a licensing system which should have strict criteria to which gambling activities should comply. Policing and administration of such a system would be far more effective than under a system of complete prohibition.

2.1.2 Gambling is allowed in South Africa's neighbouring countries e.g. Botswana, Lesotho and Swaziland, and a total prohibition here will simply result in a strong outflow of capital to those countries. The facilities in the former TBVC states attracted thousands of people, particularly on weekends and during holidays and millions of Rand were spent on gambling. In fact, the revenue from gambling forms an important source of income for most of these territories and the vast majority of gamblers there are South Africans.

None of South Africa's neighbouring countries have a ban on gambling and the Board is of the opinion that a continuing prohibition here would boost the already flourishing gambling industry in most of those countries. Such uncontrolled outflow of capital in such fashion would be very detrimental to South Africa's economy.

2.1.3 Many illegal gambling activities pay no tax of any form or levy to the State. Thus, a very lucrative activity is depriving the fiscus of considerable and much needed funds. Licenced, controlled and regulated gambling in South Africa would secure an important source of income for the fiscus in the form of tax and levies. This could be conducive to helping provide considerable tax relief for both corporate and individual tax payers.

2.1.4 In addition, it was common cause among all witnesses in their submissions to the Board that the much needed funding for the Reconstruction and Development Programme (RDP), welfare and many other good causes could be raised through legalised lotteries and gambling. The main use of such funding would assist greatly in the upliftment and development of disadvantaged and disabled people. The Board is in full agreement with this contention.

Funds raised from lotteries and gambling, as opposed to monies accrued from national taxation, come from voluntary public participation – no one is compelled to gamble.

2.1.5 It is an unjustifiable anomaly that betting on horse racing throughout South Africa, as well as the operation of casinos in the former TBVC states are legalised while the South African Police Services are doing their best to apply the provisions of the Gambling Act to stamp out unlicensed casinos operating in the rest of the country. This situation is untenable and has to be normalised one way or another. The Board prefers that, as recommended hereunder, lotteries and gambling be legalised subject to control and supervision in terms of a strict system of licensing and inspection.

2.1.6 Furthermore, the Board is convinced that a State approved lottery and gambling system would be highly conducive to economic development and the creation of employment opportunities in South Africa. Evidence suggests that the horse racing industry alone provides direct and indirect employment for approximately 50 000 people and that this number is rising. The Board will give more accurate estimates in its main report but at this juncture it can safely be said that approximately 100 000 people in South Africa could be dependent on employment in a legalised gambling industry within two years from 1995.

2.1.7 Many respondents expressed the view that a gambling industry flourishes best if linked to another industry which, to a certain extent, is commensurate with gambling. Therefore, countries with a strong tourist, leisure, outdoor or free-time industry benefit most from gambling activities. South Africa is no exception and the Board foresees that many facets of the tourist, leisure, and free-time industry in South Africa could benefit substantially from a legalised system of gambling.

2.2 As was experienced in other countries, unlicensed operators of casinos and other illegal gambling activities in South Africa, for understandable reasons, do their utmost to find ways and means to avoid prosecution. They are, mostly, the clients of lawyers who specialise in gambling law and who, at all times, will seek loopholes in the law so as to protect their clients against prosecution and other forms of legal action.

In this way, operators in South Africa developed the so-called "broker" system by which an intermediary, acting between the operator and the gambler, would issue discs made of plastic or other similar material in exchange for cash. This substitute for cash is then used in the gambling process. Operators and their lawyers contend that since no real cash is used, the provisions of the Gambling Act are not transgressed.

2.3 Despite Supreme Court decisions to the contrary, operators and their lawyers still maintain that this loophole in the law exists and that the "broker" system is valid. To put the vagueness and uncertainty finally to rest and to clear up any confusion that might still exist, the legislature promulgated Section 5 of the General Law Sixth Amendment Act, 1993 (Act 204 of 1993). The provisions of this Act have not as yet been implemented by Government.

In view of the urgency to regularise the situation with regard to this issue in South Africa, the Board, at its first meeting, decided to recommend to Government to implement the provisions of Section 5 without any further delay. This recommendation was conveyed to Government after the meeting.

The Board hereby wishes to confirm that recommendation and is convinced the issue will be brought to rest once all illegal casinos are closed.

3. BASIC PRINCIPLES OF LOTTERIES AND GAMBLING IN THE REPUBLIC OF SOUTH AFRICA

The Board believes any system of lotteries and gambling in South Africa should proceed from certain fundamental principles on which the system could be developed for the future. The following principles should underline South Africa's system. Namely that:

(a) Government will allow and approve a system in which only licensed lotteries and gambling activities will be permitted;

(b) Such lotteries and gambling activities shall be well controlled and regulated by law and operated and administered for the benefit, upliftment and development of all the people of South Africa;

(c) A national state lottery should be owned and controlled by central Government;

(d) As a matter of principle, governments should not have ownership, control, management of or shareholding in other forms of lotteries or gambling activities. However since the Board wishes to investigate the subject further within its historical context and realities of gambling in the old South Africa, final recommendations on this issue will be made in the Board's main report;

(e) The funds accrued from lotteries and gambling in South Africa shall be channelled into taxes, licence fees, administration costs, the RDP, welfare and other recognised and approved charitable organisations as and where applicable;

(f) The integrated character of South Africa's economy and the national interest compel an integrated approach with regard to the control, management and operation of a lottery and gambling system in South Africa; and,

(g) The lottery and gambling industry shall at all times uphold the highest standards of moral conduct and obedience to the law of the country and by its own efforts formulate and develop a code of conduct which will embrace the principles of honesty, integrity and fairness.

4. RECOMMENDATIONS

Against the background of the above-mentioned exposition, the Board is convinced that the Gambling Act, 1965 (Act 51 of 1965) no longer reflects the true moral viewpoint of the majority of South Africans and that Government should legalise lotteries and gambling in the Republic of South Africa and substitute the present Act with a new Lotteries and Gambling Act – the draft of which the Board will submit with its main report. The Board, therefore, recommends that:

4.1 GOVERNMENT STATES AS POLICY THAT, IN PRINCIPLE, ONLY LICENSED FORMS OF LOTTERIES AND GAMBLING IN THE REPUBLIC OF SOUTH AFRICA BE LEGALISED;

4.2 LOTTERIES AND GAMBLING ACTIVITIES SHALL BE SUBJECT TO THE CONTROL, REGULATION AND SUPERVISION PROVIDED FOR BY STATUTE AND OTHER PROVISIONS WHICH WILL BE PROMULGATED BY LEGISLATURES;

4.3 FUNDS THAT ACCRUE FROM LOTTERIES AND GAMBLING IN THE REPUBLIC OF SOUTH AFRICA SHALL BE UTILISED, *INTER ALIA*, FOR TAXES, LEVIES, LICENCING, ADMINISTRATION COSTS AND AN APPRECIABLE PERCENTAGE FOR THE RECONSTRUCTION AND DEVELOPMENT PROGRAMME AND OTHER RECOGNISED AND APPROVED PROJECTS FOR THE UPLIFTMENT AND DEVELOPMENT (IN ITS WIDEST CONTEXT) OF THE DISADVANTAGED AND DISABLED IN THE SOUTH AFRICAN SOCIETY;

4.4 THE LOTTERY AND GAMBLING INDUSTRY BE COMPELLED TO UPHOLD THE HIGHEST STANDARDS OF MORAL CONDUCT AND PROFESSIONALISM AND TO DEVELOP A CODE OF CONDUCT WHICH WILL EMBRACE THE PRINCIPLES OF HONESTY, INTEGRITY AND FAIRNESS; AND,

4.5 SECTION 5 OF THE GENERAL LAW SIXTH AMENDMENT ACT, 1993 (ACT 204 OF 1993), BE IMPLEMENTED WITHOUT DELAY AND ALL ILLEGAL CASINOS BE CLOSED WITHOUT DELAY.

5. LOTTERIES

5.1 The Board is aware of the distinction, recognised worldwide, as well as in all the submissions to the Board, between lotteries and gambling. This distinction also exists in legislation here and elsewhere in the world. It is not the purpose of the Board to enter into any discussion about it in this Report. Suffice it to point out that by virtue of its sovereignty, Government has the authority to legislate on lotteries and gambling in South Africa while Schedule 6 to the Constitution of the Republic of South Africa, 1993, (Act 200 of 1993), excludes lotteries from the legislative competencies of the Provinces. This distinction appears to be more academic than real and, considering the good relationship which the Board believes must exist between central Government and Provincial Governments, the matter will not be taken any further here. In the light of the Board's recommendation in this regard, the distinction is not relevant.

5.2 Evidence submitted to the Board indicated that a national State Lottery is a prerequisite for the objectives which lotteries and gambling in South Africa must serve. The first and most imortant argument in favour of a national State Lottery is its enormous income potential and, consequently, its high distribution value. Information to hand indicates that charities and the disadvantaged in countries with national State Lotteries benefit more than those in countries without them. Second, the backlog which the RDP aims to catch up with in South Africa virtually compels the establishment of a national State Lottery. Third, the nine provinces in the country, through their representatives, support the establishment of a national State Lottery.

5.3 The principle of State ownership and control and a national State Lottery is strongly supported by the evidence before the Board. The implication is that while the Government owns and controls it, the operation thereof could be in the hands of a non-statal party. The Board agrees with this approach on the grounds that the running of a national lottery is a highly sophisticated function requiring specialised skill and experience. Furthermore, for the sake of transparency, credibility and the perception of non-partisanship, it is advisable for a non-statal party to operate the national State Lottery on behalf of the State. Obviously such operators will have to be subject to the strictest accounting and auditing controls – a matter to be dealt with in the legislation which will regulate the State Lottery.

5.4 The Board received many submissions from international and local operators, all of whom testified to their skill, experience and ability in operating a national State Lottery for South Africa. It is clear to the Board that the large number of contenders who will compete for a licence to operate the lottery will have to be given a fair chance to present their services and expertise and that an independent licencing authority will have to judge each applicaton according to criteria which the Board will recommend in its main report.

6. RECOMMENDATION

Against the foregoing, the Board recommends that:

6.1 GOVERNMENT APPROVES AND DECLARES ITS INTENTION TO ESTABLISH A NATIONAL STATE LOTTERY IN THE REPUBLIC OF SOUTH AFRICA;

6.2 THE OWNERSHIP AND CONTROL OF SUCH A STATE LOTTERY SHALL VEST IN CENTRAL GOVERNMENT WHILE THE OPERATION AND RUNNING THEREOF MAY BE CONTRACTED OUT TO A NON-STATAL PARTY; AND,

6.3 THE DETAILS OF THE ESTABLISHMENT, OWNERSHIP AND CONTROL OF THE STATE LOTTERY AS WELL AS CERTAIN DETAILS OF ITS OPERATION BE PROVIDED FOR IN LEGISLATION TO BE PROMULGATED BY PARLIAMENT.

7. OTHER AND SMALL LOTTERIES

7.1 The Board has received evidence on small lotteries and activities that, in essence, resemble lotteries. Examples are scratch card and other schemes some of which have become very popular in South Africa. These activities are conducted in violation of the provisions of the law and will have to be terminated at a stage in future and may subsequently be allowed to operate only under a legalised gambling system.

7.2 This subject calls for cautious handling and the Board will advise thereon in more detail in its main report.

8. SPORTS POOLS IN SOUTH AFRICA

8.1 Sports Pools are generally defined in the Gambling Act, 1965 as a scheme in terms of which a person is invited to forecast the result of any sporting event. If that person forecasts the outcome of the event correctly or makes a prediction closest to the actual outcome then that person qualifies for a prize. For the purposes of the definition, the forecast includes not only the forecast of the person or team that will win "but also any forecast relating to the system of scoring employed in the sporting event concerned or to any person responsible for the score".

8.2 According to evidence before the Board, and also supported by the Howard Commission's findings, football or soccer pools are by far the most popular of Sports Pools worldwide. These pools are strictly regulated, operate under licence; are heavily taxed; operate mostly on a national basis; form a substantital source of income; and, contribute handsomely to the improvement of sporting facilities and the development of sports generally.

8.3 The Howard Commission recommended on a number of issues related to football pools for which it had convincing evidence. Apart from agreeing with that Commission's recommendation that football pools should be legalised but regulated by legislaton, the Board will refrain from recommending on the other issues relating to Sports Pools at this stage. Interested parties had until the end of September 1994 to make representations on the subject of Sports Pools and until such time as the Board has studied the different submissions and considered all the oral evidence, it cannot make any recommendations on such questions as to whether South Africa should have one national pool for football or whether provinces should also have their own pools (which they may choose to have in terms of the Constitution of the Republic of South Africa); and also the criteria of licensing; financial aspects; taxes; and other related matters. These matters will be examined, reported and recommended upon in detail in the Board's main report.

8.4 In line with its recommendation in principle, namely that lotteries and gambling should be legalised subject to legislative control and regulation, the Board will recommend that Sports Pools must follow the same and that revenue could be utilised for, *inter alia*, the development of sports in general and the establishment of a sports academy.

8.5 A request from the National Soccer League (NSL) to recommend to Government that a football pool be allowed and licenced to operate on a national basis from January 1995 was considered by the Board.

The NSL explained its difficulty of long preparation time that it requires to launch the football pool and, generally, operate the pool successfully during the football season.

The Board has great sympathy with the NSL's problems, but in all fairness, and on the basis of equity, cannot accede to its request at this stage. First, it would amount to discrimination against other related forms of gambling which could equally make a good case for preferential treatment. Second, even if such a recommendation were to be made by the Board, the Government has no legal power to grant such an allowance and licence. This in the face of the prohibition contained in the Gambling Act, 1965 which still stands as law in South Africa. Third, the Board believes all forms of gambling should be controlled and regulated by statutory provisions on a national and provincial level. Consequently, no football pool can be allowed and licenced until the present Gambling Act has been amended or replaced.

9. RECOMMENDATION

The Board recommends that:

9.1 SPORTS POOLS BE LEGALISED IN SOUTH AFRICA AND THAT THEIR REGULATION BE PROVIDED FOR IN LEGISLATION, DETAILS OF WHICH WILL BE PROVIDED IN THE BOARD'S MAIN REPORT.

10. CASINOS IN SOUTH AFRICA

10.1 The erstwhile independent homelands – Transkei, Bophuthatswana, Venda and Ciskei – legalised and licenced the establishment and operation of casinos while they enjoyed the legislative power of being able to do so. As was to be expected, casinos were soon operating in the major centres and resorts in those territories and were subsequently attracting large numbers of people from the then "South Africa". These South Africans spent large sums of money on gambling and it is common knowledge that the majority of the previous TBVC countries obtained a large portion of their income from this source and that their governments had substantial stakes in the casinos. These casinos have retained their legality after the post-election incorporation of the TBVC states into South Africa. They continue to operate legally under their issued licences.

In the meantime, casinos sprang up and started operating in certain metropolitan areas of South Africa – in flagrant violation of the provisions of the Gambling Act, 1965.

10.2 Evidence submitted to the Board indicated that the South African Police Services are faced with many difficulties in their attempts to police the situation: it is dangerous and at times, also difficult to arrest the operators of these illegal casinos. The reluctance of some Attorneys General to prosecute alleged offenders is also of little help to the South African Police Services. In the meantime, the number of illegal casinos has increased – largely due to their very lucrative nature and the lack of police action.

10.3 The uncertainty and confusion arising from this situation have serious consequences on many fronts: first, the rule of law implies that the law of the country should be obeyed. Lord Coke once said: "If the State spares the guilty it threatens the innocent". Obedience to the law is vital for the preservation of any State for, as Aristotle said: "Transgressions creep in unperceived and at last ruin the State, just as the constant recurrence of small expenses in time eat up a fortune". People show more respect for justice, and submit more readily when they see the State abides by and applies the laws of the country.

10.4 The operators of illegal casinos argue, first, that the reluctance of the State to police properly and prosecute consistently implies that it wants practice to overtake the law. Second, the long-existing anomaly of licenced horse racing in the country and the side-by-side existence and operation of legal and illegal casinos as well as other gambling activities whose legality is questionable, makes the prohibition contained in the Gambling Act farcical. Third, as a result their operations provide what people basically want to do – gamble!

10.5 The Board is fully aware of the powerful monetary and other interests vested in casinos in South Africa; the problems of policing the situation; the sensitivities surrounding the issue arising from the alleged substantial number of employment opportunities which these casinos provide; and, the pressure Government experiences from various quarters. Whereas the Board knows that a clamp-down on illegal gambling dens would lead to serious repercussions and possible violence as well as driving them further underground, it is also aware of the unanimous decision of the nine provincial governments that these illegal casinos should be closed down. Furthermore, reference has already been made to the harm done to the image of a government that fails to apply its laws. Not only does it "enamelchip" the State's authority, but it also demoralises those who have to ensure law and order in the country – the police.

10.6 It is against this background that the Board, on the advice of its Executive Committee on Casinos, decided to recommend that the provisions of the Gambling Act, 1965 (Act 51 of 1965) should be applied. No matter whether the Act was promulgated by the previous Government, its provisions are law and, in that respect, it is no different from any other statute passed years before. Consequently, until its repeal, the Gambling Act still states the law on gambling in South Africa.

10.7 Casinos, among others, are activities which fall within the legislative competencies of provinces. Provinces, therefore, are free to introduce legislation to regulate these activities within their borders. The Board is convinced that once properly licenced and regulated, casinos and other forms of gambling can be an important source of income for those provinces.

The Board is of the opinion that, for the sake of uniformity among all provinces, certain prescriptions and guidelines should be provided by central Government in order also to protect the national interest as well as that of the provinces. To that end, the Board believes national legislation should prescribe first, a properly constituted licensing authority in each province for the issue of licences for all casinos, horse racing, gambling and wagering activities. Second, that whatever criteria are set by a provincial licensing authority, these shall be based on the following considerations: access by the public to gambling premises and activities; health and safety requirements; issue of licences only to fit and proper persons; licences to endure for a limited period but renewable on application; responsibility and accountability of the operator to abide by the law and regulations covering that particular activity; the provisions of acceptable financial guaranteees for the purpose of meeting commitments regarding gamblers and payment of tax and other dues to the Government; proper auditing of the operator's books; and, the establishment of an effective inspection service.

These and other matters will all be dealt with in the proposed legislation to be submitted to Government in due course. The Board will recommend that Provincial legislature be requested not to promulgate any legislation until these prescriptions and guidelines have been determined in the proposed national statute.

11. RECOMMENDATIONS

Against the background of the above-mentioned, the Board recommends that:

11.1 THE PROVISIONS OF THE GAMBLING ACT, 1965 (ACT 51 OF 1965) BE APPLIED WITH REGARD TO ILLEGAL CASINOS WHICH WOULD RESULT IN THE CLOSING OF ALL ILLEGAL CASINOS IN THE COUNTRY;

11.2 URGENT DISCUSSIONS BE HELD BETWEEN THE MINISTER OF JUSTICE, THE ATTORNEYS-GENERAL AND THE RELEVANT SENIOR OFFICERS OF THE SOUTH AFRICAN POLICE SERVICES ON THE UNIFORM APPLICATION OF THE PROVISIONS OF THE ACT;

11.3 THE PROVISIONS OF SECTION 5 OF THE SIXTH AMENDMENT ACT, AS RECOMMENDED BY THE BOARD ON 30 AUGUST 1994, BE IMPLEMENTED AS SOON AS POSSIBLE TO ELIMINATE ANY PERCEIVED LOOPHOLES IN THE LAW;

11.4 PROVINCIAL LEGISLATURE BE REQUESTED TO POSTPONE ANY LEGISLATION ON CASINOS, UNTIL GOVERNMENT HAS PROVIDED PRESCRIPTIONS AND GUIDELINES IN NATIONAL LEGISLATION TO BE PROMULGATED IN THE NEXT LEGISLATIVE SESSION OF PARLIAMENT AND, FOR THAT REASON, THE GAMBLING ACT, (ACT 51 OF 1965), NOT BE TRANSFERRED TO PROVINCIAL LEGISLATURE AT THIS STAGE;

11.5 SUCH NATIONAL LEGISLATION SHOULD PRESCRIBE THAT EACH PROVINCE WHICH AUTHORISES CASINO AND OTHER GAMBLING OPERATIONS WITHIN ITS BORDERS SHALL ESTABLISH A PROPERLY CONSTITUTED LICENSING AND CONTROL AUTHORITY, POSSIBLY CO-ORDINATED BY A NATAIONAL BODY, FOR THE PURPOSE OF ISSUING LICENCES FOR CASINOS AND OTHER GAMBLING ACTIVITIES AND FOR ENSURING THE PROPER CONTROL AND REGULATION THEREOF;

11.6 CRITERIA SET BY A PROVINCIAL LICENSING AUTHORITY SHALL, AMONG OTHERS, ACCOMMODATE THE FOLLOWING ASPECTS:

11.6.1 ACCESS BY THE PUBLIC TO GAMBLING PREMISES AND ACTIVITIES;

11.6.2 HEALTH AND SAFETY REQUIREMENTS;

11.6.3 ISSUE OF LICENCES ONLY TO FIT AND PROPER PERSONS;

11.6.4 LICENCES TO ENDURE FOR A LIMITED PERIOD BUT RENEWABLE ON APPLICATION;

11.6.5 RESPONSIBILITY AND ACCOUNTABILITY OF THE OPERATOR TO ABIDE BY LAWS AND REGULATIONS;

11.6.6 PROVISION OF ACCEPTABLE FINANCIAL GUARANTEES FOR THE PURPOSE OF MEETING COMMITMENTS AND THE PAYMENT OF TAXES AND OTHER DUES TO GOVERNMENT;

11.6.7 PROPER AUDITING OF THE OPERATOR'S BOOKS; AND

11.6.8 ESTABLISHMENT OF AN EFFECTIVE INSPECTION SERVICE.

12. BETTING ON SPORTS AND OTHER CONTINGENCIES

12.1 According to the Howard Commission betting on sport, as distinct from Sports Pools, relates to betting on a single sporting event which includes betting not only on the result of the event but also on other contingencies related to it. That Commission dealt with the subject of sports betting at some length and finally concluded by recommending, with some reservations, that betting on sport be legalised in South Africa.

The Board considered the differences by the Howard Commission between Sports Pools and betting on sporting events and concludes that it cannot support the Commission's distinction. A good example of a Sports Pool type of gambling is soccer pools which are not only practised worldwide, but are only viable mainly on the grounds of a substantial number of games during a season and large crowds of supporters.

12.2 The Board is of the opinion that, as elsewhere in the world, soccer identifies itself, at this stage, as the only sport that qualifies as a Sports Pool activity. It does not mean that other types of sports, such as rugby, formula one motor racing etc. may not, at a later stage, be recognised as a Sports Pool activity. That will depend on future developments. Sports Pools have already been dealt with elsewhere in this Report and needs no further attention here.

12.3 On analysis of the available evidence it is clear that betting on sports and other related activities is a matter that appropriately belongs to the competencies of provincial legislatures. It is not a subject for central Government to regulate, in any detail, by national law. The Board recommends that provincial governments legislate on betting on sports and other contingencies.

In this regard the following guidelines are recommended by the Board:

12.3.1 That, as a principle, betting on sports and other contingencies be legalised except in those cases where the sporting event or contingency is illegal; *contra bonos mores*, against public policy or interest, or amounts to cruelty to animals;

12.3.2 That the definition of betting on sports and other contingencies be couched in comprehensive terms so as to allow flexibility and be accommodative of new developments in this field of gambling; and,

12.3.3 That subjects such as licencing; transborder and international sporting events; division of revenue; inspectorate; and, still others, which are set out in more detail in the recommendations, be legislated for in more detail by provincial governments.

13. RECOMMENDATIONS

The Board consequently recommends that:

13.1 BETTING ON SPORTS AND OTHER CONTINGENCIES AS DISTINGUISHED FROM SPORTS POOLS BE LEGALISED EXCEPT IN THOSE CASES WHERE THE SPORTING EVENT IS ILLEGAL, *CONTRA BONOS MORES*, OR AGAINST PUBLIC POLICY OR INTEREST OR AMOUNTS TO CRUELTY TO ANIMALS;

13.2 PROVINCIAL LEGISLATURES WHICH ALLOW BETTING ON SPORT AND OTHER CONTINGENCIES WITHIN THEIR BORDERS BE ENCOURAGED TO PROMULGATE THE NECESSARY LEGISLATION IN THIS FIELD AS SOON AS POSSIBLE;

13.3. THE DEFINITION OF SPORTS AND OTHER CONTINGENCIES BE COUCHED IN BROAD TERMS SO AS TO ALLOW FLEXIBILITY AND BE ACCOMMODATIVE OF NEW DEVELOPMENTS IN THIS FIELD OF GAMBLING;

13.4 ALL BETTING ON SPORTS AND OTHER CONTINGENCIES BE ALLOWED ONLY UNDER OFFICIALLY ISSUED LICENCES;

13.5 SUCH BETTING BE ALLOWED ALSO IN CASES OF TRANSBORDER AND INTERNATIONAL SPORTING EVENTS;

13.6 THE REVENUE THAT ACCRUES FROM BETTING ON SPORTS AND OTHER CONTINGENCIES BE UTILISED FOR TAXES, LEVIES, ADMINISTRATION COSTS AND CHARITABLE CAUSES AND IN PARTICULAR FOR THE DEVELOPMENT OF SPORTS AND SPORTING FACILITIES; AND,

13.7 AN INSPECTION SYSTEM BE ESTABLISHED AS PART OF THE CONTROL AND REGULATION SYSTEM.

14. CONCLUSION

14.1 A bibliography and names of contributors and witnesses who made submissions to the Board will form part of the Main Report.

SCHEDULE

COMPOSITION OF THE LOTTERIES AND GAMBLING BOARD

Prof N E Wiehahn (Chairperson)

Mr W Vermeulen (Department of Finance)

Adv J H de Lange (Department of Justice)

Dr N E Chinkanda (Department of Welfare)

Mr R A Bell

Mr J T M Edwards

Mr D D B Mkhwanazi

Mr E Molobi

Dr M A Tshabalala

Mr J H Viljoen

Mr J A Brazelle (Northern Cape)

Mr A J L Geyser (KwaZulu/Natal)

Mr E J Jacot-Guillarmod (PWV)

Mr T M Manyoni (Free State)

Mr E Mushwana (Northern Transvaal)

Mr T R Ramphele (North West)

Mr Z Titus (Eastern Cape)

Mr J J Walsh (Western Cape)

Mr A Wilsenach (Eastern Transvaal)

MEMORANDUM

TO: **MISTER C L FISMER, MP**
MINISTER FOR GENERAL SERVICES
CAPE TOWN

FROM: **PROF N E WIEHAHN**
CHAIRMAN: LOTTERIES AND GAMBLING BOARD
PRETORIA

DATE: **27 MAY 1995**

DEAR MINISTER

RE: INSPECTION SERVICES; TAX ON GAMBLING AND MISCELLANEOUS MATTERS

INTRODUCTION

A number of issues, some of which have been discussed with you, need to be brought to your attention for consideration and decision. The Board decided that this should be done by way of this memorandum, as those of a policy-nature have already been dealt with in the Board's Main Report and therefore need no further official reporting on, while the others are of a purely domestic nature.

1. INSPECTION SERVICES

1.1 One of the principles for gambling in South Africa is, as recommended by the Board in its Main Report in Chapter 4 par 1.0, that "strict control, efficient and effective regulation as well as competent policing of and in the gambling industry" should be accepted for the entire country, and that policy and legislation be formulated and implemented with that objective.

1.2 With regard to casino- and related forms of gaming the Board recommended in Chapter 7 of its Main Report, par. 3.2, that the gaming legislation of each province should provide for the establishment of gaming inspection services; the powers, functions and role of gaming inspectors should be spelled out in such legislation, and that the closest liaison and co-operation be established between the inspectorates and the South African Police Services with a view to exercising strict control over gaming activities in the provinces.

1.3 These recommendations were made against the background of mainly the legislative competence which provincial legislatures have in terms of section 126 of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993 as amended) which confers such powers on the provincial governments with regard to all matters which fall within the functional areas specified in Schedule 6 to the Constitution. One of these areas includes casinos, racing, gambling and wagering. Apart from this constitutional ground, evidence was also submitted to the Board, from, *inter alia,* certain provinces in this regard.

1.4 Notwithstanding the legal ground and evidence on this aspect, the Board is fully aware of the inherent authority of Parliament as government of the country and also of its constitutional powers to pass laws, even overriding provincial legislation, on matters which, *inter alia,* require "to be regulated or co-ordinated by uniform norms or standards that apply generally throughout the Republic".

Consequently, the decision to centralise inspection services in the entire gambling industry or a part thereof, would be based on necessity, convenience and/or ground of a political nature. This would fall within the realm of national considerations.

1.5 The Board was requested to consider anew the propriety of its recommendation in the Main Report that inspection services in particularly the gaming and related industries should be provincially based and whether

it should not be centralised on a national basis in terms of the proposed gaming bill. The following reasons for the request were proffered.

First, the technical side of inspection services i.e. approval of technology, maintenance of national standards, monitoring of quality etc., would be more efficiently done on a national basis than on a provincial basis. Second, advice received by individual members of Cabinet from overseas sources and expressed to yourself, is to the effect that the inspection, as part of control and regulation of casino and related gambling activities, could be much better and more efficiently performed and maintained from a national than a provincial or regional basis. Third, some provinces would not have the financial resources to introduce and maintain such inspection servics. Fourth, national inspectors would be much less exposed to the temptation of bribery, corruption and other unethical forms of conduct and would be in a much more favourable position to maintain "uniform norms or standards" which Parliament in terms of the Constitution would wish to apply throughout the gambling industry in the Republic.

1.6 The Board discussed the request at its last meeting and came to the following conclusions:

1.6.1 Factually and perceptually it would be unwise for the Board to reverse its recommendation on this aspect in the Main Report. It would not only reflect negatively on the Board's public image but would also create a precedent which would open the door for requests to reconsider all other recommendations in the Reports of the Board;

1.6.2 As pointed out above, the provincial legislatures have the constitutional powers to institute their own inspection services, both technical and operational, or not. The Board was unanimous on this recommendation. There was no evidence of a political, economic, social or other nature before the Board why provinces should not have gaming inspectors of their own and, apart from individual advice and opinions based on experience in other countries, the Board is still of the opinion that it is within the legal power and discretion of a province whether it wants to introduce a gaming inspection service of its own.

1.6.3 However, should Parliament decide, for the reason of co-ordination and uniformity, set out as a principle in the Main Report, to centralise inspection services, legally in the proposed national gaming legislation and operationally under the control of the National Gaming and Wagering Board recommended in that bill, it has such powers and can invoke them for the good reasons it would have to do so. In the case of a national inspection service for casino and related gambling activities being introduced, the Board is of the opinion that, as is recommended as a principle in the Main Report, the sensitivity of the relationship between central government and provincial legislatures be observed and to that end close liaison and co-operation between the two levels of governments be sought. Furthermore that, should provinces elect to introduce their own inspection service, their jurisdictions *vis à vis* the national inspectorate be accurately determined by the proposed National Gaming and Wagering Board in collaboration with the respective provincial gaming authorities.

2. VALUE ADDED TAX IN THE GAMBLING INDUSTRY

2.1 As stated in the Main Report of the Board most gambling jurisdictions in the world are compelled to pay taxes on the principle that as an industry, the respective governments are entitled to their share of the revenue generated by gambling. The Board therefore recommended in Chapter 4 par. 7 that, as a principle, income tax be levied on operators of gambling activities but that income on gambling wins not be taxable. With regard to value added tax (VAT) all forms of gambling have exempted status.

2.2 In reaction to this recommendation the Board was requested to reconsider the grounds for its recommendation that all forms of gambling shall be exempted from paying VAT. Again the Board cannot reverse or deviate from its recommendation in principle on this aspect namely that no VAT should be payable by the gambling industry. It has decided however, after considering presentations made *ex post facto* the finalisation of the Main Report, to provide a different ratio for its recommendation in principle and that is that the gambling industry should be granted a zero rating rather than an exempted status.

2.3 All the reasons for excluding gambling from paying VAT and, particularly the principle that double taxation should not be imposed, still apply. The argumentation for exempting gambling from paying VAT on a zero rating basis rather than an exempted rating basis is as follows:

2.3.1 Exempt Status

(a) If an activity is granted exempt status, it is not liable for output taxes on its sales, but it can also not recover the VAT which it pays on the goods and services which it purchases. Apart from placing this type of business activity at a disadvantage compared to normal business entities which can recover the VAT which is levied on their purchases, it creates practical problems in the policing of these activities for Inland Revenue. All gambling entities will have other activities which are vatable and the carrying on of mixed activities will entail the apportionment of inputs and the attendant administrative difficulties therewith. It also creates increased scope for abuse on the part of the enterprise in determining the levels of input tax to be claimed by them in respect of their taxable activities.

(b) Another very big problem is that in terms of the VAT legislation, an activity that is granted exempt status, is liable to pay input VAT on the value of its capital assets. This would create enormous difficulties with the apportionment of assets between the gambling exempt activity and the other normal vatable activities. The affordability thereof for the present affected enterprises would also be a major problem.

(c) This option would also not totally adhere to the principle of not applying double taxation, as gambling enterprises would still be subject to input VAT.

2.3.2 Zero Rated Status

(a) If an activity is zero rated for VAT purposes, it is not liable for output taxes on its sales and more importantly, it can recover the input VAT which it pays on its purchases. In other words, it is in a tax neutral position with regard to VAT – a situation which is effectively similar to that of normal business entities.

(b) This alternative option of zero rating also eliminates all those problems relating to exemption. Zero rating also adheres to the principle of not applying double taxation as the enterprise will only be subject to provincial tax on its gambling activities. The provinces obviously wish to maximise as far as possible their revenue from gambling with the result that they will take into account the fact that gambling is zero rated for VAT purposes when setting the percentages of provincial tax to be levied. Furthermore, the provinces will ensure that they have the necessary expertise and systems for ensuring that all the correct taxes are collected. This will relieve Inland Revenue of acquiring the necessary skills in a specialised field and will also eliminate the duplication of having to collect independently both VAT and provincial taxes. No tax will therefore be lost to government.

(c) In the light of the above, it can be seen that the most practical and effective method of excluding gambling from VAT is by zero-rating gambling transactions. This method also fully complies with the principle that double taxation should not be imposed.

The Board therefore recommends that the exclusion of the gambling industry from paying value added tax be based on a zero rating and not on an exempted status.

3. MISCELLANEOUS MATTERS

3.1 Budget of the Board

At present the budget of the Board is still controlled and administered by the Department of Justice while the Board no longer reports to the Minister of that Department. The Board accepts that with your elevation to a full cabinet position, and the simultaneous transfer of the responsibility for gambling policy and legislation to

your Department, the Board's financial and administrative affairs would also be included in the package. It is not only undesirable that the Board should function under two different ministries, but also inconvenient and difficult at most times.

The Board shall appreciate it if you could approve of the transfer of the budget and other financial affairs of the Board to your Ministry where they rightfully belong. Should you require further and more complete motivation, the Board will gladly provide you with same without delay. The Board is aware of the fact that in terms of section 1 of the Lotteries and Gambling Board Act, 1993 (Act 210 of 1993) the Minister, as defined, is the Minister of Justice.

3.2 Mr E Mushwana – MEC of Northern Transvaal

The Board has been advised by the Premier's office of Northern Transvaal Province that Mr E Mushwana has been replaced by Mr T Mufamadi as a member of the Board representing that Province.

In terms of section 3 (1) of the Lotteries and Gambling Board Act, 1993 (Act 210 of 1993), the Board shall consist of inter alia, not more than one representative of each province designated by the government of such province, who shall be appointed by the Minister. The Board recommends that the substitution of Mr Mufamadi for Mr E Mushwana, as advised by the Premier's office be accepted and that Mr Mufamadi be appointed by the Minister of Justice as the Act determines.

4. On behalf of the Board and myself I again wish to express our sincere thanks and appreciation for your interest in and support for the Board's activities. Please be assured of our loyalty and co-operation.

Yours Sincerely



PROF N E WIEHAHN
CHAIRMAN

MAIN REPORT

FOREWORD

This foreword must be read as a continuation to and expansion of the preface to the Board's Interim Report which was submitted to the government during October 1994. Since then, the Board continued very actively with its task to prepare and complete this Main Report within its terms of reference as determined by the provisions of the Lotteries and Gambling Board Act, 1993.

The Board depended largely on the recommendations of its executive committees which met regularly throughout November and December 1994 as well as in January and February 1995.

The meetings of the Board were well-attended and a spirit of cohesion, comradery and team spirit rapidly developed among the members as a result of the dedication to duty and task with which each regarded his membership of the Board. This is noteworthy, particularly in the light of the divergent interests represented on the Board and that the majority of members live in centres outside the Gauteng jurisdiction.

The Board's office accommodation on the second floor of the Burocadia Building in Pretoria was not completed for full use before December 1994, with the result that Board and committee meetings had to be held at neutral venues away from base. The Board's office and meeting accommodation was fully usable only from January 1995.

The extent of the Board's activities led to the appointment of two more executive committees during November 1994: The Tax Executive Committee which dealt with the financial aspects of the investigation (that is, taxes, licence fees, distribution of income and still others) which necessitated a closer liaison with the Commission of Inquiry into certain aspects of the tax structure of South Africa (Katz Commission) and the Financial and Fiscal Commission in order to obviate any further delays after this Report's submission to government.

To further accelerate developments after the submission of the Report, and at the request of Minister Fismer, the Board decided to formulate draft legislation to be promoted by central government. To that end, the Legislation Executive Committee was appointed. Two statutes have been drafted – one on lotteries, and one on gaming and wagering – which are attached to this report. The Board was also requested to draft model legislation for the provinces. This will be submitted as soon as possible.

The Lotteries and Gambling Board Act, 1993, provides for the appointment of advisory panels consisting of experts in the various fields of gambling falling within the terms of reference of the Board. In this regard it was decided to rely on the submissions of organisations and persons with the relevant expertise and, where needed, to appeal to such persons for expert advice.

To co-existence and operation of legal and illegal casinos within the borders of the new South Africa and the confusion arising from the lack of uniformity in the policing of this situation, as well as the reluctance of some of the attorneys-general to prosecute in cases of alleged transgressions of the present legislation, gave rise to criticism and all kinds of complaints:

Failure to apply the law of the land; lack of consistency in police action and prosecution, discrimination in law administration – to mention a few. This caused great uncertainty and confusion with regard to gaming in the country. In order to bring order and more certainty, the Board was requested to make a recommendation in this regard.

A stand had to be taken and as the Roman Law adage states: "*Justitia est obtemperalis legibus*" (Justice is obedience to law) the Board recommended to government that section 5 of the General Law Sixth Amendment Act, 1993 (Act No. 204 of 1993), which clarifies any perceived loopholes in the Gambling Act 1965 (Act No. 51 of 1965), be implemented and that all illegal casinos be closed.

Furthermore, it was also recommended that discussions be held between the Deputy Minister of Justice, the South African Police Services and the attorneys-general with a view to facilitating uniformity of action and ensuring the proper and effective implementation of the said section 5 of the General Law Sixth Amendment Act, 1993.

There was reaction from the illegal operators to this step by government which manifested itself in a number of court cases. All of these were decided in favour of the government, and this led to, among other things, demonstrations in certain centres.

In order to obtain as much information as possible for this Main Report, the Board invited the public and particularly interested parties by advertisements in the media and through radio-talks to submit by *30 September 1994*, written presentations to the Board under the headings lotteries, sports pools, casinos, bingo, betting on sports and, obviously, on matters related thereto.

The response to this invitation exceeded all expectations. Submissions were received from national and international sources – literally from all quarters of the world. Despite the final date which was set for presentations to be in, written information and proposals continued to arrive well beyond that date. By the end of January 1995 written presentations to the Board exceeded 450 in number. Many of these contained much detailed information and proposals while some were couched in the form of applications for licences and other forms of request for authorisation to conduct legal gambling in South Africa.

More elaboration on the nature, content and extent of the presentations would be inappropriate here, but suffice it to state that the quality and scope of the vast majority were excellent and comprehensive. Most of the submissions from overseas sources reflected a vast knowledge and experience in the gambling world. All this information obviously assisted the Board immensely and contributed largely to the contents and quality of this Report.

Many organisations and persons requested an opportunity to make verbal presentations to the Board, either to explain and elaborate on their written submissions or to put new information before the Board. Consequently, the Board conducted oral sessions for five full days during the beginning of November 1994 in order to give as many organisations and persons an opportunity to give verbal evidence. These sessions were also advertised in the media inviting interested parties to participate in the verbal sessions. Because of the Board's policy of being as neutral and objective as possible in its activities, these sessions were conducted at the University of South Africa's Postgraduate School of Business Leadership in Midrand – an organisation highly unlikely to be involved in gambling, either now or in the future.

More than 40 organisations and persons appeared before the Board to present their cases and provide information. All sessions were well attended by members of the Board and were conducted in a good spirit, thanks to the kind and friendly co-operation of the witnesses. Many people representing organisations or appearing in their personal capacities flew in from other centres (some even from overseas) specially to appear before the Board. The Board wishes to express its gratitude and appreciation to these persons in particular.

The launching of a National Lottery in Britain in November 1994 and the official indications that certain changes were about to be introduced in the regulatory measures relating to gaming in that country, led to the Board's decision to send a delegation to London.

The delegation visited London from 28 November 1994 to 2 December 1994 and the Board greatly appreciates the fact that Minister C.L. Fismer, MP (then Deputy Minister of Justice), who was in Europe for other official duties at the time, found it possible to join the delegation in London and attend most meetings and discussions which had been arranged for the Board. A full programme of very interesting and instructive interviews and presentations was organised by the High Commissioner's Office in London and the Board's thanks and appreciation have been conveyed to the High Commissioner and his staff.

The high quality of the information obtained and successful completion of the tour was also largely attributable to the active and large-scale involvement of the chairperson and officials of the Gaming Board of Great Britain.

The Gaming Board kindly arranged for important witnesses such as the Managing Director of the Norwegian State Lottery, the Director of the Irish National Lottery and the joint Secretary of the Gaming Regulators European Forum, Casino Gaming in Holland and the Netherlands Measuring Institute to fly from their various countries to make presentations to the group in London. The Board is indebted to these persons. Furthermore, the Board is fully aware of the fact that many other organisations and persons travelled specially to London from the United States and Europe to interview the Board.

Following the visit to London, the Chairperson of the Board travelled on to the United States where he interviewed organisations and leaders, regulators, and many others in the American gambling world and was fortunate enough to attend the Annual American Gaming Summit in Las Vegas.

The volume of information at the Board's disposal increased substantially after the visits to London and the United States. Another Board member travelled from London to Holland where he visited the state lottery, casinos, the Netherlands Measuring Institute and gaming machine manufacturers.

During September 1994 the Premiers' Forum requested the then Deputy Minister of Justice to brief the Board for a recommendation on assigning certain provincial ordinances (of the previous Transvaal and Cape provinces) relating to horse-racing to the relevant new provinces. This assignment was completed in November 1994.

In its activities the Board was very aware of the sensitivity of the relationship between the central government and the provinces – a relationship which is rooted in the country's new constitution. To that end, the Board has kept the closest contact with the provinces through their respective representatives on the Board as well as with the Interprovincial Liaison Committee on gambling. Some meetings of the latter were attended by the Chairperson and other Board members so as to be able to exchange necessary information.

In December 1994 the then Deputy Minister of Justice, Mr Fismer, requested the Board to include, as part of its brief, the question as to whether dog racing in South Africa should be legalised or not. This subject is dealt with in Chapter 8 of this Report.

The main factor, which was also stated in the foreword to the Interim Report and which continued to dominate the Board's activities throughout, was the extreme time pressure under which the Board had to perform its task. This was brought about by circumstances beyond the Board's control. The urgency with which the Interim Report and this Report had to be completed for submission to government and financial constraints, compelled the Board to turn down invitations to visit Australia, France, Austria, and still other countries – visits which, in all probability would have contributed more to the Board's knowledge and to the volume of this Report.

The writing of this Report commenced in December 1994, after the delegation's return from overseas and it was completed in February 1995. The Board would have preferred to have had much more time at its disposal in order to give South Africa a more comprehensive and detailed Report. However, as Cicero said: "*Nolite id velle quood fieri non potest*" (Do not wish for what cannot be).

Three aspects of the Report need to be explained:

First, the Board avoided naming witnesses in the text of the Report for the reason that, in view of the large volume of evidence and information received, reference to names would have added considerably to its length. Therefore, in the text of the Report, only a short digest of the evidence is given on each subject. These witnesses are, however, also listed under the heading "SOURCES OF REFERENCE".

Second, information and statistics on certain subjects in the evidence and from sources do not correspond and, in some cases, are even in direct conflict with one another. A search for the accurate version of information in such cases would have been too time-consuming. Consequently, merely the gist of the relevant information is reflected in the Report.

Third, the Board searched and deliberated long to find a term that would include, in its meaning, the gambling, gaming and wagering activities of South Africans. Many dictionaries, thesauruses and other authoritative sources were consulted. The Board finally decided on "gambling" as a generic term to include lotteries, gaming and wagering. "Gambling" seems to be the generic term in many countries and sources indicate that it is rapidly becoming so established in South Africa.

This Report has its shortcomings and will certainly be criticised by many. However, be that as it may. It is a truism that the best formula for failure is to try and please everyone! The Board did its best under the circumstances and within the very short time at its disposal, bearing in mind that the peak of its activities fell over the Christmas holidays when most

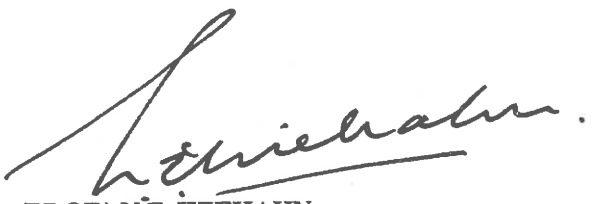
people are on vacation and the entire country is out of gear. With due acknowledgement to the late Sir Winston Churchill, it can truly be said that never in so short time has so much endeavour been put into an investigation by members of a Board with so much dedication on a subject which will have such a dramatic effect on the country's economic and social fibre.

The completion of this Report and the draft legislation would not have been possible had it not been for the whole-hearted co-operation and support of all the organisations and persons who, together with the Board, involved themselves with so much commitment and dedication to the Board's task. To thank them all with a general thank-you would show very little of the deep gratitude owed to them by the Board. On the other hand, it is impossible to thank them individually in this foreword. As Senega said: "Words can never convey enough the true meaning of gratitude".

The following persons and organisations must, however, be thanked individually, without detracting from the indebtedness owed to others, for their particular contributions to the completion of the Board's task:

- The Government who appointed the Board and for providing them with the opportunity to undertake this task and thus help create a source of substantial income for the State, the Reconstruction and Development Programme and other good causes in the country;
- Minister C.L. Fismer, MP, who as the Minister responsible, kept close association with the Board throughout and without ever interfering, shared so many experiences and discoveries with its members;
- The Director-General of the Department of Justice for the provision of funds, office accommodation, secretarial services and other facilities as well as for the friendly co-operation enjoyed by the Board;
- The chairperson and members of the staff of the Gaming Board of Great Britain for courtesy and assistance afforded the Board;
- Mr D.C. Swanepoel, the Secretary to the Board and his staff, Miss C. Ellis, Miss C. de Jongh, Miss M.V. Tilsley,
- Mr H. Mngadi and Mr R.M. Hand who so ably assisted the Board;
- Mr F.H. Cronje, retired senior public servant, for research done for the chairperson; and,
- Mr I.M. Stiff for editing this Report.

As chairperson of the Lotteries and Gambling Board I wish to add my sincere thanks and appreciation to each and every member of the Board for the comradery, friendship and wonderful team spirit that developed and prevailed during our task.



(PROF.) N.E. WIEHAHN
PRETORIA
MARCH 1995

EXECUTIVE SUMMARY

THE FOLLOWING IS A SUMMARY OF THE BOARD'S RECOMMENDATIONS:

1. THE SOCIAL AND ECONOMIC IMPACT OF GAMBLING

1. THE BOARD RECOMMENDS THAT –

(a) RESEARCH BE CONDUCTED BY THE NATIONAL GAMING AND WAGERING BOARD (WHICH THE BOARD WILL RECOMMEND IN A LATER CHAPTER) INTO THE SOCIAL AND ECONOMIC IMPACT OF GAMBLING INCLUDING THE KEEPING OF STATISTICS AND OTHER DATA IN THIS REGARD; AND,

(b) THE GAMBLING INDUSTRY ESTABLISH AN INSTITUTE OR CLINIC FOR THE TREATMENT AND REHABILITATION OF PATHOLOGICAL GAMBLERS.

2. PRINCIPLES FOR GAMBLING IN SOUTH AFRICA

2.1 Control and regulation

THE BOARD RECOMMENDS THAT THE PRINCIPLE OF STRICT CONTROL, EFFICIENT AND EFFECTIVE REGULATION AS WELL AS COMPETENT POLICING OF AND IN THE GAMBLING INDUSTRY BE ACCEPTED FOR THE ENTIRE COUNTRY AND THAT POLICY AND LEGISLATION BE FORMULATED AND IMPLEMENTED WITH THAT OBJECTIVE.

2.2 Relationship between central and provincial government

THE BOARD RECOMMENDS THAT –

(a) WHEREAS THE RELATIONSHIP BETWEEN THE CENTRAL, PROVINCIAL AND LOCAL GOVERNMENTS IS SENSITIVE, THE CLOSEST LIAISON AND CO-OPERATION BETWEEN THEM BE SOUGHT AND MAINTAINED SO THAT FAIRNESS, FRANKNESS AND JUSTICE IN THE GAMBLING INDUSTRY IN SOUTH AFRICA CAN PREVAIL; AND,

(b) THE CONTROL STRUCTURE TO BE ESTABLISHED IN TERMS OF NATIONAL GAMBLING LEGISLATION PROVIDE FOR PROVINCIAL REPRESENTATION TO MAXIMISE LIAISON AND CO-OPERATION.

2.3 Protection of gamblers

THE BOARD RECOMMENDS THAT THE GAMBLING POLICY AND LEGISLATION PROMULGATED AT ALL LEVELS OF GOVERNMENT HAVE AS A PRIMARY OBJECTIVE THE PROTECTION OF THE GAMBLER: HIS PHYSICAL AND MENTAL WELL BEING; HIS PERSONALITY AND DEMOCRATIC RIGHTS UNDER THE CONSTITUTION OF THE COUNTRY; HIS FREEDOM TO GAMBLE OR NOT TO GAMBLE; HIS MONEY; HIS RIGHT TO FAIR GAMBLING; HIS POSITIVE PERCEPTION OF THE INDUSTRY; AND, HIS GOOD FAITH AND INTEGRITY.

2.4 Protection of society

THE BOARD RECOMMENDS THAT THE GAMBLING POLICY AND LEGISLATION AT ALL LEVELS OF GOVERNMENT HAS, AS AN IMPORTANT OBJECTIVE, THE PROTECTION OF SOCIETY AGAINST THE OVER-STIMULATION OF LATENT DEMAND FOR GAMBLING; THE DAMAGING EXCESSES OF GAMBLING; AND, THE DECLINE OF THE WORK-ETHIC THROUGH GAMBLING.

2.5 Qualifications and status of licence-holders

THE BOARD RECOMMENDS THAT STRICT CONTROL ON THE LICENCE-HOLDER BE ACCEPTED AS A PRINCIPLE AND THAT REQUIREMENTS RELATING TO THE FITNESS AND PROPRIETY IN ALL RESPECTS OF THE APPLICANT BE CONTAINED IN POLICY AND LEGISLATION OF GOVERNMENT AT ALL LEVELS AND THAT, AS IN OTHER JURISDICTIONS, LICENCE-HOLDERS OR OPERATORS BE REQUIRED TO MAINTAIN THESE HIGH STANDARDS THROUGHOUT THE DURATION OF THEIR LICENCES.

2.6 Quality of gambling technology

THE BOARD RECOMMENDS THAT THE PRINCIPLE OF CONTROL OVER GAMBLING TECHNOLOGY BE ACCEPTED AND THAT GAMBLING POLICY AND LAW SHALL SET HIGH STANDARDS AND REQUIREMENTS FOR THE ACQUISITION, MAINTENANCE AND SERVICE OF EQUIPMENT.

2.7 Taxation

THE BOARD RECOMMENDS THAT –

(a) INCOME TAX ON OPERATORS OF GAMBLING ACTIVITIES BE LEVIED;

(b) INCOME ON GAMBLING WINS NOT BE TAXED; AND,

(c) ALL FORMS OF GAMBLING HAVE VALUE ADDED TAX EXEMPTED STATUS.

2.8 Transparency, honesty and integrity

THE BOARD RECOMMENDS THAT –

(a) THE PRINCIPLE OF TRANSPARENCY, FAIRNESS, OPENNESS, EQUITY AND LOGIC BE INCORPORATED IN THE GAMBLING POLICY AND LEGISLATION OF THE COUNTRY AND THAT THE INDUSTRY SHALL ITSELF ADOPT THIS PRINCIPLE IN ITS ADMINISTRATION, PRACTICES AND OPERATIONS WITH A VIEW TO CREATING AND STRENGTHENING THE PERCEPTION OF HONESTY, INTEGRITY AND JUSTICE IN THE EYES OF THE PUBLIC; AND,

(b) POLITICIANS SHOULD NOT BE INVOLVED IN DECISION-MAKING OR CONTROL BODIES RELATING TO GAMBLING.

2.9 Government involvement in the gambling industry

THE BOARD RECOMMENDS THAT LEGISLATION SHALL EXCLUDE CENTRAL AND PROVINCIAL GOVERNMENTS AND PARASTATAL BODIES FROM HOLDING SHARES OR OTHER FORMS OF POWER IN THE GAMBLING INDUSTRY EXCLUDING THE NATIONAL STATE LOTTERY.

2.10 Co-ordination and uniformity in the country

THE BOARD RECOMMENDS THAT LEGISLATURES ON ALL LEVELS OF GOVERNMENT STRIVE TOWARDS AS MUCH UNIFORMITY AS POSSIBLE IN THEIR POLICY AND LEGISLATION WITH REGARD TO GAMBLING IN ORDER TO ESTABLISH AND DEVELOP A UNIFORMLY CONTROLLED AND REGULATED GAMBLING INDUSTRY IN SOUTH AFRICA. TO THIS END THE BOARD WILL RECOMMEND THAT NATIONAL LEGISLATION SHALL CONTAIN MINIMUM PRINCIPLES WHICH PROVINCES MUST INCLUDE IN THEIR LEGISLATION.

2.11 Reparation of imbalances in society through the gambling industry

THE BOARD RECOMMENDS THAT LEGISLATURES FORMULATE GAMBLING POLICIES AND LEGISLATION TO UPLIFT, ADVANCE AND ECONOMICALLY EMPOWER HISTORICALLY DISADVANTAGED AND UNDERPRIVILEGED PEOPLE AND COMMUNITIES WITH A VIEW TO REPAIR IMBALANCES IN SOCIETY AND THAT CERTAIN OF THE REVENUE GENERATED FROM GAMBLING BE SET ASIDE FOR THIS PURPOSE.

2.12 Market related industry

THE BOARD RECOMMENDS THAT THE PRINCIPLES OF EQUAL OPPORTUNITY BE APPLIED IN THE ALLOCATION OF LICENCES AND IN DOING THAT, ALL PROSPECTIVE APPLICANTS, BIG OR SMALL, BE GIVEN AN EQUAL OPPORTUNITY TO COMPETE FOR LICENCES. FURTHERMORE, THIS PRINCIPLE, TOGETHER WITH A PROHIBITION OF AN OVERCONCENTRATION OF MARKET-SHARE BE CONTAINED IN OFFICIAL POLICY AND LEGISLATION RELATING TO GAMBLING AT ALL LEVELS OF GOVERNMENT.

2.13 Contracts, credit and gambling debts

THE BOARD RECOMMENDS THAT –

(a) THE PROPOSED NATIONAL GAMING ACT PROVIDES THAT ALL LEGAL GAMBLING DEBTS SHALL BE LEGAL DEBTS AND THAT THEY SHALL BE ENFORCEABLE IN A SOUTH AFRICAN COURT OF LAW; AND,

(b) GAMBLING ON CREDIT BE SUBJECT TO STRICT CONTROL.

2.14 Self-discipline in the industry

THE BOARD RECOMMENDS THAT THE PRINCIPLE OF SELF-DISCIPLINE BE ACCEPTED BY THE GAMBLING INDUSTRY IN SOUTH AFRICA AND THAT POLICY AND LEGISLATION OF LEGISLATURES CONTAIN A STRONG INDUCEMENT FOR THE INDUSTRY TO DEVELOP A CODE OF CONDUCT FOR ITSELF AS A FORM OF SELF-DISCIPLINE WITHIN ITS RANKS. SUCH A CODE MUST BE APPROVED BY THE RELEVANT PROVINCIAL CONTROLLING BODY.

3. A NATIONAL LOTTERY FOR SOUTH AFRICA

3.1 The participants in the South African National Lottery

THE BOARD RECOMMENDS THAT NO PERSON BELOW THE AGE OF 16 BE ALLOWED TO PARTICIPATE IN THE NATIONAL LOTTERY EITHER IN HIS OWN CAPACITY OR THROUGH SOMEONE ELSE.

3.2 Ownership and control of the National Lottery

THE BOARD RECOMMENDS THAT THE NATIONAL LOTTERY FOR SOUTH AFRICA BE OWNED AND CONTROLLED BY THE CENTRAL GOVERNMENT AND THAT THIS PRINCIPLE BE CONTAINED IN LEGISLATION ON LOTTERIES.

3.3 Control structures

THE BOARD RECOMMENDS THAT –

(a) GOVERNMENT INTRODUCES A NATIONAL LOTTERY ACT FOR THE CONTROL AND REGULATION OF A SOUTH AFRICAN LOTTERY;

(b) A NATIONAL LOTTERIES BOARD BE PROVIDED FOR IN THE PROPOSED ACT, THE DETAILS OF WHICH SHALL BE THE FOLLOWING:

(i) THE BOARD SHALL HAVE A CHAIRPERSON WHO SHALL BE APPOINTED BY THE MINISTER RESPONSIBLE AND WHO SHALL BE A FIT AND PROPER PERSON;

(ii) THE BOARD SHALL HAVE ONE REPRESENTATIVE FROM EACH PROVINCE NOMINATED BY THE PROVINCIAL GOVERNMENT BUT APPOINTED BY THE MINISTER RESPONSIBLE;

(iii) A NUMBER OF REPRESENTATIVES FROM THE PRIVATE AND PUBLIC SECTOR, SHALL BE APPOINTED BY THE MINISTER RESPONSIBLE;

(iv) NO PERSON HAVING A DIRECT OR INDIRECT INTEREST IN THE NATIONAL LOTTERY SHALL BE APPOINTED TO THE BOARD;

(v) THE TERM OF OFFICE, REMUNERATION, CONDITIONS OF APPOINTMENT AND OTHER RELATED MATTERS SHALL BE DETERMINED BY THE MINISTER RESPONSIBLE AFTER CONSULTATION WITH THE BOARD;

(vi) A MEMBER SHALL BE A FIT AND PROPER PERSON;

(vii) A MEMBER SHALL NOT BE A POLITICAL OFFICE BEARER;

(vii) THE POWER, FUNCTIONS AND ROLE OF THE BOARD SHALL BE PROVIDED FOR IN LEGISLATION AND SHALL BE AS FOLLOWS:

(aa) TO ADVISE GOVERNMENT ON ALL MATTERS PERTAINING TO THE NATIONAL LOTTERY, SUCH ADVICE TO BE GIVEN WHEN REQUESTED BY THE MINISTER OR ON THE BOARD'S INITIATIVE;

(bb) TO SUPERVISE, OVERSEE AND REGULATE ALL ACTIVITIES OF THE NATIONAL LOTTERY ON A CONTINUOUS BASIS;

(cc) TO APPOINT A CHIEF EXECUTIVE OFFICER, WHO SHALL ALSO BE AN *EX OFFICIO* MEMBER OF THE BOARD, AND THE NECESSARY PERSONNEL TO CONDUCT THE AFFAIRS OF THE NATIONAL LOTTERY ON A DAY-TO-DAY BASIS;

(dd) TO CONDUCT STUDIES, RESEARCH AND INVESTIGATIONS INTO ALL RELEVANT SUSPECTS PERTAINING TO LOTTERIES; AND,

(ee) TO PERFORM ALL OTHER FUNCTIONS, OPERATIONS AND ACTIVITIES WHICH ARE RELATED TO AND NECESSARY FOR THE EXECUTION OF ITS MAIN FUNCTIONS AND ROLE.

3.4 Operating the National Lottery

THE BOARD RECOMMENDS THAT –

(a) THE MARKETING AND OPERATING OF THE NATIONAL LOTTERY BE AWARDED TO A NON-STATAL ORGANISATION;

(b) SUCH AN ORGANISATION SHALL HAVE OR HAVE ACCESS TO THE NECESSARY KNOWLEDGE, SKILL, EXPERIENCE IN THE MARKETING AND OPERATION OF A NATIONAL LOTTERY AND DEMONSTRATE COMMITMENT TO BLACK ECONOMIC EMPOWERMENT;

(c) THE PROPOSED NATIONAL LOTTERIES BOARD PUBLISH, LOCALLY AND ABROAD, PUBLIC AND PROPER INVITATIONS CALLING FOR TENDERS OR BIDS FROM POTENTIAL OPERATORS, SETTING OUT FULLY THE QUALIFICATIONS AND REQUIREMENTS WITH WHICH BIDDERS MUST COMPLY;

(d) THE NATIONAL LOTTERIES BOARD HAS THE INHERENT POWER TO SEEK WHATEVER ASSISTANCE IT WOULD REQUIRE, INCLUDING THE APPOINTMENT OF CONSULTANTS, TO APPOINT THE MOST SUITABLE OPERATOR;

(e) THE OPERATOR'S CONTRACT BE AWARDED FOR A LIMITED PERIOD BUT AT LEAST FOR SUCH A PERIOD THAT THE OPERATOR CAN RETRIEVE SUFFICIENT RETURN ON INVESTMENTS MADE. AN OPERATOR SHOULD BE ALLOWED TO BID AGAIN AFTER EXPIRY OF HIS CONTRACT;

(f) IN ITS ADVERTISING FOR TENDERS OR BIDS, THE SETTING OF QUALIFICATIONS AND REQUIREMENTS FOR APPLICANTS, THE CONSIDERATION OF TENDERS OR BIDS AND THE AWARD OF CONTRACTS, AND, ANY OTHER MATTER RELATING TO THESE ACTIVITIES, THE NATIONAL LOTTERIES BOARD MAINTAIN THE HIGHEST DEGREE OF OPENNESS, INTEGRITY AND GOOD FAITH AND THAT THE PUBLIC'S PERCEPTION IN THIS REGARD ALWAYS BE BORNE IN MIND; AND,

(g) THE MINISTER RESPONSIBLE IN CONSULTATION WITH THE NATIONAL LOTTERIES BOARD SHALL LICENSE THE OPERATOR.

3.5 Accounting and auditing

THE BOARD RECOMMENDS THAT –

(a) PROPER AND EFFICIENT ACCOUNTING PROCEDURES FOR THE INCOME AND EXPENSES OF THE NATIONAL LOTTERY BE PRESCRIBED IN THE PROPOSED NATIONAL LOTTERY LEGISLATION;

(b) EFFECTIVE INDEPENDENT AUDITORS SHALL BE APPOINTED BY THE OPERATOR TO AUDIT THE FINANCIAL STATEMENTS OF THE OPERATOR ON A REGULAR BASIS;

(c) SUCH AUDITED STATEMENTS SHALL BE SUBMITTED TO THE NATIONAL LOTTERIES BOARD FOR SCRUTINY AND FOR INCLUSION IN THE NATIONAL LOTTERIES BOARD'S ANNUAL REPORT TO PARLIAMENT; AND,

(d) SUCH AUDITED STATEMENTS SHALL ALSO BE SUBMITTED TO THE AUDITOR GENERAL.

3.6 Distribution of income from the National Lottery

THE BOARD RECOMMENDS THAT –

(a) A DISTRIBUTION TRUST FUND OF THE NATIONAL LOTTERY BE ESTABLISHED INTO WHICH THE PROCEEDS OF THE NATIONAL LOTTERY SHALL BE PAID;

(b) 50 PERCENT OF THE GROSS INCOME OF THE NATIONAL LOTTERY SHALL BE ALLOCATED FOR PRIZES;

(c) THE REMAINDER OF THE INCOME, AFTER PRIZES AND EXPENSES HAVE BEEN DEDUCTED, SHALL BE KNOWN AS PROCEEDS AND BE PAID INTO THE TRUST FUND AND BE APPORTIONED AS FOLLOWS:

(i) 50 PERCENT FOR THE RECONSTRUCTION AND DEVELOPMENT PROGRAMME;

(ii) 20 PERCENT FOR SPORTS DEVELOPMENT;

(iii) 20 PERCENT FOR CHARITIES;

(iv) FIVE PERCENT FOR ART, CULTURE AND HERITAGE; AND,

(v) FIVE PERCENT FOR MISCELLANEOUS CAUSES TO BE IDENTIFIED IN SPECIFIC CIRCUMSTANCES.

(d) IN CASES WHERE A JUSTIFIABLE RECIPIENT OR CAUSE CANNOT BE FOUND FOR THE FIVE PERCENT EARMARKED FOR MISCELLANEOUS CAUSES, THAT PERCENTAGE CAN BE PROPORTIONALLY CHANNELLED TO THE OTHER CAUSES MENTIONED IN PARAGRAPH (C) ABOVE.

3.7 Legislation

THE BOARD RECOMMENDS THAT GOVERNMENT CONSIDERS THE ATTACHED DRAFT LOTTERIES BILL (PART I AND THE RELEVANT PROVISIONS IN PART III THEREOF) IN THE ABOVE REGARD.

4. OTHER LOTTERIES

4.1 Existing illegal lotteries

THE BOARD RECOMMENDS THAT SECTIONS 10, 11 AND 12 OF THE LOTTERIES AND GAMBLING BOARD ACT, 1993 (ACT NO. 210 OF 1993), BE IMPLEMENTED AND THAT INTERIM MEASURES AND REGULATIONS BE IMPLEMENTED WITH REGARD TO THE OTHER LOTTERIES AND SIMILAR FUND-RAISING ACTIVITIES IN THE COUNTRY PENDING THE IMPLEMENTATION OF THE PROPOSED NEW LOTTERIES DISPENSATION.

4.2 Other lotteries

THE BOARD RECOMMENDS THAT–

SOCIETY LOTTERIES

(a) SOCIETY LOTTERIES BE LEGALISED AND THE TERM BE DEFINED IN LEGISLATION;

(b) THE FOLLOWING CONDITIONS BE SET IN LEGISLATION FOR A SOCIETY LOTTERY TO BE CONDUCTED:

(i) PRIOR AUTHORISATION IN THE FORM OF A LICENCE OR PERMIT BE OBTAINED FROM THE RELEVANT PROVINCIAL LICENSING AUTHORITY FOR THE PROPOSED LOTTERY;

(ii) PROPER AND WRITTEN APPLICATION BE MADE FOR SUCH AUTHORISATION. SUCH APPLICATION SHALL GIVE DETAILS OF THE SOCIETY ON WHOSE BEHALF THE LOTTERY IS TO BE CONDUCTED; THE BODY OR PERSONS TO CONDUCT THE LOTTERY; THE CAUSE TO BE SERVED BY THE LOTTERY; AND ANY OTHER RELEVANT INFORMATION REQUIRED BY THE PROVINCIAL LICENSING AUTHORITY;

(iii) THE LICENCE OR PERMIT SHALL BE OF LIMITED DURATION BUT MAY BE RENEWED BY THE PROVINCIAL GOVERNMENT ON PROOF OF AN UNBLEMISHED RECORD OF OPERATION DURING THE TERM OF THE EXPIRED LICENCE OR PERMIT;

(iv) THE MAXIMUM TURNOVER FOR A SOCIETY LOTTERY SHALL BE R500 000 OR SUCH OTHER AMOUNT AS MAY BE DETERMINED BY THE NATIONAL LOTTERIES BOARD; SHOULD, HOWEVER, A SOCIETY LOTTERY WISH TO EXCEED THAT AMOUNT OF TURNOVER, PRIOR AUTHORITY SHALL BE OBTAINED FROM THE NATIONAL LOTTERIES BOARD;

(v) THE ADMINISTRATION COSTS OF A SOCIETY LOTTERY SHALL BE LIMITED TO AN ACCEPTABLE LEVEL IN LEGISLATION;

(vi) THE NATIONAL LOTTERIES BOARD SHALL DETERMINE THE FREQUENCY OF SOCIETY LOTTERIES AFTER CONSULTATION WITH THE RELEVANT LICENSING AUTHORITY; AND,

(vii) SHOULD A SOCIETY LOTTERY WISH TO OPERATE IN MORE THAN ONE PROVINCE AUTHORISATION SHALL BE OBTAINED FROM EACH PROVINCE IN WHICH THE SOCIETY LOTTERY INTENDS TO OPERATE;

PRIVATE LOTTERIES

(a) PRIVATE LOTTERIES BE LEGALISED AND THE TERM BE DEFINED IN LEGISLATION;

(b) THE FOLLOWING CONDITIONS BE SET IN LEGISLATION FOR PRIVATE LOTTERIES:

(i) THE ENTIRE PROCEEDS, AFTER DEDUCTION OF COSTS, BE ALLOCATED TO PRIZES OR FUNDS FOR THE PRIVATE ORGANISATION OR CLUB WHICH CONDUCTS THE PRIVATE LOTTERY;

(ii) NO PERSON SHALL BE EMPLOYED FOR REWARD IN CONNECTION WITH THE PROMOTION OR CONDUCT OF THE PRIVATE LOTTERY;

(iii) NO ADVERTISING OR PUBLICITY IN CONNECTION WITH THE PRIVATE LOTTERY SHALL BE CONDUCTED OUTSIDE THE PRECINCTS OF THE ORGANISATION OR CLUB OR BEYOND ITS MEMBERS;

(iv) TICKET SALES FOR THE LOTTERY SHALL NOT TAKE PLACE THROUGH THE OFFICIAL POSTAL SERVICE; AND,

(v) THE TOTAL AMOUNT OF TICKET SALES SHALL NOT EXCEED R20 000.

SMALL LOTTERIES

(a) SMALL LOTTERIES BE LEGALISED AND THE TERM BE DEFINED IN LEGISLATION;

(b) THE FOLLOWING CONDITIONS BE SET IN LEGISLATION FOR SMALL LOTTERIES:

(i) THE TOTAL VALUE OF PRIZES SHALL NOT EXCEED R3 000,00 OR SUCH OTHER AMOUNT AS THE NATIONAL LOTTERIES BOARD MAY DETERMINE;

(ii) NONE OF THE PRIZES SHALL BE MONEY-PRIZES;

(iii) THE PROCEEDS, AFTER THE NECESSARY DEDUCTIONS, SHALL BE DEVOTED FOR PURPOSES OTHER THAN PRIVATE GAIN: AND,

(iv) NO PERSON SHALL BE EMPLOYED FOR REWARD IN CONNECTION WITH THE SMALL LOTTERY.

PROVINCIAL OR LOCAL AUTHORITY LOTTERIES

PROVINCIAL OR LOCAL AUTHORITY LOTTERIES BE PROHIBITED IN LEGISLATION.

4.3 Sports pools

THE BOARD RECOMMENDS THAT –

(a) NATIONAL LEGISLATION PROVIDE FOR SPORTS POOLS TO BE REGULATED UNDER AUSPICES OF THE NATIONAL LOTTERIES BOARD;

(b) ALL THE REQUIREMENTS AND CONTROL MEASURES WHICH APPLY TO THE NATIONAL LOTTERY SHALL APPLY *MUTATIS MUTANDIS* TO SPORTS POOLS; AND,

(c) THE NATIONAL LOTTERIES BOARD GIVES SERIOUS CONSIDERATION TO THE FUTURE OF A SOCCER POOL IN CONJUNCTION WITH THE NATIONAL LOTTERY AS WELL AS WHAT EFFECT A SOCCER POOL MAY HAVE ON A NATIONAL LOTTERY PARTICULARLY IF IT IS IMPLEMENTED BEFORE THE NATIONAL LOTTERY.

4.4 Legislation

THE BOARD RECOMMENDS THAT GOVERNMENT CONSIDERS THE ATTACHED DRAFT LOTTERIES BILL (PART II AND THE RELEVANT PROVISIONS IN PART III THEREOF) IN THE ABOVE REGARD.

5. CASINOS, BINGO AND RELATED FORMS OF GAMING IN SOUTH AFRICA

5.1 Legislative authority with regard to casinos, bingo and related forms of gaming

THE BOARD RECOMMENDS THAT –

(a) A NATIONAL GAMING AND WAGERING BOARD BE ESTABLISHED IN A NATIONAL GAMING ACT;

(b) THE NATIONAL GAMING AND WAGERING BOARD BE COMPOSED OF A CHAIRPERSON, A REPRESENTATIVE FROM EACH PROVINCE, AND FIVE OTHER PERSONS AS THE RESPONSIBLE MINISTER MAY DETERMINE, ONE OF WHOM SHALL BE DESIGNATED BY THE MINISTER;

(c) THE NATIONAL GAMING AND WAGERING BOARD SHALL HAVE THE POWER TO APPOINT STAFF, OPEN A BANK ACCOUNT WHEN NECESSARY AND GENERALLY CONDUCT THE AFFAIRS NECESSARY FOR THE ACHIEVEMENT OF ITS OBJECTIVES;

(d) THE FUNCTION AND ROLE OF THE NATIONAL GAMING AND WAGERING BOARD SHALL BE TO INVESTIGATE AND ADVISE THE CENTRAL AND PROVINCIAL GOVERNMENTS ON ALL MATTERS PERTAINING TO GAMING AND WAGERING; TO CO-ORDINATE, FACILITATE, AND LIAISE BETWEEN CENTRAL GOVERNMENT AND THE PROVINCIAL LEGISLATURES AND THE PROVINCIAL LEGISLATURES AMONG THEMSELVES ON THESE MATTERS; TO CONDUCT STUDIES AND RESEARCH INTO ANY SUBJECT OF A GAMING AND WAGERING NATURE AND REPORT THEREON; TO LIAISE AND CO-OPERATE WITH NATIONAL AND INTERNATIONAL GAMING ORGANISATIONS ON MATTERS OF MUTUAL CONCERN AND INTEREST; TO APPROVE GAMING MACHINES AND EQUIPMENT; TO APPROVE VARIOUS TYPES OF GAMES THAT MAY BE PLAYED; AND, TO PERFORM ALL SUCH OTHER FUNCTIONS AS MAY BE NECESSARY FOR THE PROPER PERFORMANCE AND EXERCISE OF ITS POWER AND ROLE;

(e) THE NATIONAL GAMING AND WAGERING BOARD SUBMIT THROUGH THE MINISTER AN ANNUAL REPORT TO PARLIAMENT AND TO PROVINCES;

(f) THE NATIONAL GAMING AND WAGERING BOARD'S MEMBERS HAVE A TERM OF OFFICE OF FIVE YEARS BUT BE ELIGIBLE FOR RE-APPOINTMENT ON EXPIRY THEREOF;

(g) THE EXPENSES OF THE NATIONAL GAMING AND WAGERING BOARD BE DEFRAYED FROM A FUND CONTRIBUTED TO BY THE PROVINCES AND PROPORTIONATE TO THE TAXATION RECEIVED FROM GAMBLING;

(h) THE FINANCIAL AFFAIRS OF THE PROPOSED BOARD BE AUDITED BY AN INDEPENDENT CHARTERED ACCOUNTANT AND THAT SUCH AUDITOR'S REPORT BE PART OF THE BOARD'S ANNUAL REPORT TO PARLIAMENT;

(i) THE NATIONAL GAMING AND WAGERING BOARD BE INDEPENDENT FROM STATE CONTROL;

(j) EACH PROVINCE PROVIDES IN ITS LEGISLATION FOR THE NECESSARY CONTROL AND REGULATORY STRUCTURE IN ACCORDANCE WITH CRITERIA LAID DOWN IN NATIONAL LEGISLATION; AND,

(k) GOVERNMENT CONSIDERS THE ATTACHED DRAFT NATIONAL GAMBLING BILL IN THE ABOVE REGARD.

5.2 Control and regulation

Authorisation of casino, bingo and related forms of gaming

THE BOARD RECOMMENDS THAT –

(a) PROVINCIAL GAMING LEGISLATION MAKE PROVISION FOR THE ESTABLISHMENT OF AN INDEPENDENT LICENSING AUTHORITY WITH THE POWERS TO CONSIDER APPLICATION FOR LICENCES AND TO AWARD LICENCES EITHER BY ITSELF OR IN CONSULTATION WITH THE MEMBER OF THE EXECUTIVE COUNCIL RESPONSIBLE FOR CASINOS, BINGO, GAMING MACHINES, OR OTHER RELATED GAMING ACTIVITIES IN THAT PROVINCE;

(b) SUCH A LICENSING AUTHORITY SHALL ALSO HAVE THE POWER TO SUSPEND OR REVOKE A LICENCE UNDER JUSTIFIABLE CIRCUMSTANCES SPELLED OUT IN THE LEGISLATION;

(c) THE COMPOSITION, TERMS OF OFFICE AND CONDITIONS OF TENURE OF MEMBERS OF SUCH LICENSING AUTHORITY SHALL BE SPELLED OUT IN THE RELEVANT PROVINCIAL LEGISLATION, SUBJECT TO POLITICAL OFFICE-BEARERS, INCLUDING MEMBERS OF PARLIAMENT AND PROVINCIAL AND LOCAL LEGISLATURES BEING EXCLUDED FROM SUCH LICENSING AUTHORITY;

(d) THE PROCEDURE FOR MAKING AN APPLICATION BE SET OUT IN THE RELEVANT LEGISLATION;

(e) THE PROCESS OF CONSIDERING THE APPLICATION SHALL BE TRANSPARENT AND THE REASONS FOR THE DECISION OF THE LICENSING AUTHORITY BE MADE KNOWN TO THE APPLICANT; AND,

(f) A RIGHT OF APPEAL AGAINST A DECISION OF THE LICENSING AUTHORITY SHALL LIE IN THE SUPREME COURT OF SOUTH AFRICA ON A POINT OF LAW ONLY AND THAT THE APPLICANT SHALL ALSO HAVE A RIGHT OF REVIEW OF THE DECISION.

Inspection services

THE BOARD RECOMMENDS THAT –

(a) THE GAMING LEGISLATION OF EACH PROVINCE PROVIDES FOR THE ESTABLISHMENT OF GAMING INSPECTION SERVICES;

(b) THE POWERS, FUNCTIONS AND ROLE OF GAMING INSPECTORS BE SPELLED OUT IN SUCH LEGISLATION; AND,

(c) THE CLOSEST LIAISON AND CO-OPERATION BE ESTABLISHED BETWEEN THE INSPECTORATES AND THE SOUTH AFRICAN POLICE SERVICES WITH A VIEW TO EXERCISING STRICT CONTROL OVER GAMING ACTIVITIES IN THE PROVINCES.

Code of conduct

THE BOARD RECOMMENDS THAT PROVINCIAL GAMING LEGISLATION PROVIDES FOR A CODE OF CONDUCT FOR CASINO GAMING OPERATORS AND OTHER ROLE PLAYERS IN THE PROVINCE AND THAT ALL PARTIES BE ENCOURAGED TO CONTRIBUTE TO THE DEVELOPMENT OF SUCH A CODE, WHICH SHALL BE APPROVED BY THE RELEVANT CONTROL BODIES.

Requirements for applicants

THE BOARD RECOMMENDS THAT –

(a) ALTHOUGH PREFERENCE SHOULD BE GIVEN TO SOUTH AFRICANS, PROVINCIAL GAMING LEGISLATION HAVE NO PROVISION THAT WOULD EXCLUDE FOREIGNERS OR NON-CITIZENS OF SOUTH AFRICA FROM APPLYING FOR AND HOLDING A CASINO OR RELATED GAMING LICENCE;

(b) THE FOLLOWING CRITERIA BE EMBODIED IN PROVINCIAL LEGISLATION FOR AN APPLICANT FOR A CASINO OR OTHER RELATED LICENCE TO COMPLY WITH:

(i) THE APPLICANT MUST BE A MAJOR AT LAW AND BE ACCOUNTABLE, WITHOUT ASSISTANCE, FOR HIS ACTION IN LAW. (ALL REFERENCES MADE TO AN INDIVIDUAL APPERTAIN EQUALLY TO A CORPORATE BODY WHICH IMPLIES THAT ALL CRITERIA ARE APPLICABLE ALSO TO SHAREHOLDERS AND MANAGEMENT);

(ii) THE APPLICANT MUST BE A FIT AND PROPER PERSON, CREDIBLE, AND OF GOOD CHARACTER;

(iii) THE APPLICANT MUST BE SOLVENT, HAVE AN ACCEPTABLE FINANCIAL RECORD IN BUSINESS AND/OR HIS PRIVATE LIFE AND GIVE ACCOUNT OF THE SOURCES OF HIS FINANCES;

(iv) THE APPLICANT MUST NOT BE AN UNREHABILITATED INSOLVENT, A POLITICAL OFFICE-BEARER, HAVE BEEN REMOVED FROM AN OFFICE OF TRUST THROUGH DISHONESTY, CONVICTED ANYWHERE OF THEFT, FRAUD, FORGERY, UTTERING A FORGED DOCUMENT, PURGERY, AN OFFENCE UNDER THE CORRUPTION ACT, 1992, ANY SERIOUS OFFENCE OF DISHONESTY OR ANY OTHER SERIOUS OFFENCE WHICH, IN THE OPINION OF THE LICENSING AUTHORITY, JUSTIFIABLY DISQUALIFIES THE APPLICANT;

(v) THE APPLICANT MUST HAVE AT LEAST AN ACCEPTABLE KNOWLEDGE OR EXPERIENCE OR ACCESS THERETO IN THE FIELD OF CASINO-GAME MANAGEMENT OR ADMINISTRATION;

(vi) THE APPLICANT MUST, IN SO FAR AS HIS PERSON OR CHARACTER IS CONCERNED, COMPLY WITH ANY OTHER REQUIREMENTS WHICH THE LICENSING AUTHORITY MIGHT SET IN ADDITION TO THOSE ABOVE OR, CONVERSELY, NOT HAVE DONE SOMETHING OR HAVE A DEFICIENCY WHICH IN THE OPINION OF THE LICENSING AUTHORITY DISQUALIFIES THE APPLICANT, PROVIDED THAT ANY PERSON WHO HAS OPERATED AN ILLEGAL CASINO AFTER 21 OCTOBER 1994 SHALL BE DISQUALIFIED FROM OBTAINING A GAMBLING LICENCE FOR A MAXIMUM PERIOD OF TEN YEARS;

(vii) THE APPLICANT MUST HAVE THE NECESSARY FINANCIAL RESOURCES TO OPERATE A CASINO OR OTHER GAMING ENTERPRISE;

(viii) THE APPLICANT SHALL COMPLY WITH WHATEVER OTHER FINANCIAL, ADMINISTRATIVE OR MANAGERIAL REQUIREMENT THE LICENSING AUTHORITY MAY SET INCLUDING, WHERE APPLICABLE, THE CONSENT OF LOCAL, COMMUNITY, REGIONAL OR TRADITIONAL AUTHORITY;

(ix) THAT THE PRINCIPLE OF TRANSPARENCY, OPENNESS AND FRANKNESS SHALL ALWAYS BE OBSERVED IN THE CONSIDERATION AND ALLOCATION OF CASINO-GAMING LICENCES;

(x) THAT THE GOVERNMENT SHOULD NOT HAVE A FINANCIAL INTEREST IN ANY APPLICATION FOR A LICENCE;

(xi) THAT THE APPLICANT MUST SHOW A CLEAR AND DEMONSTRABLE COMMITMENT TO A PROGRAMME FOR BLACK ECONOMIC EMPOWERMENT THROUGH SHARE-HOLDING, PARTICIPATION IN MANAGEMENT, AND OTHER AVENUES, OF HISTORICAL DISADVANTAGED AND UNDERPRIVILEGED PERSONS AND COMMUNITIES; AND,

(c) THE PROVINCIAL LICENSING AUTHORITIES, IN THE ALLOCATION OF LICENCES, SHALL CONSIDER BLACK ECONOMIC EMPOWERMENT.

Types of casino licences

THE BOARD RECOMMENDS THAT PROVINCIAL GAMING LEGISLATION EMBODY THE FOLLOWING CLASSIFICATION OF CASINO OR OTHER RELATED GAMING LICENCES:

(a) THAT THERE SHALL BE A CASINO LICENCE WHICH CAN BE AWARDED TO A SUITABLE APPLICANT TO OPERATE A CASINO OR RELATED GAMING ACTIVITY. LIMITATIONS AND FREEDOMS WITH REGARD TO THE NUMBER OF GAMING MACHINES, OTHER FACILITIES, STAKES AND PRIZES SHALL BE ENDORSED ON THE LICENCE ACCORDING TO WHAT THE LICENSING AUTHORITY DEEMS NECESSARY IN A PARTICULAR CASE;

(b) THAT THERE SHALL BE A GAMING MACHINE LICENCE WHICH CAN BE AWARDED TO A SUITABLE APPLICANT TO OPERATE A MAXIMUM OF FIVE GAMING MACHINES ON PREMISES NOT PRIMARILY USED FOR GAMING. SUCH A LICENCE SHALL BE ENDORSED BY THE LICENSING AUTHORITY WITH REGARD TO THE NUMBER OF MACHINES, STAKES, PRIZES AND OTHER RELATED MATTERS AS DEEMED NECESSARY BY THE AUTHORITY. THESE STAKES AND PRIZES WILL BE LIMITED TO MUCH LESSER AMOUNTS THAN FOR MACHINES AUTHORISED FOR CASINO LICENCES. A MAXIMUM PRIZE OF R2 000 FOR A SINGLE WIN IS RECOMMENDED;

(c) THAT LICENCES SHALL NOT BE TRANSFERABLE FROM THE LICENCE TO ANOTHER PERSON WITHOUT THE CONSENT OF THE RELEVANT LICENSING AUTHORITY AND SHALL BE ISSUED FOR ONE LOCALITY ONLY AND NOT TO BE DIVISIBLE OVER MORE THAN THE PREMISES OR LOCALITY IT HAS BEEN ISSUED FOR;

(d) THAT WHERE SHAREHOLDING IN THE HANDS OF THE LICENCE-HOLDER CHANGES BY MORE THAN FIVE PERCENT APPROVAL FROM THE LICENSING AUTHORITY SHALL BE OBTAINED. NO PERSON SHALL HOLD A SHARE IN LICENCE AS A NOMINEE FOR AN UNDISCLOSED PRINCIPLE;

(e) THAT THE LICENSING AUTHORITY SHALL BE ENTITLED TO ISSUE TEMPORARY LICENCES OF A LIMITED DURATION SUBJECT TO CONDITIONS AND GUARANTEES BEING FURNISHED WHICH THE AUTHORITY MAY DEEM FIT UNDER THE CIRCUMSTANCES;

(f) THAT ALL LICENCES SHALL BE FOR AN UNLIMITED PERIOD SUBJECT TO THE LICENCE-HOLDER'S COMPLIANCE WITH LEGAL REQUIREMENTS. A LICENCE FEE SHALL BE PAYABLE ANNUALLY; AND,

(g) THAT ALL LICENCES SHALL BE DISPLAYED AND BE AVAILABLE TO AND OPEN FOR INSPECTION AT ALL TIMES BY PROVINCIAL GAMING INSPECTORS.

The number of casino licences in South Africa

THE BOARD RECOMMENDS THAT –

(a) UNTIL SUCH TIME AS THE NECESSARY RESEARCH HAS BEEN CONDUCTED ON THE FACTORS THAT PLAY A ROLE IN DETERMINING THE MAXIMUM NUMBER OF CASINOS TO BE ALLOWED IN SOUTH AFRICA, NO MORE THAN 40 CASINO LICENCES (INCLUSIVE OF THE EXISTING 17 LICENCES) BE AWARDED; AND,

(b) URGENT MARKET ANALYSIS, INVESTIGATION AND RESEARCH BE CONDUCTED AS SOON AS POSSIBLE BY THIS BOARD ON THE RELEVANT FACTORS THAT INFLUENCE THE NUMBER OF CASINOS TO BE ALLOWED IN THE COUNTRY AND EACH PROVINCE.

5.3 The operator (licence-holder)

THE BOARD RECOMMENDS THAT –

(a) A COMMITMENT TO PROVIDE SOCIAL, CULTURAL AND COMMUNITY SERVICE IN THE PROVINCE OF OPERATION SHALL BE A CONDITION OF LICENCE; AND,

(b) SUCH A COMMITMENT SHALL ALSO INCLUDE A PLAN OR PROGRAMME OF ADVANCEMENT AND EMPOWERMENT THROUGH PARTICIPATION AND SHARING OF HISTORICALLY DISADVANTAGED PERSONS OR GROUPS OF PERSONS WHO HAVE BECOME DISADVANTAGED THROUGH UNFAIR DISCRIMINATION.

5.4 The gambler

AGE OF ADMISSION

THE BOARD RECOMMENDS THAT THE AGE LIMIT FOR ADMISSION TO CASINOS AND RELATED GAMING ACTIVITIES SHALL BE 18 IN ALL PROVINCES AND THAT THIS LIMIT BE EMBODIED IN PROVINCIAL GAMING LEGISLATION.

HOURS OF OPERATION

THE BOARD RECOMMENDS THAT –

(a) THE HOURS OF OPERATION FOR ALL CASINO AND OTHER RELATED FACILITIES BE CONTROLLED AS A CONDITION OF LICENSING BY THE LICENSING AUTHORITY OF EACH PROVINCE; AND,

(b) THE HOURS OF OPERATION SHALL BE ENDORSED ON THE LICENCE OF THE OPERATOR.

ADVERTISING AND PUBLICITY

THE BOARD RECOMMENDS THAT ADVERTISING AND PUBLICITY WITH REGARD TO CASINO AND RELATED GAMING ACTIVITIES BE ALLOWED BY PROVISION IN PROVINCIAL GAMING LEGISLATION PROVIDED THAT ANY FORM OF SUCH ADVERTISING OR PUBLICITY SHALL:

(a) NOT BE EXCESSIVE, EXTRAVAGANT, MISLEADING OR FALSE;

(b) NOT BE CONDUCTED AT SCHOOLS OR OTHER INSTITUTIONS WHERE YOUNG PEOPLE ARE THE DOMINANT FREQUENTERS; OR,

(c) NOT BE PLACED OR CONDUCTED IN YOUTH PERIODICALS OR OTHER PUBLICATIONS OR BROADCAST ON YOUTH RADIO PROGRAMMES OR TELEVISED ON YOUTH TELEVISION PROGRAMMES.

FACILITIES, ENTERTAINMENT AND EMPLOYMENT

THE BOARD RECOMMENDS THAT –

(a) APART FROM BEING A CONDITION OF LICENSING, OPERATORS SHOULD NOT BE COMPELLED BY PROVINCIAL GAMING LEGISLATION TO PROVIDE ENTERTAINMENT OR

FACILITIES FOR THE PUBLIC IN ADDITION TO THE GAMING PROVIDED FOR IN THE CASINOS AND THAT IT SHOULD BE LEFT TO THE OPERATOR TO DECIDE WHETHER HE WANTS TO DO SO OR NOT; AND,

(b) PREFERENCE BE GIVEN TO OPERATORS WHOSE FACILITIES WILL CREATE EMPLOYMENT OPPORTUNITIES AND CONTRIBUTE TO THE STIMULATION OF THE TOURIST INDUSTRY.

EXCLUSION OF PLAYERS

THE BOARD RECOMMENDS THAT PROVISION BE MADE IN PROVINCIAL GAMING LEGISLATION FOR THE RIGHT OF AN OPERATOR TO EXCLUDE CERTAIN PERSONS FROM GAMING IN HIS/HER CASINO ON ACCEPTABLE GROUNDS OR AS THE CONDITIONS OF THE LICENCE MAY DETERMINE.

GAMING INTELLIGENCE SERVICE

THE BOARD RECOMMENDS THAT –

(a) PROVINCIAL GAMING AUTHORITIES TAKE NOTE OF THE UNOFFICIAL INTELLIGENCE SERVICE IN THE CASINO AND RELATED GAMING INDUSTRY AND ADVISE LICENCE-HOLDERS THEREOF AND THAT THE AUTHORITIES LIAISE WITH THAT SERVICE WITH A VIEW TO BUILDING UP A DATA-BANK OF INFORMATION ON UNWELCOME ELEMENTS AND DEVELOPMENTS IN THE CASINO AND RELATED GAMING INDUSTRY; AND,

(b) AS A CONDITION OF LICENSING, OBLIGE OPERATORS TO INSTALL SURVEILLANCE EQUIPMENT IN THEIR CASINOS.

5.5 Casino employees

THE BOARD RECOMMENDS THAT –

(a) Provincial gaming legislation provides for the protection of all employees in the casino and related gaming industry; and,

(b) The proposed National Gambling and Wagering Board explore the possibillity of the registration of all private sector training and development institutions which conduct training for personnel in the gaming industry as well as the contents of their courses, accreditation, certificates and diplomas and any other information which the National Gaming and Wagering Board may require in consultation with the industry, provided that approval shall be obtained from the Provincial Licensing Authorities on all these matters.

5.6 Casino premises and areas

THE BOARD RECOMMENDS THAT –

(a) PROVINCIAL GAMING LEGISLATION PROVIDE THAT LICENSING AUTHORITIES SHALL SET THE LOCAL AUTHORITY'S MINIMUM REQUIREMENTS WITH REGARD TO HEALTH, SAFETY, SECURITY, WELFARE, WATER SUPPLY, VENTILATION, ILLUMINATION AND OTHERS, AS MINIMUM CRITERIA FOR PREMISES IN WHICH CASINO AND RELATED GAMING ACTIVITIES ARE TO TAKE PLACE;

(b) SHOULD CIRCUMSTANCES DEMAND THAT THESE CRITERIA BE INCREASED, OPERATORS BE ADVISED ACCORDINGLY AND THAT PART OF INSPECTORS' DUTIES SHALL BE TO REGULARLY INVESTIGATE THESE ASPECTS;

(c) A MAP OF THE AREA WHERE GAMING MACHINES SHALL BE LOCATED (IN THE CASE OF AN APPLICATION FOR A GAMING MACHINE LICENCE) FORMS PART OF THE APPLICATION TO ENABLE THE LICENSING AUTHORITY TO DETERMINE WHETHER THE AREA IS SUFFICIENT FOR GAMING ON THE NUMBER OF MACHINES WHICH WILL BE UTILISED FOR GAMING;

(d) EACH PROVINCIAL LICENSING AUTHORITY DETERMINE, FOR ITSELF, ON ADVICE, THE MINIMUM STANDARDS REQUIRED FOR AN AREA IN WHICH PLAY ON GAMING MACHINES WILL TAKE PLACE IN THE CASE OF AN APPLICATION FOR A GAMING MACHINE LICENCE; AND,

(e) MOBILE CASINOS NOT BE BANNED AT THIS STAGE BUT THE SUBJECT OF THEIR OPERATIONS, CROSS-BORDER ACTIVITIES AND OTHER RELATED MATTERS BE FURTHER RESEARCHED BY THE NATIONAL GAMING AND WAGERING BOARD AND THE PROVINCIAL AUTHORITIES.

5.7 Gaming machines and technology

THE BOARD RECOMMENDS THAT –

(a) PROVINCIAL LEGISLATION PROVIDES FOR THE FOLLOWING MATTERS PERTAINING TO GAMING EQUIPMENT:

(i) ONLY THE EQUIPMENT OF LICENCED MANUFACTURERS SHALL BE USED IN CASINOS AND RELATED GAMING ACTIVITIES;

(ii) ONLY TYPES OF EQUIPMENT APPROVED BY THE NATIONAL GAMING AND WAGERING BOARD BE ALLOWED. UNTIL SUCH TIME AS THIS CAN BE IMPLEMENTED ONLY EQUIPMENT ALREADY LICENSED IN AN ESTABLISHED GAMING JURISDICTION SHOULD BE ALLOWED;

(iii) SUCH EQUIPMENT SHALL BE SERIAL-NUMBERED BY THE MANUFACTURERS AND ACCOMPANIED BY A MANUFACTURER'S CERTIFICATE TESTIFYING TO ITS ORIGIN, QUALITY, PERFORMANCE, DATE OF MANUFACTURE AND STANDARD OF PERFORMANCE;

(iv) THE CERTIFICATE OF EACH PIECE OF EQUIPMENT SHALL BE RETAINED BY THE OPERATOR FOR READY INSPECTION BY A PROVINCIAL INSPECTOR;

(v) CERTIFICATES SHALL REFLECT THE DATES OF REGULAR INSPECTION OF THE EQUIPMENT BY THE NATIONAL GAMING AND WAGERING BOARD AND BY PROVINCIAL INSPECTORS;

(vi) A REGISTER OF ALL EQUIPMENT SHALL BE KEPT BY THE PROVINCIAL LICENSING AUTHORITY AS OFFICIAL DOCUMENTATION REFLECTING ALL THE GAMING EQUIPMENT PER OPERATOR USED IN THAT PROVINCE;

(vii) GAMING EQUIPMENT USED IN LEGAL CASINOS AND GAMING MACHINE ENTERPRISES MUST QUALIFY FOR REGISTRATION WITHIN A PERIOD OF 12 MONTHS FROM THE DATE OF PROMULGATION OF THE NEW LEGISLATION;

(b) PROVINCES TAKE THE NECESSARY STEPS TO PROTECT THE GAMING INDUSTRY WITHIN THEIR BORDERS AGAINST THE DUMPING OF OUTDATED, OBSOLETE AND CORRUPT EQUIPMENT FROM OTHER MARKETS; AND,

(c) OPERATORS BE COMPELLED TO MAINTAIN RECORDS OF EACH MACHINE'S TURNOVER AND PAY-OUTS.

5.8 Accounting and auditing procedures

THE BOARD RECOMMENDS THAT –

(a) THE PROVINCIAL LEGISLATION STIPULATES THAT PROVINCIAL GAMING LEGISLATION SHALL PROVIDE FOR THE OBLIGATION ON ALL CASINO AND RELATED GAMING OPERATORS TO KEEP PROPER BOOKS OF ACCOUNT ON A DAILY BASIS;

(b) THE PROVINCIAL GAMING LEGISLATION SHALL MAKE IT COMPULSORY FOR CASINO OPERATORS TO HAVE THEIR FINANCIAL AFFAIRS AUDITED BY AN INDEPENDENT CHARTERED ACCOUNTANT ON AT LEAST AN ANNUAL BASIS;

(c) SUCH AUDITED STATEMENTS AND AN ACCOMPANYING REPORT SHALL BE SUBMITTED ANNUALLY TO THE PROVINCIAL LICENSING AUTHORITY; AND

(d) THE PROVINCIAL LICENSING AUTHORITY, INCLUDING THE CONTROLLING BODY, SHALL HAVE RIGHT OF ACCESS TO ALL THE FINANCIAL STATEMENTS, BOOKS OF ACCOUNT AND AUDITED STATEMENTS AS AND WHEN THEY WISH.

5.9 Taxes, fees, guarantees, levies and upfront payments

THE BOARD RECOMMENDS THAT –

(a) PROVINCIAL GAMING LEGISLATION STATE THAT THE PAYMENT OF TAXES AND OTHER MONEYS BY A CASINO-OPERATOR SHALL BE OBLIGATORY AND THAT SUCH PAYMENTS SHALL CONSIST OF THE FOLLOWING:

(i) A TAX TO BE IMPOSED BY THE PROVINCE ON GROSS WIN OF THE CASINO AT A RATE AND PAYMENT FREQUENCY TO BE DETERMINED BY THE PROVINCE;

(ii) A LICENCE FEE SHALL BE PAYABLE FOR THE CASINO AS WELL AS A FEE FOR EVERY MACHINE AND TABLE TO BE USED IN THE CASINO. THIS LICENCE FEE COULD, AT THE OPTION OF THE PROVINCIAL LICENSING AUTHORITY, INCLUDE AN INITIAL BIDDING FEE. IN THE CASE OF AN APPLICATION FOR THE OPERATION OF MACHINES ONLY, THE FEE SHALL BE FOR EVERY MACHINE THE OPERATOR WISHES TO USE;

(iii) ANY OTHER TAX OR LEVY WHICH THE RELEVANT PROVINCIAL FISCAL AUTHORITY MAY IMPOSE;

(iv) AN UPFRONT AMOUNT OR GUARANTEE MAY BE DEMANDED FROM AN OPERATOR ON HIS BEING AWARDED A CASINO OR RELATED LICENCE. THIS WILL SECURE FULFILMENT OF THE OPERATOR'S OBLIGATION TOWARDS GAMBLERS, AND THE PROVINCE; AND,

(v) THE PROVINCIAL CONTROLLING BODY WILL BE RESPONSIBLE FOR THE COLLECTION OF ALL PROVINCIAL TAXES, LEVIES AND LICENCE FEES.

(b) THE CASINO OR RELATED GAMING INDUSTRY BE EXEMPT FROM PAYING VALUE ADDED TAX.

5.10 Offences related to casino and related gaming

THE BOARD RECOMMENDS THAT –

(a) PROVINCIAL GAMING LEGISLATION SPELL OUT THE OFFENCES AND THEIR SANCTIONS IN RELATION TO THE CASINO-GAMING INDUSTRY IN EACH PROVINCE;

(b) THAT SUCH PENALTIES SHALL INCLUDE, *INTER ALIA*, ENDORSEMENT OF LICENCES, SUSPENSION OF LICENCES, CURTAILMENT OF RIGHTS ON LICENCES, AND ALSO THE REVOCATION OF A CASINO AND RELATED GAMING LICENCE; AND,

(c) OFFENDERS, ON BEING FOUND GUILTY, MAY BE SENTENCED TO A MAXIMUM PERIOD OF IMPRISONMENT OF TEN YEARS OR A FINE OR BOTH.

5.11 Bingo

THE BOARD RECOMMENDS THAT –

(a) ALL CASINOS BE ALLOWED TO ORGANISE AND OPERATE THE GAME OF BINGO AND TO PARTICIPATE INLINKED GAMES AS WELL AS A NATIONAL GAME; AND,

(b) WHERE APPROPRIATE, SEPARATE LICENCES FOR THE OPERATION OF STAND ALONE BINGO BE AUTHORISED.

6. BETTING ON SPORT AND OTHER RELATED ACTIVITIES

6.1 Betting on horseracing

THE BOARD RECOMMENDS THAT THE HORSERACING INDUSTRY IN SOUTH AFRICA NOT BE GIVEN ANY POLICY OR STATUTORY PROTECTION OR ANY PREFERENTIAL TREATMENT IN PROVINCIAL GAMBLING LEGISLATION BUT THAT IT COMPETES FOR LICENCES FOR OTHER FORMS OF GAMBLING IN THE SAME WAY AS ANY OTHER APPLICANT WOULD DO.

6.2 Dog racing and betting thereon

THE BOARD CANNOT RECOMMEND THE LEGALISATION OF DOG RACING NOW, BUT RECOMMENDS THAT IT UNDERTAKES FURTHER RESEARCH TO ESTABLISH WHETHER DOG RACING SHOULD BE PERMITTED IN SOUTH AFRICA

6.3 Racing with other animals and betting thereon

THE BOARD RECOMMENDS THAT –

ALL FORMS OF COMPETITION BETWEEN ANIMALS WHICH ARE ILLEGAL AND *CONTRA BONOS MORES* NOT BE ALLOWED. SHOULD THESE BE CONDUCTED THE OFFENDERS SHALL BE PUNISHED.

7. MISCELLANEOUS

THE BOARD RECOMMENDS THAT –

(a) THE BOARD ONLY BE DISSOLVED ONCE THE NATIONAL GAMBLING AND WAGERING BOARD AND THE NATIONAL LOTTERIES BOARD HAVE BEEN ESTABLISHED;

(b) THE BOARD'S STAFF AND NECESSARY ACCOMMODATION BE RETAINED IN THE MEANTIME; AND,

(c) THE BOARD PERFORMS SUCH FURTHER FUNCTIONS AS RECOMMENDED IN THIS REPORT.

CHAPTER 1

A. THE HISTORY OF GAMBLING IN THE WORLD

The purpose of this chapter is not te delve deeply into the history of gambling and how it developed since the beginning of history, but merely to give the reader some historical background to a basic characteristic of the human being: To play; to take a chance; to hazard; to risk; to game; to chance his luck. Furthermore, it attempts to convince those who still believe that gambling is a pastime discovery of the sin ridden 20th century, of the very long history of gambling which presently is a well-established and a dynamic revenue generator in most countries.

The oldest "profession" known to civilised society may very well be prostitution, but probably just as old as a leisure-time activity or as a more serious endeavour is the phenomenon of gambling. Gambling in one form or another has been present in most cultures since ancient times and is widely participated in at all levels of the social strata in most countries.

Anthropologists have found its recurrence in the most primitive societies. This originates from primitive man's fascination with using unknown objects to predict the future and using them for entertainment. Based on artifacts found in the tombs of ancient Egypt, there is a belief that dice might have been the first human game.

From the earliest times people put their faith in deities to whom they prayed for good fortune. The Goddess of Fate, Fortuna, was venerated in many ancient Roman provinces. She was often depicted in a way of helping her worshippers control destiny and the uncertainty of fortune.

Fortuna was later identified with the Greek Tyche, the Goddess of Chance or Lot, the original "Lady Luck".

This history of gambling commenced in an ancient world which presented many mysteries to its human inhabitants. To them eclipses and meteor showers seemed to happen by chance. Tornadoes, hurricanes, floods and other natural catastrophies swept across countrysides without warning. In an attempt to understand the imcomprehensible, people turned to religion.

By throwing sticks, tossing coins, shells or knuckle-bones, reading the entrails of sacrificed animals or drawing lots, they hoped to find a divine affirmation or condemnation of their plans to plant crops, wage war or undertake major changes in their lives. Pagan priests cast lots or rolled very primitive forms of dice to compel the gods to reveal the secrets of the future and to reduce the uncertainty of decision-making. Some of them were not averse to manipulating the process in attempts to outwit the gods and impress the rulers and people. They were probably the first in a long series of cheats which can be found throughout the history of gambling.

Anthropologists have excavated loaded dice used by many pharaohs of ancient Egypt. Unpredictable events were determined by supernatural agencies which could be appealed to for favours or decisions. Criminals, for example, were identified by the "spinning of nuts" or casting of lots.

Better understanding of nature replaced fear with curiosity. Rather than rely on religion to dictate human actions, other ways were sought to predict the future. Ancient divination arrows evolved into playing cards and knuckle-bones became dice and dominoes. Given the human predilection for gambling, it was a short step from using these objects to predict the future to using them for entertainment.

From those times emperors, rulers, empires, and nations came and went. Great empires often rose and fell in various parts of the world. In most cases these civilisations had little knowledge of each other, yet they did have one thing in common: The casting of lots to settle disputes, mediate, apportion inheritances, determine whether slaves were to be freed and still more.

Even in ancient Hindu culture, life or death was determined by lottery when the accused decided his or her own fate by drawing one of two statuettes from an urn.

"Lots" is an ancient Teutonic word describing a pebble which was cast to decide disputes and divisions of property. The Italian version "lotteria" and the French "lotteric" are derivatives referring to games of chance. In Dutch and English the word "lot" has a broader meaning and refers not only to a lottery game but also to the determination of a person's destiny or "lot in life".

In Greek mythology the gods cast lots to divide the world: Zeus won the heavens; Poseidon won the sea; and Hades, the loser, was left with the underworld. The Iliad tells how Zeus used a sacred balance to determine whether the Greek or Trojans would win the war and whether it would be Hector or Achilles who would die.

In Greek mythology, Palamedes invented dice and taught his fellow soldiers how to play "craps" in order to relieve boredom during the long siege of Troy. He was eventually put to death for deceptive gambling practices. Also in ancient Greece, magistrates and certain dignitaries were selected by means of drawing coloured beans from an urn.

Decision by lots was also used by the ancient Hebrews. The Bible tells how Jonah was thrown into the sea, after having lost in a drawing of lots, to calm the sea. It also describes how Moses instructed the Isrealites to draw lots to divide land west of the Jordan River. Pontius Pilot' s soldiers gambled for Jesus Christ's cloth and few possessions after the crucifixion.

King Solomon recommended the lot as a means of settling disputes. History also tells that in the declining Roman Empire the drawing of lots became a game. In Emperor Nero's time and during the celebration of the Feast of the Eternity of the Empire, Romans bought tickets for as many as a 1 000 prizes per day consisting of jobs, land, ships and slaves.

One of the chief games in Rome at the beginning of our times was chariot racing held in the circuses – the old Circus Maximus and that of Caligula–a later one. At times these were watched by as many as 150 000 spectators. These race meetings sometimes lasted up to 15 days with as many as 24 races a day. Four teams would race at a time and as the sources say: "Gambling on these races was heavy". Manipulation of the races and highly questionable betting practices were part of the scene. Emperor Heliogabalus' habit of deciding what to give his guests for dinner by handing out tickets for a gold vase for one, or a dish of flies for another, was another example of Roman gambling in ancient times.

In ancient China a member of the Han dynasty with the name of Leung invented a lottery game using 120 characters to form an ancient poem of luck by Confucius. The revenue produced by the lottery was used for military purposes. Migration to Europe from China introduced this form of lottery to Europe where the characters or proverbs were replaced by numbers and today this game is known as "Keno". It will be referred to again later.

Lottery as it is known today was recorded in Europe about the middle of the 15th century. Drawings in the cities of Ghent, Utrecht and other also referred to other lotteries in the territories of the Duke of Burgundy and English and Scottish sailors subscribed to these lotteries and thus paved the way for expansion of this game in Britain.

Gambling became a way of life in Europe and legislation soon permitted lotteries in the Netherlands, Russia and Austria. Other European countries also conducted lotteries to raise funds for both the poor and many community projects. Huge prizes were offered in Germany e.g. a palace, thousands of acres of land and more. In Italy lotteries increased to the extent that in 1533 King Francois I became alarmed at the massive outflow of French money to Italian lotteries and as a result he developed a French lottery.

Rivalry between England and France compelled Queen Elizabeth I to introduce the first national lottery in 1566 to raise essential revenue necessary to improve British ports. The first draw was held in 1569. This set the precedent for English lotteries which continued for two and-a-half centuries – providing a comfortable source of income.

One of Britain's largest private lotteries was organised in 1602 to finance a huge plantation and during the period the British Museum was supported largely by revenues from private lotteries. Despite a prohibition on these, private lotteries, quasi-private lotteries and small public lotteries flourished in Britain and were connived at by the authorities unless there was a complaint, or if a scheme was believed to be fraudulent. Lotteries were officially banned in the 19th century.

Gambling also became a pastime in North Africa when Jacques Cartier, at the beginning of the 16th century, introduced it to that part of the world. To his amazement, he found that native Americans used games of chance not only to determine how and when to hunt, plant crops or heal the sick, but also as major social and religious events.

Men were the great wagerers and wagered everything: Felt, blankets, wives, children, their hair and even themselves as slaves for a prescribed period. Games lasted until one side or the other had lost everything that had been brought to the gambling session. Rather than appear downcast, the losers would dance and sing and let the victors know they were happy they had brought possessions to the games that the victors considered worth winning. Once home, the losers would start hunting, building and collecting for the next session of games. The end result was an equal distribution of goods throughout society and thus "a passion for wagering which even the missionaries failed to conquer".

In 1519 Benedetto Gentile noted the popularity of gaming during Gemea's public elections when 90 political candidates were running for five senatorial positions and people bet on their favourite candidates. Gentile kept the formula, replaced the 90 names with numbers and held the first five-one-ninety lottery. This led to the first government lottery in Florence in 1530 and soon thereafter lotteries became a government monopoly in Venice.

This was the beginning of Lotto which soon spread to Germany and Austria and continued intermittently in other European countries. It was first as open to abuse and fraud as other lotteries of the time, thus incurring periodic bans.

Many well-known historical personalities were ardent gamblers: The novelist Dostoevsky was an intemperate gambler as was the composer Wagner. Other were the Earl of Sandwich (who invented the sandwich so that he might eat without interrupting his gambling) and George Washington.

At the beginning of the 18th century, European Governments began to appreciate the money-making potential of lotteries. The oldest continuously operated government-sponsored lottery was the Dutch "Klassloterie" founded in 1726. France, banning all private lotteries, instituted the "lotteric royale" in 1727 in which nearly 80 percent of the funds were paid out in prizes. A lottery was started in Spain in 1763 to fund a hospital in Madrid.

The native tribes and European adventures laid the foundation for a thriving lottery culture in America and lotteries became the primary method for generating essential revenues, subsidising public projects; and paying public and private debts. The town of Lotteryville, Rhode Island, was established by Joseph Redelton in this way when he organised a lottery to pay his debt.

Churches supported and often were the beneficiaries of lotteries and many well-known educational institutions in the United States were funded by revenue raised by lotteries. By 1790 there were nearly 2 000 legal lotteries operating in America and they were viewed as being a kind of charitable contribution to public amenities.

Elsewhere in the world lotteries were in existence and operating. In China a lottery was used to raise funds for the needy during a famine and the Thai Lottery became nationalised in 1874 (with numbers instead of letters from the Chinese alphabet).

Lotteries began to decline in America and Europe during the early 19th century "because of the inadequacy of licensing procedures needed to handle the increasing complexity of the games". By 1845 most states in the United States of America had banned lotteries entirely. Despite the continued operation of lotteries in other states until approximately the late 1870s, public sentiment against lotteries eventually led to a complete ban on interstate sale of lottery games. The result of this was that lotteries virtually came to a halt in America.

Lotteries were introduced to Australia in 1881 and have developed rapidly. At present the Tattersall Sweep Organisation and others operate with state government licences in that country.

According to authoritative sources, games revived in many parts of the world in the early 1900s while in certain countries such as Mexico, Cuba, Thailand, the Phillipines, Spain and others, gambling had continued unabated albeit unnoticed by the rest of the world.

Toto, a new game based on sports wagering, was introduced in Britain in the 1920s and soon spread to Algeria, Chile, Denmark, Greece, Italy, Poland and others where it is still a popular pastime.

Lotteries were resuscitated in the United States in 1924 despite the ban that existed on lotteries in that country. Russia reinstituted its national lottery, (after the official ban of 1923) in 1930. France's new lottery began in 1933 and in the years that followed one European country after the other reintroduced lotteries as means of raising funds for good causes.

By the 1950s the lottery's revenue potential, combined with significant technological advances that could ensure honest and efficient lottery operations, became attractive to many previously anti-lottery governments in Europe, Asia and North America. By the early 1960s lotteries also flourished in many African countries, as well as in Asia and the Far East.

Today lottery as a form of gambling has established itself in most countries not only as a form of entertainment, but perhaps more importantly, as a generator of revenue to fund many public and private projects. Reliability, security and maximised revenue are the foremost concerns of lottery operators. Lottery players are, to an increasing extent, protected by a formidable array of sophisticated systems supported by ever-advancing technology which ensures that they all stand an equal chance of winning.

Gambling in the form of casino, bingo and other forms of gaming is, according to the sources of history, an innovation of the 20th Century which mushroomed in the years following the Second World War, particularly in the United States.

In Britain all forms of commercial gaming were prohibited by law and anyone who played, elsewhere than in a private house, any game in which there was an element of chance for money or money's worth, ran the grave risk of committing a penal offence. Indeed, certain games, such as roulette, were illegal even in a private house.

From the 1960s commercial gambling, particularly the casino form, proliferated in a variety of ways in different parts of the world. The liberalisation of gambling is occurring worldwide and the emphasis seems to be shifting from the question of whether or not it should be legalised, to the question of how it should be controlled and regulated.

The wide range of gambling forms in the world is ever increasing and this can be mainly attributed to three factors: First, the changing attitudes society has towards gambling – from that of aversion to that of greater acceptance; second, the realisation of governments that gambling is no longer just a leisure-time activity, but a very important component of a country's economy which can generate huge sums of revenue and create many employment opportunities; and, third, the advancement of the technology which can take gambling to all corners of the land and the security it provides.

B. THE HISTORY OF GAMBLING IN SOUTH AFRICA

Very few sources exist on the history of gambling in South Africa. Consequently, little is known about the leisure-time activities of the inhabitants and early settlers. Some sources refer in passing that some forms of gambling, as a pastime activity, were conducted in the late 17th century and during the 18th century.

It is assumed that sailors who visited the Cape after the establishment of the first European settlements must have practised some form of gambling, as did the soldiers stationed there. The Board, unfortunately, did not have the time to explore the historical roots of gambling in South Africa during those times. The Board also assumes that some form of gambling must have been practised by the indigenous people of South Africa before the arrival of European settlers. However, very little information is available on this subject.

In Britain there existed "Art Unions" which were exempt from the British general prohibition on lotteries. These unions were allowed to promote lotteries specified in the Art Unions Act of 1846, provided they were described as voluntary organisations formed for the promotion of the fine arts and had been incorporated by Royal Charter.

The prime purpose of a lottery run by an arts union was the purchase of paintings, drawings or other works of arts which would subsequently be distributed by chance or otherwise among members, subscribers or contributors to the union. Furthermore, the arts unions were also allowed to raise funds by subscription or contribution and those monies could be

allotted and distributed among members by chance or as prizes. The only stipulation was that the monies would be expended solely on works of art.

The concept of art unions and the idea of exemption as contained in the British Arts Unions Act of 1846 was introduced to the Cape Province during the mid 1800s.

The Art Unions Act, 1860 (Act No. 28 of 1860), legalised voluntary art unions and a form of lottery in the Cape Colony which could be run on condition that the revenue derived therefrom was used for the encouragement of the fine arts. At the time, a strong aversion to official gambling existed in the Cape Colony. This law relieved these art associations from "all pains and penalties" which, by law, they would have been subjected to.

As had happened elsewhere in the world, despite public opposition to gambling and the many statutory prohibitions in the Cape Colony, gambling in the form of lotteries often developed with the authorities' consent.

Certain small private lotteries were conducted among the inhabitants particularly in and around Cape Town and in other bigger centres. Thus, for example, the discovery of diamonds in the Kimberley area led to an influx of hundreds of thousands of fortuneseekers who, as diggers and miners, introduced gambling into that region.

Exploitation, crime and other undesirable social phenomena gave rise to the promulgation of the Lotteries Prohibition Act, 1889 (Act No. 9 of 1889). This Act prohibited lotteries and dealt severe penalties to offenders.

The discovery of diamonds and gold with its influx of, as was said, hundreds of thousands of fortune seekers, journey-men and associated labourers, "catapulted South Africa into its own industrial revolution". Many of these people came through the Cape. In addition, thousands of British troops on their way to the front of the Anglo-Boer War of 1899 – 1902 disembarked in Cape Town where they stayed in preparation for transfer.

Prostitution and gambling flourished and led to an untenable situation for the Cape Government. As a consequence, the Betting Houses, Gaming Houses and Brothels Suppression Act, 1902 (Act No. 36 of 1902), was promulgated. As its title indicates, it endeavoured to suppress gambling and prostitution in the Cape and was generally aimed at controlling immorality (which was on the increase during the war).

Natal, being on the East Coast of South Africa, was more exposed to Asian influences of gambling following the immigration of Indians (who worked mainly in the sugar industry) and Chinese, whose port of entry on their way to the Transvaal gold mines was Durban. Apart from the Asian influence, the European settlers introduced Western types of gambling into Natal. As a result of rapid development in gambling in the Natal Colony, the law to provide for the Discouragement of Gambling, 1878 (Act No. 25 of 1878), was promulgated. The preamble stated that "great mischief has been found to result from the existence of the practice of gambling", and the Act therefore declare all lotteries, games of chance, betting stands or booths to be common nuisances and against the law. The law further provided for penalties for both the operator and the gambler.

The definition of "lottery" was widened by Act No. 3 of 1902 (Law against Gambling). An extension of the prohibition against gambling in Natal was contained in Act No. 31 of 1909 (Law relating to Gambling) which prohibited building and other societies, having as object the advancing of money, from doing so by ballot, drawing, chance or lot.

The Republic of the Orange Free State also introduce bans on gambling from the middle of the previous century until 1902. These prohibitions were contained in two laws viz: A law on lotteries and sweepstakes and one on gambling. These laws prohibited all forms of gambling including any schemes etc. in which the awarding of a prize (not only monetary) was determined by chance. Advertising of gambling was also prohibited by the law and a subscriber was empowered to recover his subscription from any operator or agent. Furthermore, lotteries conducted outside the Free State were also subject to the provisions of the law and no person in that Republic could participate therein.

Further extensions to the prohibitions on gambling were contained in the Police Offences Ordinance, 1902 (Ordinance No. 21 of 1902), which, inter alia, defined "gambling house" and "gaming table" rather widely and a presumption of guilt was placed on any person found in a gambling house. The Ordinance also conferred powers on the police to search premises.

After the discovery of gold towards the end of the 1880s, Transvaal experienced a huge influx of people of all kinds. Gambling came with them and in bars and other places of public gathering, it soon became a popular pastime among miners, traders, public servants and others. While the owners of mines, and businesses as well as others in decision-making positions were getting "more and more involved in political issues of the day, the miners and labourers were gambling and drinking their days away".

Gambling very soon flourished and with it came many unacceptable practices. The Transvaal Government passed the "Wet Tegen Hazardspelen" in 1889 (Law No. 6 of 1889), which made the keeping or visiting of a gambling house or gaming table unlawful. Heavy penalties were imposed on the operator and visitor. Any person who won money or any article of value by any illegal means (e.g. gambling) was deemed to have obtained it by false pretences. The courts were empowered to decide whether a game was one of chance or whether the stakes were excessive. The law further provided that informers were entitled to half the money forfeited or fine paid.

Lotteries were also forbidden in the Transvaal by the "Wet Het Houden van Loterijen" of 1890 (Law No. 7 of 1890). "Lotteries" and "prizes" were comprehensively defined while advertising or any other form of publicity with regard to lotteries was forbidden. No person was exempt from the provisions of this law merely because a lottery was conducted outside of the Transvaal. A third of all fines received accrued to an informer.

After the formation of the Union of South Africa, the prohibition of gambling continued a legacy which was carried over from the two former British colonies and two Boer Republics. The Natal Gambling Law Amendment Act of 1927 (act No. 1 of 1927), merely deleted certain French words from the definition of "lotteries" and also empowered the Governor-General to declare, by proclamation, any game to be a game of chance or any scheme to be so.

Two Amendment Acts relating to gambling law were passed during the '30s: Act No. 26 of 1933 (Gambling Amendment Act, 1933), coincided with the influx of approximately 300 000 poor-whites into the industrial centres of South Africa. Poverty, unemployment and serious adverse social and economic conditions in any country are factors which are conducive, inter alia, to gambling. People with little or no hope of recovering from their misery will risk anything, including gambling, to turn their misfortune into a means of survival. This was the case in South Africa during the great depression of the early 1930s.

To enhance the prohibition on gambling in the country, the Act of 1933 provided that whenever any person was charged with an offence under any law relating to unlawful gambling, the fact that the offence was committed on the premises of a club or similar association or on premises of which the accused was co-owner, did not serve as a defence. Such person was liable to the penalties prescribed by the law for that offence.

The second amendment introduced by the Gambling Amendment Act 1939 (Act No. 5 of 1939), came at the beginning of the Second World War and South Africa's entry into the war as an ally of the Commonwealth. As happens in all countries in times of war, money was needed by many organisations and the result was that all kinds of ways were designed to get around the statutory prohibition on gambling (including lotteries). At the time, gambling increased and in order to cast the net of prohibition wider, the Minister of Justice was empowered by this Act to declare, by notice in the *Government Gazette*, the operation of a pin-table machine or contrivance to be a lottery. He was empowered to do the same with regard to any game or scheme. He had to be satisfied, however, that the rewards depended, to some degree, on chance. Totalisators conducted in accordance with any law were excluded.

During the late 1940s sports pools became a popular way of gambling, which was to be expected as horseracing and betting thereon were not statutorily prohibited. One year after the change of government in 1948, a new approach to official policy on gambling was manifested when the prohibition on Sports Pools Act, 1949 (Act No. 38 of 1949), was promulgated. This Act prohibited sports pools in wide-ranging provisions and forbade any person from establishing a sports pool or having a financial interest therein; managing, conducting or assisting in the running thereof; selling or disposing of or purchasing tickets; or, allowing any premises to be used for it. Advertising of sports pools was prohibited and the Postmaster General was empowered to intercept sports pool mail.

The definition of "sports event" was wide and included almost all types of sport while "sports pool" included any scheme under which a forecast had to be made of the result in competition with others; a subscription had to be made as a

condition; a price had to be awarded to the correct or nearest to correct forecaster. Penalties were prescribed for offenders.

The law relating to gambling was subsequently amended by section 38 of the General Law Amendment Act, 1955 (Act No. 62 of 1955), and by the prohibition on Sports Pool Amended Act, 1961 (Act No. 74 of 1961). The former Act, among others, provided that in any prosecution under any statute or under the common law for keeping or visiting a gambling house, it was not a defence that the premises to which the charge related, were available only for the use of subscribers or members or were not available for use by the public in general; or were used only by personal friends of the owner or occupier, provided that it was proved that any such use occurred habitually. The latter Act related to the powers of provincial councils to raise revenue in respect of certain legal gambling activities such as horseracing.

The provisions of the Gambling Act, 1965 (Act No. 51 of 1965), as interpreted by the courts, state the present legal position on gambling in South Africa. This Act, which commenced on 1 July 1969, repealed most of the laws discussed above and many provisions of others. In terms of the 1965 Act, all lotteries, sports pools and games of chance in South Africa are prohibited. Its provisions cast a wide net and cover, by broad definitions, almost all forms of gambling. Prohibitions on participation in a lottery; sports pools; advertisement relating thereto; distribution of notices of lotteries or sports pools; lotteries or sports pools conducted outside South Africa; and offences and penalties in relation thereto form the substance of the Act. Many court cases were conducted arising from the provisions of the Act and interpretation thereof – far too many for the purposes of this Report.

In spite of the long-standing prohibition of lotteries and gambling in South Africa, illegal casinos with very little respectability began operating at a low level in major centres. Until May 1990 the police acted against illegal operators with reasonable success. However, as a result of the evidence of a statistician in a court case in which it was found that games such as blackjack are statistically games of skill, casinos started to proliferate. Many criminal cases against casino operators were withdrawn and some operators were acquitted during this period. At one stage the police were aware of approximately 2 000 illegal casinos operating nationwide. (Certain illegal lottery operations – eg scratchcard games – designed to raise funds for welfare, were also introduced at that time). This state of affairs resulted in the amendment of the Gambling Act, 1965, to replace the concept of a game of skill with a gambling game. This, in turn, led to the closing of some illegal casinos during February 1993.

In the meantime, the government appointed the Commission of Inquiry into Lotteries, Sports Pools, Fundraising Activities and Certain Matters relating to Gambling (the Howard Commission) during September 1992. The terms of reference of the Commission were to inquire into and report on the desirability, in view of prevailing social and ethical values, of legalising lotteries, sports pools and other forms of betting games that were prohibited by law. The Commission also had to investigate matters, prescribed in its terms of reference, related to various aspects of gambling. The Commission's report was submitted to government in March 1993. The essence of the recommendations was that all variations of gambling should be legalised in South Africa, but subject to strict control. Flowing from the Howard Commission's report the Lotteries and Gambling Board Act, 1993 (Act No. 210 of 1993), was passed during December 1993. The Board formally commenced with its activities on 29 August 1994.

Subsequently, casinos began re-opening using dubious schemes in an attempt to circumvent the new definition of gambling games as described in the Gambling Act, 1965. During 1993 the Gambling Act, 1965, was again amended to clarify any perceived loopholes. Illegal casinos are, nevertheless, once again operational.

From 1976 onwards, with the advent of the homelands within South Africa's border, the erstwhile independent TBVC State introduced gambling legislation. As a result, a total of 18 casino licences and a number of lottery licences were issued.

The new political dispensation in South Africa has also had an important effect on the issue of gambling. With the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), and following the reincorporation of the TBVC States countries into South Africa, an anomolous situation has arisen in that, while the Gambling Act, 1965, outlaws gambling of any kind in South Africa, the existing licence-holders in those territories, may in terms of section 229 of the Constitution, conduct legal gambling.

The Constitution also recognises the competency of the provincial governments to legislate on matters which fall within the functional areas of "casinos, racing, gambling and wagering", which are listed in Schedule 6 of the Constitution. This, however, does not leave central government without any responsibility in this regard. Central government will, *inter alia*, have to ensure that the matter is regulated and co-ordinated by uniform laws and standards that shall apply throughout South Africa. It will also have to ensure that countrywide economic unity is maintained.

Two other anomalies existed under the old political dispensation: First was the legalised betting on horseracing which dates back many decades and had been widely accepted in this country; second, was the introduction of the Defence Bonds scheme on 1 October 1979. This scheme generated revenue for the Defence Force at a time when sanctions prevented South Africa from acquiring money from overseas sources. This scheme was, in essence, a state lottery. It was abolished on 1 January 1985.

From the above it is clear that with regard to gambling, the country has entered a new era and, therefore, a new approach is unavoidable.

CHAPTER 2

OVERVIEW OF GAMBLING IN THE WORLD

1. The purpose of this chapter is to give a brief overview of gambling in the world, its extent, and the rate of its development. Gambling is a worldwide phenomenon and the number of countries which have legalised gambling (or are in the process of doing so) have increased markedly in recent years. Communication technology has made the world "smaller", brought countries closer to each other and has made the exchange of information, experiences and knowledge about gambling not only easier but also essential.

   Lotteries, as detailed in the chapter on the history of gambling, have always been part of the historical development of the world. They have had their ups and downs – often completely prohibited by authorities, but never completely outlawed. Despite some official bans, (which often lasted for many decades) and, in some cases, hundreds of years, people always conducted and participated in lotteries.

   Casinos and their derivatives, on the other hand, are developments of more recent times and, according to official sources, are presently proliferating worldwide at a remarkable rate and in a variety of ways. The process of legalisation is accelerating and many countries are experiencing the liberalisation of casinos and related forms of gaming. A recent development is gaming on mobile premises: In the United States of America, nine states have allowed riverboat casinos. Other countries are expected to follow this development and it is not inconceivable that transcontinental trains or flights might have gaming opportunities as pastime activities on board particularly as passenger boats have been afforded this for some time.

2. In this survey, the systems of a number of important gambling countries are briefly examined. This does not mean that the system of those not mentioned are without significance. The systems selected are those which could be a source of reference in designing a system for South Africa. Cultural, climatic, economic and social factors compel differences of approach, control and regulation of gaming from country to country. Some of these show a commonality of and resemblance to those factors in South Africa. Here and there systems which are more removed will also be mentioned but then only for the sake of illuminating the extent of worldwide gambling.

3. EUROPE

3.1. Gambling in Europe retained many of the features which characterised the political, cultural, social and economic history of that continent. The gambling industry in Europe never modernised to the same extent and at the same rate as in, for example, the United States and other parts of the world. The industry experiences the same problems as the agencies of the European Union – in overcoming the many restrictive legacies of European countries which impede uniformity in so many spheres in Europe.

Until recently, gambling, particularly the casino form, was still very class orientated, controlled by monopolistic enterprises and largely operated for the market of financially strong elites. Patterns of gambling activity, formed more than three centuries ago were still, until recently, in existence in many European countries. Conservatism, which was manifested in limiting slot machine play, restricting hours, dress codes, entrance fees and limitations on advertising, is still prevalent. Authoritative sources hold that gambling in Europe, the casino-form in particular, is only now breaking away from its past and becoming more modernised.

3.2 The long adherence to the legacy for conservatism can be ascribed to differences in culture, language, religion, protectionism, some elements of feudalism, class, and the many wars fought in Europe (including the Second World War). These and other factors stood in the way of the modernisation of the European gambling industry.

Analysis shows that western Europe has a lower potential of expansion due to governmental interference, tax structures and monopolies. On the other hand, Europe's most underserved market is its eastern part – Russia and its neighbouring countries. This is due to the reluctance of operators who are wary of most of those countries' unstable governments and societies. In addition, their economies are at present not that attractive.

A very brief overview of the gambling industry in the most important European countries follows:

3.2.1 AUSTRIA

Austria has a population of 7,7 million and 12 casinos operate in its major cities. The country has a state lottery and also allows sports pools. All lotteries are controlled by a central organisation – Österreichische Lotteriën – which has its headquarters in Vienna. All casinos in Austria are controlled and operated by Casinos Austria. The state has a major interest in Casinos Austria. The increase in the number of gamblers has been between ten and 15 percent every year since 1990 with more than 2,7 million players in 1991 of whom more than 50 percent were foreigners. Casinos Austria developed and installed a slot information system with computer operational data from all its slot machine rooms – the first multi-casino slot information system in the world. A continued large increase in the number of guests from abroad contributes to Austrian tourism. The company also operates internationally and on a number of luxury ships.

3.2.2 BELGIUM

Belgium has a population of approximately ten million. Belgian casinos have roots dating back to the 17th century and, at present, Belgium has eight casinos – four in Flemish-speaking areas and four in the French speaking part. Government inspectors visit these casinos regularly to ensure their proper operation. Yet, according to official sources, these casinos are officially "illegal". This anomaly results from a series of "historical accidents" and a style of policymaking known as "finding a Belgian solution". Giving administrative recognition to an illegal business in Belgium seems to be the best solution to a complex gaming issue. Representatives from the Flemish and French-speaking regions need to concur to solve major policy problems. When consensus on policy is lacking, the problem is passed to the administrators or private sector to find a solution.

Consensus exists that Belgium's populace cannot support more than eight casinos. The legalisation of casinos in Belgium is not a simple answer as the National Government of Belgium is a coalition of the Socialist and Christian Parties and has some other divisions which make it very difficult to pass laws legalising casinos. As a result, Belgian legislators, who regard casinos as nothing more than small struggling businesses with a small social impact, agree that casinos have a low national priority and do not deserve their time, efforts and consideration. Casino owners do not have much political force and half of the casinos have foreign owners. Belgian casinos' main problem is the lack of a legal base and official structure.

3.2.3 BRITAIN

Great Britain has one of the largest gaming industries in Europe. Games mostly played are traditionally European table games but with less emphasis on slot machines. There are approximately 120 casinos in Great Britain. While low-stake machines count in excess of 180 000 and higher stake machines more than 40 000, the population counts 58 million people. The casinos in London make up approximately 67 percent of total win. Taxes on win are assessed on a sliding scale ranging from approximately two percent to 33 percent.

The Gaming Board for Great Britain exercises strict control over gaming operations. The casino system in Great Britain has been uniquely established to meet the demands of residents of the country more than that of tourists although London casinos cater to the highest-stakes players in the world. On the other hand, the regulation framework includes several impediments to gaming becoming more attractive to tourists: No advertising, little signage, relatively few complimentary services, and, a 48 hour club membership is required before playing for the first time.

Control of casino gaming includes the judiciary, the police and the Gaming Board for Great Britain – a statutory body. A Certificate of Consent issued by the Board is a prerequisite for application for a casino licence. The Board works anlongside a licensing authority which grants, refuses or modifies licences. This authority is regarded as the "kingpin" of the licensing machinery. Adequacy of existing gaming facilities is determined by statistical information provided by each casino every month. The supply of facilities should be sufficient only to meet unstimulated demand. The Gaming Board is entitled to see all accounting records, audited accounts and details of players' cheque-cashing transactions.

Taxes are paid on a progressive scale. A licensing fee is payable as is a fee on machines. A certain amount is also payable on each licensed employee. The Gaming Board's expenses are covered in the fees that are paid.

Casino operations have certain prescribed hours while 18 is the age limit for entrance to casinos. No advertising may be used to stimulate gaming activity in the United Kingdom. Live entertainment in casinos is prohibited as it may stimulate gaming activity.

The Gaming Board has the power to revoke a licence or to stop gaming at a casino for a number of reasons. Licences are valid for one year and a licence may be renewed. A very effective and efficient inspectorate forms part of the Gaming Board's regulatory system. During 1993 more than 1 200 lottery schemes were registered with the Board comprising more than 50 local authority and more than 670 society schemes.

3.2.4 CZECH REPUBLIC

This republic has a population of 10,5 million. The government of the Czech Republic is presently in a process of restructuring the regulatory system governing the gaming industry and this will cover the many casinos operating in the country. It is difficult to determine accurately the number of casinos in this country. The largest casino operates in Prague which has more than 40.

Complicated tax laws apply to gambling operations. The Minister of Finance collects a ten percent gross win tax and the casino pays a 40 percent tax on net income after national taxes and expenses. These, together with licensing fees and other ad hoc taxes, make it difficult to achieve a profit. This should improve with the expected restructuring. Foreign shareholding cannot exceed 49 percent in gaming operations.

Casinos Austria is a major role player in the Czech casino industry after having joined forces with the Czechoslavakian state-owned Spa Company. The law further requires that casinos may have slot machines only if they were manufactured within the last five years. The licence for each casino specifies the games that the operator may offer.

3.2.5 DENMARK

Denmark has a population of approximately 4,5 million. Casino gambling in Denmark was legalised in 1990 and casinos are controlled by the Ministry of Justice. A maximum of ten licences may be issued. Until 1993, six licences had been awarded to companies which, by law, must be established under Danish law. One of the largest casinos in Northern Europe operates in Copenhagen and it has 30 000 square feet of gaming space, 21 tables and 180 machines. The rules governing casinos include hours of operation, age restriction of 18 and the need to produce identification. No restriction on advertising exists. The police have full control over games, machines and staff approval. Legislation is national with no regional variation.

The government levies 65 percent tax on gross gaming win. There are appoximately 300 slot machines in Danish casinos. The Danish Technological Institute authorises all machine types.

3.2.6 FINLAND

Finland's population counts five million people. Casinos in Finland are, generally, small with 24 gambling halls spread throughout the country and a large full-scale casino in Helsinki. A certain RAY-company has a legal monopoly on all of the 16 800 slot machines in the country. Approximately 85 percent of the gamblers are locals and admissions for 1991 counted more than 200 000 patrons. The gross win from all operations was estimated at more than R40-million in 1992. All proceeds from the casino industry goes to charity.

The Council of State issues licences for casinos with terms and conditions for the operation set out in full. The licence sets out the terms and conditions for the operation and does not allow more than 20 roulette and card tables and 150 gaming machines. The tax legislation provides that gaming operations must pay the state three percent of the gross win. In practice, the police provide the greatest control and security of gaming at casinos.

The Technical Research Centre of Finland inspects the gaming machines. Hours of operation are prescribed and the age limit for entrance is 18. Entrance to a casino requires a numbered client card which is purchased at the first visit to the casino. This card is personal to the holder and must be represented at each visit. Foreigners have to prove their identity with their passports. No restriction on advertising exists and the result is that aggressive marketing takes place.

3.2.7 FRANCE

France has a population of 54 million and boasts the largest casino industry in Europe with more than 140 casinos and approximately 7 000 slot machines operating throughout the country. By law casinos much be located in resort areas and, as a matter of practice, they must have French partners.

Casino gaming tax revenues are not an important factor in national budgets. Horseracing and lotteries produce considerably more public funds. The tax structure for gambling is high in France and reaches as high as 80 percent depending on the level of gross win.

To obtain a licence, private gaming operators first contract for facilities in an approved community. Then an agreement is entered into with local government. Local authorities participate in making determination of licensing conditions through negotiation with casino applicants. The National Gaming Commission, under the Ministry of Interior, reviews the agreement and approves the character and financial ability of the proposed operator.

Ongoing casino regulation and inspection is provided by Gaming Division of the Ministry of Interior. The Division has a force of approximately 50 inspectors who make regular visits to casinos. They are assisted by local police forces. The Ministry inspects all French casinos and can suspend licences for improprieties. The Minister of Interior maintains final authority over gaming. The Ministry of Agriculture regulates the horserace betting establishment while the Ministry of Finance controls the national lotto and lottery games.

Casino employees are privately trained, usually in training institutions conducted by the casinos themselves. These employees are registered with the Ministry of Interior.

Casinos must keep accounts of all financial activities and slot machines must be metered. Officials of the Ministries of Interior and Finance have full access to gaming records and slot machines. Gross gaming win taxes are paid directly to the national government and to local authorities. Total tax levies usually are over 40 percent of the collective gross win. Opening hours are regulated by the contracts and these contracts also stipulate that casinos shall have restaurants. There is no official limitation on advertising but in certain cases restrictions are imposed by some contracts.

3.2.8 GERMANY

The population of Germany is approximately 80 million. The country has approximately 40 casinos and every major city has at least one. At present, the individual states constituting the Federal Republic of Germany grant long-term casino licences often of ten years duration. These states set casino law. As a rule, the Minister of Internal Affairs of each state is responsible for the licensing of casinos in his state. In certain states, however, other ministers are participants in such decisions.

Regulations controlling casinos relate to minimum age for gambling; madatory closing of casinos on certain holidays; hours of operation; and, permissible games. Casinos may be closed in the case of violation of rules. Control and inspection of casinos are exercised by both government and in-house inspectors. An efficient information exchange service on cheaters and other undesirable persons is in existence.

The number of slot machines in casinos count approximately 3 500 at present. In addition there are some 220 000 low-stake gaming machines. Gaming machines are regularly checked for accuracy and have to pay out at least 80 percent. The general pay-out of machines in Germany ranges from 80 percent to more than 90 percent.

Operators must prove they are of good character, stable financial responsibility and must provide deposits, guarantees and financial security. In addition, they must prove ability and experience to operate a casino and also undertake to provide cultural, social and other facilities. Once a licence is granted the operator obtains a Certificate of Operation.

Taxes are about 80 percent increasing from about 60 to 70 percent in the initial years. The 80 percent is broken up into 55 percent for the state concerned; five percent for the Federal Ministry of Finance and 20 percent for the local authority in whose jurisdiction the casino operates.

Hours of operation are laid down by the various states and advertising is permitted. The trend is to restrict the age of entrance to 18. German law is hostile towards certain types of games of chance largely because of the following reasons: Gaming may result in economic ruin; gaming is not conducive to value-creating activities; and, gaming might have a morally-detrimental impact on youth. Revenues in German casinos increased by approximately 35 percent between 1991 and 1994. Two trade unions for casino personnel exist and there is a reluctance to employ casino staff over the age of 25.

3.2.9 HOLLAND

Holland's population counts approximately 15 million people. According to official sources the country features the most sophisticated, best run, well-rounded casino gaming in all of Europe. There are ten casinos all of which combine the best of Europe and Las Vegas in terms of both technology and style.

Casino gaming in Holland, although in existence before the Second World War, was revived under the revised Gambling Act of 1947 as the result of the support of a strong tourism lobby, a changed attitude towards gambling, successful casinos in neighbouring countries and the desire to protect gamblers against illegal gaming practices. Holland Casinos, which is state-owned, was given the only licence by the Dutch Government. This constitutes a government monopoly. The top management of Holland Casinos are appointed by the Ministers of Economic Affairs and of Justice who have to approve the annual accounts. The net profit goes to the treasury.

The casino employees are trained by Holland Casinos in all forms of casino gaming. They undergo security checks every year. Security in the casinos falls into two categories: 24-hour physical security of the people and property in the casino and, second, the security of the game. Hi-tech cameras and other equipment is used in the process. Each visitor is registered and entrance tickets are issued only on proof of identity. The entrance age is 18. A sophisticated computer system linked

countrywide ensures the storage and exchange of information regarding undesirable visitors. Entertainment in the form of bars and restaurants forms part of all casinos in Holland. There is no prohibition on advertising in the Act. Accounts are strictly audited by certified public accountants. The Gaming Act provides that 33,3 percent of the gross gaming profits go directly to the national treasury before other expenses are paid.

Gaming regulations in terms of the Gambling Act prescribe rules for the conduct of visitors inside the casinos. These regulations are supplemented by house-rules. The licences issued by the Ministry of Justice are subject to some regulation of the kinds of games that can be played, publicity, appointment and training of personnel and control as well as administrative matters.

Value added tax of 18,5 percent is levied on the gross winnings. Every casino facility makes a donation per visitor to a fund controlled by the local authority and casino together. This fund is used for financing cultural activities and sport as well as festivities that benefit the town and casino.

3.2.10 ITALY

The population of Italy is 60 million. The country has four casinos with the largest, a Las Vegas-style operation, close to the French border. This casino has 600 slot machines and about 75 table games. It is rated as one of the highest grossing casinos in Europe and is certainly one of the most profitable. Italian casinos are situated close to borders with neighbouring countries and focus on capturing players from those areas.

The games and slot machines in Italian casinos produced a gross profit of more than R90 million in 1991. Two types of roulette games are played: The American and the traditional type. American game profits are taxed at a rate of more than 50 percent while the traditional games are taxed at a rate of more than 70 percent. The federal government had adopted a conservative approach to casino expansion. That is why the gaming market is underserved in Italy.

3.2.11 MONACO

The capital of Monaco, Monte Carlo, is probably the most famous casino jurisdiction in the world other than Las Vegas. The population of Monaco is approximately 30 000. There are three casinos: one in the Las Vegas-style and two in the European-style. It is said that Monaco is the essence of classical gaming elegance. The casinos of Monaco have more than a million visitors a year and collectively have gaming wins of approximately R400-million. The casinos are regulated by well-entrenched house-rules developed over many decades.

3.2.12 POLAND

Poland with a population of 38 million, has approximately 15 casinos with more to come. Poland is planning the adoption of a national gaming law. At present, some casinos operate under agreements with the national government, while others are ventures existing in terms of agreements with provincial and local authorities. Taxes vary and are discriminatory in certain circumstances with some casinos paying more than others.

The Minister of Finance administers gaming rules that are set out per each agreement. Patrons must show identification documents and, if necessary, passports.

Casinos Austria formed a joint venture with the government airline, LOT to form the company Casinos Poland. This company has opened a number of casinos in the major centres of the country. Government legislation is strict and gross win tax can be as high as 80 percent. These and other factors inhibit further expansion of the gaming industry in Poland.

3.2.13 PORTUGAL

Portugal's population of 10 million are served by eight casinos which presently operate privately although local authorities, in some cases, own the buildings. The Ministry of Tourism directs operations of Potuguese casinos. Casino licences are for a period of five years. The Gambling General Inspectorate within the Ministry of Commerce and Tourism provides inspection services. Inspectors ensure that all gaming activities are conducted in terms of the rules; that only authorised people play in the casinos; and, that taxes are paid.

Certain requirements are set for potential licence-applicants in terms of the law. Further regulations in respect of casinos apply. These relate to the payment of taxes and fees; approval of all gaming equipment; restricted hours of operation; restrictions on entrance into casinos; prohibition on direct advertising; and, the provision of restaurant, bar and other facilities and entertainment.

3.2.14 RUSSIA AND THE COMMONWEALTH OF INDEPENDENT STATES

The concentration of casinos varies from one in Kiev to an estimated 100 in Moscow and an estimated 200 nationwide. Most of these operations feature two or three table games and a few slot machines located in nightclubs and restaurants. Recent developments include the opening of new casinos in Moscow, Sochi, (a sea resort on the Black Sea) and Bishkek. Some of these are operated by American operators. Gross gaming tax is about 90 percent.

3.2.15 SPAIN

Spain has a population of 40 million. Spanish people love gambling and, according to the latest statistics, it has become the country's leading pastime. With 22 licensed casinos, Spain has a mature and well-regulated gaming industry. According to the country's National Gaming Commission, gaming has increased by more than 20 percent from the late 80s to the early years of this decade. Gambling has a long history in Spain and all forms are participated in by the nation and tourists – the National Lottery, the Loteria Primitivia, Lotto, football pools, the horseracing "quinelia", casinos and still other. Illegal gaming is also rife and involves large amounts of money.

The State Administration authorises games, raffles, tombolas, betting and combinations thereof, their general regulation and other matters related thereto. The National Gaming commission may make proposals to the various ministries on matters related to gaming. The Commission grants concessions for gambling venues, issues reports and processes sanctions for the violation of rules. The Commission is also assisted by a police force: The Special Brigade of Gaming is mandated to police gaming and enforces rules by making random visits and inspections. In some areas, gaming inspectors of local authorities are also present.

The government has introduced certain measures to discourage gaming by the poorer section of the nation: Restriction on prizes; strict certification of slot machines; and, no lights, noise or music on a machine not in use. There are still other examples of such measures.

Authorisation for the operation of casinos is granted by the Ministry of Interior based on certain criteria. The duration of a licence is ten years and is renewed almost automatically in the case of no misconduct by the licensee. A sliding scale for the payment of taxes exists while VAT is paid by the casinos.

Identification is required for entry to casinos and no person under 18 is allowed. A good information exchange system exists with regard to persons who are barred from casinos. Fairly strict rules of behaviour are maintained and it is compulsory for casinos to provide services such as bars, restaurants and lounges. Cinemas, theatres, convention rooms, concert halls, etc. are voluntary.

Advertising is prohibited and the Commission must authorise publicity about the casino. Granting of loans to gamblers by casinos is strictly forbidden. A fairly strict disciplinary system is in existence.

Foreign investment in Spanish gaming entities must be officially authorised and may not exceed 25 percent of their share capital.

3.2.16 SWITZERLAND

The population of Switzerland is close to seven million and the country has a significant tourist trade. Switzerland, compared to other European countries, has been a slow starter in modern gambling, particularly with regard to casino gaming. Sources state that there are 16 Kursaal casinos (slot machines only) now operating in Switzerland. Since 1991 the introduction of full-size casinos in the country is under way. Legislative jurisdiction with regard to gambling is vested mainly in the cantons and not the federal government.

Operating licences are granted only to organisations which serve the interests of local and regional tourism. The cantons set licensing requirements while federal law prohibits minors from entering the so-called Kursaal casinos.

Illegal gaming exists in Switzerland but not on the same scale as in other European countries. However, in 1990 alone the police raided more than a dozen illegal gaming facilities in Zurich and in one case more than R2-million was involved. It is contended that the gross revenues of all the illegal casinos exceed the revenues of the legal slot machine arcades.

Machines are technically examined. The tax structure differs from canton to canton but the tax rate is lower in rural areas and higher for slot machines in the bigger Kursaal casinos where 25 percent of the gross revenue goes to the federal government.

3.2.17 TURKEY

Turkey has a population of 58 million and has a fairly large gambling industry. According to latest statistics it is the fourth largest casino market in Europe. Apart from lotteries, there are approximately 75 licenced casinos operating in Turkey although many more are operating illegally. Political and social instability coupled with a changing regulatory structure in Turkey has been a serious impediment to the growth of the gambling industry. Nevertheless, the industry has shown a growth of more than 25 percent in the last three years. The largest market for the Turkish gambling industry is the Israeli junket market. However, should gaming be legalised in Israel this would affect the Turkish industry negatively.

4. NORTH AMERICA

4.1 CANADA

Canada has a population of approximately 19 million. Gaming started to develop with the exemptions introduced to the criminal law which allowed certain games to be played. State lotteries were allowed in the provinces for certain good causes. For example, a sports lottery raised funds for the Winter Olympic in Calgary.

All provinces offer games separately. Charity bingo games proliferated in the early 1970s and soon became a billion-dollar enterprise. There was no formal regulatory control over these gaming activities although the provincial attorneys-general assumed oversight authority.

Until recently, casino gaming in Canada was totally underdeveloped. From 1992, however, casinos have penetrated the Canadian gambling industry very rapidly with each province now on the verge of allowing casinos in various major centres within its borders. Most provinces now have a Gaming Commission for the purpose of authorising, licensing and regulating operations. According to market analysis, the Canadian gambling industry should show a notable growth in future.

Information has it that a large number of machines in Canada are electronically linked to a central computer system of the federal government which enables a check on turnover and pay-out of each machine.

4.2 UNITED STATES OF AMERICA

The United States is experiencing tremendous expansion in gambling, particularly with regard to gaming. For example, casino profits have increased by more than 50 percent during the past 10 years. The legalising of casino gaming is increasing, particularly also with regard to riverboat-gaming in various states and land-based casinos.

Gambling in various forms is practiced in 34 states. To discuss the operation, administration, legal aspects and statistics in each state would take up far too much space in this Report. Consequently, only a brief overview of gaming in the country can be given.

Two factors are largely responsible for the explosion of gambling in the United States: First, many of the federal states and their cities are facing severe budgetary problems compounded by large capital costs. This came as a result of the deteriorating infrastructure such as roads, schools, buildings and utilities. Money is badly needed. Raising taxes is unacceptable, both economically and politically. Second, full-scale gambling was started in the Indian reserves – a development parallel to that in South Africa where gambling was introduced in the then homelands. Individual states are observing the financial success of these gambling operations and now also seek that wealth. These pressures are particularly acute in those states where only their Indian Reserves have gambling facilities – mostly casinos.

The development of gaming in the United States has been characterised by many court cases and attempts of the federal government to intervene by way of national legislation in the gaming activities in some states.

Acceptance of gaming entertainment among the different American states continued to rise in 1993 and is presently estimated at well above 50 percent of the adult population.

In most states authorisation of gaming is done by the state although local authorities are also involved in some cases. The qualifications set for the issuing of a licence vary in minor respects but in the vast majority of the states the applicant must have a clean record, be a fit and proper person, be of good financial standing, and have experience in the management or operation of gaming.

Some states approve only certain types of games while others allow a wider range within their borders. In states where gaming is well-established, employees of gaming operations have to be licenced and trained. Gaming schools also exist in some states.

Taxes and fees also differ from state to state, as does the distribution of tax revenue. Additional taxes as a portion of gross win may be imposed by municipalities in some cases.

Gaming machines and other technical apparatus manufactured in the United States are of a high technological quality and have high standards of operation and maintenance. Most states prescribe the standards and levels with which machines must comply. Machines must be duly registered and operators are to retain checks on their machines. These are controlled by the state as well as the manufacturers.

In some states publicity and advertising are prohibited. Las Vegas is a notable exception in this regard.

Operational hours are also determined in most states and will probably receive more attention in the legislation due to be promulgated this year.

Most states have a ban on loans to gamblers – operators are not allowed to lend money to gamblers for the purpose of gambling. Illegal gaming is conducted on a fairly wide scale in many states and attracts criminal elements associated with many other social evils. This, according to many sources, is one of the reasons why most states which, hitherto, have not allowed gaming within their borders, are now in the process of legalising gambling albeit with strict regulation.

5. AUSTRALASIA

Australasia is rated as the most underdeveloped gaming market in the world. While Australia, Macao and the Philippines have well-developed gaming venues, the remainder of the region is limited to large monopoly casinos.

5.1 AUSTRALIA

The population of Australia is approximately 17 million. It has the most secure and lucrative gaming market in the South Pacific. There are four major forms of gambling each controlled by a separate act: Wagering; casinos and bingo; lotteries; and, gaming machines. Each state has its own mix of gambling forms including a wide array of specialised lotteries and other forms of gambling. A total of 11 casinos operate throughout Australia. More are to be established in future. A large number of gaming machines are operated throughout Australia in clubs and licensed premises.

The gross casino win in Australia for 1993 was in excess of R1,5-billion and the win from slot machines outside casinos is many times higher. Australia is a popular destination for Asian gamblers of whom about 750 000 visit there annually – contributing revenues of more than R500-million each year.

All major cities in Australia have casinos or will have them in the near future. Each of the Australian states has its own regulatory system in terms of which each form of gambling with regard to administration, licensing, qualifications, accounting procedures, taxes, fees, equipment, operational requirements, disciplinary action and other matters, is controlled. The tourist industry is strongly linked to gaming in Australia. A certain percentage of revenue accrues to a fund for researching on compulsive gambling and the rehabilitation of pathological gamblers.

5.2 INDIA

India has a population of nearly 700 million and a tourist flow of close to 20 million a year. Despite tremendous poverty among the lower classes, the upper classes enjoy enormous wealth. Full-scale casinos are not allowed in India but a slow process of liberalisation is taking place and already one main operator has started, with government approval, to offer gaming facilities in Goa. Other licences are to be issued soon. The information about regulatory systems, licences, taxes, fees and other matters is not available as yet.

5.3 MALAYSIA

Malaysia has a population of 13,2 million and receives approximately 6,5 million tourists per year. Despite the fact that Malaysia's government is dominated by Muslims who are morally opposed to gambling, a casino has operated lawfully for two decades in Kuala Lampur. The casino has 1 600 slot machines and many table games. This casino operates 24 hours a day and approximately 1,7 million Asians from outside of Malaysia visit the casino annually. With the rise of Islamic fundamentalism it is suggested that no further gaming will be allowed.

5.4 NEW ZEALAND

New Zealand is traditionally a conservative country and the population has resisted gambling, in particular casinos, for many decades. Recently a gaming authority was set up for gaming operations under the auspices of the Casino Control Act of 1990. The Act established a system for the licensing, supervision and control of casinos. The purpose of the Act is the promotion of tourism, employment, economic development, proper control over casinos, and to protect the industry and its operations against crime and dishonesty.

A casino control authority has been established under the Minister of Internal Affairs. The authority grants a licence for the premises and for the operations. Conditions may be attached to the licence and a licence may be revoked. An applicant must be a fit and proper person with no criminal record and with a clear record of honesty.

Casino employees are approved and operational hours are set and the authority has the right to inspect all books of account. The taxes and fees payable are determined by the authority at the beginning of each financial year. For the first five years the tax is fixed at four percent. The Minister of Finance decides on the distribution of revenue collected through taxes and levies.

Disciplinary action against operators is also provided for and appointed inspectors of the authority and the police may recommend to the authority that an operator's licence be cancelled or suspended. The Act provides for fines in cases of violation of the law, regulations or rules.

6. SOUTH AMERICA

Gambling has taken tremendous strides in development over the last decade and it is predicted that this trend will continue. In most Latin American countries, gambling exists in either an authorised and licenced form and/or as an illegal activity. The systems of the two biggest Latin America countries are outlined here:

6.1 ARGENTINA

With a population of 30 million and an annual tourist statistic of approximately 3,5 million, Argentina has a rich gambling history. Until recently the majority of casinos were government-owned and operated. More and more privatisation is taking place. Currently, approximately 40 casinos operate in Argentina with foreign investors moving in as privatisation increases. National casinos together have a gross win of more than R400-million annually (excluding the win of the many privately operated casinos). There are no gaming licences in Argentina. The provinces grant private casinos permission to operate and government-run casinos are approved by public law on a case-by-case basis. Private casinos pay 40 percent of table win and 12 percent of slot win directly to the provincial government.

The National Lottery Administration (NLA) is controlled by the Argentine President and his cabinet. All forms of gambling fall under the NLA and it sets the general gaming rules together with the different provincial ministries. Many of the rules for certain game types are similar to those in the United States.

As the casinos are public enterprises, one of their primary goals is the creation of employment. Consequently, all casino employees must be Argentine citizens. The national casino organisation runs a dealer school. Accounting procedures are prescribed by the NLA and, as a matter of policy, advertising is not allowed. Persons under the age of 18 are not allowed in casinos. Operational hours are prescribed and casino equipment must comply with requirements prescribed by the NLA. No provisions for the revocation of an authorisation exists.

6.2 BRAZIL

Brazil has a population of 138 million. It has the largest market of players in South America and has a flourishing illegal gaming industry because, at present, casino gaming is banned. Legalising casino gaming is on the cards as just about all of Brazil's neighbours have legalised gaming and consequently, so the argument goes, Brazil cannot escape it. The proposed laws indicate that casino licences would be granted to areas that are tourist attractions; are border areas; have less than 300 000 inhabitants; or, have a shortage of alternatives for economic development.

The following games are played in Brazil: Bingo; cock-fighting; horseracing; general lottery; instant lottery; lotto-numbers and toto-football pools. "Jogo do Bicho" (the "animal game") is a pervasive illegal slot machine, table and lottery-type game found throughout Brazil. In the State of Rio de Janeiro alone more than 50 000 people are employed in those game enterprises.

The proposed Act will establish the Brazilian Institute of Tourism which, as the governmental agency, will have executive powers, responsibility, and authority to develop regulations and issue licences for the operation of casino-hotels. An upfront payment will be payable. Licences will be limited to Brazilian companies and a company will be allowed only one licence. Licences will have a limited duration but will be renewable. Operation hours will be set and standards of technology will be determined. Applicants will have to be fit, proper, of good financial standing and have a crime-free record. Other requirements relating to the conservation and maintenance of buildings, grounds, equipment, deposit of funds, maintenance of accounting records and still others will be prescribed by the proposed Act. Disciplinary action in case of violations of the laws or rules will also be prescribed.

7. AFRICA

Gambling in Africa is characterised by many small casinos in the hotels of various nations and is aimed mainly at the tourist industry. Only those jurisdictions with the "most developed" gaming industries will be very briefly outlined here:

7.1 KENYA

With an estimated population of 25 million, Kenya has one of the more developed gaming industries in Africa. There are ten casinos along the Mombasa Coast and two in Nairobi. Most casinos are private and are small. Public servants and persons under 18 may not enter casinos. No dress codes exist and an admission fee is charged to discourage local people from entering.

Table games include blackjack, roulette, pontoon and craps. Because of restrictions on the export of local money from Kenya, gamblers experience many problems when they win. The casino returns any hard currency which the gambler exchanged for gaming chips but returns all other winnings in Kenyan shillings which may not leave the country.

Casino taxes are 13,5 percent of the gross win. A heavy import duty exists on gaming equipment. In 1991, the gross win tax produced in excess of R10-million for the government while casino wins were about R75-million. Government regulation is minimal as there are insufficient government staff versed in gaming operations. A Betting Control Board assigns inspectors who are present during all hours of casino operation.

7.2 MAURITIUS

The Mauritians are fond of gambling which is practised in many forms: Casinos, horseracing, a general lottery, toto/football sports pools, off-track betting and slot machines.

Gaming in Mauritius is controlled by a number of bodies: The Minister of Finance, the Gaming Control Board, the State Investment Corporation as well as the latter body's Casino Management Company which controls casino gaming. Government and the private sector operate the casinos.

The Gaming Control Board is the licensing authority. It supervises all gaming and betting in Mauritius; supervises the conduct and operation of all gaming houses; specifies the rules applicable to and decides the maximum stakes in respect of any game played in a gaming house; and, issues gaming house, coin-operated gaming machines and lottery organisers' licences.

On moral and social grounds the government is opposed to the issuing of further licences. On the other hand, it also promotes gaming as a source of revenue for itself and other good causes.

The Registrar of Companies requires the submission of annually audited financial statements. Monthly statements must be filed with the Accountant General. A gaming tax of 50 percent on casino revenue; an annual gaming licence fee; a local gaming tax which varies from area to area; and, a monthly tax on every slot machine is payable in Mauritius. Locals have to pay an entry fee while foreigners are exempt therefrom.

Operational hours, a ban on advertising, age limit of 18 for entry into a casino, disciplinary action, and still other matters are regulated in the rules of gaming.

7.3 MOROCCO

Gaming, particularly casinos, is a relatively new introduction to Morocco. It has one major casino which is considered quite lavish. Hours of operation are restricted. One other smaller casino exists in Casablanca. All games are conducted in local currency which may not be taken from the country.

7.4 NAMIBIA

Namibia is the African country with the latest authorised gaming industry. Having been administered by South Africa for so many decades, gambling in any form was prohibited as it was here. Namibia achieved independence a few years ago and has recently introduced its Casinos and Gambling Houses Act, 1994 (Act No. 32 of 1994). This Act provides for the licensing, supervision and control of casinos and gambling houses and for the establishment of a casino Board. The functions of the Board are to make recommendations to the Minister of Environment and Tourism on the control and regulation of casinos. The Board is also a licensing authority for casinos and gambling houses. The Act prescribes certain qualifications for a casino licensee. In Windhoek, an applicant shall have an hotel or similar accommodation of at least four star rating and at least 100 rooms for guests. Elsewhere in Namibia the applicant shall have accommodation of at least three star rating and at least 50 rooms for guests.

A licence authorises the playing of any game specified therein. The Act authorises the holder of a gambling house licence to keep prescribed gambling machines in the gambling house. The Act furher prescribes the restrictions upon the granting of licences; application procedures; appointment of inspectors and their duties; duration of licences; withdrawal and suspension of licences; approval of certain casino employees; registration of certificates of approval; restrictions applicable to certain employees; restrictions on persons under 18 entering a casino; accounting procedures; levies; offences under the Act; forfeiture of machines; and, other related matters. The relevant Act came into operation on 2 December 1994.

7.5 NIGERIA

Nigeria has numerous gaming venues most of which are small and "its casinos are more productive than those of poorer countries in West Africa". Lagos, the capital, has four casinos – each in a large hotel.

7.6 OTHER SOUTHERN AFRICAN COUNTRIES

Casino gaming takes place in Botswana, Lesotho, Swaziland and Zimbabwe. However, the industry in these countries is so small that an analysis thereof is not warranted as it will have no material impact on casino gaming in South Africa.

CHAPTER 3

THE SOCIAL AND ECONOMIC IMPACT OF GAMBLING

INTRODUCTION

This chapter deals with two of several impacts which gambling has on a society. These are the social and the economic effects. Others that can be discussed are of a political, educational and sociological nature. It is conceded that certain aspects of the one would overlap with another and that the dividing line cannot always be clearly drawn between the different areas of impact. The social and economic impact are the two spheres which have been (and still are) the most researched subjects in publications of any sorts. From a government's and a society's point of view, these two impacts are of great importance and it is the Board's contention that they must not only be researched but also be provided for in the country's gambling policy and law.

The social impact will be dealt with first and then the impact of gambling on the economy of the country.

1. SOCIAL IMPACT

1.1 The continuous worldwide shortening of the work-week (that is, the reduction of hours that people have to work per week) has contributed largely to the lengthening of their free time. Free weekends and the fact that (as alleged by researchers) people sleep fewer hours per nigth, all add to a continuous lenghtening of people's leisure-time.

Leisure or free time has become increasingly filled with all kinds of activities and pastimes. These activities are by personal choice and are voluntary. Sport, reading, gardening, entertainment and many others are different types of activity which people indulge in during their free or leisure-time.

Gambling has become one of these and is rapidly developing as one of the major forms of leisure-time entertainment. The liberalisation of gambling in the world and the rapid growth of sophisticated gaming types and facilities have provided increased accessibility to (and availability of) an unprecedented number of gambling oppurtunities. Gambling has become a great national pastime and entertainment.

For this and other minor reasons, it is essential to discusss briefly those areas of the social sphere where the effects of gambling would be most felt. This is with a view to make recommendations to the government on appropriate steps to protect and strenghten the positive side of gambling and, on the other hand, to guard against the social evils of gambling.

1.2 The Board dealt with the opposition to gambling in its Interim Report handed to the government in October 1994. In that Report, the Board conceded that the points raised by churches and others against the legalisation of gambling in South Africa have merit. The old Roman adage: *"ne sit summum malum alea, malum certe est"* (granted gambling is not the worst of evils, it still is an evil) forms the point of view of many people. The reasons for those people opposing legalised gambling are, briefly, the following:

First, gambling negatively affects man's relationship with God. It is His command that happiness and joy are to be found in honest and hard work. This manifests man's dependence on Him.

Second, gambling makes man more dependent on chance than on working for a living.

Third, the relation between labour and its reward becomes completely distorted.

Fourth, gambling has a negative effect on the gambler's family.

Fifth, gambling impacts negatively on society in general in that it discourages people to work and also facilitates the increase in crime and other social evils. Consequently, churches warn against the sins of avarice, temptation, waste, addiction and prejudice which are associated with gambling and result therefrom.

However, as was stated in the Interim Report, gambling is a reality in that it is natural for man to take a chance or a risk. Prohibitions and bans of all kinds on gambling in many countries around the world have not been successful – in fact they have been highly conducive in promoting illegal gambling. For this, and many other reasons, the Board has recommended legalising gambling in South Africa, provided it is strictly controlled and regulated. That ground has been covered and will not be repeated here.

However, some of the points raised by those opposed to gambling also relate to the social impact of gambling and will briefly be covered in this chapter.

1.2.1 *Effect on the Work Ethic of the People*

This is a subject which is discussed by researchers in the theological, sociological as well as economic disciplines. The contention is that gambling can have the effect that, instead of working for their money, people would rather spend a certain amount (which they can hardly afford to spend) on gambling in the hope that they will win a big prize. This aspect is not measurable and no accurate statistics can be given as to the extent a nation's work, is *per se*, negatively affected by gambling. It is also doubtful, according to most sources, whether gambling alone is to be held responsible for the decline or change, if any in a nation's work ethic.

As stated above, people have much more leisure-time at their disposal in which they can do many things – all of which can contribute to a change or decline in work ethic. However, be that as it may, the Board agrees that this aspect should nevertheless be researched as part of a programme of study to establish a South African perspective on the subject.

1.2.2 *Effect on the Society*

Researchers conclude that gambling is becoming more and more acceptable by the broader society. Attitudes based on religious grounds are more difficult to change while those which are based on purely social grounds (that is, the problem of addiction to gambling, the safety and security of the gambler's family; and, the proliferation of crime and other social evils) are more easily changed provided, first, strict control and efficient regulation of gambling can be imposed, and, second, on-going research with a view to remedial steps can be introduced.

Research has shown that the impact of gambling on society is minimal where governments have introduced proper and efficient regulatory measures to control gambling. Where no legalisation took place or where a relatively laissez-faire approach to control measures was adopted, the impact on the society varied from being invisible, slow and undeterminable to being one of notable change.

However, as in the case of the work-ethic, no table of measurement or standards of evaluation exist – all conclusions are largely speculative and based on empirical observations. At the same time, however, all authorities conclude that gambling definitely impacts on the society in many varied areas: Morality; attitudes; division between casino-goers, on the one hand and punters, on the other; change in lifestyles; attitude of youth, adults and the elderly; the fact that the "nouveau riche" concept carries a negative association; and, still other subjects. For this reason it is concluded that the impact of gambling on society should also be researched and studied on a continuous basis in all countries.

1.3 The compulsive or addictive gambler

The Board received much information on the so-called compulsive or addictive gambler and believes this person deserves more discussion as a subject in the field of the social influences of gambling.

Gambling is a conventional mainstream activity in those countries where it is legalised and gamblers are to be found everywhere. The non-addictive or non-compulsive gambler gambles for fun, pleasure and entertainment and will only spend what he can afford on gambling. His actions are bound by his financial ability and moral restraints. If he wins he is glad and, while some spread the news, others remain silent about it. If he loses he regrets it and would probably not gamble soon again on the ground that he is not a successful gambler.

1.3.1 Research on the impact of winning a big prize shows that the winner may experience one or a combination of four results: First, the winner indulges in uncontrolled spending. Such a person squanders money on unnecessary purchases or realises his dreams by buying things he would not have been able to own on his work-income alone. Second, the winner increases his gambling. The taste of success drives him on and he could become a compulsive gambler. Third, the winner as a "nouveau riche" becomes ostracised by society because of jealousy, envy or suspicion. As an authoritative source states: "Corruption of the character by sudden wealth is a common puritan ethics expectation". Fourth, the winner can be threatened and probably runs the risk of being deprived of his prize-money by unlawful means.

1.3.2 A minority of people have become known as addictive, compulsive, or pathological gamblers because they are driven by an urge – the nature of which has given rise to much research and many publications. The pathological gambling of this type of person very often leads to the destruction of his relationship with others, his family and, in the end, himself as he has become a burden on society.

There is a view that there is no "compulsive" type of person and such people are unfairly labelled addictive gamblers. Their heavy gambling arises from the winning or losing of money rather than the activity of gambling. Therefore, anyone can have a problem with gambling. Another view to the contrary is that there are addictive gamblers and that excessive gambling results from the particular social development of the individual who has been exposed to specific learning experiences involving gambling.

1.3.3 The consensus of learned opinon is that certain people are compulsive or pathological gamblers and that their number is increasing worldwide. Furthermore, their condition is badly neglected by governments, researchers and therapists. Studies have revealed that a pathological gambler is a person who is chronically and progressively unable to resist gambling, and who, if not treated, ultimately destroys others and himself. Some sources recognise it as a psychological abnormality which is classified as a mental disorder. It must be treated as a psychiatric condition and requires specialist care and treatment. On the oher hand, compulsive gambling is not necessarily due to an anti-social personality disorder.

1.3.4 A leading expert concludes that an analysis of gambling practices, age-old and worldwide as they are, "suggests that gambling is one of the most profound and complex features of the human mind. Repercussions extend far beyond the gaming table or the pack of cards into risk-taking and decision-making in all walks of life". The complexity of human behaviour patterns in gambling make it very difficult to study and research, though very interesting. Various studies have proved that very few (if any) distinctions exist between the excessive gambler and the average gambler with regard to intelligence and other personality features.

The pathological, compulsive or addictive gambler will remain a subject for study and research. This is being done in many countries, which have legalised gambling systems. In those countries universities, research institutions, groups and individual researchers of various related principles conduct on-going research. This is not only because of the interesting and complex nature of compulsive gambling and the gambler's psychology but, perhaps more importantly, the social impact of this addiction on society. The following diagnostic criteria determined by various studies more than justify that reserach and analysis should also be conducted in South Africa from the moment gambling is legally and structurally introduced:

(a) The gambler frequents the gambling venues more and more. He is there from opening until closing time;

(b) At times, the person becomes very depressed, elated or aggressive in the venue;

(c) The person defaults on his personal debts or other financial responsibilities;

(d) The person becomes crime-orientated and this manifests itself in forgery, fraud, embezzlement, tax evasion, etc.;

(e) The person borrows money from fellow gamblers – even those unknown to him;

(f) The person's relationship with his family, friends and others starts to deteriorate;

(g) The person's inability to account for money lost or evidence of his gains;

(h) The person's loss of employment due to absenteeism or conduct related to excessive gambling;

(i) Eventual depression, despondency, alcoholism, or drug addiction; and,

(j) Finally, the destruction of his social, family, personality and other structures which, in the end, could drive him to self-destruction in the form of suicide or serious crime.

1.3.5 It is not the intention here to give a psychological or sociological analysis of the compulsive gambler. Suffice it to state that South Africa, according to evidence put before the Board, does have a number of compulsive gamblers, the statistics of whom they might be and the extent to which they are addicted are unknown.

Churches and an organisation, Gamblers Anonymous, informed the Board of their experience of the effect of compulsive gambling on the individual's religion, his family, financial position, and his way of life. The Board accepts their evidence and believes compulsive gambling does exist in South Africa and that this phenomenon should be studied and researched on an on-going basis. To that end, provision for such study and research should be made in the new gambling law.

Consequently, the Board will recommend that the National Gaming and Wagering Board (which the Board will recommend in a later chapter) conducts research and study into gambling with particular reference to the social and other impacts of gambling, including compulsive gambling as well as keeping statistics and other data in this regard and, secondly, as the industry has a responsibility to compulsive gamblers it should make a contribution towards their rehabilitation and consequently the Board will recommend that the gambling industry establishes an institute or clinic for the treatment and rehabilitation of pathological gamblers.

2. ECONOMIC IMPACT

The economic impact of gambling on a country is as important as its social impact. After all, gambling is about people and money and it goes without saying that if gambling affects the people and their social structure and value system, gambling money must similarly have a profound impact in a country's economic sphere.

The discussion on the economic impact can traverse many subjects and areas which overlap with other spheres of society such as education, politics or even religion. The discussion will deal with the following subjects as factors impacting on the economy of the country:

2.1 The effect of gambling on personal saving

There is a view that gambling detrimentally affects the willingness of people to save money. Gambling is a major leisure-time activity which involves the movement of money mainly from the gambler or player to the operator and other recipients. It is not, so it is averred, conducive to private saving and thus to domestic investment. If there is no gambling in a country, people would save more and thus contribute to investment and economic development and all its beneficial derivatives.

This statement, however, is not entirely correct for two reasons: First, there is no proof that if people cannot gamble they would save; second, the revenue from gambling, if properly regulated and channelled, can be highly conducive to investment. Investment and economic development in any country is not dependent only on the private savings of individuals. Informed sources hold that all over the world people (especially young people) tend to save less and spend more. They do not only spend on gambling but also on other leisure-time

activities. Investing in shares on a stock exchange, which many people increasingly do, is also a risk they take. Many reasons can be put forward for this: Materialistic society; greater socialist consciousness in so-called welfare states; decline in buying power of money; inflation; change in value systems and attitudes; and, still others. On the other hand, no evidence exists to the effect that gambling does not affect the savings-rate of people.

The Board hunted far and wide but could find no authoritative information on the question as to whether gambling has a detrimental effect on private savings or not and if so, to what extent. The probable reason for this is that gambling does not have a definable or determinable impact on private savings. There may be an indirect influence which results from the value system which changes in a country through the introduction of gambling, namely that gambling can be a "quick-fix" for one's financial difficulties.

However, it is believed this can only be minimal.

The Board believes, however, that if a system of control is introduced by which gambling is restricted to cater only to the existing demand and does not stimulate demand, then gambling should not impact significantly on people's private savings. Such controls will be discussed in further chapters of the Report.

2.2 Gambling as a leisure-time activity

This subject has already been referred to in the previous chapter where it was stated that as a result of the worldwide shortening of working time, people's leisure-time has increased and, consequently, leisure-time activities and entertainment have increased. This is proved by global surveys conducted by specialist organisations. Reliable sources indicate that from the mid-1960s to the 1990s the proliferation of gambling increased worldwide.

Because of competition for tourists; changing attitudes of people towards gambling; advancement of technology producing innumerably more games of various types; and, the realisation that gambling is to an increasing extent becoming a source of high revenue for governments, the process of legalising gambling has become more accelerated.

South Africa now forms part of that process of legalising and the Board is convinced that gambling will add a very important leisure-time activity to present pastimes. This will have a profound economic impact on the country and the Board's view is that if gambling is properly controlled and kept clean of all the vices and evils it is associated with, it could develop into one of the most important leisure-time activities in the country.

2.3 Gambling generates employment and income

Statistics as to how many people are employed in the gambling industry worldwide are not available. Rough estimates put the number of people who have an income from direct and indirect employment at several million.

The gambling industry employs many people directly in the management, operation and maintenance of gambling activities while, secondary to that, many more are employed, not directly but indirectly. Sales people for lottery tickets, printers, manufacturers of gambling technology and all the people who work for them, security services, state controllers, researchers and still many more, are a few examples of the many employment opportunities which flow from the legalisation and operation of a gambling industry.

However, in view of the importance of employment and income creation, the Board did its best to arrive at a formula for the calculation of the number of jobs, direct and indirect, that could be created by the gambling industry. In its endeavour to calculate this, the Board considered the following: That the industry would only be in full operation from mid-1996; that, when considering the worldwide average, every two gaming machines create one employment opportunity; that a National Lottery has a wide network of people who participate in the operation of the lottery; that other lotteries also have relatively wide networks of people involved in their operations; and, that wagering also involves people countrywide in pools and other forms of betting. On the basis of these considerations the Board conservatively estimates that during 1997 more than

10 000 people in South Africa will be directly or indirectly employed in or derive an income from the gambling industry.

The above numbers do not include other secondary activities such as lawyers, accountants, psychologists, researchers, and still others. The Board is convinced that its multiplying effect of legalised gambling on the employment market will be very beneficial and should be regarded as an important economic impact on the country. As in other countries, the employment creation factor of gambling is an important reason for legalising it in South Africa.

2.4 The impact of gambling on economic growth

Gambling is described in all the latest sources of information as an "industry" for good reasons: First, as stated above, it creates many thousands of employment opportunities; second, its wide range of activities in the leisure-time entertainment world is so vast that it attracts thousands of people, both locals and foreigners; third, it is a dynamic and high profile activity involving lots of money and therefore requires and creates a wide supporting base of services. Information at the Board's disposal indicates that the following other industries, and services, are stimulated by gambling: Manufacturing, building, paper, printing, transport, security, clothing, food and beverages, liquor, textile, tourism, the designated trades (electricians, carpenters, etc.), sports, and still others.

Without attempting to determine accurately how such stimulation to the economy will be given by the gambling industry in South Africa, the Board is convinced that, as in other countries where the industry is of comparable size, gambling will have a stimulating effect on the economy. It is impossible to determine at this stage as to how great it will be and what sections will receive the highest stimulation.

An important impact experienced by most countries was that legalised gambling attracts investments from both local and foreign sources. Investments have supplemented economic growth to a large extent in countries that have followed an open-market policy. An internationally renowned institute for policy research and planning has found that gambling "has become an accepted economic stimulant for local, state and federal governments".

The industry has proved that, if properly implemented and regulated, it can provide an effective programme to create employment and generate additional revenues. Increasing revenue by legalising gambling is regarded "as a viable alternative because it is, in effect, a voluntary tax. Politicians are more willing to consider gambling because it has a positive revenue impact without the obvious negative political implications of raising taxes".

Worldwide investment usually consists of: Establishment and construction of resort or accommodation facilities; establishment of manufacturing facilities; investment in service industries supportive of the gambling industries; and, training and developing people for the industry. The Board has abundant proof of the strong interest which local and foreign investors have in the South African gambling industry.

2.5 The impact of gambling on tourism

Many of the presentations received by the Board stated that tourism to South Africa will be encouraged and stimulated by legalising gambling. No evidence was given to substantiate this statement and reading the many sources of information on overseas experiences, it would appear that there is no clear proof that legalising gambling will attract more tourists to a country. It would appear that generally, people do not necessarily travel to a country to gamble there. However, there are exceptions: First, the Las Vegas-type of destinations which as end-resorts originally dit not have much more to offer than gambling. With gambling threatening to become fairly commonplace in the world, that type of resort must offer more than just gambling. In Las Vegas, for example, which is in the Nevada Desert and has no natural or other type of attraction, steps have been taken to turn the city into a family-orientated destination resort complete with great spectacles and theme parks. In addition, to continue attracting tourists, Las Vegas offers (in all probability) the widest range of games that can be played. Second, the experience is also that where a country prohibits gambling within its borders, its citizens would travel to neighbouring countries where gambling is legal.

Therefore, it is too general a statement that people do not necessarily travel to a jurisdiction just to gamble there. Experience in South Africa showed that many South Africans travelled to neighbouring states where gambling was legalised.

However, the Board is of the opinion that gambling will not be a direct stimulant to the tourist industry as many would believe. That is not saying that legalised gambling will not have a beneficial impact on the tourist industry. It will certainly make many resorts and accommodation facilities viable and this will attract tourists.

2.6 Gambling as source of tax and revenue

The generation of revenue through the gambling industry has been one of the prime movers for legalising gambling in many countries. Compared to tax (which is a compulsory measure) gambling is voluntary – no one is compelled to gamble. People part with their money voluntarily and they are more willing to do so in the awareness that a portion thereof is earmarked for social projects and good causes.

A brief survey of the incomes generated through the gambling industry world-wide indicates that the industry is a significiant source of revenue for governments. According to the Howard Commission, during the 12 months from mid-1991 to mid-1992, totalisators and bookmakers countrywide received bets in excess of R3,1-billion. Governments receive their portion of income through taxes, levies and licence fees from licence-holders and through income tax paid by employees in the gambling industry.

The Board believes that gambling in South Africa will provide the government – central and provincial – with an important source of income from the National Lottery, other lotteries, gaming and wagering. The Board will, therefore, recommended in the relevant chapter dealing with each of these subjects as to how much must be channelled to the state and to other causes.

2.7 The impact of gambling on consumer spending

It is averred that countries which have legalised gambling experienced a change in consumer spending. Investigations revolved around the question of whether there is proof of this and what part of the consumer's income is spent on gambling or, rather, what does he sacrifice in his normal day-to-day life-style and living to enable him to gamble.

The Board found no real evidence either locally or abroad of the impact of gambling on consumer spending and is of the opinion that if it does impact it will be limited.

RECOMMENDATION

1. THE BOARD RECOMMENDS THAT –

(a) RESEARCH BE CONDUCTED BY THE NATIONAL GAMING AND WAGERING BOARD (WHICH THE BOARD WILL RECOMMEND IN A LATER CHAPTER) INTO THE SOCIAL AND ECONOMIC IMPACT OF GAMBLING INCLUDING THE KEEPING OF STATISTICS AND OTHER DATA IN THIS REGARD; AND

(b) THE GAMBLING INDUSTRY ESTABLISH AN INSTITUTE OR CLINIC FOR THE TREATMENT AND REHABILITATION OF PATHOLOGICAL GAMBLERS.

CHAPTER 4

PRINCIPLES FOR GAMBLING IN SOUTH AFRICA

INTRODUCTION

The purpose of this chapter is to identify and briefly discuss certain principles identified and accepted by the Board which the government, central and provincial, must strictly adhere to in policy and legislation to ensure a credible, honest, profitable and flourishing gambling industry in South Africa. They run like golden threads through the entire industry and have been the cornerstones of those worldwide systems which are successful and rank among the best.

South Africa is fortunate in that where some countries have discovered through bad experiences that gambling has its own fundamentals without which the industry cannot exist and operate, it can build those principles directly into the very foundations of its own gambling industry. The Board very briefly deals with each of these principles as follows:

1. CONTROL AND REGULATION

A consensus of opinion exists among all sources of information that if South Africa legalises gambling it should be strictly controlled, well-regulated and effectively policed. The policy and legislation on gambling should be well-formulated, detailed to a large extent and very clear. Furthermore, it should cover as must as possible of the entire gambling spectrum.

The Board approached its recommendations from the angle of strict and effective control and will therefore recommend that an efficient and effective control structure be legislated for, consisting of statutory control, supervisory and advisory bodies, inspection services, security measures, accounting procedures and still other parts of the structure.

The Board will also recommend that these structures should be legislated for by all those provincial governments which introduce gambling within their jurisdictions.

RECOMMENDATION

THE BOARD RECOMMENDS THAT THE PRINCIPLE OF STRICT CONTROL, EFFICIENT AND EFFECTIVE REGULATION AS WELL AS COMPETENT POLICING OF AND IN THE GAMBLING INDUSTRY BE ACCEPTED FOR THE ENTIRE COUNTRY AND THAT POLICY AND LEGISLATION BE FORMULATED AND IMPLEMENTED WITH THAT OBJECTIVE.

2. RELATIONSHIP BETWEEN CENTRAL AND PROVINCIAL GOVERNMENT

The Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provides that the provinces have legislative competencies with regard to, among other things, "casinos, racing, gambling and wagering" within their boundaries. Legislative competency with regard to lotteries is vested in central government. This division of competencies, which in itself has given rise to controversy and speculation among legislatures and lawyers, has made the relationship between the central and provincial governments a very sensitive and touchy issue. The Board is fully aware of this and believes, therefore, that the closest co-operation and liaison should be established between the central government and the provincial governments and also among the provincial governments themselves.

Justice, fairness and equity in the system can only be served if the utmost good faith, transparency and frankness prevails. The Board will recommend that, first, the closest liaison and co-operation be established and maintained between the different levels of government, and, second, that control structures be established to make provision for sufficient cross-representation from the different levels to support this principle.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) WHEREAS THE RELATIONSHIP BETWEEN THE CENTRAL, PROVINCIAL AND LOCAL GOVERNMENTS IS SENSITIVE, THE CLOSEST LIAISON AND CO-OPERATION BETWEEN THEM BE SOUGHT AND MAINTAINED SO THAT FAIRNESS, FRANKNESS AND JUSTICE IN THE GAMBLING INDUSTRY IN SOUTH AFRICA CAN PREVAIL; AND,

(b) THE CONTROL STRUCTURE TO BE ESTABLISHED IN TERMS OF NATIONAL GAMBLING LEGISLATION PROVIDE FOR PROVINCIAL REPRESENTATION TO MAXIMISE LIAISON AND CO-OPERATION.

3. PROTECTION OF GAMBLERS

The worldwide principle in gambling is to allow as little interference as possible with the gambler's freedom to gamble. However, certain individuals have to be protected against themselves when they show a tendency towards compulsive gambling – a subject dealt with in the previous chapter. Apart from the compulsive or pathological gambler, the state should also accept the principle that the non-compulsive gambler should be protected against exploitation and abuse from the operator. In fact, the gambler is the key-figure in the industry and his money is the key-commodity.

Therefore, the Board is convinced that the policy and legislation with regard to gambling should proceed on the premise that control structures, regulatory measures, rules and other standards should primarily be aimed at the protection of the gambler. He has a right to fair gambling. His physical safety, wellbeing, the safety of his money, his good faith and trust and his positive perception of the industry should be protected in policy and law.

The industry is doomed if the gambler loses confidence and trust in its operations and feels that he is exploited. A good example is Las Vegas which took many years to clean-up gambling within its jurisdiction and even longer to change the public's perceptions from a negative to a positive.

The Board will recommend that gambling policy and legislation must contain sufficient measures to ensure the protection of the gambler. More details of this will appear from the discussion in succeeding chapters.

RECOMMENDATION

THE BOARD RECOMMENDS THAT THE GAMBLING POLICY AND LEGISLATION PROMULGATED AT ALL LEVELS OF GOVERNMENT HAVE AS A PRIMARY OBJECTIVE THE PROTECTION OF THE GAMBLER: HIS PHYSICAL AND MENTAL WELLBEING; HIS PERSONALITY AND DEMOCRATIC RIGHTS UNDER THE CONSTITUTION OF THE COUNTRY; HIS FREEDOM TO GAMBLE OR NOT TO GAMBLE; HIS MONEY; HIS RIGHT TO FAIR GAMBLING; HIS POSITIVE PERCEPTION OF THE INDUSTRY; AND, HIS GOOD FAITH AND INTEGRITY.

4. PROTECTION OF SOCIETY

Gambling policy and law in all countries are about a human activity in the leisure-time of people. It has a strong social character and is aimed at regulating a social activity. Gambling, being about playing for money – lots of money – holds a strong attraction for people: Individuals visit gambling places to stake their money in the hope to win and groups visit gambling places because they are social places where people gather even if they do not necessarily gamble. Gambling places also attract criminals and do show a vulnerability for social evils.

Two considerations are relevant here: Protection of society against excessive gambling – not to stimulate a demand which does not exist; the so-called "unstimulated demand". With this in mind, some jurisdictions impose resrictions of various kinds on gambling: Limit on number of licences; restriction on hours of operation; age limits for entry; dress codes; bans on advertising; and, still others. Most countries prescribe an opening time for gambling houses which is later than the starting time of workers "so as not to undermine the work 'ethic' of the people".

The Board believes that policy and law relating to gambling should also contain the principle of protection of society against the damaging excesses of gambling and should, to that end, impose limitations that are desirable and practicable. Policy and law on all levels of government should strike an acceptable balance between, on one hand, allowing a clean and tidy gambling industry to flourish for the benefit of all its benefactors, and, on the other hand, the protection of the individual gambler and the society.

RECOMMENDATION

THE BOARD RECOMMENDS THAT THE GAMBLING POLICY AND LEGISLATION AT ALL LEVELS OF GOVERNMENT HAS, AS AN IMPORTANT OBJECTIVE, THE PROTECTION OF SOCIETY AGAINST THE OVER-STIMULATION OF LATENT DEMAND FOR GAMBLING; THE DAMAGING EXCESSES OF GAMBLING; AND, THE DECLINE OF THE WORK-ETHIC THROUGH GAMBLING.

QUALIFICATIONS AND STATUS OF LICENCE-HOLDERS

Analysis of the different systems of gambling in the world proves that all jurisdiction set high standards and requirements with which applicants for gambling licences must comply. According to reliable information sources, the conduct of some licence-holders has been the cause of these high standards. Both legal and illegal operators are known to have been the key-people with regard to machine manipulation; fraud; embezzlement of funds; tax-evasion; liquor law infringements; drug trafficking; money laundering; and, still many other transgressions, all of which have given gambling the bad image it has in many countries.

Licence-holders have become the group in the gambling industry with the most severe tests to pass before being issued a licence. From then on, they are under the closest scrutiny by gambling policing and inspection services. The cleaning-up in many jurisdictions started with the operators and the introduction of criteria for the award of a licence. Fitness and propriety of person; unblemished character; sound and solvent financial management; previous record of sound gambling management; harmonious human relations; and, still others are the qualifications which a licence applicant must have before a licence is awarded. These attributes must be maintained for the duration of the licence. This principle is connected with the principles of control and protection of the gambler which were discussed earlier in this chapter.

The Board agrees with all these jurisdictions which have identified the control of the operator or licence-holder as a key-principle in the gambling industry and will recommend that this principle must also be reflected in the policy and law relating to gambling at all levels of government.

RECOMMENDATION

THE BOARD RECOMMENDS THAT STRICT CONTROL ON THE LICENCE-HOLDER BE ACCEPTED AS A PRINCIPLE AND THAT REQUIREMENTS RELATING TO THE FITNESS AND PROPRIETY IN ALL RESPECS OF THE APPLICANT BE CONTAINED IN POLICY AND LEGISLATION OF GOVERNMENT AT ALL LEVELS AND THAT, AS IN OTHER JURISDICTIONS, LICENCE-HOLDERS OR OPERATORS BE REQUIRED TO MAINTAIN THESE HIGH STANDARDS THOUGHOUT THE DURATION OF THEIR LICENCES.

6. QUALITY OF GAMBLING TECHNOLOGY

The Board received an abundance of evidence on the quality of gambling technology and all presentations stated in no uncertain terms that the gambling industries of many jurisdictions are threatened by poor quality machines and other gambling technology. Therefore, South Africa should ensure that only machines and technology of the highest quality shall be used in the country's gambling industry. Such requirements must be provided for in the law and, furthermore, manufacturers of such equipment shall at all times be responsible for facilitating the servicing and maintenance thereof.

The technology-side of gambling is in itself a major aspect of the gambling industry and the principle which the Board subscribes to and will recommend that operators of gambling activities shall only purchase top quality machines; that such equipment shall be guaranteed by the manufacturer and licensed by a control body which the Board will recommend; that the manufacturer shall guarantee the quality of the technology and the authenticity of the origin; and, that such technology shall be maintained and be foolproof and unable to be tampered with. More detail hereof will follow in later recommendations.

RECOMMENDATION

THE BOARD RECOMMENDS THAT THE PRINCIPLE OF CONTROL OVER GAMBLING TECHNOLOGY BE ACCEPTED AND THAT GAMBLING POLICY AND LAW SHALL SET HIGH STANDARDS AND REQUIREMENTS FOR THE ACQUISITION, MAINTENANCE AND SERVICE OF EQUIPMENT.

7. TAXATION

Most gambling jurisdictions in the world are compelled to pay taxes and distribute revenue to good causes. The majority of countries also impose fees for the award of the initial licence and its subsequent renewal. Certain countries also impose levies on machines and the number of gamblers that play per gambling house. To discuss all these here in detail would not be appropriate and could be misleading. The principle is that the gambling industry must be a revenue generator for the government and its projects as well as for indentifiable and approved good causes in society.

The introduction of casinos, and especially, a national lottery as recommended in this Report calls for careful consideration of the tax structure. The matter was not part of the brief for the Interim Report of the Commission of Inquiry into certain aspects of the tax structure of South Africa (Katz Commission) and that report, therefore, contains no reference to the subject.

The Katz Commission has not yet had the opportunity to study the subject, and the Board was unsuccessful in arranging a meeting with the Commission. Representatives from the Board did, however, meet with a delegation of the Financial and Fiscal Commission. The recommendations that follow are, therefore, based on the best information currently available and due cognisance has been taken of the views of the Inter-Provincial Liaison Committee on gambling.

7.1 Income Tax

(a) *Operators*

The Board is of the opinion that there can be no reason to deviate from the principles of normal income tax payable by companies or individuals involved in running gambling activities for profit. They would operate their business for profit as any other company or individual and can, therefore, not be treated any differently.

(b) *Gamblers*

As it would be extremely diffucult, if not impossible, to establish gaming and betting profits of individuals, it would be completely impractical to try and tax them. (This comment does not apply to the registered professional gambler who is liable for income tax in the normal way).

In the case of lotteries, prizes won could be established, but experience worldwide teaches that the sheer magnitude of the bigger prizes lies at the heart of the success of lotteries. By reducing the prize by levying income tax on them would severely affect participation, and consequently, money that can be made available to good causes.

7.2 Value Added Tax (VAT)

(a) *Lotteries*

The whole object of lotteries is to derive as much money as possible for good causes (e.g. RDP, charities, sport, art and culture), with the result that it would be senseless to levy VAT on them. Lotteries are, in any case, a form of voluntary tax as participants feel they are doing something for good causes. Worldwide experience has shown that taxing lotteries has a very negative impact on their success.

Exempting lotteries from VAT will not have a material effect on state revenue as all existing lotteries are, in any case, illegal and probably do not presently contribute much in the way of VAT.

(b) *Other forms of gambling*

Casinos are soon to be legalised in South Africa and in terms of the Constitution the provinces have the exclusive right to levy tax on gambling (with the exception of VAT and income tax).

Unless gambling is exempt from VAT, the provinces will not be able to optimise the benefits which they can derive from casinos. It will totally inhibit the flexibility of provinces to set realistic tax structures if operators also have to pay 14 per cent VAT on gross casino wins.

It does not help provinces to have an exclusive right to levy taxes on gambling if gambling is subjected to VAT as this, to a large extent, negates the ability of provinces to generate income from this source. North West Province, for example, levies 15 per cent tax on the gross wins of their casinos and, assuming this to be a justifiable rate, will be able to levy very little if their casinos become subject to 14 per cent VAT.

It is interesting to note that when VAT was introduced in the previous TBVC States, gambling was excluded as it was already subject to a specific gambling tax. As the existing legal casinos (ex TBVC) do not pay VAT and from all accounts very little VAT (if any) is paid by illegal casinos, the state will not lose revenue from this source by exempting gambling from VAT. There seems to be no justification for imposing double taxation.

It should be mentioned that there is no fair and equitable nor practical method of charging the end user (which is the very principle of VAT).

Services currently exempt from VAT are those financial services which include funds for the promotion of horseracing (governed by a province). Currently, financial institutions are also exempt with a special levy on their financial services. Furthermore, by exempting gambling operations, no value added input credit can be claimed on capital equipment and other expenses, which, in effect, ensures that a large portion of the VAT is included in the cost of operation.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) INCOME TAX ON OPERATORS OF GAMBLING ACTIVITIES BE LEVIED;

(b) INCOME ON GAMBLING WINS NOT BE TAXED; AND,

(c) ALL FORMS OF GAMBLING HAVE VAT EXEMPTED STATUS.

8. TRANSPARENCY, HONESTY AND INTEGRITY

The Board has already alluded to the necessity of maintaining a favourable perception of the gambling industry in the eyes of the gambler and society. The Board has received several submisions on this subject, all pleading for an

open, clean and tidy gambling industry in which all decisions and actions on government's side including licensing authorities, disciplinary bodies, accounting and auditing procedures and all the others shall be transparent, clear, logical, fair, equitable, and motivated.

Secrecy breeds suspicion and mistrust. To that end, some witnesses submitted that politicians should not be involved in decision-making bodies relating to gambling as the perception will be created that they, being in positions of power, could thereby manipulate, prefer, favour, prejudice or in any other way harm the good image of the industry. Allegations were made concerning political leaders' involvement in decisions relating to gambling activities in the previous TBVC States to the effect that certain licence-holders were unjustifiably preferred over others. The Board has no proof of this and will not comment thereon.

What is important, is the fact that the gambling industry worldwide, because of its history in some parts of the world, is invariably associated with crimes, abuse, manipulation, favouritism and many other negative aspects. It is, therefore incumbent upon the policy-makers, legislature and the industry to avoid the development of such a perception in gamblers' eyes and the public.

The Board strongly supports the demand that the gambling industry and the authorities shall at all times ensure that that decisions, processes, procedures and other activities are transparent, open, clear, logical, fair, equitable and well-motivated.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) THE PRINCIPLE OF TRANSPARENCY, FAIRNESS, OPENNESS, EQUITY AND LOGIC BE INCORPORATED IN THE GAMBLING POLICY AND LEGISLATION OF THE COUNTRY AND THAT THE INDUSTRY SHALL ITSELF ADOPT THIS PRINCIPLE IN ITS ADMINISTRATION, PRACTICES AND OPERATIONS WITH A VIEW TO CREATING AND STRENGTHENING THE PERCEPTION OF HONESTY, INTEGRITY AND JUSTICE IN THE EYS OF THE PUBLIC; AND

(b) POLITICIANS SHOULD NOT BE INVOLVED IN DECISION-MAKING OR CONTROL BODIES RELATING TO GAMBLING.

9. GOVERNMENT INVOLVEMENT IN THE GAMBLING INDUSTRY

This subject raises the question to what extent the government should be involved in the country's gambling industry either through ownership or shareholding. Apart from the National Lottery which, as the Board recommended in its Interim Report, should be state-owned and controlled, the government's involvement in other lotteries, gaming and wagering should be excluded. Its functions should be limited to authorisation, control and regulation for the purpose of maintaining law, order and fairness in the industry.

In other countries an analysis of this aspect reflects a much chequered picture. In some the government owns, controls and regulates every facet of the industry. Information reveals that such jurisdiction has a higher vulnerability to corruption, bribery and abuse and a lower income potential. In those systems where governmental control and involvement is much less the industries seem to fare much better.

The Board supports the latter approach and believes that, apart from the National Lottery, both central and provincial governments should have no involvement in all other forms of gambling apart from the control thereof by way of legislation.

RECOMMENDATION

THE BOARD RECOMMENDS THAT LEGISLATION SHALL EXCLUDE CENTRAL AND PROVINCIAL GOVERNMENTS AND PARASTATAL BODIES FROM HOLDING SHARES OR OTHER FORMS OF POWER IN THE GAMBLING INDUSTRY EXCLUDING THE NATONAL LOTTERY.

10. CO-ORDINATION AND UNIFORMITY IN THE COUNTRY

The Constitution gives provincial governments legislative power with regard to gaming and wagering while a national lottery can be introduced and regulated by central government. With ten legislatures in the same industry it is highly possible that the gambling legislation of one province could conflict with that of another on a subject or, that confusion could arise or that a lack of consistency could exist.

The Board has evidence at its disposal that the lack of uniformity between provinces, or states in a country with regard to gambling policy and legislation, can give rise to great uncertainty and conflict. The examples are so numerous in the world that decentralised control, which must be seen as a compromise in those countries for the sake of revenue generation, has been the cause of much confusion and speculation.

The Board accepts and appreciates the principle of decentralised legislative competence to provincial level and has already discussed the relationships arising therefrom earlier in this chapter. The Board, however, believes that provinces should strive to the greatest uniformity possible in policy and legislation with regard to gambling within their jurisdictions. To that end, the Board will submit model legislation formulated on criteria it will recommend to provincial legislatures to base their gambling legislation on.

The intention of the Board is not to prescribe to provincial governments but to merely recommend basic principles with the object of achieving uniformity in the industry. The actions of one province are bound to impact on another province. As co-ordination is of prime importance in the interest of the national economy, the Board will later recommend the establishment of a National Gaming and Wagering Board to perform these co-ordinating functions.

RECOMMENDATION

THE BOARD RECOMMENDS THAT LEGISLATURES ON ALL LEVELS OF GOVERNMENT STRIVE TOWARDS AS MUCH UNIFORMITY AS POSSIBLE IN THEIR POLICY AND LEGISLATION WITH REGARD TO GAMBLING IN ORDER TO ESTABLISH AND DEVELOP A UNIFORMLY CONTROLLED AND REGULATED GAMBLING INDUSTRY IN SOUTH AFRICA. TO THIS END THE BOARD WILL RECOMMEND THAT NATIONAL LEGISLATION SHALL CONTAIN MINIMUM PRINCIPLES WHICH PROVINCES MUST INCLUDE IN THEIR LEGISLATION.

11. REPARATION OF IMBALANCES IN SOCIETY THROUGH THE GAMBLING INDUSTRY

The Board is aware of the position of disadvantaged and underprivileged persons and communities in South Africa who have become so due to historical and political reasons. This happened because of a lack of opportunities caused by unfair discrimination against them in policy, law and practice.

The Board believes that the gambling industry offers an ideal opportunity for the upliftment, advancement and economic empowerment of these people and will recommend that legislatures must formulate policies and legislation with a view to repairing such imbalances in society by all possible means.

RECOMMENDATION

THE BOARD RECOMMENDS THAT LEGISLATURES FORMULATE GAMBLING POLICIES AND LEGISLATION TO UPLIFT, ADVANCE AND ECONOMICALLY EMPOWER HISTORICALLY DISADVANTAGED AND UNDERPRIVILEGED PEOPLE AND COMMUNITIES WITH A VIEW TO REPAIR IMBALANCES IN SOCIETY AND THAT CERTAIN OF THE REVENUE GENERATED FROM GAMBLING BE SET ASIDE FOR THIS PURPOSE.

12. MARKET RELATED INDUSTRY

The Board received numerous submissions requesting it to avoid monopolies in the gambling industry in South Africa and to apply principles of equal opportunity in the industry. Requests to "level the playing field" for all and "give the small man a chance" surfaced frequently during interviews and presentations. Fear was expressed that

furhter licences would be given to a present licence-holder or that it would be possible to develop a monopoly in the industry through the buying or selling of shares or numerous other methods.

The Board is acutely aware of the danger of monopolies and fully subscribes to the principle that the gaming industry should not be controlled by a monopoly and that it should remain as open as possible for all operators, big and small. However, it must be pointed out that at present various statutory measures exist which could be invoked to prevent monopolistic formations in the industry.

RECOMMENDATION

THE BOARD RECOMMENDS THAT THE PRINCIPLES OF EQUAL OPPORTUNITY BE APPLIED IN THE ALLOCATION OF LICENCES AND IN DOING THAT, ALL PROSPECTIVE APPLICANTS, BIG OR SMALL, BE GIVEN AN EQUAL OPPORTUNITY TO COMPETE FOR LICENCES. FURTHERMORE, THIS PRINCIPLE, TOGETHER WITH A PROHIBITION OF AN OVERCONCENTRATION OF MARKET-SHARE BE CONTAINED IN OFFICIAL POLICY AND LEGISLATION RELATING TO GAMBLING AT ALL LEVELS OF GOVERNMENT.

13. CONTRACTS, CREDIT AND GAMBLING DEBTS

This subject relates to the gaming contract between the casino operator on the one hand, and the gambler on the other. Normally, the player games with cash but it is also a practice, as sources and evidence indicated, that the relationship between the two parties becomes so familiar and close that the casino will allow the gambler to play on credit or allow him to use credit facilities. On the other hand, it also happens that an operator cannot pay the gambler his winnings. It is, therefore, a two-sided phenomenon in the gaming industry – the gambler builds up a debt or the operator has a sudden debt on his hands when he cannot meet his obligation towards the winner-gambler.

Gambling debts are not enforceable in some countries. In Germany the law prohibits the enforcement of gambling debts. Therefore, casinos may not cash cheques (except for Euro-cheques) and no obligation is created by casino gaming or betting. In Great Britain casinos cannot grant credit and unregulated cheque cashing is seen as a credit advice. Each cheque must be exchanged for cash or chips.

In South Africa gambling debts are, in terms of common law, not enforceable. Now that gambling will be legalised in South Africa, this rule needs to be amended. Gambling debts will give rise to natural obligations and debts arising from them can be the subject of set-off. In the Board's view, this position has become untenable in this day and age when gambling is not only being tolerated and accepted but, to a certain degree, hailed as an important source of revenue for good causes in the community. The Board is of the opinion that the law should be amended to make gambling debts enforceable in a court of law.

Whether casino gambling on credit or any other non-cash basis is allowed is basically an issue to be decided by each provincial legislature. Currently, legal casinos grant credit facilities to approved gamblers. As far as the obligation of the casino operator is concerned, the Board believes that the payment of a deposit or the furnishing of a guarantee on obtaining a licence would ensure the fulfilment of the operator's obligations towards the winner-gambler.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) THE PROPOSED NATIONAL GAMING ACT PROVIDES THAT ALL LEGAL GAMBLING DEBTS SHALL BE LEGAL DEBTS AND THAT THEY SHALL BE ENFORCEABLE IN A SOUTH AFRICAN COURT OF LAW; AND

(b) GAMBLING ON CREDIT BE SUBJECT TO STRICT CONTROL.

14. SELF-DISCIPLINE IN THE INDUSTRY

Information at the Board's disposal indicates that those jurisdictions which achieve the highest degree of success in combating crime, illegal gambling and other transgressions, also operate within the parameters of codes of conduct which they have formulated over the years and apply within their own ranks. An important feature is that legal licence-holders form part of the policing process in the industry. This proves to be successful. They also operate a very successful intelligence service which, together with their code of conduct, contributes to a successful and self-imposed disciplinary system.

The Board strongly supports the notion of a self-designed, self-formulated and self-imposed code of conduct which the industry could develop with time. The Board believes, however, that some form of incentive or encouragement should be given from legislatures' side. This could be provided for in policy and legislation in such a way that it is not regarded as peremptory but rather voluntary. Furthermore, such a code, once formulated, should have the support and sanction of a provincial controlling body.

RECOMMENDATION

THE BOARD RECOMMENDS THAT THE PRINCIPLE OF SELF-DISCIPLINE BE ACCEPTED BY THE GAMBLING INDUSTRY IN SOUTH AFRICA AND THAT POLICY AND LEGISLATION OF LEGISLATURES CONTAIN A STRONG INDUCEMENT FOR THE INDUSTRY TO DEVELOP A CODE OF CONDUCT FOR ITSELF AS A FORM OF SELF-DICIPLINE WITHIN ITS RANKS. SUCH A CODE MUST BE APPROVED BY THE RELEVANT PROVINCIAL CONTROLLING BODY.

CHAPTER 5

A NATIONAL LOTTERY FOR SOUTH AFRICA

INTRODUCTION

The historical development of lotteries has been dealt with briefly in the chapter on the history of gambling in the world. It has for may hundreds of years been recognised as an important generator of revenue for the state as well as for good causes in society. There were times when lotteries were banned by law in some countries while they continued in others.

Not all countries presently have state lotteries. In some cases, the abuse of lottery systems and illegal practices led to their total banning. They were only reintroduced after many decades. Thus, in the United States, large lotteries were prohibited between the mid 1960s. In the United Kingdom a state lottery was reintroduced towards the end of 1994 after the last state lottery had been conducted in 1826. In virtually all cases, the reinstatement was under strict control because, as stated above, it remains an important source of revenue and provides good entertainment for the participants.

State lotteries were revived in many countries after the Second World War mostly in modernised form. It would appear that state lotteries in developed countries differ from those in less developed countries. Lotteries in developed countries such as France, Sweden, Norway, Germany, Switzerland and the United Kingdom also show differences. Some countries, such as Germany and Austria are known for the lotto-type of lottery, while others have a system using bearer-tickets in which the participant buys a ticket with numbers or symbols on it, commonly known as the "draw" lottery. The systems of the world show great variety on these two themes.

The Board recommended in its Interim Report that a National Lottery be established and that the ownership and control of such a lottery be vested in central government while the operation and running thereof may be contracted out to the private sector. Furthermore, the Board also recommended that the details of such a lottery, which will be set out in this Report, be included in the country's legislation on gambling.

At the same time, it must be noted that national lotteries are not entirely unknown to South Africans. Decades ago many South Africans regularly purchased tickets in the then-called "Irish sweep" and not long after in the so-called "Rhodesian sweep". This continued for many years and information has it that South African ticket-holders often won prizes in those lotteries. This participation continued until lotteries, and participation therein, were prohibited in South Africa. During the 1970s the then-government introduced the Defence Bond system in which people could buy tickets at post offices and other outlets. Lucky ticket-holders won prizes. The revenue of the system was mainly for defence purposes. The system was abolished in the mid-1980s.

The Board received many submissions and proposals on a National Lottery for South Africa: How it should be established; what its components should be; how it should be marketed; how it should be administered; how the taxes and revenue should be dealt with; and, still many others – far too many to deal with individually in this Report. It would also be a grave injustice to mention some and not others. For this reason, very few, if any, witnesses or presentations will be individually mentioned in this Report. Only the gist of the evidence, condensed from all the information the Board received from all parts of the world, will be given.

The following key-points need to be identified as most important in the establishment and operation of a National Lottery. Details of these principle matters will be provided for in the proposed legislation.

1. THE PARTICIPANTS IN THE SOUTH AFRICAN NATIONAL LOTTERY

The public, comprising of all people who live in and outside South Africa, could be participants in the National Lottery. They are the people who may purchase tickets in the lottery and enjoy doing so in the awareness that a major portion of their money will go towards good causes. Apart from this satisfaction, they would also experience the excitement of possibly winning a prize when the lottery draw takes place. Their participation in the lottery is voluntary.

Surveys have shown that people who participate in lotteries come from all walks of life and across a wide agespan – from young to old. Some continue to do so *ad infinitum* and despite the fact that they have never won a prize in their lives. Apparently they are driven by the hope that the "next time will be the lucky time".

The question is whether an age-limit for participation should be set in legislation. A brief survey of lotteries worldwide shows that this question is answered differently in most systems. The spectrum appears to be: No age-limit; any minor, provided the participant is assisted by a major; and a 16 or 18 age-limit. No clear motivation can be found why a particular age-limit is set. Therefore, if the Board recommends that 16 years be the age-limit for participation in the National Lottery, it does so simply because more experienced countries such as those in Europe do so. On the other hand, the Board believes in the principle of protecting the gambler against any latent pathological tendencies he may have for gambling but does not know of. Second, the Board feels that although a demand should not unnecessarily be stimulated, the age of 16 is an age when young people can evaluate their social environment and make their own decisions.

RECOMMENDATION

THE BOARD RECOMMENDS THAT NO PERSON BELOW THE AGE OF 16 BE ALLOWED TO PARTICIPATE IN THE NATIONAL LOTTERY EITHER IN HIS OWN CAPACITY OR THROUGH SOMEONE ELSE.

2. OWNERSHIP AND CONTROL OF THE NATIONAL LOTTERY

2.1 The Board has previously referred to its recommendation that the National Lottery should be owned and controlled by the state for the following reasons: First, the lottery is, as in many other countries, a very important source of revenue for many national projects which must, but cannot be, sufficiently funded from taxes or other statal income. Such projects are the direct responsibility of the state and not of the private sector. The state should, therefore, own and control his source of income. Second, successful national lotteries are usually of such magnitude and extent that any disruption, scandal or major complication can have far-reaching effects on a government – it might fall. Third, the perception that if the state owns and controls the lottery the management thereof is in safe hands and beyond reproach. At least the public, as voters, have a controlling-interest, albeit very remote, in the lottery. Privately owned and controlled lotteries are invariably subject to a suspicion of exploitation and profiteering.

2.2 The Board is supported by strong evidence from all quarters that the National Lottery in South Africa should be owned by the state for the following reasons: First, the need for funding of the Reconstruction and Development Programme (RDP) is so huge that no privately-owned and controlled lottery could generate sufficient funding to provide the short term urgent needs of the RDP. Second, if the National Lottery were to be privately-owned and controlled, contributions towards the RDP or any other national project will have to be collected through the tax system – a compulsory and unpopular mechanism in any country. Owning and controlling the lottery empowers the state to decide for itself how much revenue must go where and at what time.

RECOMMENDATION

THE BOARD RECOMMENDS THAT THE NATIONAL LOTTERY FOR SOUTH AFRICA BE OWNED AND CONTROLLED BY THE CENTRAL GOVERNMENT AND THAT THIS PRINCIPLE BE CONTAINED IN LEGISLATION ON LOTTERIES.

2.3 Control structure of the national lottery

In those countries from which the Board could obtain information about control structures with regard to state lotteries, bodies have been established in which certain powers and functions are vested for the purpose of exercising control. The bodies – called boards, commissions, committees, offices, etc. – have been established by law and their functions are also prescribed in that way. Basically, they perform some or all of the regulatory, controlling, authorisation, licensing and advisory functions.

The Office of the National Lottery in Great Britain has a Director-General who regulates the entire national lottery. He has very wide powers in terms of their legislation. The office of the Director-General is under the Secretary of State's directions in terms of the law. In other countries the controlling function is performed by boards or commissions consisting of state and private sector representatives. It is unnecessary to mention examples of such countries as they vary in size, powers, representation and other aspects.

The Board accepts the evidence of those witnesses who argue that the control structure of lotteries should be separated from that of gaming and wagering in South Africa and will recommend accordingly and that, in the case of the National Lottery, the control structure should reflect the state's ownership and authority and that the new Board should be representative of the state and the private sector. Furthermore, all provinces should also be represented on the Board. The new Board's composition, powers, members' term of office and other aspects should be provided for in the law.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) GOVERNMENT INTRODUCES A NATIONAL LOTTERY ACT FOR THE CONTROL AND REGULATION OF A SOUTH AFRICAN NATIONAL LOTTERY;

(b) A NATIONAL LOTTERIES BOARD BE PROVIDED FOR IN THE PROPOSED ACT, THE DETAILS OF WHICH SHALL BE THE FOLLOWING:

(i) THE BOARD SHALL HAVE A CHAIRPERSON WHO SHALL BE APPOINTED BY THE MINISTER RESPONSIBLE AND WHO SHALL BE A FIT AND PROPER PERSON;

(ii) THE BOARD SHALL HAVE ONE REPRESENTATIVE FROM EACH PROVINCE NOMINATED BY THE PROVINCIAL GOVERNMENT BUT APPOINTED BY THE MINISTER RESPONSIBLE;

(iii) A NUMBER OF REPRESENTATIVES FROM THE PRIVATE AND PUBLIC SECTOR, SHALL BE APPOINTED BY THE MINISTER RESPONSIBLE;

(iv) NO PERSON HAVING A DIRECT OR INDIRECT INTEREST IN THE NATIONAL LOTTERY SHALL BE APPOINTED TO THE BOARD;

(v) THE TERM OF OFFICE, REMUNERATION, CONDITIONS OF APPOINTMENT AND OTHER RELATED MATTERS SHALL BE DETERMINED BY THE MINISTER RESPONSIBLE AFTER CONSULTATION WITH THE BOARD;

(vi) A MEMBER SHALL BE A FIT AND PROPER PERSON;

(vii) A MEMBER SHALL NOT BE A POLITICAL OFFICE BEARER;

(viii) THE POWERS, FUNCTIONS AND ROLE OF THE BOARD SHALL BE PROVIDED FOR IN LEGISLATION AND SHALL BE AS FOLLOWS:

(aa) TO ADVISE GOVERNMENT ON ALL MATTERS PERTAINING TO THE NATIONAL LOTTERY, SUCH ADVICE TO BE GIVEN WHEN REQUESTED BY THE MINISTER OR ON THE BOARD'S INITIATIVE;

(bb) TO SUPERVISE, OVERSEE AND REGULATE ALL ACTIVITIES OF THE NATIONAL LOTTERY ON A CONTINUOUS BASIS;

(cc) TO APPOINT A CHIEF EXECUTIVE OFFICER, WHO SHALL ALSO BE AN *EX OFFICIO* MEMBER OF THE BOARD, AND THE NECESSARY PERSONNEL TO CONDUCT THE AFFAIRS OF THE NATIONAL LOTTERY ON A DAY-TO-DAY BASIS;

(dd) TO CONDUCT STUDIES, RESEARCH AND INVESTIGATIONS INTO ALL RELEVANT ASPECTS PERTAINING TO LOTTERIES; AND,

(ee) TO PERFORM ALL OTHER FUNCTIONS, OPERATIONS AND ACTIVITIES WHICH ARE RELATED TO AND NECESSARY FOR THE EXECUTION OF ITS MAIN FUNCTIONS AND ROLE.

2.4 Operating the national lottery

Whereas the ownership and control of the National Lottery will be vested in central government, the Board is of the opinion that the operation of the lottery should be in the hands of a private sector organisation. Much evidence has been submitted to the Board on the subject of who should market and operate the lottery.

Some witnesses pleaded strongly for the state or a parastatal organisation to be given that task. This was done for good reasons and their evidence reflects great justification for their standpoint. Others put an equally strong case before the Board for the private sector to be given the chance of marketing and operating the lottery. The Board did not have an easy task in this regard especially as it had already recommended in its Interim Report that the operation of the lottery may be contracted out to a non-statal third party.

After careful consideration, the Board decided that it would be preferable for a non-statal third party to operate South Africa's new National Lottery for the following reasons: First, the state does not have the necessary knowledge, skill and expertise to perform all the functions of an operator – these are extremely important and more particularly so in the initial stages. These skills and expertise are abundantly available in the private sector. The marketing and operation of the National Lottery should be very efficiently and smoothly conducted during its commencement. Second, teamwork between the state as owner/controller, on the one hand, and a private sector operator on the other, would enhance the perception of integrity, honesty and transparency of the lottery. As mentioned earlier in the chapter on principles for gambling in South Africa, these aspects are important in ensuring the trust and confidence of lottery participants. Third, private sector involvement in the operation of the state lottery would be a stimulant to economic development in the country. A certain percentage of income would be channelled through the operator into certain sectors of the economy. Fourth, a private sector operator can be kept on its toes throughout its term and contract. The possibility that the contract could be given to another operator after expiry of a current contract ensures the best services from an operator. Ample evidence exists which supports this contention. In those countries where the marketing and operation of state lotteries are in non-statal hands, the public have a more positive perception of the lottery and receive relatively better service. Hence, participation in the lottery is more popular in those countries.

The Board will, therefore, abide by its previous recommendation, namely that the marketing and operation of the National Lottery be licensed to a non-statal organisation which has the necessary knowledge, skill and expertise in this field. However, the Board is of the opinion that a proper and public invitation calling for tenders or bids from such persons or organisations be published locally and abroad. The invitation must set out all the qualifications and requirements with which bidders must comply: Fitness, propriety, qualifications, knowledge, skill, experience and still others to be detailed.

Furthermore, the Board is also of the opinion that a consultant could be employed to help the proposed National Lotteries Board to appoint the best operator of the National Lottery. This Board will also recommend that the contract awarded to such an operator be of a certain duration which must be long enough to give the operator sufficient return on his investment. Finally, the Board wishes to emphasise the importance of its principles of transparency, integrity and good faith.

The National Lotteries Board must bear in mind that, while it will be factually transparent, open, honest and acting in good faith, the public could form a different perception with very negative consequences. In today's climate of sophisticated communications, perception and image are of increasing importance.

The National Lotteries Board may consider the operator and lottery to be a good public institution and a benevolent and entertaining form of generating revenue under its efficient and skilful control but, if the public's perception is otherwise, that perception will soon become the reality. Whatever is done in the selection of an operator should be done as openly as possible and with the greatest degree of good faith, integrity and honesty.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) THE MARKETING AND OPERATION OF THE NATIONAL LOTTERY BE AWARDED TO A NON-STATAL ORGANISATION;

(b) SUCH AN ORGANISATION SHALL HAVE OR HAVE ACCESS TO THE NECESSARY KNOWLEDGE, SKILL, EXPERTISE AND EXPERIENCE IN THE MARKETING AND OPERATION OF A NATIONAL LOTTERY AND DEMONSTRATE COMMITMENT TO BLACK ECONOMIC EMPOWERMENT;

(c) THE PROPOSED NATIONAL LOTTERIES BOARD PUBLISH, LOCALLY AND ABROAD, PUBLIC AND PROPER INVITATIONS CALLING FOR TENDERS OR BIDS FROM POTENTIAL OPERATORS, SETTING OUT FULLY THE QUALIFICATIONS AND REQUIREMENTS WITH WHICH BIDDERS MUST COMPLY;

(d) THE NATIONAL LOTTERIES BOARD HAS THE INHERENT POWER TO SEEK WHATEVER ASSISTANCE IT WOULD REQUIRE, INCLUDING THE APPOINTMENT OF CONSULTANTS, TO APPPOINT THE MOST SUITABLE OPERATOR;

(e) THE OPERATOR'S CONTRACT BE AWARDED FOR A LIMITED PERIOD BUT AT LEAST FOR SUCH A PERIOD THAT THE OPERATOR CAN RETRIEVE SUFFICIENT RETURN ON INVESTMENTS MADE. AN OPERATOR SHOULD BE ALLOWED TO BID AGAIN AFTER EXPIRY OF HIS CONTRACT;

(f) IN ITS ADVERTISING FOR TENDERS OR BIDS, THE SETTING OF QUALIFICATIONS AND REQUIREMENTS FOR APPLICLANTS, THE CONSIDERATION OF TENDERS OR BIDS AND THE AWARD OF CONTRACTS, AND, ANY OTHER MATTER RELATING TO THESE ACTIVITIES, THE NATIONAL LOTTERIES BOARD MAINTAIN THE HIGHEST DEGREE OF OPENNESS, INTEGRITY AND GOOD FAITH AND THAT THE PUBLIC'S PERCEPTION IN THIS REGARD ALWAYS BE BORNE IN MIND; AND,

(g) THE MINISTER RESPONSIBLE IN CONSULTATION WITH THE NATIONAL LOTTERIES BOARD SHALL LICENSE THE OPERATOR.

2.5 Minority recommendation of members E. Mushwana and Z. Titus on the issue of who must award licences:

Two Board members, Messrs E. Mushwana and Z. Titus, strongly expressed the view that the Minister responsible should have the final say on the granting of a licence to run the National Lottery. These members' submission was as follows:

(a) *The National Lottery will be owned by the state;*

(b) *for that reason, the state has to ensure the success of the National Lottery at all times and must not delegate its duties in this regard to the Board;*

(c) *the proceeds of the lottery will primarily be used in promoting causes in which the state has a direct interest and in respect of which the state is responsible for formulating policies, and consequently a functionary of the state who is a parliamentarian should have the final say on the matter;*

(d) *the principle initiated herein is in line with the principle flowing from sections 31 and 33 of the draft Bill; and*

(e) *the Minister should as a control measure, always be held accountable to Parliament on this important matter and the Board is not so accountable.*

Their recommendation effectively entails that section 13 (1) of the draft Bill should be amended to provide that the Minister shall issue the licence authorising a non-statal body to run the National Lottery only "after" consultation with the National Lotteries Board. They feel that the use of the words "in consultation with" in that section unduly limits the Minister's authority and that those words should be substituted with the words "after consultation with".

2.6 Minority view on the subject of who should operate the national lottery

Another Board member, Mr T.R. Ramphele, held strong views on the subject of who should operate the National Lottery. His submission was as follows:

A national lottery may be run by the state, it may be parastatal or it may be private-enterprise driven.

UK is the only country which has opted for the lottery that is exclusively private-sector driven and this is the model that the Board proposes in terms of section 13 of the final draft of the National Lotteries Bill.

I hold the view that we in South Africa should follow the model that is followed in Norway, and/or Ireland. According to these models, the National Lottery should be run by persons with business skills. This management is guided purely by marketing forces but operates within a government department. This would not exclude contracting private contractors to fulfil certain functions.

ADVANTAGES OF THE BRITISH MODEL

1. *It is completely private-enterprise driven with no government involvement and rules of the market determine success;*
2. *there are high returns;*
3. *the country will generate substantial amounts for the RDP programme. There is, however, no evidence that the Irish model operating within the material conditions existing in the UK would not yield the same results.*

   Protagonists of this model are of the view that the pressing need for the country is money. Further, that this money would have a direct and indirect effect of creating jobs.

   The National Lottery will be run by a body corporate, which will use very sophisticated technology, very highly trained personnel and be very competitive in international standards. This above assertion excludes a very large percentage of South Africans (if not all) from qualifying to run the lottery.

REASONS FOR THE DISSENTING VIEW

1. *There is no evidence in some of the countries like Norway or Ireland that the National Lottery run by the state is inefficient and, consequently, does not yield good profits. What I heard from the Norwegians is that the National Lottery brings the nationals together and nurture the spirit of good relations. In fact, this has even influenced them on the type of tecnology they introduce.*

2. *I am of the view that this country needs development and not money. Economic growth is not synonymous with economic development.*

3. *The system proposed has a very high potential to inject money into the system. The reality of the situation is that:*

   Human resources – not capital nor income, nor material resources – constitute the ultimate basis for the wealth of nations ... Clearly a country which is unable to develop the skills and knowledge of its people and to utilise them effectively in the national economy will be unable to develop anything else.

4. *It is trite that private enterprise cannot be tasked with developing black advancement in this country. They can play a very meaningful role, but it would be a mistake to leave it entirely up to them. As one writer states:*

> *"Despite its undoubted production efficiency, a free-market system simply attaches too little visible importance to considerations of justice" Johan van Zyl –2 February 1990 – Sunday Times.*

In fact, in the South African context, Professor L. Human of Stellenbosch opines that the big companies in South Africa have not been successful in advancing black managers. She is of the view that though discriminatory practices have been removed, statistics suggest that less than nine percent of all South African managers employed by white-owned companies are black. She attributes this to the problem of education and training and to white managers in management. I doubt whether these issues can receive the attention required in the free-market system. Does this mean profits will take the back seat?

5. *Other countries with the same problem as ours have, where necessary, chosen not to be guided by labels but by what is good for the country.*

In suggesting adoption of a different model from the free-market, the German writers said: "No modern people will have the zeal for free-market unless it operates in a setting of 'distributive justice' with which they are tolerably content ... a laissez-faire program which confirmed its efforts to preserving or restoring free-market, even in a competitive market, while remaining silent or opposing any proposals for adopting new or retaining old measures in the area of distributive justice; would seem to me glaringly unrealistic with respect to its chances of political success, and highly questionable also in respect to more exalted criteria of merit".

We need "Distributive justice" especially in human development. Our resources to develop this are very scarce and are eluding us at a fast pace. The merits of privatisation are not disputed.

What we have to consider is that this is not a panacea for all our problems.

The trend in almost all developed countries is that the National Lottery is run by the state. We would not by doing that, be taking a different route. Our situation is not comparable to the British. They are an industrialised nation with no problem of skill development.

Our country needs to develop managerial capacity. P. Spies ("Report By Unit For Future Research"— University of Stellenbosch, 1989) estimated that by the year 2000 there will be a need for 579 000 highly qualified or very senior managerial employees, but no more than 389 000 are available in South Africa.

A state-run national lottery will contribute significantly to advancement of black management. Throwing money at our problem of development will only be a waste. It must be remembered that if the normal operation of a market economy fails to address the inequities, government is forced to become a provider of economic justice of the last resort.

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EDITED BY PIERRE HUGO

2.7 Accounting and auditing procedures

An important responsibility of the operator is to give full and regular account of the income of the National Lottery. This is also an important control-function of the National Lotteries Board whose right it is to receive and study the financial accounts of the operator.

In those countries whose state lottery procedures were studied by this Board, it was clear that the controlling body has this as one of its most important tasks. The controlling body can only keep a watchful eye on the successful operation of the National Lottery if supervision of the financial statements are also carefully scrutinised. In fact, one of the important aspects of the annual report which the controlling board, commission or office must submit to the Minister responsible or to Parliament, are the audited statements of the income and expenses of the National Lottery.

In most cases state lotteries have, apart from their internal accountants and auditors, firms of professional and independent auditors who compile and check their financial statements. The Board supports the international examples and believes that in addition to the factual correctness which financial statements of the National Lottery must reflect in terms of income and expenses, regular accounting and auditing of such statements will enhance the perception of the lottery's integrity, honesty, good faith and transparency.

The Board, therefore, will recommend that proper and efficient accounting and auditing procedures be made compulsory for the operator.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) PROPER AND EFFICIENT ACCOUNTING PROCEDURES FOR THE INCOME AND EXPENSES OF THE NATIONAL LOTTERY BE PRESCRIBED IN THE PROPOSED NATIONAL LOTTERY LEGISLATION;

(b) EFFECTIVE INDEPENDENT AUDITORS SHALL BE APPOINTED BY THE OPERATOR TO AUDIT THE FINANCIAL STATEMENTS OF THE OPERATOR ON A REGULAR BASIS;

(c) SUCH AUDITED STATEMENTS SHALL BE SUBMITTED TO THE NATIONAL LOTTERIES BOARD FOR SCRUTINY AND FOR INCLUSION IN THE NATIONAL LOTTERIES BOARD'S ANNUAL REPORT TO PARLIAMENT, AND,

(d) SUCH AUDITED STATEMENTS SHALL ALSO BE SUBMITTED TO THE AUDITOR-GENERAL.

2.8 Distribution of income from the national lottery

Income generation is the primary objective of a national lottery and in a survey of state lotteries in other countries they clearly appear to be an important source of governmental income. Apart from the tax which the government receives, a substantial percentage of the income is channelled to good causes while operators (in those countries where private operators exist) are allowed a certain percentage of the income to defray expenses and ensure a certain profit.

The Board did not receive many proposals as to how the income from the National Lottery should be distributed. All presenters of evidence, however, were unanimous that the Reconstruction and Development Programme should be a main beneficiary of the National Lottery.

The Board is aware of the needs of provincial governments with regard to projects they have within their borders. To that end certain safeguards have been provided in the proposed legislation to protect the interests of the provinces. The Board will, therefore, not recommend a specific percentage of the income to be allocated for the provinces.

The Board has been informed that the Inter-provincial Liaison Committee on gambling requested that a portion of the proceeds of the National Lottery should be directly allocated to the good causes in the provinces according to a formula which determines the amount allocated for each province. The Board is of the opinion that the proposed National Lotteries Board could, in making grants to good causes and organisations, include conditions that a certain percentage calculated according to a formula, be allocated to recipients in specific provinces. The draft legislation is wide enough to permit this.

In only a few countries do the controlling bodies (that is boards or commissions) distribute the income from the state lottery. In some other countries this task vests in either the state itself – that is, the departments of finance, welfare, sport, tourism, financial administration or some other relevant portfolio. In other countries the distribution is the responsibility of a subdivision of the controlling authority while in still others, an independent body does the distribution. In those cases where the state does the division there is concern about the perceived integrity, openness and good faith of the distributors and, so sources state, internal strife among state departments is often considered rife.

In those systems where a subdivision of the controlling authority distributes income, the controlling authority itself might, in many cases, just as well do it itself. A lack of independence could exist. In those countries where an independent body, separate from the controlling authority, does the distribution, concern exists about the lack of communication between that body and the controlling authority. All systems seem to have positive and negative features.

The choice of a particular system appears to also depend on the circumstances prevailing in a country. Conditions and experience in South Africa were also considered by the Board and after due consideration it was decided that the proposed National Lotteries Board should be responsible for the division of the distributable income of the National Lottery.

The proposed Board is representative of the provinces and will have access to the necessary knowledge and expertise to enable it to perform this function. However, this does not mean that the Board must allocate the available funds beyond the macro-level, so to speak, but merely that it shall apportion the money to a body or cause, the office-bearers of which shall then divide it further.

The question as to what percentage should be apportioned for a particular recipient or cause is more difficult to answer. Numerous examples of formulas abroad can be quoted and it is easy to simply transplant one to this system. However, South Africa's needs are peculiar at this stage of the country's development and, therefore, the method of distribution must meet those demands the best it can. Taking this into account, the Board is of the view that the allocation of the lottery's distributable funds should always suit the pevailing circumstances. Distribution percentages have not been included in the draft legislation as these may change from time to time and it is therefore recommended that they be provided for in the regulations. However, as a starting point the Board recommends the distribution percentages set out hereunder.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) A DISTRIBUTION TRUST FUND OF THE NATIONAL LOTTERY BE ESTABLISHED INTO WHICH THE PROCEEDS OF THE NATIONAL LOTTERY SHALL BE PAID;

(b) 50 PERCENT OF THE GROSS INCOME OF THE NATIONAL LOTTERY SHALL BE ALLOCATED FOR PRIZES;

(c) THE REMAINDER OF THE INCOME, AFTER PRIZES AND EXPENSES HAVE BEEN DEDUCTED, SHALL BE KNOWN AS PROCEEDS AND BE PAID INTO THE TRUST FUND AND BE APPORTIONED AS FOLLOWS:

(i) 50 PERCENT FOR THE RECONSTRUCTION AND DEVELOPMENT PROGRAMME;

(ii) 20 PERCENT FOR SPORTS DEVELOPMENT;

(iii) 20 PERCENT FOR CHARITIES;

(iv) FIVE PERCENT FOR ARTS, CULTURE AND HERITAGE; AND,

(v) FIVE PERCENT FOR MISCELLANEOUS CAUSES TO BE IDENTIFIED IN SPECIFIC CIRCUMSTANCES.

(d) IN CASES WHERE A JUSTIFIABLE RECIPIENT OR CAUSE CANNOT BE FOUND FOR THE FIVE PERCENT EARMARKED FOR MISCELLANEOUS CAUSES, THAT PERCENTAGE CAN BE PROPORTIONATELY CHANNELLED TO THE OTHER CAUSES MENTIONED IN PARAGRAPH (c) ABOVE.

2.9 Legislation

RECOMMENDATION

THE BOARD RECOMMENDS THAT GOVERNMENT CONSIDERS THE ATTACHED DRAFT LOTTERIES BILL (PART I AND THE RELEVANT PROVISIONS IN PART III THEREOF) IN THE ABOVE REGARD.

CHAPTER 6

OTHER LOTTERIES

INTRODUCTION

All lotteries whether statal, parastatal or private have two aspects in common: They are the most common form of gambling by which funds can be raised and they provide a degree of entertainment to participants. Perception prevails that lotteries are relatively free from dishonesty and other similar criminal features. This is particularly true if enough publicity is given to the good causes they serve in society. However, it has been found through investigation that lotteries are very vulnerable to deceit, fraud, dishonesty and manipulation. This is particularly so in the case of non-governmental lotteries where there are no control measures which have statutory or public sanction. As stated before, perceptions play an important role with regard to public acceptability and support of a lottery. Factually, a lottery may be fraudently managed and administered but if public perception is positive, namely that it is strictly controlled, well-managed and efficiently administered, the public will continue to support it. Perceptions rather than facts determine a lottery's public acceptance and subsequently, the support level.

Over hundreds of years peoples' attitudes towards lotteries have changed because of the "proper control" factor employed. Gamblers do not mind losing large sums of money in a system which they perceive as honest and well controlled but they protest severely about a system in which the perception is one of uncontrolled and corrupt management – even if they lose only an insignificant amount. Subject to the "control factor", governments generally have a positive approach to priviate lotteries: They are a harmless form of gambling and enjoyment. Without control they, according to authoritative sources, present greater possibilities of fraud than either gaming or wagering bacause the gambler has no idea of where his money went. The sources also intimate that lottery frauds often go undetected because most people have a low expectation of winning a prize and take for granted that those who organise and run the lottery are honest.

Another precondition which relates more to the gambler than to the lottery itself, and to a certain extent, also to control, is that gamblers should not spend more on lotteries than they can afford. It is not possible to impose a limit on the amount of money which a gambler wishes to gamble. However, experience in other countries has shown that in order for lotteries to be socially acceptable, some form of control must be invoked in order not to make lotteries too attractive.

1. Lotteries, in particular non-governmental lotteries, appear in a variety of forms: First, private lotteries are normally limited to members of a society or an organisation all of whom work or live in one locality. Factories, offices and clubs are an example. Normally, legislatures do not allow public advertising for such lotteries or the sale of tickets through the official postal services. In many countries the absence of further statutory restrictions such as on the size of prizes or the lottery itself or with regard to other key aspects has led to many abuses and corruption. Second, society lotteries are conducted for the purpose of collecting money for charity, education, sports, cultural matters, religious, or other good causes. These lotteries are normally not allowed to be conducted for private gain – the criteria being that the lottery should be for the good of a cause or society. These lotteries are required to be registered with registering authorities in most countries – either a local, regional or provincial authority.

   In terms of the regulatory provisions of the registering authorities, certain restrictions are contained in the authorisation: Limits on the percentage of money allocated for prizes; restriction on the number of lotteries to be conducted in a certain period; dates within which lotteries are to be conducted; limitation on age of ticket buyers; manner in which lotteries may be advertised; and, still others.

   A variation of the lottery which resembles a state lottery in many respects is the so-called local authority, municipal, or regional lottery. It is normally more regulated than private or siciety lotteries and in certain countries a portion of the income must be used for whatever project the local authority might designate for it at a given time.

   A survey of the legislation applicable to non-governmental lotteries indicate that more often than not, confusion and uncertainty arise from the application and interpretation of the law. This stems from the fact that this type of lottery is popular but difficult to control. This holds true in most countries.

2. The Howard Commission report of 1993 states that many lotteries and scratch-card games (which are a form of lottery) were conducted in South Africa at that time. These were operated by, or on behalf of, registered fund-raising organisations to raise funds for social welfare and charitable purposes. The Report then mentions Operation Hunger, Community Chest, Viva, Ithuba and Natal Lotto as examples of such lotteries and concludes that there are many more other lotteries and scratch-card games in existence in South Africa. These, the Report concludes, if allowed to continue, would have a detrimental effect on a National Lottery. Consequently, the Howard Commission recommended that a National Lottery be introduced but that provincial and municipal lotteries not be allowed as these lotteries "would have scant prospects of success, and these authorities which contemplate running their own lotteries would be better advised to support the national lottery in order to raise the funds they need for social welfare purposes".

   With regard to small lotteries or raffles which schools, churches and other similar institutions run, the Howard Commission recommended that they should be legalised subject to certain restrictions relating to value of tickets sold, prizes, the purposes of the lottery and still others. The Commission also recommended the legalising of private lotteries along the lines of the regulations of the British law relating to private lotteries. No other lotteries were to be allowed in South Africa.

3. In terms of the Constitution of the Republic of South Africa Act, 1993 (Act No. 200 of 1993), the legislative authority with regard to lotteries is vested in central government. This implies that the national legislation applicable to the National Lottery should also apply to the non-governmental lotteries and that, by implication, such lotteries should also be controlled by the National Lotteries Board. However, in view of the sensitivity of the relationship between central government and provincial governments, as well as practical considerations, it is evident that some form of control and regulation will have to be delegated from the central government to provincial level.

4. The Board received presentations from a number of non-governmental lotteries including scratch-card games. It is not necessary to detail here what each of these organisations submitted to the Board – in writing or orally duing the evidence sessions of the Board. Their submissions have the following elements which are more or less common to the majority of the organisations: First, control of non-governmental lotteries is necessary. It will ensure discipline, integrity and transparency. Second, all operate with a view to raising funds for a variety of good causes. Third, all want to be exempted from paying tax. Fourth, they all want to be allowed to continue with their operations. Fifth, they have already built up a record of good work, have gained in experience and skill and have contributed substantially to alleviate the suffering of many underpriveleged, disadvantaged and needy people in the country. Sixth, there is a need for regional lotteries as well as municipal lotteries, and lastly, all wanted an interim authorisation to continue with their activities until the lotteries legislation is in place.

   The Board also received many complaints that the administration costs of existing illegal lotteries, in some cases, are excessive. The Board will therefore recommend that limits of these costs be determined in legislation.

5. In its Interim Report the Board referred to the existence of these non-governmental lotteries and other similar activities and stated that they are conducted in violation of the law and that they may have to be stopped until they can be authorised to operate again under a legalised lottery system. The Board did state, however, that this aspect calls for cautious handling. The reasons for such a call were: First, they do pay tax to the state; second, they do benefit an appreciable number of disabled, disadvantaged, underprivileged people and orphaned children, and the public's perception about them is much more positive than in the case of the illegal casinos. Closing these lotteries would be correct in principle and law but there is an old adage which states that whenever a law no longer reflects the majority of the people's attitudes and views it has become an empty shell with no soul.

   In the Board's view, the public has greater understanding and sympathy for these lotteries than the illegal casinos. To close them would arouse far more animosity among the public than what has happened so far in the case of the closing of the illegal casinos.

   On the other hand, to close the illegal casinos and not the illegal lotteries, would amount to discrimination which the Board can hardly justify. Consistency in government action has always been the only way to ensure trust and confidence on the side of the people.

The Board is also aware of a scheme conducted by a well-known chain departmental store by which a certain sum of money is debited to its clients' account on a monthly basis: The winner of this type of illegal lottery is determined on the basis of a monthly draw.

The Board discussed the issue at length and concluded to recommend that section 10, 11 and 12 of the Lotteries and Gambling Board Act, 1993 (Act No. 210 of 1993), be implemented with regard to these lotteries and other similar activities. These provisions state that any person or organisation authorised to collect contributions from the public and who collects them by means of a prohibited gambling activity shall apply for registration of that activity with the Board. The State President may then, on recommendation to the Board, grant such a person or organisation immunity from prosecution. The Minister may make regulations enabling the Board to exercise its functions in this regard. In terms of these provisions of the Act interim measures can be implemented to regulate and control these lotteries and activities.

However, the Board believes that these operations must cease to exist once the new lotteries dispensation is in place. The bigger of these can obviously not operate alongside a National Lottery. Once the National Lottery is operative, they should be scaled down to fall under the proposed system of society lotteries and will therefore be limited in size and locality.

The Board also wishes to point out that the good causes for which funds are raised by these operators, will benefit substantially from the proceeds of the National Lottery. Charity organisations will therefore qualify to apply for grants from the National Lotteries Board.

RECOMMENDATION

THE BOARD RECOMMENDS THAT SECTIONS 10, 11 AND 12 OF THE LOTTERIES AND GAMBLING BOARD ACT, 1993 (ACT NO. 210 OF 1993), BE IMPLEMENTED AND THAT INTERIM MEASURES AND REGULATIONS BE IMPLEMENTED WITH REGARD TO THE OTHER LOTTERIES AND SIMILAR FUND-RAISING ACTIVITIES IN THE COUNTRY PENDING THE IMPLEMENTATION OF THE PROPOSED NEW LOTTERIES DISPENSATION.

6. The Board is of the opinion that the following system of non-governmental lotteries and other similar fund-raising activities (excepting the National Lottery) can be legalised and introduced in South Africa:

6.1 Society lotteries

These lotteries distinguish themselves from small and private lotteries and the proposed National Lottery, in the respects that they are conducted for the promotion of a society, or charity, or other good cause but are not for private gain or a commercial undertaking.

The Board regards this as an important principle for this type of lottery. In the Board's opinion, the following conditions must apply to society lotteries before they can be conducted:

(a) Prior authorisation must be obtained in the form of a permit or licence to be issued by a provincial government. Application is to be made to the provincial licensing authority in writing, setting out fully the nature of the society, the type of society lottery, the persons or body to conduct the lottery; the cause to be served by the lottery; the society must, in terms of the Fundraising Act, be authorised to collect contributions from the public; and, all other relevant information which the provincial authority may require. Vesting the provincial authority with licensing powers would ensure a limitation on the number of society lotteries per province as well as a form of control;

(b) The licence or permit to conduct a society lottery shall be of limited duration but may be renewed from time to time by the provincial authority on proof of an unblemished record of operation during the term of the expired licence or permit;

(c) The maximum turnover for a society lottery shall be R500 000 or such other amount as the National Lotteries Board may determine. Should the society lottery want to exceed that amount of turnover, prior authority should be sought from the National Lotteries Board;

(d) Should a society lottery wish to operate in more than one province authorisation should be sought from each of those provincial authorities in which it wishes to operate. Every lottery so conducted shall be a separate lottery in each area of jurisdiction and shall be subject to the proposed limitations in each area;

(e) The whole proceeds of a society lottery must be applied to the purpose of the society;

(f) Administration expenses of a society lottery must be limited to an acceptable level;

(g) The lottery be conducted in accordance with an approved scheme and specific rules;

(h) The lottery could be operated by a manager registered with the licensing authority;

(i) The National Lotteries Board shall determine the frequency of such lotteries after consultation with the relevant provincial licensing authority;

(j) The society shall keep records of all lotteries conducted by it and allow access thereto by the provincial licensing authority; and,

(k) the lottery shall be audited by an independent auditor.

6.2 Private lotteries

These are very popular forms of lottery which are confined to members of one organisation, club or fairly limited locality. Sweepstakes is a form commonly known in South Africa. The Board will recommend that these be legalised subject to the following conditions:

(a) The entire proceeds, after deduction of costs, be allocated to prizes or funds for that organisation or club;

(b) No person shall be employed for reward in connection with the promotion or conduct of the lottery;

(c) No advertisement of, or publicity for, the lottery shall be made outside the precincts of the organisation or club or beyond the members of such organisation or club;

(d) Ticket sales for the lottery shall not be conducted through the official postal services; and,

(e) The total amount of ticket sales shall not exceed R20 000.

The crux of this type of lottery is that it is private and, therefore, limited in its extent.

6.3 Small lotteries

These lotteries are sometimes known as raffles or draws and are conducted at school fêtes, church bazaars and other similar social functions. These are pretty innocent and regarded as a harmless method of collecting funds for the organisation conducting them. The Board is of the opinion that these small lotteries should be legalised subject to the following conditions:

(a) The total value of prizes shall not exceed R3 000,00 or such other amount as may be determined by the National Lotteries Board responsible;

(b) None of the prizes shall be money-prizes;

(c) The proceeds shall be devoted to purposes other than private gain; and,

(d) No person shall be employed for reward in connection with the small lottery.

7. The Board is of the opinion that provincial and local authority lotteries should not be allowed as they would, first, cause confusion among the participants – many of whom are not gambling-educated; second, give rise to many costly lottery administrations; and, third, dilute the income of the National Lottery. The lottery market is far too limited for more lotteries than those recommended above.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

SOCIETY LOTTERIES

(a) SOCIETY LOTTERIES BE LEGALISED AND THE TERM BE DEFINED IN LEGISLATION;

(b) THE FOLLOWING CONDITIONS BE SET IN LEGISLATION FOR A SOCIETY LOTTERY TO BE CONDUCTED:

(i) PRIOR AUTHORISATION IN THE FORM OF A LICENCE OR PERMIT BE OBTAINED FROM THE RELEVANT PROVINCIAL LICENSING AUTHORITY FOR THE PROPOSED LOTTERY;

(ii) PROPER AND WRITTEN APPLICATION BE MADE FOR SUCH AUTHORISATION. SUCH APPLICATION SHALL GIVE DETAILS OF THE SOCIETY ON WHOSE BEHALF THE LOTTERY IS TO BE CONDUCTED; THE BODY OR PERSONS TO CONDUCT THE LOTTERY; THE CAUSE TO BE SERVED BY THE LOTTERY; AND ANY OTHER RELEVANT INFORMATION REQUIRED BY THE PROVINCIAL LICENSING AUTHORITY;

(iii) THE LICENCE OR PERMIT SHALL BE OF LIMITED DURATION BUT MAY BE RENEWED BY THE PROVINCIAL GOVERNMENT ON PROOF OF AN UNBLEMISHED RECORD OF OPERATION DURING THE TERM OF THE EXPIRED LICENCE OR PERMIT;

(iv) THE MAXIMUM TURNOVER FOR A SOCIETY LOTTERY SHALL BE R500 000 OR SUCH OTHER AMOUNT AS MAY BE DETERMINED BY THE NATIONAL LOTTERIES BOARD. SHOULD, HOWEVER, A SOCIETY LOTTERY WISH TO EXCEED THAT AMOUNT OF TURNOVER, PRIOR AUTHORITY SHALL BE OBTAINED FROM THE NATIONAL LOTTERIES BOARD;

(v) THE ADMINISTRATION COSTS OF A SOCIETY LOTTERY BE LIMITED TO AN ACCEPTABLE LEVEL IN LEGISLATION;

(vi) THE NATIONAL LOTTERIES BOARD SHALL DETERMINE THE FREQUENCY OF SOCIETY LOTTERIES AFTER CONSULTATION WITH THE RELEVANT LICENSING AUTHORITY; AND,

(vii) SHOULD A SOCIETY LOTTERY WISH TO OPERATE IN MORE THAN ONE PROVINCE AUTHORISATION SHALL BE OBTAINED FROM EACH PROVINCE IN WHICH THE SOCIETY LOTTERY INTENDS TO OPERATE;

PRIVATE LOTTERIES

(a) PRIVATE LOTTERIES BE LEGALISED AND THE TERM BE DEFINED IN LEGISLATION;

(b) THE FOLLOWING CONDITIONS BE SET IN LEGISLATION FOR PRIVATE LOTTERIES:

(i) THE ENTIRE PROCEEDS, AFTER DEDUCTION OF COSTS, BE ALLOCATED TO PRIZES OR FUNDS FOR THE PRIVATE ORGANISATION OR CLUB WHICH CONDUCTS THE PRIVATE LOTTERY;

(ii) NO PERSONS SHALL BE EMPLOYED FOR REWARD IN CONNECTION WITH THE PROMOTION OR CONDUCT OF THE PRIVATE LOTTERY;

(iii) NO ADVERTISING OR PUBLICITY IN CONNECTION WITH THE PRIVATE LOTTERY SHALL BE CONDUCTED OUTSIDE THE PRECINCTS OF THE ORGANISATION OR CLUB OR BEYOND ITS MEMBERS;

(iv) TICKET SALES FOR THE LOTTERY SHALL NOT TAKE PLACE THROUGH THE OFFICIAL POSTAL SERVICES; AND,

(v) THE TOTAL AMOUNT OF TICKET SALES SHALL NOT EXCEED R20 000;

SMALL LOTTERIES

(a) SMALL LOTTERIES BE LEGALISED AND THE TERM BE DEFINED IN LEGISLATION;

(b) THE FOLLOWING CONDITIONS BE SET IN LEGISLATION FOR SMALL LOTTERIES:

(i) THE TOTAL VALUE OF PRIZES SHALL NOT EXCEED R3 000,00 OR SUCH OTHER AMOUNT AS THE NATIONAL LOTTERIES BOARD MAY DETERMINE;

(ii) NONE OF THE PRIZES SHALL BE MONEY-PRIZES;

(iii) THE PROCEEDS, AFTER THE NECESSARY DEDUCTIONS, SHALL BE DEVOTED FOR PURPOSES OTHER THAN PRIVATE GAIN; AND,

(iv) NO PERSONS SHALL BE EMPLOYED FOR REWARD IN CONNECTION WITH THE SMALL LOTTERY; AND,

PROVINCIAL OR LOCAL AUTHORITY LOTTERIES

PROVINCIAL OR LOCAL AUTHORITY LOTTERIES BE PROHIBITED IN LEGISLATION.

8. SPORTS POOLS

Distinct from animal racing and other forms of competition on which betting can take place is human sports. Betting on human sports dates back to ancient times. In ancient Greece, for example, the Olympic Game's supreme event was the pentathlon, a contest of five exercises – broad jump, javelin throw, 200-yard sprint, discus throwing and wrestling. Authoritative sources state that the "all-male crowds put their bets on and cheered hometown champions".

Human sports, being an important form of entertainment and enjoyment in which the participants compete against one another is a natural acivity for spectators. They compete by deciding who the winner of a sporting competition will be. Betting on human sports has always been part of gambling. During the previous century, the concept of pooling punters' bets developed in Europe and soon spread worldwide.

Sports pools or pool betting, as the name implies, involves pooling the stakes of the gamblers concerned, deducting a proportion of the stakes to cover expenses, tax and the operator's profits and, when the result is known, sharing the remaining "prize pool" among winners. The odds cannot be known in advance. The commercial operator holds "the bank" while his clients compete against one another. This is different from sport betting where a bookmaker offers fixed odds which he adjusts as the bets with him reflect the weight of money staked on the various alternatives. It could happen that at times the bookmaker ends up paying more than the total sum staked. On the other hand, it is also possible that he could win.

The most popular human sport offering itself for pool betting is soccer. Soccer pools are found worldwide and the evidence submitted to the Board consisted mainly of requests to allow the formation and operation of soccer pools in South Africa.

The proposals aim at the establishment of a national soccer pool which would have a number of benefits: More funds for good causes; bigger and more attractive prizes; expenses would be less; on a national basis. The proponents suggest the establishment of a national body along the lines which this Board has already proposed in the form of the National Lotteries Board or the National Gaming Board. This national body should consider applications for a licence to operate soccer pools in South Africa; set standards for the proper operation of soccer pools; determine the allocation of turnover into prizes, commissions, taxes, levies and revenue to sports development, and other good causes; establish a national sports development fund; proportion and channel revenue to the different provinces; and, generally regulate the soccer pool in collaboration with the sport administrators.

Worldwide experience indicates that soccer pools do not co-exist and flourish in parallel with a national lottery. The Board, therefore, while recommending that provision be made for the legalising of soccer pools, recommends that the National Lotteries Board will have to seriously consider this matter before issuing a soccer pool licence. Furthermore, the effect of a soccer pool on a national lottery will also have to be considered by that Board.

The Board will recommend that sports pools be placed under the jurisdiction of the National Lotteries Board and that national legislation provides for a number of criteria with a view to controlling and regulating sports pools, and in particular soccer pools, in South Africa.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) NATIONAL LEGISLATION PROVIDE FOR SPORTS POOLS TO BE REGULATED UNDER THE AUSPICES OF THE NATIONAL LOTTERIES BOARD;

(b) ALL THE REQUIREMENTS AND CONTROL MEASURES WHICH APPLY TO THE NATIONAL LOTTERY SHALL APPLY *MUTATIS MUTANDIS* TO SPORTS POOLS; AND

(c) THE NATIONAL LOTTERIES BOARD GIVES SERIOUS CONSIDERATION TO THE FUTURE OF A SOCCER POOL IN CONJUNCTION WITH THE NATIONAL LOTTERY AS WELL AS WHAT EFFECT A SOCCER POOL MAY HAVE ON A NATIONAL LOTTERY PARTICULARLY IF IT IS IMPLEMENTED BEFORE THE NATIONAL LOTTERY.

9. LEGISLATION

RECOMMENDATION

THE BOARD RECOMMENDS THAT GOVERNMENT CONSIDERS THE ATTACHED DRAFT LOTTERIES BILL (PART II AND THE RELEVANT PROVISIONS IN PART III THEREOF) IN THE ABOVE REGARD.

CHAPTER 7

CASINOS, BINGO AND RELATED FORMS OF GAMING IN SOUTH AFRICA

INTRODUCTION

1. This chapter deals with gaming as a "specie" of the "genus" gambling. It relates to casinos, bingo and related forms of gaming in South Africa. The terms "casino", "bingo" and others are described in the Glossary to this Report. They will not be repeated here.

   As the principles and regulatory meausres applicable to these forms of gaming are more or less similar in most countries, the Board's recommendations on them must be regarded as *mutatis mutandis* applicable to the different forms also in South Africa. Therefore, whenever the term "casino" is used it includes, in so far as it can be applied, also the other related forms of gaming – in particular card clubs where they play for money. Specific reference to bingo is made at the end of this chapter.

   1.1 During the past five years casino-gaming has been the fastest growing form of gambling in most countries. A brief survey of worldwide gaming, according to the Global Gaming Almanac of 1995, reveals that more than a dozen countries and many more regional governments are in "a process of legalising" casino gaming and that, for example, "the United States is at present witnessing the most widespread liberalisation of casino gaming in its history". New Zealand, as another example, has just completed its casino licensing process.

   Casino gaming is also showing the greatest utility and adaptation capabilities. It provides gaming opportunities and entertainment on luxury liners, riverboats, hotels, bars, clubs, lodgings, and reports indicate that soon casinos or at least slot machines will be available on luxury buses, trains and aircraft. The possibilty of slot machines in caravans accompanying entertainment groups such as circuses, concerts, and others – taking gaming where the people are – cannot be excluded.

   1.2 Casino gaming is not entirely new to South Africa. As previously mentioned, a number of licence-holders had established casinos in the erstwhile TBVC States of South Africa and these have "educated" thousands of South Africans over the past decade. The Board will make the necessary recommendations in regard to those casinos later in this Report.

   Apart from casino-gaming in the TBVC States, many South Africans gambled in casinos in neighbouring countries: Swaziland, Botswana, Zimbabwe and Lesotho. Gaming has now also become a reality in Namibia. These are all legal casino-gaming opportunities in South Africa's neighbouring countries which, as the Board indicated in its Interim Report, would not only have made South Africans more gaming-conscious but would also have led to the outflow of mega-amounts of money from South Africa.

   1.3 The illegal casinos presented, and still do so, a serious problem, not only for the Board but, so the Board assumes, for the government and most South Africans. These casinos started operating in South Africa approximately five to six years ago in flagrant violation of the law – a serious and dangerous phenomenon in any society. Illegal casinos also operated in the previous TBVC States while some also conducted business in the previous self-governing states in which the prohibition on gambling contained in the Gambling Act, 1965 (Act No. 51 of 1965), applied. The Board recommended in its Interim Report as well as per separate letter to the government that all illegal casinos should be closed without delay for good reasons which the Board does not want to repeat here.

   At the time of writing and deliberating this Report, the Board was continuously informed privately and through the media of illegal casinos still operating – some of which are doing so openly.

   1.4 The Board is fully aware of the co-ordinating efforts of Minister C.L. Fismer with the South African Police Services and the attorneys-general to the effect that the law should be applied and all illegal casinos be closed. The Board is also aware of the other steps taken by the Minister and some members of the Board who were often approached by concerned and law-abiding members of the public to resolve the problem. Yet, it would appear that certain operators of illegal casinos have no concern or respect for the law and authority. This can

be construed as nothing else but a "rape of the law" and it is not out of place here to quote the author, Fulton Sheen who once, with regard to the failure of authorities to apply the law, stated that "a sure sign of the loss of freedom is the compassion which extends pity not to the raped but to the rapist".

The Board cannot but express its deep disappointment with the apparant inability or lethargy on the side of the South African Police Services to close the illegal casinos and of some attorneys-general in some regions to prosecute alleged offenders. As Artistotle said, there is nothing which should be more jealously maintained by any "government than the spirit of obedience to the law". Government itself goes to pieces when this principle is not stringently upheld.

1.5 The subject of illegal casinos was discussed at length by the Board. Apart from criticism from the public on the violation of the law by these operators, other potential operators, who, because of their being responsible and law-abiding citizens, refrained from operating illegal casinos and also complained of discrimination and apathy on the part of the authorities. The Board is of the opinion that some form of penalty should be imposed on those persons who, despite instructions and warnings from the authorities, continued to operate their illegal casinos. The Board considered two options: A heavy penalty in the form of back payment calculated from a certain date, or, second, such operators being disqualified from obtaining a casino licence in the new gambling dispensation of the country. The seriousness of the matter compels the Board to opt for the disqualification alternative.

The Board will recommend that the operators of illegal casinos who continued to operate their casinos after the implementation date of section 5 of the General Law Sixth Amendment Act, 1993 (Act No. 204 of 1993), be disqualified from obtaining a licence by the relevant licensing authority for a period not exceeding ten years. The date of implementation was 21 October 1994.

1.6 In the chapter of Principles for Gambling in South Africa, the Board specified certain principles which should underlie the entire gambling industry in South Africa. These, obviously, will also apply to casino gaming. As provincial governments have the constitutional powers to legislate with regard to casino and other related gaming, the Board will recommend that the provinces shall adhere to these principles: Strict control; sound and harmonious relationship between central government and provincial governments; protection of the gambler; protection of society; high standards of conduct for operators and licence-holders; collection of correct taxes; high quality of gaming technology and equipment; transparency; honesty and integrity; uniformity in the country; black economic empowerment; anti-monopolistic policies; and, self-discipline in the industry in their gaming policies, legislation and regulation.

1.7 In the Howard Commission report a casino is described as a public building or room in which gaming takes place and gaming means the playing of a game for stakes. These games include the operation of a slot machine for a monetary prize. The Commission stated that it had received evidence of a "massive demand for casino gaming in South Africa" and that the evidence "confirms the truism that this form a gambling must be strictly limited and controlled if socially harmful excesses and criminal activities are to be avoided".

The Commission discussed the evidence before it in further detail and then made certain recommendations in the light of the conclusions it arrived at – they are there for the reading. It might be added that those recommendations were appropriate at the time the Commission conducted its investigations. Many of them would be inappropriate given present times and circumstances.

1.8 The Board recommended in its Interim Report on the principles of uniformity and harmonious relations among the provinces, that certain prescriptions and guidelines should be provided by central government in legislation in order to protect national interests as well as those of the provinces. To that end, so the Board's recommendations in its Interim Report continues, national law should prescribe that provincial legislation shall establish a properly constituted licensing authority in those provinces which elect to legalise and allow casino and other related forms of gaming. Provincial legislation shall further set criteria with regard to the following: Access by the public to gaming premises; health and safety requirements; proprietary of potential licence-holders; responsibilities and accountability of operators of casinos to observe the law and high ethical standards; and, still others. These and other matters, as promised in the Interim Report, will be dealt with in this Report in much more detail.

2. LEGISLATIVE AUTHORITY WITH REGARD TO CASINO, BINGO AND RELATED FORMS OF GAMING

2.1 The Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), in section 126 vests legislative power in each of the nine provincial governments. A provincial legislature shall be competent to make laws for the province with regard to all matters which fall within the functional areas specified in Schedule 6 of the Constitution. This competence shall include the competence to make laws which are reasonably necessary for, or incidental to, the effective exercise of such legislative competence. Schedule 6 of the Constitution details, inter alia, "casinos, racing, gambling and wagering" as legislative competences of provinces.

2.2 The Constitution also empowers central government in section 126, to overrule provincial legislation if such legislation is necessary to have co-ordination and uniform standards on a matter that applies generally throughout the Republic of South Africa. Furthermore, the Board accepts that central government also has the constitutional power to overrule provincial legislation if such legislation materially prejudices the economic, health or security interests of another province or the country as a whole or "impedes the implementations of national economic policies".

These are wide powers and the terms used in the relevant section are subject to different interpretations. However, be that as it may, the Board does not believe that provincial legislatures should govern and operate under the threat of possible intervention from central government in the case of them not co-operating on this important issue of gambling in South Africa. Rather, the Board is convinced that provincial governments will work together and co-operate in the spirit of the principle enunciated in chapter four of this Report, namely that a fair and equitable gambling industry should be established in South Africa and that the closest co-operation and liaison should be established between central government and the provincial governments and also the provincial governments among themselves.

Overwhelming evidence was submitted to both the Howard Commission and this Board (from national and international sources with long experience) to the effect that this form of gambling in particular should be strictly and, preferably, centrally controlled. In view of this, the Board will recommend that a national law be promulgated in terms of which a central control structure will be established and certain criteria set to ensure that maximum co-ordination and uniformity are promoted in South Africa. Provincial gaming legislation shall, with regard to casino, bingo and related forms of gaming in each province comply with such criteria.

2.3 It is clear from a study of the different systems in the world, as set out in an authoritative work, that either national or regional legislative authorities control casino-gaming. In the United States the authority is vested in the state governments. Other examples of federal state systems are Germany and Australia whereas in Switzerland, where the canton-system of government is well-developed, the control is, contrary to expectation, determined by national legislation. In countries such as the United Kingdom (Home Secretary); France (Ministry of Justice); Denmark (Ministry of Justice); Holland (Ministry of Justice); and, Portugal (Ministry of Tourism), this authority is vested in central government.

In most countries independent Boards or commissions are established by legislation for the purpose of exercising control.

2.4 The Board received evidence to the effect that, though legislative authority and control with regard to casino, bingo and other related forms of gaming are the prerogatives of provincial governments, a form of central supervising authority is essential for the sake of uniformity, co-ordination and liaison. Such a body would deal, as section 126 of the Constitution of the Republic provides, with a "matter that, to be performed effectively, requires to be regulated or co-ordinated by uniform norms or standards that apply generally throughout the Republic". The composition, powers, functions and funding of this national body will be provided for in the proposed national gaming law. It will be composed of a representative from each of the provinces and five other persons and a chairperson, all of whom shall be appointed by the Minister. The Minister will be represented by one of the five persons. The body will have co-ordinating, liaison, facilitating, investigatory, research, advisory and certain exective functions. Its expenses shall be defrayed by contributions from provinces. It shall be independent of state control and will be responsible for its own budget for the reason that it controls and supervises activities which are basically private sector operated.

In order to avoid a multiplication of controlling bodies, the Board also believes that this body should also exercise the same functions, role and powers with regard to racing and wagering activities. These gambling activities are dealt with in the next chapter.

The principles for control, criteria and other aspects thereof are very similar to those of casino and other forms of gaming. The proposed body should be known as the National Gaming and Wagering Board.

2.5 The Board is of the opinion that an independent gaming Board or similar body in each of those provinces which elects to have casino-gaming should be established to control and regulate the industry. All evidence supported the establishment of an independent control body as opposed to a government department. The main reasons given are the flexibility which an independent body has in attracting suitable staff and the distancing from government of licensing and other control functions. It is foreseeable that the provincial licensing authority of each province, which the Board will recommend later in this Report, will also perform the functions and powers of such a provincial controlling body.

2.6 The basic controls and regulatory objects are: It is fair for everyone; there is no corruption; and, the correct taxes and levies are collected. It is essential that each province provides in its legislation for the necessary controls and regulatory structures to satisfy these controls.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) A NATIONAL GAMING AND WAGERING BOARD BE ESTABLISHED IN A NATIONAL GAMING ACT;

(b) THE NATIONAL GAMING AND WAGERING BOARD BE COMPOSED OF A CHAIRPERSON, A REPRESENTATIVE FROM EACH PROVINCE, AND FIVE OTHER PERSONS AS THE RESPONSIBLE MINISTER MAY DETERMINE, ONE OF WHOM SHALL BE DESIGNATED BY THE MINISTER;

(c) THE NATIONAL GAMING AND WAGERING BOARD SHALL HAVE THE POWER TO APPOINT STAFF, OPEN A BANK ACCOUNT WHEN NECESSARY AND GENERALLY CONDUCT THE AFFAIRS NECESSARY FOR THE ACHIEVEMENT OF ITS OBJECTIVES;

(d) THE FUNCTION AND ROLE OF THE NATIONAL GAMING AND WAGERING BOARD SHALL BE TO INVESTIGATE AND ADVISE THE CENTRAL AND PROVINCIAL GOVERNMENTS ON ALL MATTERS PERTAINING TO GAMING AND WAGERING; TO CO-ORDINATE, FACILITATE, AND LIAISE BETWEEN CENTRAL GOVERNMENT AND THE PROVINCIAL LEGISLATURES AND THE PROVINCIAL LEGISLATURES AMONG THEMSELVES ON THESE MATTERS; TO CONDUCT STUDIES AND RESEARCH INTO ANY SUBJECT OF A GAMING AND WAGERING NATURE AND REPORT THEREON; TO LIAISE AND CO-OPERATE WITH NATIONAL AND INTERNATIONAL GAMING ORGANISATIONS ON MATTERS OF MUTUAL CONCERN AND INTEREST; TO APPROVE GAMING MACHINES AND EQUIPMENT; TO APPROVE VARIOUS TYPES OF GAMES THAT MAY BE PLAYED; AND, TO PERFORM ALL SUCH OTHER FUNCTIONS AS MAY BE NECESSARY FOR THE PROPER PERFORMANCE AND EXERCISE OF ITS POWERS AND ROLE;

(e) THE NATIONAL GAMING AND WAGERING BOARD SUBMIT THROUGH THE MINISTER AN ANNUAL REPORT TO PARLIAMENT AND THE PROVINCES;

(f) THE NATIONAL GAMING AND WAGERING BOARD'S MEMBERS HAVE A TERM OF OFFICE OF FIVE YEARS BUT BE ELIGIBLE FOR RE-APPOINTMENT ON EXPIRY THEREOF;

(g) THE EXPENSES OF THE NATIONAL GAMING AND WAGERING BOARD BE DEFRAYED FROM A FUND CONTRIBUTED TO BY THE PROVINCES AND PROPORTIONATE TO THE TAXATION RECEIVED FROM GAMBLING;

(h) THE FINANCIAL AFFAIRS OF THE PROPOSED BOARD BE AUDITED BY AN INDEPENDENT CHARTERED ACCOUNTANT AND THAT SUCH AUDITOR'S REPORT BE PART OF THE BOARD'S ANNUAL REPORT TO PARLIAMENT;

(i) THE NATIONAL GAMING AND WAGERING BOARD BE INDEPENDENT FROM STATE CONTROL;

(j) EACH PROVINCE PROVIDES IN ITS LEGISLATION FOR THE NECESSARY CONTROL AND REGULATORY STRUCTURE IN ACCORDANCE WITH CRITERIA LAID DOWN IN NATIONAL LEGISLATION; AND,

(k) GOVERNMENT CONSIDERS THE ATTACHED DRAFT NATIONAL GAMBLING BILL IN THE ABOVE REGARD.

3. CONTROL AND REGULATION

3.1 Authorisation of casino, bingo and other related forms of gaming

The distinction between legal and illegal casino-gaming activities is to be found in the presence or absence of authorisation by an empowered licensing or approval authority. Such authorisation is normally in the form of a licence issued by such an authority. All countries which have legalised casino-gaming have a system of licensing and it is unnecessary to give any details here of the different forms, criteria and procedures applicable to these systems.

These authorisation powers are vested variously in other countries: In some systems it is vested in the executive of the governments in others in individual ministries while in the majority of countries it is vested in bodies with delegated powers. In certain countries it is regarded as a judical function while certain other countries regard it as a quasi-judicial. Yet others see it as a purely administrative function. It is not appropriate to deal with these in any detail in this Report.

Suffice it to state that provincial legislatures that elect to introduce legalised casino-gaming must also establish licensing authorities.

The composition of such authorities and their other functions, apart from considering licence applications, should be set out in the provincial legislation. In line with its general approach of an independent body, the Board will recommend that political office bearers, including members of parliament and provincial and local legislatures be excluded from the licensing authority.

Whether the licensing authority should also have the power to finally revoke or suspend a licence is a subject which presents a variety of possibilities. In other systems, such powers are vested either in the licensing authority itself, the executive of the government, the relevant ministry or a judicial body such as a court or special tribunal.

The Board is of the opinion that no reason exists why the licensing authority which awards the licence should also not have the power to suspend or revoke a licence under justifiable circumstances, provided that an appeal should lie to the Supreme Court against such a decision of the licensing authority on a point of law only and also have a right of review.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) PROVINCIAL GAMING LEGISLATION MAKE PROVISION FOR THE ESTABLISHMENT OF AN INDEPENDENT LICENSING AUTHORITY WITH THE POWERS TO CONSIDER APPLICATIONS FOR LICENCES AND TO AWARD LICENCES EITHER BY ITSELF OR IN CONSULTATION WITH THE MEMBERS OF THE EXECUTIVE COUNCIL RESPONSIBLE FOR CASINOS, BINGO, GAMING MACHINES, OR OTHER RELATED GAMING ACTIVITIES IN THAT PROVINCE;

(b) SUCH A LICENSING AUTHORITY SHALL ALSO HAVE THE POWER TO SUSPEND OR REVOKE A LICENCE UNDER JUSTIFIABLE CIRCUMSTANCES SPELLED OUT IN THE LEGISLATION;

(c) THE COMPOSITION, TERMS OF OFFICE AND CONDITIONS OF TENURE OF MEMBERS OF SUCH LICENSING AUTHORITY SHALL BE SPELLED OUT IN THE RELEVANT PROVINCIAL LEGISLATION, SUBJECT TO POLITICAL OFFICE-BEARERS, INCLUDING MEMBERS OF PARLIAMENT AND PROVINCIAL AND LOCAL LEGISLATURES BEING EXCLUDED FROM SUCH LICENSING AUTHORITY;

(d) THE PROCEDURE FOR MAKING AN APPLICATION BE SET OUT IN THE RELEVANT LEGISLATION;

(e) THE PROCESS OF CONSIDERING THE APPLICATION SHALL BE TRANSPARENT AND THE REASONS FOR THE DECISION OF THE LICENSING AUTHORITY BE MADE KNOWN TO THE APPLICANT; AND,

(f) A RIGHT OF APPEAL AGAINST A DECISION OF THE LICENSING AUTHORITY SHALL LIE TO THE SUPREME COURT OF SOUTH AFRICA ON A POINT OF LAW ONLY AND THAT THE APPLICANT SHALL ALSO HAVE A RIGHT OF REVIEW OF THE DECISION.

3.2 Inspection services

In the chapter on principles the Board identified as a basic principle for control the aspect of inspection services in casino, bingo and other related forms of gaming. Inspection services have been found to be an indispensable part of the regulatory and control mechanisms in that industry. Effecive inspection services exist in the United States, United Kingdom, France, Spain, Holland and most other countries. These services are performed mainly by either an independent inspection service or in some cases by a government department. Methods of inspection vary greatly from system to system. One aspect emerges from the array of inspection or hands-on control systems: Inspection in the casino-gaming industry is essential for many obvious reasons.

The Board accepts the need for inspection services and has the support of all the witnesses that expressed themselves on this issue. The reasons being: First, the South African Police Services, by their own admission, do not have the necessary manpower or expertise to police a modern legalised casino-gaming industry. The Police Services found it difficult to even control the situation in recent times when a complete ban on gambling still exists. Second, casino-gaming and its other related derivatives are sophisticated and highly technologised forms of gambling requiring special training and police skills of control. The South African Police Services have far too much on their hands as it is. To expect the police to also assume the policing function with regard to casino-gaming would add a further burden with which it will never be able to cope. It is, therefore, more appropriate that the provinces should each have their own inspection service exercising control within the jurisdiction of their own laws.

In the light of this, the Board is of the opinion that each province must establish its own inspection service to administer the laws and systems of regulation adopted by the provincial legislature. This does not imply that the South African Police Services is absolved from its normal policing-functions with regard to crimes which are committed in the casino-gaming sphere. Inspectors would normally not have more powers than they are given in the gaming legislation. The powers of the police are usually much more extensive.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) THE GAMING LEGISLATION OF EACH PROVINCE PROVIDES FOR THE ESTABLISHMENT OF GAMING INSPECTION SERVICES;

(b) THE POWERS, FUNCTIONS AND ROLE OF GAMING INSPECTORS BE SPELLED OUT IN SUCH LEGISLATION; AND,

(c) THE CLOSEST LIAISON AND CO-OPERATION BE ESTABLISHED BETWEEN THE INSPECTORATES AND THE SOUTH AFRICAN POLICE SERVICES WITH A VIEW TO EXERCISING STRICT CONTROL OVER GAMING ACTIVITIES IN THE PROVINCES.

3.3 Code of conduct

The Board also identified self-discipline as an important principle to be followed in the entire gambling industry. Certain systems in other countries do have voluntary codes of conduct or house-rules drawn up, and adhered to, by the industry. It is not a code or set of rules that can be imposed on the role players but rather an ethic which grows organically from a culture which develops over time. Nevertheless, the Board believes that encouragement from provincial legislasture in the form of advice or a positive attitude would greatly induce the development of a self designed and self-imposed code of conduct in the province concerned.

RECOMMENDATION

THE BOARD RECOMMENDS THAT PROVINCIAL GAMING LEGISLATION PROVIDES FOR A CODE OF CONDUCT FOR CASINO GAMING OPERATORS AND OTHER ROLE PLAYERS IN THE PROVINCE AND THAT ALL PARTIES BE ENCOURAGED TO CONTRIBUTE TO THE DEVELOPMENT OF SUCH A CODE, WHICH SHALL BE APPROVED BY THE RELEVANT CONTROL BODIES.

3.4 Requirements for applicants

Most systems have conditions with which applicant casino or other gaming operators must comply before a licence is issued. The Board has perused most of these requirements set in other systems and does not regard it necessary to relate them here. The requirements which are common to most systems relate to character, credibility, financial standing and capability, criminal record, and competence and experience in the field of casino-gaming.

These requirements, as experience has proved in countries with well-established gambling industries, not only ensure a high standard of integrity, honesty and competence, but also promote confidence and trust on the part of the public.

In some countries, certain members of society and their relatives are denied the right to apply for licences on the grounds that they are directly or indirectly connected to the process of decision-making with regard to the licensing of gaming. These members would include civil servants, cabinet ministers, deputy ministers and members of the licensing authority and their relatives.

The Board is of the opinion that requirements which are common to the systems of more advanced countries should also be set here in provincial legislation for applicants that apply for casino, bingo or other related licences. These requirements relate to legal status; propriety of person; credible financial status and capability; criminal record; knowledge and experience; political involvement and, where applicable, the consent of local, regional, community, or traditional leaders, as well as any others which may be set in a particular case. As stated above and in the chapter on Principles of Gambling, government should not have a financial interest in any application. Furthermore, the Board is of the opinion and will recommend that applicants must make a contribution to black economic empowerment in the jurisdiction in which they operate.

3.5 Application for licences by foreigners

This aspect relates to the question as to whether foreigners or non-citizens should be allowed to hold casino or related gaming licences within the borders of the licensing authority's jurisdiction. Many countries allow foreign licence-holders to operate within their borders for the following reasons: First, such operators have all the necessary knowledge, skills and experience in the gaming industry and in that way import those qualities into the host-country. Second, foreign operators usually invest large sums of money in the gambling industry

of the host-country and in direct and indirect ways stimulate economic growth and provide employment opportunities for locals and so help to develop the people generally.

Third, foreign licence-holders have an "internationalising" effect on the local gambling industry. They bring the local industry into contact with the international gambling fraternity and, as a result, with the latest research, studies and development in this field. Fourth, foreign operators, particularly those from the more advanced systems, bring with them the high standards which prevail in their home systems and usually update the operations accordingly in the host-country. Fifth, foreign operators also act as promoters for the tourist industry of the host country. Tourists tend to feel more confident to game in a casino with internationally accepted and approved standards. The Board believes, however, that controlling authorities in South Africa will, right from the start, ensure that gaming standards here are of the highest in the world.

The Board, however, is also aware that certain disadvantages are attached to allowing also foreigners to hold licences in South Africa. These need not be dealt with here in any detail. Suffice it to state that, on a balance, the disadvantages outweigh the advantages.

In the Board's opinion, it would be to the detriment of the country or province to exclude foreigners, be they individuals or corporations, from the opportunity of holding operator's licences in South Africa. At the same time, however, the Board believes that, where possible, preference should be given to South African citizens to hold casino licences. The Board will therefore recommend that, although South Africans should be preferred, foreigners also be allowed to hold casino or related gaming licences in South Africa.

RECOMMENDATION

(a) THE BOARD RECOMMENDS THAT, ALTHOUGH PREFERENCE SHOULD BE GIVEN TO SOUTH AFRICANS, PROVINCIAL GAMING LEGISLATION HAVE NO PROVISION THAT WOULD EXCLUDE FOREIGNERS OR NON-CITIZENS OF SOUTH AFRICA FROM APPLYING FOR AND HOLDING A CASINO OR RELATED GAMING LICENCE.

(b) THE BOARD RECOMMENDS THAT THE FOLLOWING CRITERIA BE EMBODIED IN PROVINCIAL LEGISLATION FOR AN APPLICANT FOR A CASINO OR OTHER RELATED LICENCE TO COMPLY WITH.

(i) THE APPLICANT MUST BE MAJOR AT LAW AND BE ACCOUNTABLE, WITHOUT ASSISTANCE, FOR HIS ACTIONS IN LAW (ALL REFERENCES MADE TO AN INDIVIDUAL APPERTAIN EQUALLY TO A CORPORATE BODY WHICH IMPLIES THAT ALL CRITERIA ARE APPLICABLE ALSO TO SHAREHOLDERS AND MANAGEMENT);

(ii) THE APPLICANT MUST BE A FIT AND PROPER PERSON, CREDIBLE, AND OF GOOD CHARACTER;

(iii) THE APPLICANT MUST BE SOLVENT, HAVE AN ACCEPTABLE FINANCIAL RECORD IN BUSINESS AND/OR HIS PRIVATE LIFE AND GIVE ACCOUNT OF THE SOURCES OF HIS FINANCES;

(iv) THE APPLICANT MUST NOT BE AN UNREHABILITATED INSOLVENT, A POLITICAL OFFICE BEARER, HAVE BEEN REMOVED FROM AN OFFICE OF TRUST THROUGH DISHONESTY, CONVICTED ANYWHERE OF THEFT, FRAUD, FORGERY, UTTERING A FORGED DOCUMENT, PURGERY, AN OFFENCE UNDER THE CORRUPTION ACT, 1992, ANY SERIOUS OFFENCE OF DISHONESTY OR ANY OTHER SERIOUS OFFENCE WHICH, IN THE OPINION OF THE LICENSING AUTHORITY, JUSTIFIABLY DISQUALIFIES THE APPLICANT;

(v) THE APPLICANT MUST HAVE AT LEAST AN ACCEPTABLE KNOWLEDGE OR EXPERIENCE OR ACCESS THERETO IN THE FIELD OF CASINO-GAME MANAGEMENT OR ADMINISTRATION;

(vi) THE APPLICANT MUST, IN SO FAR AS HIS PERSON OR CHARACTER IS CONCERNED, COMPLY WITH ANY OTHER REQUIREMENTS WHICH THE LICENSING AUTHORITY

MIGHT SET IN ADDITION TO THOSE ABOVE OR, CONVERSELY, NOT HAVE DONE SOMETHING OR HAVE A DEFICIENCY WHICH IN THE OPINION OF THE LICENSING AUTHORITY DISQUALIFIES THE APPLICANT, PROVIDED THAT ANY PERSON WHO HAS OPERATED AN ILLEGAL CASINO AFTER 21 OCTOBER 1994 SHALL BE DISQUALIFIED FROM OBTAINING A GAMBLING LICENCE FOR A MAXIMUM PERIOD OF 10 YEARS.

(vii) THE APPLICANT MUST HAVE THE NECESSARY FINANCIAL RESOURCES TO OPERATE A CASINO OR OTHER GAMING ENTERPRISE;

(viii) THE APPLICANT SHALL COMPLY WITH WHATEVER OTHER FINANCIAL, ADMINISTRATIVE OR MANAGERIAL REQUIREMENTS THE LICENSING AUTHORITY MAY SET INCLUDING, WHERE APPLICABLE, THE CONSENT OF LOCAL, COMMUNITY, REGIONAL OR TRADITIONAL AUTHORITY;

(ix) THAT THE PRINCIPLE OF TRANSPARENCY, OPENNESS AND FRANKNESS SHALL ALWAYS BE OBSERVED IN THE CONSIDERATION AND ALLOCATION OF CASINO-GAMING LICENCES;

(x) THE GOVERNMENT SHOULD NOT HAVE A FINANCIAL INTEREST IN ANY APPLICATION FOR A LICENCE;

(xi) THE APPLICANT MUST SHOW A CLEAR AND DEMONSTRABLE COMMITMENT TO A PROGRAMME FOR BLACK ECONOMIC EMPOWERMENT THROUGH SHAREHOLDING, PARTICIPATION IN MANAGEMENT AND OTHER AVENUES, OF HISTORICAL DISADVANTAGED AND UNDERPRIVILEGED PERSONS AND COMMUNITIES; AND,

(c) THE BOARD RECOMMENDS THAT THE PROVINCIAL LICENSING AUTHORITIES, IN THE ALLOCATION OF LICENCES, SHALL CONSIDER BLACK ECONOMIC EMPOWERMENT.

3.6 Types of casino licences

The information obtained by the Board and also supported by presentations of witnesses, clearly indicates that casino-licences should be of different types. The point was clearly made that a small operator cannot hold the same type of licence as a big operator. Furthermore, the information draws a distinction between casinos open to and frequented by the public as opposed to those which are limited to members of an organisation or club who alone have the right to enter and play in that organisation's or club's premises.

The third category relates to places such as bars, lodgings, sporting clubs and others where the main activity is not gaming but something else and where only a limited number of gaming machines are located for those who wish to play a slot machine or two.

The Board alluded earlier on in this Report to the great potential of further developments in casino and related gaming expected from the advancement in gaming technology. This would possibly also lead to a further differentiation in the types of licences in years to come.

The Board is convinced that a distinction must be drawn between the different types of licences for casinos and related gaming activities.

A proposal submitted to the Board for consideration was to differentiate on the grounds of size of the investment that is made by the operator. According to this proposal an investment of R500-million and higher would qualify as a superior or A-class licence. This investment also has to include five star hotel accommodation with more than a certain number of rooms. A lesser or B-class licence would relate to an investment of lower value but still attached to hotel accommodation of at least three star rating and with not less than a certain number of rooms. The lowest or C-class licence would relate to all those gaming enterprises falling outside the A and B-class casinos.

The Board does not agree with these bases of distinction. They are arbitrary, illogical and can lead to injustices. After considering all the information and evidence the Board came to the conclusion that the types

of licences in South Africa should be uncomplicated and industry friendly. Therefore, the following types of licences and their features should characterise the authorisation of gaming in South Africa:

CASINO LICENCE

A licence for casinos in which the size, number of machines, tables and other equipment and facilities, locality, and many other details would be set out.

GAMING MACHINE LICENCE

A licence for machines in which the number of machines, the details of the machines and other information would be detailed. This type of licence could be granted to any operator in any premises, or locality including arcades (which are well-known in certain countries) provided he complies with the criteria laid down by the provincial legislature. The Board is, however, of the opinion that machine licences should preferably be issued to holders of liquor licences or sporting clubs. The Board further believes that the overall numbers of these licences should be restricted and that not more than five machines should be allowed per licence.

Another important feature of machine licences is that the amount of prize money which a gambler can win on a machine is limited.

Furthermore, the Board will recommend that all gaming licences shall endure indefinitely – subject to the licence-holder's compliance with legal requirements. A licence fee shall be payable annually. Licences should not be transferable from the holder to another person and where shareholding above a certain percentage changes hands, approval shall be obtained from the relevant licensing authority.

Finally, the Board believes that it must be possible for a licensing authority to award temporary licences subject to various conditions relating to the time within which a project shall be completed, the furnishing of forfeitable guarantees in this regard, or any other aspect which, in the opinion of the licensing authority, would justify the issuing of a temporary licence.

RECOMMENDATION

THE BOARD RECOMMENDS THAT PROVINCIAL GAMING LEGISLATION EMBODY THE FOLLOWING CLASSIFICATION OF CASINO OR OTHER RELATED GAMING LICENCES:

(a) THAT THERE SHALL BE A CASINO LICENCE WHICH CAN BE AWARDED TO A SUITABLE APPLICANT TO OPERATE A CASINO OR RELATED GAMING ACTIVITY. LIMITATIONS AND FREEDOMS WITH REGARD TO THE NUMBER OF GAMING MACHINES, OTHER FACILITIES, STAKES AND PRIZES SHALL BE ENDORSED ON THE LICENCE ACCORDING TO WHAT THE LICENSING AUTHORITY DEEMS NECESSARY IN A PARTICULAR CASE;

(b) THAT THERE SHALL BE A GAMING MACHINE LICENCE WHICH CAN BE AWARDED TO A SUITABLE APPLICANT TO OPERATE A MAXIMUM OF FIVE GAMING MACHINES ON PREMISES NOT PRIMARILY USED FOR GAMING. SUCH A LICENCE SHALL BE ENDORSED BY THE LICENSING AUTHORITY WITH REGARD TO THE NUMBER OF MACHINES, STAKES, PRIZES AND OTHER RELATED MATTERS AS DEEMED NECESSARY BY THE AUTHORITY. THESE STAKES AND PRIZES WILL BE LIMITED TO MUCH LESSER AMOUNTS THAN FOR MACHINES AUTHORISED FOR CASINO LICENCES. A MAXIMUM PRIZE OF R2 000 FOR A SINGLE WIN IS RECOMMENDED;

(c) THAT LICENCES SHALL NOT BE TRANSFERALE FROM THE LICENCE-HOLDER TO ANOTHER PERSON WITHOUT THE CONSENT OF THE RELEVANT LICENSING AUTHORITY AND SHALL BE ISSUED FOR ONE LOCALITY ONLY AND NOT TO BE DIVISIBLE OVER MORE THAN THE PREMISES OR LOCALITY IT HAS BEEN ISSUED FOR;

(d) THAT WHERE SHAREHOLDING IN THE HANDS OF THE LICENCE-HOLDER CHANGES BY MORE THAN FIVE PERCENT, APPROVAL FROM THE LICENSING AUTHORITY SHALL BE OBTAINED. NO PERSON SHALL HOLD A SHARE IN A LICENCE AS A NOMINEE FOR AN UNDISCLOSED PRINCIPLE;

(e) THAT THE LICENSING AUTHORITY SHALL BE ENTITLED TO ISSUE TEMPORARY LICENCES OF A LIMITED DURATION SUBJECT TO CONDITIONS AND GUARANTEES BEING FURNISHED WHICH THE AUTHORITY MAY DEEM FIT UNDER THE CIRCUMSTANCES;

(f) THAT ALL LICENCES SHALL BE FOR AN UNLIMITED PERIOD SUBJECT TO THE LICENCE-HOLDER'S COMPLIANCE WITH LEGAL REQUIREMENTS. A LICENCE FEE SHALL BE PAYABLE ANNUALLY; AND,

(g) ALL LICENCES SHALL BE DISPLAYED AND BE AVAILABLE TO AND OPEN FOR INSPECTION AT ALL TIMES BY PROVINCIAL GAMING INSPECTORS.

3.7 The number of casino licences in South Africa

A vexing question which appears in all submissions concerning casinos as well as in the sources of information available to the Board relates to the number of casino-licences which a provincial authority should allow to operate within its borders.

A limited number of witnesses stated that the system should be open and an all-corners approach should be followed. This means that, provided they comply with the licence requirements, all applicants should be allowed to operate. The element of competition inherent in the free-market system would sort it all out and "distinguish the men from the boys".

While the Board accepts the market-related philosophy in casino gaming, this approach militates strongly against the control principle dealt with earlier in this Report. A free-for-all system in casino gaming holds the greatest dangers imaginable – not only for the entire gambling industry, but for the country as a whole. The dangers need not be spelled out here – they are well known.

The vast majority of witnesses and other sources hold the view that for the sake of good order, the profitability of the casino-gaming industry and the protection of society, only a limited number of licences should be issued by each provincial licensing authority – sufficient only for the needs of the local people and expected tourist flow. The Board accepts this view. However, the whole matter is very sensitive and should be handled with the greatest care and caution. Three basic questions arise from this: First, who shall decide on the maximum number of licences which a provincial licensing authority may award? Here cognisance must be taken of the fact that the National Gaming and Wagering Board will be closely involved from a national interest point of view if too many licences are proposed. Second, what criteria should be used to arrive at a formula according to which the appropriate number of casino licences should be allowed in the country? Third, and arising from this question, what is the correct number of licences that can be awarded if account is taken of the fact that the wealth, tourists attractions, size, population density, developmental level of people, and other aspects differ vastly from province to province?

Logically, and in principle, the decision should be left to each provincial authority to determine. On the other hand, the number of licences is an issue which has far-reaching national economic, social, financial and other implications. Once a licence has been awarded to an operator who performs well and perfectly within the parameters of the law, it will not only be difficult but also unfair to revoke such a licence for no reason other than that too many licences have been awarded in the province. It is better to control strictly in the beginning and relax later and as the need arises than to be too lenient at the start and try to curb later.

The Board is of the opinion that the National Gaming and Wagering Board, in consultation with each provincial licensing authority, should recommend the maximum number of casino licences for each province and the locality of each casino operation. The National Gaming and Wagering Board should also facilitate or, where necessary, arbitrate in any cross-border disputes between provinces on locality of casinos.

However, the final decision to award a licence should remain with the provincial licensing authority. Should the National Gaming and Wagering Board not agree with the award of a licence in a particular case that Board should then advise and liaise on the matter with the relevant provincial member of the Executive Committee. In such a case the Minister responsible in central government should also be advised.

The Board is of the opinion that it must give guidance as to the maximum number of casino licences that can be awarded in the country and on the criteria which should be considered in determining how many licences can be awarded per province. The following factors play a role in this regard:

(a) RELATION BETWEEN POPULATION AND THE NUMBER OF CASINOS

In a number of gaming countries, a survey of the number of casinos compared to the population presented a much chequered picture: From Monaco where there is one casino for every 10 000 inhabitants to the Phillipines where there is one casino for every six million people.

Variations are great between these two margins:
Austria, 12 casinos for 7,7 million people.
France, 140 casinos for 54 million people.
Germany, 40 casinos for 80 million people.
Britain, 120 casinos for 58 million people.
Greece, three casinos for 10 million people.
Italy, four casinos for 60 million people.
Kenya, 10 casinos for 25 million people.
Holland, 10 casinos for 15 million people.
Spain, 22 casinos for 40 million people.
Turkey, 75 casinos for 58 million people.
Argentina, 40 casinos for 30 million people.
Australia, 11 casinos for 17 million people.

These statistics show that there is one casino for approximately every 750 000 people. Numbers also depend on the particular government's policy towards gaming. Many other important factors play a role in determining the maximum number of casinos there should be in a country such as South Africa.

(b) PRESENT LICENCE-HOLDERS

Presently there are 17 casino licences in South Africa which were obtained under the political dispensation in the previous TBVC States. The holders of these licences have made big investments and have vested rights which must be considered in the calculation of the maximum number to be allowed in the country when these casinos are integrated into the new system. The Board realises that this a difficult issue and will recommend that any one particular licence-holder should not dominate the gaming market in South Africa. The Board also believes that the proposed provincial licensing authorities should negotiate with the present licence-holders with a view to facilitating their integration into the new dispensation.

(c) ACCESSIBILITY OF CASINOS

Demographics play an important part in most countries in determining the locality and size of a casino and the number of machines and other amenities to be allowed per casino. These factors also play a role in determining the number of casinos per region.

(d) TOURIST TRAFFIC

Countries with a large tourist industry find justification for allowing more casinos. Monaco is a case in point where more than one million people visit and game in the three casinos. It is difficult, at this stage, to estimate how the tourist industry of South Africa will benefit from gaming.

(e) ECONOMIC ACTIVE POPULATION

South Africa presently experience unemployment in excess of 40 per cent. This aspect is cyclical and, obviously, as economic growth increases this percentage will decrease. Nevertheless, it is a factor to be considered in the calculation of numbers of casino licences in the country and per province.

(f) PROPENSITY FOR GAMBLING

This subject relates mainly to attitude, moral views and people's religion. In countries with relatively few casinos these aspects play an important role in determining how many casinos there should be. South Africans have "tasted" gambling in the previous TBVC States but it is presently difficult to determine to what extent the people will gamble. More research is required on this subject.

(g) POTENTIAL OF GAMING IN SOUTH AFRICA

With the legalisation of gambling, South Africa is entering a new era with many uncertainties. It has joined the international community in many fields and has thus become very vulnerable to all kinds of influence. On the other hand, gambling has been prohibited for many decades and people's attitudes have been orientated that way. They are not so educated in gambling that an evaluation can be made of South Africa's gaming potential.

It would, therefore, appear that much-needed and urgent research will have to be conducted before a reasonably accurate estimate of the maximum number of casino licences for the country and each province can be given. However, on the basis of one casino per every one million people, the Board ventures to suggest that South Africa should, under present circumstances, not allow more than 40 casinos inclusive of the 17 existing licences. However, the Board hastens to state that a more realistic number should be determined as soon as possible through national market analysis and research.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) UNTIL SUCH TIME AS THE NECESSARY RESEARCH HAS BEEN CONDUCTED ON THE FACTORS THAT PLAY A ROLE IN DETERMINING THE MAXIMUM NUMBER OF CASINOS TO BE ALLOWED IN SOUTH AFRICA, NO MORE THAN 40 CASINO LICENCES (INCLUSIVE OF THE EXISTING 17 LICENCES) BE AWARDED; AND

(b) URGENT MARKET ANALYSIS, INVESTIGATION AND RESEARCH BE CONDUCTED AS SOON AS POSSIBLE BY THIS BOARD ON THE RELEVANT FACTORS THAT INFLUENCE THE NUMBER OF CASINOS TO BE ALLOWED IN THE COUNTRY AND EACH PROVINCE.

4. THE OPERATOR (LICENCE-HOLDER)

4.1 The qualifications which an applicant licence-holder must comply with have already been dealt with under a different subject-heading. What the Board is concerned with under this heading is, first, the operator's commitment or involvement in the community or area in which the casino is located.

The German system, and a few others too, require that "in order to obtain a casino franchise, an applicant must contract to provide cultural, social, and other services". Two dimensions emerge from this: First, the operator will be socially, and culturally involved in the players' environment within the casino – providing social, cultural and other services for their entertainment and relaxation. Second, the operator will also be involved in the community in which the casino operates – contributing to social, cultural and community activities outside of the casino.

Evidence of this type of involvement by a few legal casinos operating in South Africa was brought to the attention of the Board during its investigations. In these cases, the operator contributed to the social welfare, cultural development and other activities of the community in the area of the casino. Commendable as this type

of involvement is, the Board does not believe that an obligation of this nature should be built into the provincial gaming legislation.

Operators should know that, for the support of players, they should do something for the communities who form the basis of their clientele. The Board also believes that an important commitment from the operator must include a plan or programme of advancement, through participation and sharing, of historically disadvantaged persons or groups of persons, who have become disadvantaged through unfair discrimination. This commitment must be a condition to the licence.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) A COMMITMENT TO PROVIDE SOCIAL, CULTURAL AND COMMUNITY SERVICES IN THE PROVINCE OF OPERATION SHALL BE A CONDITION OF LICENCE; AND,

(b) SUCH A COMMITMENT SHALL ALSO INCLUDE A PLAN OR PROGRAMME OF ADVANCEMENT AND EMPOWERMENT THROUGH PARTICIPATION AND SHARING OF HISTORICALLY DISADVANTAGED PERSONS OR GROUPS OF PERSONS WHO HAVE BECOME DISADVANTAGED THROUGH UNFAIR DISCRIMINATION.

5. THE GAMBLER

The axis of the entire casino gaming industry is the gambler and his money. Without him there can be no gaming. It is, therefore, essential that the South African casino-gaming industry devotes the most attention to the gambler. Further, it shall be the main obligation of provincial legislatures to formulate and structure their gaming legislation around gambler's safety; security; well-being; weaknesses; entertainment; and, others. These aspects will be dealt with hereunder.

5.1 Age of admission

One of the principles in gambling in the vast majority of systems is that of not stimulating or cultivating a demand which does not exist. The philosophy appears to be that a person must first learn to work for his money – he can gamble with it later in his life.

That is the order of life and the way it should be learned by young people. Thus, they should not be exposed to gambling too early in their lives. To that end, the vast majority of countries have age limits for admission to casinos and other related forms of gaming. The average age appears to be 18.

The Board supports this limit: At that age a person is enfranchised; may legally drive a motor vehicle and possess a fire arm – an empowerment with often much more risky consequences than casino gaming!

RECOMMENDATION

THE BOARD RECOMMENDS THAT THE AGE LIMIT FOR ADMISSION TO CASINOS AND RELATED GAMING ACTIVITIES SHALL BE 18 IN ALL PROVINCES AND THAT THIS LIMIT BE EMBODIED IN PROVINCIAL GAMING LEGISLATION.

5.2 Hours of operation

This aspect relates to the hours of the day during which casinos and other related activities may be open for gaming by the public or members. According to an authoritative source, this subject covers a wide spectrum. Much depends on factors such as: First, the climate of the country or region (temperature, humidity, vulnerability to storms, etc.); the degree of conservatism or liberalism of the society in which casinos are

allowed; differences between international, national and local licence-holders; the culture of the country; the attitude of the licensing authority (which may differ from time to time); the volume of tourist traffic; additional entertainment facilities provided; and, still other factors.

Based on these factors, the operating hours differ vastly from country to country and even from casino to casino within the same country. Casinos in some countries are open for 24 hours a day while others have limited hours. One of the reasons for imposing restrictions is that of protecting the gambling community and, in particular, the latent compulsive gambler.

The majority of systems that have restrictions on hours of operation have them during the night and part of the day. Hours of operation are, generally, from approximately mid-day to the early hours of the morning.

The Board is of the opinion that hours of operation in casino and other related facilities should be strictly controlled as a condition of licencing by the provincial licensing authority.

The Board is not in a position to prescribe the exact hours of operation for the provinces because of the differences that exist with regard to climate, population density, tourist trade, and other factors. The Board believes, however, that a restriction on the hours of operation may be imposed by provinces depending on specific circumstances. Hours of operation should be endorsed on licences.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) THE HOURS OF OPERATION FOR ALL CASINO AND OTHER RELATED FACILITIES BE CONTROLLED AS A CONDITION OF LICENSING BY THE LICENSING AUTHORITY OF EACH PROVINCE; AND,

(b) THE HOURS OF OPERATION SHALL BE ENDORSED ON THE LICENCE OF THE OPERATOR.

5.3 Advertising and publicity

All casino and related gaming operators, for obvious reasons, wish to have as many members of the public or club as possible utilise their facilities. Apart from all the additional or side-benefits such as cinemas, live shows, restaurants, private telephone services, saunas and many other attractions which they provide, they also spend (if allowed) huge sums of money on advertising, publicity and public relations to seemingly make their gaming facilities more attractive and thereby attracting more patrons.

On the principles that, first, the demand should not be stimulated and, second, to protect the public against the evils of gambling, many systems in the world have restrictions on advertising and publicity with regard to gambling. Where advertising is allowed, limitations such as no misleading advertising; no extravagant advertising; no indecent advertising; no false advertising; and, still others, exist. In a number of jurisdictions advertising is forbidden: Spain (with minor exceptions), Argentina and Mauritius. In others, no restrictions whatsoever exist: Germany, France, Switzerland, while in the United Kingdom no advertising "may be used to stimulate gaming behaviour".

The Board is of the opinion that, of the two principles stated above, advertising and publicity should not be absolutely prohibited but it should be restricted in South Africa. It is difficult to prescribe accurately what restrictions provinces should impose. The principle should be that the gambler and society should be protected against gambling and in that way the demand for gambling should not be stimulated. On this basis, the Board will recommend that advertising of casino-gaming be allowed but subject to certain restrictions.

RECOMMENDATION

THE BOARD RECOMMENDS THAT ADVERTISING AND PUBLICITY WITH REGARD TO CASINO AND RELATED GAMING ACTIVITIES BE ALLOWED BY PROVISION IN PROVINCIAL GAMING LEGISLATION PROVIDED THAT ANY FORM OF SUCH ADVERTISING OR PUBLICITY SHALL –

(a) NOT BE EXCESSIVE, EXTRAVAGANT, MISLEADING OR FALSE;

(b) NOT BE CONDUCTED AT SCHOOLS OR OTHER INSTITUTIONS WHERE YOUNG PEOPLE ARE THE DOMINANT FREQUENTERS; OR,

(c) NOT BE PLACED OR CONDUCTED IN YOUTH PERIODICALS OR OTHER PUBLICATIONS OR BROADCAST ON YOUTH RADIO PROGRAMMES OR TELEVISED ON YOUTH TELEVISION PROGRAMMES.

5.4 Facilities, entertainment and employment

This subject relates to additional facilities such as entertainment; bars; restaurants; swimming pools; hotels; accommodation; saunas; shopping malls or the like; cinemas; conference centres; and, many others which form part of the entire casino or gaming enterprise. In some countries the provision of these (or some of them) form part of the licensing conditions. In France, for example, where all gaming operations are privately owned and operated, the requirement is that all casinos shall have restaurants. Many casinos are also attached to larger resorts with hotels, swimming pools, baths and sports facilities. These may or may not be owned by the casino. In Germany, as another example, operators are expected to undertake certain social and civic responsibilities as a condition of the licence. Casinos, therefore, often have good restaurants, sports facilities, gymnasiums and other social amenities in order to comply with this requirement. In Spain the regulations of both central and regional governments require that casinos shall provide bars, restaurants, lounge areas and showrooms.

Other facilities such as cinemas, convention centres, pools and others are voluntary. Other countries have no such requirements but also no restrictions except for demanding, as in Great Britain, that live shows shall not take place in the gaming part of the casino. On the other hand, there are examples when casinos are not allowed to have any other facility such as restaurants etc. in order to protect the existing local trade.

The Board is of the opinion that casino operators shall by themselves, without legislative prescription, provide such facilities as and when needed. This could be a condition of the licence issued to the operator. The element of competition in a market related industry will compel them to make their gaming facilities as attractive as possible for the public to come and game there. Whereas the Board will not prescribe what facilities or entertainment should be provided, it does know that the laws of the country relating to, for example, prostitution, sale of liquor, indecency, etc., also apply to casinos and it is, therefore, not necessary to recommend on this aspect.

The Board, however, is aware of and fully appreciates the fact that the development of tourism could well be linked to the availability of resorts which offer a range of entertainment facilities in addition to gaming. Furthermore preference should be given to operators whose facilities will create employment opportunities and will contribute to the stimulation of the tourist industry.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) APART FROM BEING A CONDITION OF LICENSING, OPERATORS SHOULD NOT BE COMPELLED BY PROVINCIAL GAMING LEGISLATION TO PROVIDE ENTERTAINMENT OR FACILITIES FOR THE PUBLIC IN ADDITION TO THE GAMING PROVIDED FOR IN THE CASINOS AND THAT IT SHOULD BE LEFT TO THE OPERATOR TO DECIDE WHETHER HE WANTS TO DO SO OR NOT; AND

(b) PREFERENCE BE GIVEN TO OPERATORS WHOSE FACILITIES WILL CREATE EMPLOYMENT OPPORTUNITIES AND CONTRIBUTE TO THE STIMULATION OF THE TOURIST INDUSTRY.

5.5 Exclusion of players

Some states in the United States of America and the systems of certain countries provide for mandatory exclusions of certain people who have been identified, for some reason or other, as unwelcome players in

casinos. This, obviously, is apart from those excluded because of their age. In Britain, players have to be members of a casino – the club system – before they can game. Non-members are therefore excluded from playing in the casino.

In Portugal, entrance to casinos is restricted. All players must present identification and pay entrance fees. An interesting feature of the Portuguese system is that foreigners aged 18 and older may enter while Portuguese must be at least 21-years-old and in some casinos as old as 25. In Germany, owners and operators may not play in their own casinos. In the Bahamas, as another example, dress codes exist and patrons are required to be neatly dressed during the day while wearing shorts and sandals is prohibited in the casinos during the evening. In many other systems casino employees may not gamble in the casino where they are employed. The Board can continue with examples of various systems where a variety of exclusions exist. However, this would lengthen this Report unnecessarily.

The Board is of the opinion that it should be left to each provincial legislature to provide for exclusions from casino or related gaming enterprises. In the Board's view, it is essential that provision must be left to the individual operator to decide who else should be excluded from gaming in the casino.

RECOMMENDATION

THE BOARD RECOMMENDS THAT PROVISION BE MADE IN PROVINCIAL GAMING LEGISLATION FOR THE RIGHT OF AN OPERATOR TO EXCLUDE CERTAIN PERSONS FROM GAMING IN HIS/HER CASINO ON ACCEPTABLE GROUNDS OR AS THE CONDITIONS OF THE LICENCE MAY DETERMINE.

5.6 Gaming intelligence service

Security is an important aspect of the casino and related gaming industry. From information and evidence at the Board's disposal it is clear that surveillance, checking of and supervision in casino operations over the players have become firmly entrenched practices worldwide.

In this regard between in-house supervisions, official inspectorates, the police services and also in-house security personnel has been firmly established in the more advanced systems in the world. Modern technology of all kinds plays an important role in this regard: Television equipment, computers and many other aids are used. In this way, a worldwide gaming intelligence service has developed and is being used by operators in most of the advanced systems. From this service it was learned that a so-called "floating gaming community" of "professional" players exists. These travel from country to country and make gambling their fulltime occupation. Various casinos have photographs of these people. Obviously, many of them would be on the list of those who must be excluded from casinos. The reports about them are not positive: Dishonesty, fraud, manipulation of machines, insolvency and other negative aspects are known about them.

The Board does not believe that provinces should make a big issue of this or provide for it in their gaming legislation. However, the Board would advise that provincial gaming authorities bring the existence of such an unofficial service to the attention of operators and the authorities who might then liaise with the service with a view to improving security in the casino gaming industry and thus strengthening the control element in the industry. The National Gaming and Wagering Board would also be well-advised to take cognisance of the international gaming intelligence service.

From sources of information it would appear that casinos in most countries have surveillance equipment as part of their systems of control. The Board believes that an obligation on operators to install such equipment in their casinos would be conducive to control and regulation in the industry and also to the development of the gaming intelligence service. It should, therefore, be a condition of licensing.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) PROVINCIAL GAMING AUTHORITIES TAKE NOTE OF THE UNOFFICIAL INTELLIGENCE SERVICE IN THE CASINO AND RELATED GAMING INDUSTRY AND ADVISE LICENCE-HOLDERS THEREOF AND THAT THE AUTHORITIES LIAISE WITH THAT SERVICE WITH A VIEW TO BUILDING UP A DATA-BANK OF INFORMATION ON UNWELCOME ELEMENTS AND DEVELOPMENTS IN THE CASINO AND RELATED GAMING INDUSTRY; AND

(b) AS A CONDITION OF LICENSING, OBLIGE OPERATORS TO INSTALL SURVEILLANCE EQUIPMENT IN THEIR CASINOS.

6. CASINO EMPLOYEES

This subject relates to all those people who are employed in the casino and related gaming industry in a country. Surprisingly, most of the advanced systems have provisions in their legal systems which regulate their employment, conditions of service and development. Many states in America and many countries in Europe also regulate the movement of personnel. It is inappropriate to deal with all the different aspects of this facet of casino-gaming in the different systems. In short, they relate to the registration of the different classes of employees, either with the gaming authority of the particular state or country, or with a gaming organisation. This is particularly true in those systems where registration is more in private hands: Their qualifications; training and development; term of service; record of employment in the gaming industry; and, any other information which the registration authority may require.

The roving type of employee is rather scarce in a local industry – that is, employees from one casino are not easily employed by another casino. They tend rather to move from country to country while many are employed by the same operator who operates internationally and sends his staff from country to country particulary with a view to training and developing others. Such personnel obviously continue to work for the same employer. Many are also trained in industries related to gaming such as the hotel, tourist, security, finance, or other industries before they move into the proper gaming industry.

The Board is of the opinion that a properly structured system of licensing of casino and related-industry staff should be introduced in South Africa. This is essential not only from a national gaming intelligence service point of view but also for many other purposes. This register should be based with and controlled by the provincial licensing authority. All permanently appointed casino operating employees should be registered with these authorities in their different capacities. Records of such people should be kept and include as much relevant detail as possible: Age, record, qualifications and still others.

Understandably, no formal training institutions in which the training of these employees can be conducted exists in the country at this stage. Training and development are still very much an in-house activity in the legal casinos presently operating in the country. For the rest, trained staff are imported from other countries.

The Board believes that the sooner formal out-of-house training for gaming personnel can commence in South Africa the better. To that end, the proposed National Gaming and Wagering Board should explore the possibility of the registration of any private sector institution which conducts such training as well as for such matters as course content; certificates or diplomas of qualification; accreditation locally and overseas; duration of courses; and, other aspects which the National Gaming and Wagering Board may require. In this regard the provincial licensing authorities should give their approval on all these matters.

An important aspect which, in the Board's view, should fall within the provincial gaming authority's jurisdiction is the individual contracts between the particular operator and the staff, conditions of service, hours of work, trade unions and other individualistic aspects. These ought to be regulated at provincial level.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) PROVINCIAL GAMING LEGISLATION PROVIDES FOR THE PROTECTION OF ALL EMPLOYEES IN THE CASINO AND RELATED GAMING INDUSTRY; AND

(b) THE PROPOSED NATIONAL GAMBLING AND WAGERING BOARD EXPLORE THE POSSIBILITY OF THE REGISTRATION OF ALL PRIVATE SECTOR TRAINING AND DEVELOPMENT INSTITUTIONS WHICH CONDUCT TRAINING FOR PERSONNEL IN THE GAMING INDUSTRY AS WELL AS THE CONTENTS OF THEIR COURSES, ACCREDITATION, CERTIFICATES AND DIPLOMAS AND ANY OTHER INFORMATION WHICH THE NATIONAL GAMING AND WAGERING BOARD MAY REQUIRE IN CONSULTATION WITH THE INDUSTRY, PROVIDED THAT APPROVAL SHALL BE OBTAINED FROM THE PROVINCIAL LICENSING AUTHORITIES ON ALL THESE MATTERS.

7. CASINO PREMISES AND AREAS

An important aspect which, according to information sources, also relates to the protection of the gambler, is the conditions and requirements pertaining to the premises, buildings or areas in which casino and related gaming activities are conducted. The Board could only obtain broad principles from the sources in this regard: That such premises shall at all times comply with the local authority requirements such as safety regulations, fire escapes, water supplies, restrooms, ventilation, lighting, and more. Second, that where circumstances require it, the relevant licensing authority or gaming authority, after being so advised by the inspectorate or policing services, shall inform the operator of any additional requirements with regard to his premises which he must comply with.

Casinos worldwide do not seem to have a serious problem in this regard.

Those who wish to attract the support of players far exceed the minimum standards of safety, welfare, security and general wellbeing required by the authorities. Most of these are connected with luxury hotels, holiday and entertainment resorts, or with other activities which are normally so well-presented and structured that problems seldom arise. The problem of overcrowding during peak times is raised in the information sources. These appear to be of a more *ad hoc* than permanent nature.

The real problem in this regard appears to lie with illegal casinos and the holders of gaming machine licences. Illegal casinos, obviously, are a matter for policing. The concern really revolves around the requirements of safety, security, welfare, etc., of the public in clubs and other limited spaces where gaming machines are located.

Sources also made reference to mobile casinos, such as luxury liners and riverboats, on which amenities and facilities comparable to those of land-based casinos are offered. Recently, reports have indicated that gaming opportunities in the form of slot machines and other machines may be offered on express trains, aircraft, luxury buses and even luxury caravans. Obviously, all the criteria mentioned above will have to be applied with due regard to the circumstances of each mobile gaming utility. The Board believes that no ban should be imposed on mobile casinos at this stage but that the matter be further researched.

The Board believes that provincial licensing authorities should set minimum requirements for premises in their legislation. On the evidence presented it would appear that one machine requires at least four square metres of space in an area which has at least a three metre ceiling height. These spatial requirements will obviously vary depending on the overall size of the total floorage, smoke-extraction equipment, ventilation, climate, tourist traffic and more. They will obviously acquire a different dimension when applied to a bulk area e.g., where a large number of machines are located. It is for the particular provincial licensing authority to obtain the necessary advice in this regard.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) PROVINCIAL GAMING LEGISLATION PROVIDE THAT LICENSING AUTHORITIES SHALL SET THE LOCAL AUTHORITY'S MINIMUM REQUIREMENTS WITH REGARD TO HEALTH, SAFETY,

SECURITY, WELFARE, WATER SUPPLY, VENTILATION, ILLUMINATION AND OTHERS, AS MINIMUM CRITERIA FOR PREMISES IN WHICH CASINO AND RELATED GAMING ACTIVITIES ARE TO TAKE PLACE;

(b) SHOULD CIRCUMSTANCES DEMAND THAT THESE CRITERIA BE INCREASED, OPERATORS BE ADVISED ACCORDINGLY AND THAT PART OF INSPECTORS' DUTIES SHALL BE TO REGULARLY INVESTIGATE THESE ASPECTS;

(c) A MAP OF THE AREA WHERE GAMING MACHINES SHALL BE LOCATED (IN THE CASE OF AN APPLICATION FOR A GAMING MACHINE LICENCE) FORMS PART OF THE APPLICATION TO ENABLE THE LICENSING AUTHORITY TO DETERMINE WHETHER THE AREA IS SUFFICIENT FOR GAMING ON THE NUMBER OF MACHINES WHICH WILL BE UTILISED FOR GAMING;

(d) EACH PROVINCIAL LICENSING AUTHORITY DETERMINE, FOR ITSELF, ON ADVICE, THE MINIMUM STANDARDS REQUIRED FOR AN AREA IN WHICH PLAY ON GAMING MACHINES WILL TAKE PLACE IN THE CASE OF AN APPLICATION FOR A GAMING MACHINE LICENCE; AND,

(e) MOBILE CASINOS NOT BE BANNED AT THIS STAGE BUT THE SUBJECT OF THEIR OPERATIONS, CROSS-BORDER ACTIVITIES AND OTHER RELATED MATTERS BE FURTHER RESEARCHED BY THE NATIONAL GAMING AND WAGERING BOARD AND THE PROVINCIAL AUTHORITIES.

8. GAMING MACHINES AND TECHNOLOGY

This very important aspect is a key-matter raised in submissions, oral presentations and evidence to the Board. All manufacturers of gaming machines and other technology impressed upon the Board the need to ensure, first, that only top quality equipment is purchased and utilised in the industry and, second, that such equipment is regularly tested and properly maintained.

The Board was also informed of the large-scale dumping of outdated and obsolete equipment that takes place and that South Africa would be seen as a very lucrative market for such equipment. Furthermore, poor quality equipment is very vulnerable to tampering and, as a consequence, large sums of money can be taken from players who have poor chances, if any, of winning a prize.

Apart from manufacturers of gaming machines and other like equipment, the Board also received valuable presentations from gaming equipment measuring institutions – one from Holland and one from Australia. Both organisations have offered their services with regard to the measuring, assizing and testing of gaming equipment and these services seem to be of a very high standard.

The Board is of the opinion that the measuring, testing, assizing and checking of gaming equipment should eventually be done by an institution in South Africa. The South African Bureau of Standards and other credible bodies such as universities could co-operate in this regard. The Board is aware of gaming equipment licensed in existing gaming jurisdictions and will recommend that these be allowed until the equipment testing process in South Africa can be implemented.

The Board will recommend that equipment used in legal casinos and gaming must qualify for registration within a period of 12 months from the date of promulgation of new legislation.

Whereas the Board does not wish to prescribe to the provinces in this regard, it does, however, have a duty towards the gaming public to recommend to government that all possible measures should be taken to ensure that only the best quality gaming equipment is used and that it should be compulsory for the operator to have the equipment regularly checked and measured. Furthermore, provinces should guard against obsolete and out-of-date equipment which could be dumped on the South African market. The Board is of the opinion that a record should be kept of each machine's turnover and pay-outs for the purpose of proper control.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) PROVINCIAL LEGISLATION PROVIDES FOR THE FOLLOWING MATTERS PERTAINING TO GAMING EQUIPMENT:

(i) ONLY THE EQUIPMENT OF LICENCED MANUFACTURERS SHALL BE USED IN CASINOS AND RELATED GAMING ACTIVITIES;

(ii) ONLY TYPES OF EQUIPMENT APPROVED BY THE NATIONAL GAMING AND WAGERING BOARD BE ALLOWED. UNTIL SUCH TIME AS THIS CAN BE IMPLEMENTED ONLY EQUIPMENT ALREADY LICENSED IN AN ESTABLISHED GAMING JURISDICTION SHOULD BE ALLOWED;

(iii) SUCH EQUIPMENT SHALL BE SERIAL-NUMBERED BY THE MANUFACTURERS AND ACCOMPANIED BY A MANUFACTURER'S CERTIFICATE TESTIFYING TO ITS ORIGIN, QUALITY, PERFORMANCE, DATE OF MANUFACTURE AND STANDARD OF PERFORMANCE;

(iv) THE CERTIFICATE OF EACH PIECE OF EQUIPMENT SHALL BE RETAINED BY THE OPERATOR FOR READY INSPECTION BY A PROVINCIAL INSPECTOR;

(v) CERTIFICATES SHALL REFLECT THE DATES OF REGULAR INSPECTION OF THE EQUIPMENT BY THE NATIONAL GAMING AND WAGERING BOARD AND BY PROVINCIAL INSPECTORS;

(vi) A REGISTER OF ALL EQUIPMENT SHALL BE KEPT BY THE PROVINCIAL LICENSING AUTHORITY AS OFFICIAL DOCUMENTATION REFLECTING ALL THE GAMING EQUIPMENT PER OPERATOR USED IN THAT PROVINCE;

(vii) THAT GAMING EQUIPMENT USED IN LEGAL CASINOS AND GAMING MACHINE ENTERPRISES MUST QUALIFY FOR REGISTRATION WITHIN A PERIOD OF 12 MONTHS FROM THE DATE OF PROMULGATION OF THE NEW LEGISLATION;

(b) PROVINCES TAKE THE NECESSARY STEPS TO PROTECT THE GAMING INDUSTRY WITHIN THEIR BORDERS AGAINST THE DUMPING OF OUTDATED, OBSOLETE AND CORRUPT EQUIPMENT FROM OTHER MARKETS; AND,

(c) OPERATORS BE COMPELLED TO MAINTAIN RECORDS OF EACH MACHINE'S TURNOVER AND PAY-OUTS.

9. ACCOUNTING AND AUDITING PROCEDURES

All the systems studied by the Board have strict regulations with regard to accounting and auditing of finances in casinos and related gaming activities. Legislation prescribes in fair detail what is required from operators.

In France, for example, casinos are required to account for all financial activities at each game. Notebooks are used to record wins and losses for each day and monthly reports on metered performances of machines are submitted to the government. The Ministries of Finance and the Interior have total right of access to all financial records. In the United Kingdom, operators are also required to keep accurate records of account and the Gaming Board is entitled to see all accounting records including audited accounts and details of players' check-cashing transactions.

Many more examples can be quoted by this Board as to how strict the accounting and auditing controls are in the more advanced systems of gaming in the world.

The Board believes that the principle of strict control should apply with regard to accounting and auditing procedures. This obligation on operators must be prescribed by provincial legislation which the proposed National Gaming Act should also set as a minimum criteria for each province. Furthermore, where other systems allow internal accountants to do the day-to-day accounting procedures, the majority of them insist on an external independent audit of all the casino's financial transactions.

Finally, those countries also empower the relevant authorities to perform checks on the financial affairs and accounting procedures whenever they deem them necessary. The Board agrees with all these measures and believes they are conducive to the principle of strict control of the gaming industry.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) THE PROVINCIAL LEGISLATION STIPULATES THAT PROVINCIAL GAMING LEGISLATION SHALL PROVIDE FOR THE OBLIGATION ON ALL CASINO AND RELATED GAMING OPERATORS TO KEEP PROPER BOOKS OF ACCOUNT ON A DAILY BASIS;

(b) THE PROVINCIAL GAMING LEGISLATION SHALL MAKE IT COMPULSORY FOR CASINO OPERATORS TO HAVE THEIR FINANCIAL AFFAIRS AUDITED BY AN INDEPENDENT CHARTERED ACCOUNTANT ON AT LEAST AN ANNUAL BASIS;

(c) SUCH AUDITED STATEMENTS AND AN ACCOMPANYING REPORT SHALL BE SUBMITTED ANNUALLY TO THE PROVINCIAL LICENSING AUTHORITY; AND,

(d) THE PROVINCIAL LICENSING AUTHORITY, INCLUDING THE CONTROLLING BODY, SHALL HAVE RIGHT OF ACCESS TO ALL THE FINANCIAL STATEMENTS, BOOKS OF ACCOUNT AND AUDITED STATEMENTS AS AND WHEN THEY WISH.

10. TAXES, FEES, GUARANTEES, LEVIES AND UPFRONT PAYMENTS

The raising of taxes, fees and other forms of payment by casino and related gaming operators is a provincial competence according to the Constitution of the Republic. A study of this subject in systems abroad presents a much chequered picture.

To quote a few examples from the United States: Colorado State imposed a maximum gaming tax of 40 percent during 1994. Taxes are revised on an annual basis and depends on gross win. Taxes during 1994 varied between two percent and 18 percent depending on the win of the particular casino. In the State of Delaware, tax varied between 12 percent and 30 percent during 1994 while in the State of Louisiana the tax was 18,5 percent of gaming win or payment of $100-million to the state – which-ever was the greater. In the State of Nevada gaming locations with more than 15 slot machines pay sliding scale taxes on a monthly basis. The first $50 000 of gross gaming win was taxed at three percent, the next $90 000 was also taxed at three percent and any amount over $140 000 was taxed at six-and-a-quarter percent.

The picture of European systems is equally varied: In Finland, casino operators must pay a tax of three percent on their gross wins. In Denmark, the government imposes a tax of 65 percent on their gross wins. In Denmark, the government imposes a tax of 65 percent on gross gaming win while in Czehoslovakia, where a very complicated tax system applies, casino operators pay ten percent tax on the gross casino win plus 40 percent on net income after national taxes and expenses. Then the casino must pay 15 percent on the remaining net profits to charities and an additional ten percent to 20 percent fee to the local government – depending on agreements at the time of licensing.

In Germany taxes are in the vicinity of 80 per cent allowing some relief for the operator in the start-up years of the casino. Of this 80 percent, 55 percent is allocated to the state in which the casino operates, five percent to the federal government and 20 percent to the local authority in which the casino is located. In Britain, taxes are also reviewed annually but applied on a three month basis. Taxes are based on the gross gaming win starting at two and-a-half per cent of £900 000 and rising to 33,33 percent. An initial licensing fee is payable by the licence-holder. Gaming machine certificates also carry initial and annual renewal fees.

Many more examples can be mentioned but they will only add to the confusion and, as the Roman adage states: "We must not be so beguiled by the changes in the scenery that we lose sight of the principle" – which is that casino operators must pay: First, a tax on their gross win which can be calculated on a sliding scale.

Second, a licence fee for the casino as well as a licence fee for every gaming machine to be used in the casino. This licence fee could also include, at the option of the relevant licensing authority, a bidding fee. Obviously, where the operator applies only for a machine licence the fee shall be for every machine he intends operating.

Such a bid or tender system is internationally widely used and large sums of money are paid upfront to acquire exclusivity. In Sydney, for example, the successful applicant had to pay an upfront bid fee of $376-million (Australian) or more than R700-million. Such upfront payment can produce a large initial source of revenue.

An appropriate amount would also secure exclusivity, for investors. This matter was also raised by a number of witnesses. To a great extent this is also a consideration when the maximum number of licences per province is to be determined.

Operators who make large investments in the form of hotels, entertainment centres, shopping malls and still other amenities will justifiably insist on protection of their investment and a sufficient return on their investment. By allowing too many other licence-holders, big or small, in the vicinity would not be conducive to the protection of original licence-holders.

The Board is of the opinion that a certain amount of exclusivity to licence-holders is an important prerequisite for an orderly, disciplined and prosperous casino-gaming industry and will, therefore, recommend that provincial gaming authorities regard it as an important element in their determination of the maximum number of licences to be awarded and the localities where casinos will operate, as well as the method of application.

Third, any other tax or levy which the provincial gaming authority wishes to impose on services, personnel or other facilities in the casino should be considered. It is difficult for the Board to determine the percentages as, so the Board believes, these may differ from province to province depending on circumstances. The protection of the gambler and the authorities can be further ensured by levying an upfront payment on the operator as a guarantee from which the operator's commitments to the gambler and the provincial tax authority could be met.

Gamblers are exposed to various risks when they play, one of which being that they could not be paid their winnings or some other form of exploitation, corruption or dishonesty. As the Gaming Board for Great Britain reported in 1993, namely that "casino-gaming" is an activity in which the only product which changes hands is money and, as a consequence, if not properly controlled, is susceptible to dishonesty.

On the principle that the gambler should be protected, the Board is of the opinion that a guarantee sum should be paid by an operator from which a gambler, in justifiable cases, could be compensated for any loss he suffered as a result of the operator having absconded or being dishonest in any way.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) THE PROVINCIAL GAMING LEGISLATION STATE THAT THE PAYMENT OF TAXES AND OTHER MONEYS BY A CASINO-OPERATOR SHALL BE OBLIGATORY AND THAT SUCH PAYMENTS SHALL CONSIST OF THE FOLLOWING:

(i) A TAX TO BE IMPOSED BY THE PROVINCE ON GROSS WIN OF THE CASINO AT A RATE AND PAYMENT FREQUENCY TO BE DETERMINED BY THE PROVINCE;

(ii) A LICENCE FEE SHALL BE PAYABLE FOR THE CASINO AS WELL AS A FEE FOR EVERY MACHINE AND TABLE TO BE USED IN THE CASINO. THIS LICENCE FEE COULD, AT THE OPTION OF THE PROVINCIAL LICENSING AUTHORITY, INCLUDE AN INITIAL BIDDING FEE. IN THE CASE OF AN APPLICATION FOR THE OPERATION OF MACHINES ONLY, THE FEE SHALL BE FOR EVERY MACHINE THE OPERATOR WISHES TO USE;

(iii) ANY OTHER TAX OR LEVY WHICH THE RELEVANT PROVINCIAL FISCAL AUTHORITY MAY IMPOSE;

(iv) AN UPFRONT AMOUNT OR GUARANTEE MAY BE DEMANDED FROM AN OPERATOR ON HIS BEING AWARDED A CASINO OR RELATED LICENCE. THIS WILL SECURE FULFILMENT OF THE OPERATOR'S OBLIGATION TOWARDS GAMBLERS, AND THE PROVINCE; AND,

(v) THE PROVINCIAL CONTROLLING BODY WILL BE RESPONSIBLE FOR THE COLLECTION OF ALL PROVINCIAL TAXES, LEVIES AND LICENCE FEES; AND,

(b) THE CASINO OR RELATED GAMING INDUSTRY BE EXEMPT FROM PAYING VALUE ADDED TAX.

11. OFFENCES RELATED TO CASINO AND RELATED GAMING

The gaming legislation of most advanced countries provides for certain penalties peculiar to the gaming industry. A range of offences are described in the law and for each a certain penalty is prescribed. In France, an operator may be fined or even jailed for violations of casino regulations. Repeated violations can lead to revocation of a licence. The same applies, more or less, in other European systems. There are variations though. The penal provisions of Germany are more severe. In Great Britain the renewal of a licence can be refused on recommendation of the Gaming Board.This is in addition to other sanctions that can be imposed under the normal criminal law of the land.

In support of the principle of strict control, the Board will recommend that, in addition to the normal criminal law, offences and their sanctions peculiar to the casino-gaming industry be set out in provincial gaming legislation.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) PROVINCIAL GAMING LEGISLATION SPELL OUT THE OFFENCES AND THEIR SANCTIONS IN RELATION TO THE CASINO-GAMING INDUSTRY IN EACH PROVINCE;

(b) SUCH PENALTIES SHALL INCLUDE, *INTER ALIA*, ENDORSEMENT OF LICENCES, SUSPENSION OF LICENCES, CURTAILMENT OF RIGHTS ON LICENCES, AND ALSO THE REVOCATION OF A CASINO AND RELATED GAMING LICENCE; AND

(c) OFFENDERS, ON BEING FOUND GUILTY, MAY BE SENTENCED TO A MAXIMUM IMPRISONMENT OF 10 YEARS OR A FINE OR BOTH.

12. BINGO

Bingo is a popular game played in many countries either at casinos or at venues which are separately licenced. It is a small stakes game played largely by the older community, but also, more recently, by the youner set. Bingo is inherently expensive and serves as a leisure pastime and social gathering for the many players who participate.

Modern technology allows for linked bingo where two or more clubs combine to play a joint game. The increase in the number of players and revenues which result allow the operators to offer greater prizes.

The game is particularly popular in Britain where more than 1 000 bingo clubs operate under separate licences with some 724 clubs participating in linked bingo.

In addition, a National Game was introduced in 1985 which allows clubs across the country to play a single game each day (two on Saturday) in which all participating clubs play a single set of computer generated numbers. The large number of participating clubs allows the payment of very large prizes on a daily basis. A limit of £50 000 (± R300 000) is placed on the pay-out although there are moves afoot to increase this ceiling to £75 000 (± R450 000).

The Board did not receive any substantial submissions regarding bingo and cannot, therefore, determine whether there is any real demand for bingo clubs in South Africa. The Board is nevertheless of the view, and will recommend, that the game of bingo is permitted as part of all casino licences granted or where appropriate, under separate licences.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) ALL CASINOS BE ALLOWED TO ORGANISE AND OPERATE THE GAME OF BINGO AND TO PARTICIPATE IN LINKED GAMES AS WELL AS A NATIONAL GAME; AND

(b) WHERE APPROPRIATE, SEPARATE LICENCES FOR THE OPERATION OF STAND ALONE BINGO BE AUTHORISED.

CHAPTER 8

BETTING ON SPORT AND OTHER RELATED ACTIVITIES

INTRODUCTION

This chapter deals with betting on sporting-activities and licenced operators related thereto. The subject includes the most important types of sport on which punters place bets for the purpose of winning money.

In the chapter on the historical development of gambling, reference was made to the wagering that took place when Emperor Nero punted on the chariot races in ancient Rome. In fact, the term "wager" comes from ancient times when someone would challenge another to decide his guilt of innocence by single combat. Later it became an agreement between two parties under which each of the parties promised to give money or its equivalent to another according to the outcome of an uncertain event. Currently, a wager is described as an agreement in terms of which a sum of money is laid down and hazarded on the issue or outcome of an uncertain event. In common parlance it is referred to as "betting".

The oldest and most popular form of betting is that on horseracing which has worldwide appeal. It is enthusiastically followed by a large number of people.

Wagering on race horses was not the starting point of this form of gambling.

Parallel to it developed betting on all kinds of contests – the outcome of which must be uncertain. An analysis of the wagering contract identifies six elements which are inherent to this form of gambling:

First, there must be an agreement between the parties to the wager. Apart from all the legal requirements for the conclusion of a contract, the wagering parties must agree that the winner will take the prize on the outcome of the uncertain event.

Second, something must be wagered by the parties. In the vast majority of cases money is wagered. The sum need not be the same and can differ from punter to punter. Obviously, the higher the wager the higher the prize or the loss.

Third, the outcome of the contest must be equal, fair and open. A wagering contract demands that the parties bet their money on a contract which must take place under circumstances which would lead to a fair and equitable outcome. Hence the presence and supervision of the "marshalls" at duels that were fought in early times. Both contestants had to have an equal chance of winning.

Fourth, the outcome of the contest must be uncertain at the time the wager is laid. This is a key-element in the agreement. Any manupilation of the contest is a disclaimer of the equality of fairness principle stated above. This explains the outcries in the sporting world when a player in a team adjusts his play or deliberately does things during play that enables the opposing team to win the contest. Such actions militate against the principle that the outcome must remain uncertain to the end.

Fifth, there must be a time limit to the contest. In other words, the contest must not continue *ad infinitum*. Games are played for a certain length of time: Boxing for a certain number of rounds; horses run for a pre-determined and agreed distance – this time element is known and forms part of the wagering contract.

Sixth, all wagering agreements have as a final element the pay-out of the prize to the winner of the wager. That, after all, is what the gambler wagered: For a sum of money he risked a win or a loss on the outcome of the contest or event. If he is correct he wins, if wrong he loses – that is the chance he wagered on.

Against this very brief analysis of the principles of a wagering agreement, this chapter will further deal with the different forms of betting on sport and other activities.

1. BETTING ON HORSERACING

This history of betting on horeseracing in South Africa goes back a long time. Unfortunately, the lack of time and space prevents the Board from presenting even a very short overview of this exciting form of gambling which not only involves huge sums of money but is the one industry which has contributed immensely to improving horse breeds. In fact, at times when betting on horeseracing was banned in certain countries by what a well-known judge termed as "governmental bursts of morality", horeseracing continued despite the bans.

Since the formation of the Union of South Africa, horeseracing and betting thereon became so firmly established that despite prohibitions on all other forms of gambling, betting on horseracing remained the only form of legalised gambling in South Africa. Over many years it has built up an excellent record of good financial control, integrity and conduct. It has become a major industry represented throughout the entire country and provides employment for thousands of people. It needs to be added that during South Africa's period of isolation from world sport, horseracing and its wagering public were one of the few groups who enjoyed contact with the outside world – the international fraternity of horeseracing and betting.

Being a well-established industry with a long history and a good record, horseracing and its wagering do not offer any problems and should not really have been included in this Report. However, with the advent of legalised gaming in South Africa, the industry will certainly be affected. Evidence to this effect was put before the Howard Commission. That Commission reported that the thrust of those representations was that horseracing is a major industry and vital to South Africa's economy and, if other forms of gambling were to be legalised, they would prejudicially affect the horseracing industry. Those presentations sought measures that would protect the industry against the detrimental effect other forms of legalised gambling will have on horseracing betting.

The horseracing industry again utilised the opportunity this Board afforded all concerned to raise its concerns in this regard. However, the industry made it clear that it did not seek protection at the expense of prohibiting competition from other forms of wagering. There are sufficient examples throughout the world where the horseracing industry spent vast sums of money in trying to prevent the introduction of alternative forms of wagering. The industry achieved scant success in preventing other forms of gambling being introduced or in obtaining rights for being able to participate in other forms of gambling. This led to a decline in the international horseracing industry.

The South African horseracing industry is an important contributor to the overall economic development of the country. It is a significant employer of labour, both skilled and unskilled, and pays substantial taxes both nationally and provincially. Through racing, breeding, riding, race-course operations, catering, TABs, bookmakers, etc., it provides direct employment to more than 20 000 people.

It is estimated that worldwide an average of ten people derive employment from one horse in training. On this basis, the horseracing fraternity directly and indirectly employ more than 80 000 people. Bets of approximately R3,5-billion a year are placed on horse races through totalisators and bookmakers and a substantial amount passed through illegal untaxed bucket shops. An estimated R225-million is paid in provincial taxes while output VAT amounts to approximately R50-million.

Against this background, the industry concluded its presentation stating the abundant international evidence indicates that the horseracing industry in South Africa will move into a steady decline with the introduction of alternative forms of gambling. That decline, the industry avers, can only be arrested or even converted into growth if the industry is given a chance to participate in the broader gambling market. To that end, the industry proposes that, while it fully supports the introduction of a national lottery, it should be given an opportunity to tender for the running of the lottery on an on-line system.

The horseracing industry supports legalising dog racing provided it is properly controlled and regulated. Thus, the horseracing industry could be given an opportunity to diversify by means of providing a totalisator service to the licenced dog racing authority. The horseracing industry avers that it already has the infrastructure to help the dog racing industry on condition that "it should be strictly controlled, regulated and taxed in similar fashion to the horseracing industry, and that the horseracing industry be given the opportunity to provide better services, or, in fact, participate directly in dog racing, to alleviate any adverse impact" on the horseracing industry.

The horseracing industry also expressed its concerns about the impact of casinos on its business and suggests, as a solution, that favourable consideration be given by licensing authorities to the applications from horsersacing clubs to operate casinos on racecourses. Furthermore, it proposes that slot machines should be allowed in sports clubs and TABs.

The Board agrees with the industry that legalising other forms of gambling may have a detrimental impact on the horseracing industry. Thus far it has been the only form of legalised gambling in South Africa (excluding the former TBVC States) and it stands to reason that it will experience serious competition from the legalised gambling industry which the Board recommends in this Report. It follows that the industry would like to protect its interests.

The Board agrees that a policy of protection at the expense of other legalised forms of gambling would be ineffective and, in fact, counterproductive. It does not regard the presentations and evidence from all the witnesses who submitted information on behalf of the horseracing industry as a plea for protection. Rather, the industry requests that the right to share in opportunities of competing in a market-related, open and legalised gambling industry in South Africa. This, according to the industry's views, will provide the protection it needs.

In other words, access to the other forms of legalised gambling would allow it to compete. The Board agrees with this contention: Rivalry and healthy competition in a transparent and open system of legalised gambling could ensure the horseracing industry's survival. If the opportunities of the new legalised system are seized and correctly used "the dispirited horse", which in Ovid's words, "will, of its own accord, strive to win the race, and will run more swiftly if encouraged".

The racing industry requested that the "playing fields be levelled" and that all forms of gambling be taxed on the basis of a percentage of the gross gambling profit and at the same rate. The Board, while sympathetic, is of the opinion that this is outside the Board's jurisdiction and the racing industry should, therefore, approach the provincial authorities in this regard particularly as the rate of taxation varies in each province.

On the other hand, if the horseracing industry does not make use of its opportunities it will follow the international trend of declining in the face of the new competition. In this regard Harry Laidlers' words on an open system are appropriate: "In the business world of sharp and ruinous competition some punishment is inevitable. The dead are found strewn all along the highways of commerce and industry. The law of the survival of the fittest has always been inexorable. Human intellect and human laws cannot prevent these disasters. The dead and wounded have no right of action from the working of this imperious law. This is a free system – liberty must exist. It is for all. This is a land of equality so far as the law goes, though some people do, in lust of gain, get the advantage, who can help it?"

The Board will, therefore, not recommend that special measures be promulgated to secure or protect the interests of the horseracing industry. Neither will it recommend that any prohibitive measure be imposed upon the industry to participate in the other forms of legalised gambling. The Board believes that each applicant for a licence of whatever form of gambling should be allowed to compete in the regulated system of gambling – no preferences or disadvantages ought to be allowed in respect of any applicant. The provincial licensing authorities could possibly view applications from the horseracing industry for other forms of gambling licences sympathetically in view of the competition posed by legalised forms of gambling and the effect that this will have on this industry with the possible loss of jobs in particular.

RECOMMENDATION

THE BOARD RECOMMENDS THAT THE HORSERACING INDUSTRY IN SOUTH AFRICA NOT BE GIVEN ANY POLICY OR STATUTORY PROTECTION OR ANY PREFERENTIAL TREATMENT IN PROVINCIAL GAMBLING LEGISLATION BUT THAT IT COMPETES FOR LICENCES FOR OTHER FORMS OF GAMBLING IN THE SAME WAY AS ANY OTHER APPLICANT WOULD DO.

2. DOG RACING AND BETTING THEREON

Racing with dogs is presently prohibited in South Africa by legislation. The Board does not deem it necessary to relate all the statutory provisions which regulate this aspect, except to refer to the relevant sections in the Gambling Act, 1965 (Act No. 51 of 1965), and other laws which have

empowered the previous four provinces of the country to control and regulate dog racing and the wagering thereon. Suffice it further to state that the provinces of the Cape, Orange Free State and Transvaal absolutely prohibited dog racing in terms of their respective ordinances. The Natal Province also prohibited dog racing except when it formed an integral part of trials held under the auspices of an organisation approved by the Administrator.

The Howard Commission reported that at the time of writing its report, the Natal and Transvaal Provinces, proposed to legalise dog racing and betting thereon (in fact it was only Natal). Opposing views were brought before that Commission on the question as to whether it should be legalised or not.

Those who were in favour of the continuation of the ban based their views on the grounds that dog racing was cruel to the animals, that other social evils were associated with it and that it was socially abhorrent. The arguments in favour of dog racing revolved around the enjoyment dogs derive from racing, the good care the racers give the dogs and that proper control and regulation would prevent all the concerns of those against dog racing.

The Beardmore Commission of 1945 found that none of the "social evils" attributable to dog racing justified its abolition but recommended certain limitations and restrictions on the holding of races, betting facilities, accumulator betting and the dissemination of betting information. The Howard Commission could find no essential differences between dog racing and horseracing "and if both are similarly regulated and controlled there can be no justification for prohibiting one and allowing the other". As for the "social evils" of improvidence and poverty attributable to wagering, the Howard Commission concluded that "punters will lose their money with equal certainty whether they back slow horses or slow dogs". That Commission then recommended legalising dog racing in the country subject to proper organisation and control as well as regulation by an organisation similar to that which controls the horseracing industry and subject to the dog racing industry being able to afford the necessary controls.

Views received by the Board were divided on the issue: On the one hand the supporters of the view that dog racing should be legalised aver that despite the prohibition, races with dogs take place anyway, the difference being that they are held "in the bush over weekends where there is no control or regulation"; that the dogs enjoy it; that the problems raised by the opposers to dog racing can be solved through proper control; that legalisation would decrease illegal racing and licence-holders will help police the system; that cruelty to racing dogs can be largely prevented through proper control; that legalisation would compel the introduction of a so-called "pension-fund" for old runners; that a proper and well-run breeding programme for dogs would improve breeds, largely eliminate over-breeding and curtail culling; that a properly controlled and regulated dog racing industry would provide employment opportunities for many; and, albeit to a smaller extent, would contribute to the economy of the country.

Those who oppose dog racing hold that: There is a great difference between horseracing and dog racing; the dog racing tracks are too small and, consequently, the racing dogs hurt each other, fall and are often seriously injured; a legalised system would give rise to an unprecedented birthrate among dogs; presently most of the non-racing dogs, which consist of the majority of pups in a litter, are cruelly destroyed; the average lifespan of a racing dog is 14 years of which only two or four years are running years; dog racing is declining sharply in overseas countries; the majority of people, particularly dog-lovers, are opposed to dog racing mainly because of the abuse of the dogs; and, finally, as history has proved, dog races are normally attended by those who really cannot afford to gamble at all.

As the issue of dog racing was not originally included in the Board's terms of reference, interested parties were not specifically invited to submit representations on dog racing. Only limited representations were consequently received. The Board is not against dog racing *per se*, but will require further clarity from interested parties on certain aspects before it can give a final recommendation. These aspects include the following:

(a) Information regarding the keeping and training of dogs;
(b) The conditions and number of dogs required to establish an industry;
(c) The breeding of dogs, their breed, and, their welfare at the end of their racing careers;
(d) Control of the dogs at both the race tracks and the kennels;
(e) The control in relation to doping and other forms of malpractices;
(f) The establishment of totalizators, bookmakers and betting both on and off course;
(g) The condition under which race tracks will be licensed; and,
(h) The degree of public support required to maintain a viable industry able to support the necessary control measures in view of the introduction of new forms of gambling recommended in this report.

RECOMMENDATION

THE BOARD CANNOT RECOMMEND THE LEGALISATION OF DOG RACING NOW, BUT RECOMMENDS THAT IT UNDERTAKES FURTHER RESEARCH TO ESTABLISH WHETHER DOG RACING SHOULD BE PERMITTED IN SOUTH AFRICA.

3. RACING WITH OTHER ANIMALS AND BETTING THEREON

During oral sessions that were conducted by the Board, reference was made to other forms of racing in the animal world as competitions on which betting could be conducted. Examples that were mentioned include: Pigeon racing, which, according to unverified information, is a well-developed and regulated pastime activity in South Africa with thousands of birds flying between towns and cities countrywide, particularly during weekends; frog-jumping; and, still others.

No evidence justifying recommendation was submitted on any one of these activities. At any rate, the Board believes that none of them has given rise to a large-scale betting activity comparable to that of horseracing or dog racing. Should, however, large scale betting on these racing activities develop on an organised basis open to the public, the operators thereof should, *mutatis mutandis*, comply with the requirements set for horeseracing and betting thereon.

The Board is of the opinion that an additional principle should be observed: Namely, that such races or jumping are *contra bonos mores* (that is, against public morals) in which case the racing should be disallowed. It is on this ground that cock-fights, bull-fights, dog-fights, and others, should not be legalised. They are all *contra bonos mores* activities and, therefore, not applicable.

RECOMMENDATION

THE BOARD RECOMMENDS THAT ALL FORMS OF COMPETITITON BETWEEN ANIMALS WHICH ARE ILLEGAL AND *CONTRA BONOS MORES* NOT BE ALLOWED. SHOULD THESE BE CONDUCTED THE OFFENDERS SHALL BE PUNISHED.

4. SPORTS BETTING

The Board has already recommended the legalisation of sports betting in its Interim Report. Provinces accordingly introduced this form of betting on 1 December 1994. As the control thereof is embodied in existing provincial legislation it is not necessary for the Board to make any recommendations in this regard.

CHAPTER 9

MISCELLANEOUS MATTERS

In conclusion, the Board whishes to raise a few general matters:

1. THE FUTURE OF THE LOTTERIES AND GAMBLING BOARD

The members of the Board were appointed for a period of two years. The first meeting of the Board was held on 29 August 1994. The Board, however, does not visualise that it should continue to function once the proposed National Gambling and Wagering Board and the National Lotteries Board are established.

The main object of this Board is to advise government on the establishment of a national policy on gambling in South Africa – a task which, through this Report, has primarily been fulfilled. The Board is, nevertheless, of the opinion that it should not be dissolved at this stage, as it still has to perform certain functions which are proposed in certain of the previous chapters. The following matters still need attention:

- The drafting of legislation on gaming to serve as a guideline to provinces (see paragraph 2.0 below);
- The implementation of sections 10, 11 and 12 of the Lotteries and Gambling Board Act, 1993 (Act No. 210 of 1993), as recommended in Chapter 6. This will enable the Board to, as an interim measure and pending the implementation of the National Lottery and other smaller forms of lotteries, regulate and control certain existing (illegal) lotteries which are aimed at fund-raising for charities and other causes (that is, scratch-card games, lottos and other schemes which are conducted in contravention of the Gambling Act, 1965);
- In Chapter 7 it is proposed that this Board as soon as possible conducts a market analysis, investigation and research on the relevant factors that influence the number of casinos to be allowed in the country and each province;
- In Chapter 8 it is proposed that the Board conduct further investigation into the legalising or not of dog racing as soon as possible;
- This Board could assist the government in any preparatory steps for the establishment of the National Lottery. For instance, the Board can assist with the preparation of draft tender specifications.

The Board is further of the opinion that the staff of the Board be retained in the meantime and that it continues to utilise a portion of the present accommodation. Most of the present accommodation will not be required in future.

2. DRAFT LEGISLATION

(a) The Board has prepared two draft bills for consideration by the government. Those are the National Gambling Bill and the National Lotteries Board Bill. It should be pointed out that these Bills contain comprehensive detail on the Board's recommendations. These Bills should, therefore, be read in conjunction with the Board's recommendations.

(b) The Board has already indicated its will to propose draft legislation on gaming which will serve as a guideline to provinces when they consider their legislation in this regard. However, as the Board's recommendations on the most basic principles underlying gambling in South Africa were only finalised during the last few days of the Board's deliberations on this Report it was not possible to finalise such draft legislation within the time frame at the Board's disposal. The Board, nevertheless, envisages finalising this task very soon – after which it will be submitted to the Minister for distribution to, and consideration by, the provinces.

3. MEMBERS REPRESENTING THE PROVINCES

The Board has been advised by its provincially designated members that they wish it to be recorded that they have not had the opportunity of consulting with their principals on all the aspects contained in this Report.

RECOMMENDATION

THE BOARD RECOMMENDS THAT –

(a) THE BOARD ONLY BE DISSOLVED ONCE THE NATIONAL GAMBLING AND WAGERING BOARD AND THE NATIONAL LOTTERIES BOARD HAVE BEEN ESTABLISHED;

(b) THE BOARD'S STAFF AND NECESSARY ACCOMMODATION BE RETAINED IN THE MEANTIME; AND,

(c) THE BOARD PERFORMS SUCH FURTHER FUNCTIONS AS RECOMMENDED IN THIS REPORT.

4. GENERAL

The Board wishes to point out that for practical and economic reasons this Report is only available in English.

CONCLUSION

LEGALISED GAMBLING PRESENTS A DRAMATIC CHANGE TO SOUTH AFRICA. HOWEVER, NO SOCIETY CAN AFFORD NOT TO CHANGE AND WHILE THERE ARE RISKS IN RECKLESS CHANGE, GREATER DANGER LURKS IN BLIND CONSERVATISM. THE STRENGTH OF THE NATION IS NOT IN FOREVER HOLDING ON TO OLD VIEWS AND WAYS BUT RATHER IN ITS CAPACITY TO ADAPT ITSELF IN AN ORDERLY MANNER TO THE CHANGING ATTITUDES OF ITS SOCIETY. FATE HAS DEALT SOUTH AFRICA A MIXED HAND OF CARDS – WE MUST LET OUR COMMONSENSE, COURAGE AND FAITH ALLOW US TO PLAY A GRAND-SLAM WITH IT.

GLOSSARY OF TERMS

1. INTRODUCTION

1.1 Gambling, as will be read in this Report, is an activity whose roots can be traced to the beginning of human history. Over thousands of years it must have and indeed has, developed rules, codes of conduct and terminology unique to each of its forms which are not known to the public at large.

Although the Board is aware that definitions are invariably hazardous, it nevertheless believes that unless the terms are explained to the reader, the contents of this Report and the legislation to follow from the recommendations, will not be fully understood. Clarity requires not that everyone must forever adhere to a single definition but that a term is clearly explained so that what is said can be fairly translated into the minds and thinking of readers.

1.2 The purpose of this Glossary is to acquaint the reader with the meaning of terms, not commonly known to the vast majority of persons, including probably most gamblers, that are used in the gambling industry and will also be used and defined in the gambling legislation for South Africa. These terms are universally used and most of them will also become part of the South African gambling technology. The Glossary is certainly not complete and will have to be added to.

2. MEANING OF TERMS

AMUSEMENT ONLY MACHINE (AOM) (PIN BALL)

A slot machine which offers no advantage to a successful player other than the opportunity for further games without charge. (Available to minors.)

AMUSEMENT WITH PRIZES MACHINE (AWP)

A machine which is used for what is technically gambling but with the prizes in money or money's worth restricted by law to such small sums that the activity takes on more of the character of an amusement in recognition of which the law allows the machines to be provided, with or without special authorisation, on a variety of premises open to the public. (Not available to minors.)

ANTE-POST BETTING

Bets made before the day of the race. Winning bets are paid out according to the odds which prevailed at the time the bet was made. These odds fluctuate according to a variety of factors including the weight of money.

BACCARAT AND RELATED GAMES

Baccarat belongs to a family of card games of which three, apart from baccarat itself, are played in casinos: Blackjack, chemin-de-fer and punto banco. All these are house banker games, except for chemin-de-fer in which the bank circulates among the players. The object of the games is to assemble cards totalling as nearly as possible a certain number. In baccarat, chemin-de-fer and punto banco the target is nine; in blackjack it is 21.

BACKGAMMON

A game for two players or two teams. Each player tries to get all his pieces off the Board before his opponent, dice being used to determine how often and to what extent the pieces are hindered or advanced. The game is one of skill and chance combined, and often played as a card-room game.

BANKER GAME/NON-BANKER GAME

A banker game involves staking against a bank held either by the house or by one of the other players. A non-banker game is one which does not. Many banker games provide the bank with an edge over the other players; not all do so, fan tan being an example of one which does not. Where the bank circulates among the players a game providing an advantage to the banker may still be considered one of equal chance, e.g. pontoon. Where there is an advantage to the banker, and the bank does not circulate, the game is not one of equal chance, e.g. roulette. All non-banker games are games of equal chance.

BINGO

A lottery played as a game of equal chance between players in which each receives a set or sets of numbers. Each set differs as a whole from that of any other player. Numbers are then selected by chance and players eliminate from their sets the numbers selected. The winning player is the one who, having eliminated all the numbers received, is the first to claim to have done so by shouting "Bingo" or by other adopted means.

BLACKJACK

Traces its roots to a French card-game (vingt-et-un) which means 21. The object of the game is to beat the dealer by attaining a points count which does not exceed 21, but is closer to 21 than the dealer's hand, drawing as many cards as he wishes. If his hand totals more than 21 he busts and loses. The points on the cards equal their numerical total – a three card counts three. Face cards total 10 while aces count either one or 11 depending on the player's preference. A hand that consists of an ace and any ten or picture card is Blackjack and beats a hand totalling 21.

BRAG

An equal chance melding card game in which bluff can play a substantial part. After the initial deal, stakes may be increased progressively until players are left to compare hands.

BUCKET SHOP

A betting shop (bookmaker) that operates illegally as it is not licensed by the relevant authority.

CAGNOTTE

The means by which, in some countries, a gaming promoter may take profits through a percentage levy on winnings.

CALLER

A person who announces *seriatim* the numbers randomly selected to be marked off on bingo players' cards: In a licensed bingo club, an employee of the club.

CARD GAMES

Most card games belong to one of two main groups.

(i) Trick-taking games. In these the object is to take more tricks than one's opponents. The various forms of bridge and whist are the most popular trick-taking games.

(ii) Melding games. In these the aim is to accumulate in one's hand specific combinations of cards. The game is won by the player who accumulates a combination of cards which, according to the rules of the game, scores more highly than the combinations held by the other players. Popular melding games which operate on this principle are poker, rummy and kalooki (a variant of rummy played with two packs of cards). The casino game blackjack and its variants are also melding games, but in these the object is to accumulate a set of cards which totals as nearly as possible a given number rather than runs of cards or sets of similarly numbered cards.

CARD-ROOM GAMES

Games of equal chance, such as poker or kalooki, played in casinos. The house takes no part in these games, but may set aside a room for them; the casino may make a sessional charge, or charge a commission, but a number of casinos provide the facility for their members free. Not all the games in this category are card games: Backgammon, dominoes and mah jong, for example, are not.

CARIBBEAN STUD POKER

Players are dealt five cards each, face down, from a 52 card deck. The dealer is dealt five cards – four down with the fifth face up. Before the deal, each player makes a first hit, called ante. After the deal, the player can either increase the bet which must double the ante – or fold. This game is a combination of poker and blackjack.

CASH BINGO

Bingo played for winnings in cash rather than kind – a distinction which can be drawn between those forms of bingo which constitute gaming in the full sense and those treated as amusements.

CASINO

A commercial gaming club or public premises, normally defined by and licensed in terms of the law for the provision of games.

CHARITY POOLS

A term describing pool competitions that are run in terms of the law primarily for the benefit of charities as opposed to sport.

CHEMIN-DE-FER

A game belonging to the baccarat family in which the bank is not held by the house but circulates among the players. It is one of the games allowed in casinos but it is also one of the two banker games allowed in clubs, pontoon being the other. In casinos the house derives its profit by means of a "shoe" charge. A shoe (or sabot as it is sometimes known) is a wooden box from which the cards are dealt. The shoe holds six packs of cards and players are charged each time the shoe has to be refilled. Alternatively casinos derive profits by means of a cagnotte (five per cent of each winning bet).

CHIPS

Tokens used to represent money in the playing of casino games. Players buy chips from the casino, using cash, a cheque or on credit negotiated with the casino management, and use them to stake in the games and return those they have left, after playing, to the casino in exchange for cash or a cheque.

CRAPS (7–11 OR DICE)

This is a house banker game played with two dice in casinos.

CROUPIER (DEALER)

An employee of a casino who actually conducts the games, e.g. by spinning the roulette wheel or dealing the cards collecting the chips and paying out winnings.

DOMINOES

Dominoes were originally derived from dice and the domino blocks thus represent the various combinations which might be obtained from the throw of two dice. Dominoes are sometimes played as a card-room game in casinos and clubs and may also be played for modest stakes in licenced premises. Pai kau is an older Chinese version of dominoes, using a slightly different type of domino.

DOUBLE LINE

In bingo, two adjoining horizontal lines of numbers on a card. They have to be completed by a player to claim a prize.

DROP

The total money the players in a casino exchange for chips to enable them to play.

EDGE

The margin by which odds in house banker games are set in favour of the house. The edge which the house enjoys in a particular game depends on the rules by which the games are played.

FAH-FEE

A Chinese numbers game.

FEATURES

Devices on a jackpot or amusements with prizes machine, such as hold, nudge and gamble, which may give a player an increased chance of winning a prize.

FIXED-ODDS BETTING

Bets offered by bookmakers at the odds which prevailed at the time the bet was struck.

FOOTBALL POOLS

These are competitions involving pool betting on the results of football matches.

FORECAST BET

A forecast, or straight forecast, is a bet, most common in racing, naming in correct order the first two to finish. A forecast double is a bet naming the correct order of the first two to finish in two races.

FRUIT MACHINE

A common type of jackpot or amusements with prizes machines in which the combinations determining whether the player wins or loses are displayed on revolving reels in the form of symbols often depicting different fruit. Also used colloquially for gaming or slot machines in general.

FULL HOUSE

The identification by a bingo player of all the numbers on his card necessary to claim a prize. 15 numbers out of 90 in the draw or 25 out of 75 are the usual arrangements. This term is also used in poker to denote a particular hand.

GAMBLING

Buying the chance of making money; taking a calculated risk because of the potential reward; engaging in an action or a series of actions, resulting in a favourable, neutral or unfavourable outcome.

In the most general sense of all, gambling refers to any activity engaged in for the sake of a return of which the outcome is uncertain.

GAMING

The playing of a game of chance (or of chance and skill combined) for winnings in money or money's worth. It does not include the playing of any athletic game or sport. Although the distinctions between different forms of gambling are not watertight, bingo, gaming machines and casino games are all conventionally considered forms of gaming.

The distinctive feature of gaming is that the person placing the stake participates in the game which determines to whom, and in some cases whether, winnings are paid. This does not mean that there is always scope for skill or that the player can necessarily influence the result; nor that there is any real element of choice. In bingo, for example, the element of choice or skill is negligible apart from speed of reaction. In roulette, on the other hand, there is scope for choice, but its exercise does not affect the result though it is possible to lose more than is necessary. In other games, such as blackjack, there is room for both skill and choice.

GAMING MACHINE

A game of chance machine which requires, before it can be activated, the insertion of stakes in the form of coins or tokens. It automatically pays out any winnings in the same form from the stakes which have been accumulated.

HARD GAMING

A colloquialism for those forms of gaming considered to carry greater potential risks than others, usually because of the high or rapid staking associated with them. The description is commonly used for banker games as played in casinos and for jackpot machines.

HEDGING BET (TAKE-BACK)

A bet made by a bookmaker, acting in effect as a punter, to offset the liability he would incur if the same bet, which has been made with him in his bookmaker capacity, were to prove successful.

HOUSE

The proprietor of a casino. In a house banker game, the proprietor of a casino, or a croupier or dealer acting as his representative, participating as a banker.

HYPOTHECATION

The expression is used, as a term of art, for the earmarking of money raised by some form of taxation – whether or not the tax is of general application – for a particular specified purpose.

INTERVAL GAMES

Used to describe certain abbreviated or mechanised forms of bingo, taking only a short time to play and usually provided in licenced clubs during intervals between, before or after sessions of the traditional form of the game. See also "Quickie".

JACKPOT

A prize which accumulates in size from one competititon to the next until it is won. Also used in racing for a combination of races (four in South Africa) of which the winner of all legs has to be selected in order to win.

JACKPOT MACHINE

A gaming or slot machine adapted to pay out sizeable winnings by automatic release of an accumulation of coins inserted in it as stakes. Often called a fruit machine or one-armed bandit. Also includes progressive jackpot machines.

KALOOKI

This card game is a version of rummy played with a double pack of cards. It is a popular card-room game in British casinos and is also played in South African card clubs.

KENO

A game with a long history which probably originated as a children's game – lotto. Easy to play. A keno ticket has 80 numbers, from 1 to 80 and the player marks from 1 to 20 numbers on the ticket. Twenty numbers are then selected, and the player is paid according to how many numbers the player marked correctly and how much the player bet. There are many variations of Keno.

LINKED BINGO

A form of bingo in which players in a number of different premises are linked by telecommunications in a common game, so increasing the volume of the stakes and, correspondingly, the size of the prizes.

LOTTERY

A lottery is the distribution of prizes by chance where the persons taking part, or a substantial number of them, make a payment or consideration in return for obtaining their chance of a prize. Each lottery should be a separate undertaking with separate accounts. However, the term is also used to describe a continuous operation consisting of identical lotteries held at regular intervals.

LOTTO

A lottery scheme in which participants have usually to select six numbers out of 49, by marking a coupon similar to a football pool coupon. Permutations are allowed.

MAXIWIN RATIO

The ratio of the highest possible prize which may be won in a particular form of gambling to the minimum stake required to have a chance of winning that prize.

MECHANISED CASH BINGO

A form of bingo played for winnings in cash in which the players are located round a mechanical or electric device and block off the numers as they are called with sliding shutters on illuminated panels in front of them, so dispensing with the delay in handling cards.

MUG OPTIONS

This refers to certain options to do with staking and drawing further cards in blackjack. If a mug option is exercised by a player the odds against his winning are, in general, high.

MULTIPLE BETS (INCLUDING DOUBLES, TREBLES, ALL TO COMES, PLACE ACCUMULATOR, JACPOT, PICK SIX AND YANKEE)

These are bets in which the payout to the punter depends on the outcome of more than one event. These bets can either be taken at predetermined odds with bookmakers or with a totalisator on specific multi-legged bet types.

NUDGE

A feature on some fruit machines which allows the player, by pressing a button, to move forward a stationary reel. This makes it possible to change a losing into a winning combination.

NUMBERS GAME (OR RACKET)

An illegal gambling activity, particularly, in the larger cities of the United States. The game is also known variously as "Fah-Fee", "policy", "bolita" and "mutual" and is often associated with organised crime.

ONE-ARMED BANDIT

A colloquialism for an old-fashioned fruit or slot machine, derived from the player's need to feed money into the machine and from the single lever which he then has to pull to activate it. It also represents a popular judgement of the chances that the money will be recovered.

PAI GOW (TO MAKE NINE)

It is an ancient Chinese version of dominoes – probably close to 1 000 years old. Players form two hands from their four dominoes with the best called the High Hand the worst called the Low Hand. Pai Gow is played with 32 tiles placed in four stacks of eight each. Three dice are rolled to determine where the dealing starts with the banker betting the first tiles if the dice total is 9 or 17. If the total is 10 or 18 the player to the banker's right gets the first tiles and so on. Any player can serve as banker but he must have played the previous hand and must be able to cover all bets. A version of Pai Gow is Pai Gow Poker.

PERMUTATION

A system which enables the punter to back a number of possible combinations of outcome without writing out a separate entry for each of them. One entry form is used which accommodates a number of alternate selections.

PIN-BALL MACHINE

A type of amusement only machine similar to bagatelle. In its commonest form, a machine where the player uses a mechanical plunger to propel a ball-bearing into a playing area where it makes contacts with springs or other devices which are then electrically activated to display on the machine the points won by the various contacts made.

POKER

Normally an equal chance non-banker card game of the melding variety often played as a card-room game. Can however, also be a banker game with a house edge.

PONTOON

A card game belonging to the baccarat family, in which the object is to assemble cards totalling as near as possible 21. The bank is not held by the house but circulates among the players.

POOL BETTING (TOTALISATOR AND PARI-MUTUEL)

The participants in pool betting compete against each other with the promoter acting as stake holder. The stakes are shared out among the winners after deductions to cover tax and the promoter's expenses and profit. The main forms of pool betting usually are the football pools and pool betting on racing.

PRIZE COMPETITION

A competition involving skill, or a mixture of skill and chance, with or without an entrance charge. One well-known example of a prize competition with an entrance charge is spot-the-ball.

PUNTER

A person who places a wager.

PYRAMID

A pattern of numbers which a bingo player may be required to complete on his card to claim a prize. The numbers to be marked off taper from all or most of those on the bottom line of the card to a single one in the centre of the top line.

QUICKIE

A quick game of bingo which needs only a few numbers to be marked off to claim a prize for which separate tickets are purchased and participation charges imposed. It is often introduced as a preliminary to the main session of play.

RAFFLE

A lottery in which the prizes consist of articles, generally of small value, and not money.

RATE OF RETURN

The percentage of stakes in a particular form of gambling returned over a period of time as winnings. Identical with payout or percentage payout.

REEL

The rotating wheel in a jackpot or amusements with prizes machine which has symbols, often fruit, on its rim.

ROULETTE

A house banker game in which players bet on which number or numbers from 0–36 will be chosen at random by a spin of a roulette wheel. Players have several different sorts of bets available which pay out at different odds which are slightly less than the true odds. Two versions of roulette are played: American roulette which proceeds at a faster pace, and French roulette. The rules are the same for both versions except that French roulette usually has a double zero also.

RUMMY

An equal chance non-banker card game which is a variant of poker. It was originally known as rum poker or gin poker, the latter probably because of the saloon atmosphere in which it first became popular.

SINGLE BET

This is a bet in which the payout to the punter depends on the outcome of only one selection.

SKINNER

The expression used by bookmakers to describe an event in which non of those who bet succeed in backing the winner.

SLOT MACHINES

A colloquialism for a gaming or amusement machine which requires before it can be played the insertion of coins or tokens. It is the most commonly used gaming machine from which prizes can be won and in which the coins or tokens inserted represent stakes.

SOCIETY LOTTERY

A lottery promoted on behalf of a society which is established for charitable purposes, for participation in or support of athletic sports, or games, or cultural activities, or for similar purposes not involving private gain. Tickets may be sold to members of the public as well as to members of the society promoting the lottery.

SPOT-THE-BALL

A prize competition with a coupon consisting of a photograph of a ball game from which the ball has been erased. Entrants have to mark where they think the exact centre of the missing ball should be. More than one entry is allowed on the same coupon.

SPOT THE LADY

This is a game for two players. Three cards, one of which is a queen, are dealt face down on a table where their positions are sometimes rearranged in an "obvious way" by the dealer. The other players bets on where he thinks the queen is located. This game is often played illegally in the streets and it is rarely played fairly. It is also known as the three-card trick and Find the Lady. Variations include the use of three walnut shells and a dried pea, the object being to identify the shell under which the pea is.

STARING PRICE (SP)

The price or odds prevailing on-course at the time of a particular race begins.

SWEEPSTAKE

A lottery in which winning numbers are determined by the results in a horserace or other sporting event.

THREE-CARD BINGO

A form of bingo in which the player receives three numbered cards, each of which he covers with a stake, the coins being removed as the numbers are called. The winner takes all those remaining on the cards of the other players when he has cleared his own. Sometimes each player also lays down an additional stake as jackpot, and the accumulated jackpots are scooped by the winner in the last of a series of games, commonly five.

TOTALISATOR (PARI-MUTUEL)

See "Pool Betting".

SOURCES OF REFERENCE

As stated in the forword, the response to the Board's request for presentations, proposals, views and information on gambling from the public and other interested parties was remarkably positive. Submissions, in written and verbal form, were presented to the Board from national and international sources. These presentations came from individuals, groups, organisations, corporations and even governments. They consisted of scientific publications, textbooks, articles, memoranda, brochures, pamphlets, leaflets, advertisements, letters and still others – all with a view to informing the Board as fully as possible for its task.

The Board is very grateful for these contributions and, as a consequence and in recognition thereof, lists them below in alphabetical order on a equal basis irrespective of the volume, length or quality of presentations. They all contributed to the final result:

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4. Africa Cristian Action, Glosderry
5. African Christian Democratic Party, Cape Town
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26. Clemo, L.G., Durban
27. Club Barcelona, Uitenhage
28. Club Group of Casinos, Sandton
29. Club Mykonos, Langebaan, Cape Town
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31. Club Triple Seven, Jeffreys Bay
32. Club 777 Entertainment City, Benoni
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5. McGregor, R., Mowbray
6. McRae, M., Sea Point
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10. Merven, J. M. M., Kempton Park
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6. Van Loggerenberg, G.D., Randfontein
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DRAFT LOTTERIES BILL, 1995

BILL

To provide for the authorization of lotteries to be promoted as part of a National Lottery; to make provision for the establishment of a National Lotteries Board; to make provision with respect to the running and regulation of that National Lottery and with respect to the distribution of its net proceeds; to provide for the authorization, regulation and control of other lotteries and sports pools; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: –

Definitions

1. In this Act, unless the context otherwise indicates –

(i) **"Board"** means the National Lotteries Board established under section 2;

(ii) **"broadcasting service"** means broadcasting service as defined in section 1 of the Broadcasting Act, 1976 (Act No. 73 of 1976);

(iii) **"charitable expenditure"** means expenditure by any organisation or institution established for charitable, benevolent or philanthropic purposes, including friendly societies, welfare organisations and conduit organisations or trusts established in respect of any such organisations;

(iv) **"chief executive officer"** means the chief executive officer appointed in terms of section 7 (1)*(a)*;

(v) **"date"**, in relation to a lottery, means the date on which the winners in that lottery are ascertained;

(vi) **"distribute"**, in relation to documents or other matters, includes distribution to persons or places within or outside the Republic; and "distribution" has a corresponding meaning;

(vii) **"exempt entertainment"** means a bazaar, sale, fete, dinner, dance, sporting event or other entertainment of a similar character, whether limited to one day or extending over two or more days;

(viii) **"fund"** means the National Lottery Distribution Trust Fund established under section 21;

(ix) **"licensing authority"** means an independent statutory body established by a law of a provincial legislature;

(x) **"lottery"** means any lottery in the generally accepted meaning of the word, and more particularly every scheme, arrangement, system, plan or device by which any prize is or may be gained, won, drawn, thrown or competed for by lot, dice or any other method of chance, either with or without reference to the happening of any uncertain event other than the result of the application or use of such lot, dice or other method of chance and also includes any scheme, arrangement, system, plan or device, which the Minister may from time to time by notice in the *Gazette* declare to be a lottery;

(xi) **"Minister"** means the Minister responsible for the administration of this Act;

(xii) **"National Lottery"** means all the lotteries that form part of the National Lottery, taken as a whole: Provided that a lottery shall only form part of the National Lottery if the lottery is promoted or proposed to be promoted by the corporate body licensed to run the National Lottery under section 13;

(xiii) **"net proceeds of the National Lottery"** means the sums that are paid to the Board in terms of section 13 (4)*(a)*;

(xiv) **"newspaper"**, includes a journal, magazine or other periodical publication;

(xv) **"participant"**, in relation to a lottery, means a person who has bought a ticket or chance in the lottery;

(xvi) **"place"** means any place, whether or not it is a public place, and includes any premises, building, dwelling, flat, room, office, shop, structure, vessel, aircraft or vehicle and any part of a place;

(xvii) **"political office-bearer"** means a person as defined in section 190A of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), including members of the Provincial Houses of Traiditional Leaders, the Council of Traditional Leaders, the Volkstaat Council and local governments;

(xviii) **"prescribe"** means prescribe by regulation; and "prescribed" has a corresponding meaning;

(xix) **"prize"** means any movable or immovable property;

(xx) **"private lottery"** means a lottery in the Republic which is promoted –

(a) for members of a social or sporting club established and conducted for purposes not connected with any form of gambling;

(b) for persons all of whom work on the same premises; or

(c) for persons all of whom reside on the same premises:

Provided that –

(i) the lottery is promoted by reasons each of whom –

(aa) is one of the persons for whom the lottery is promoted; and

(bb) in the case of a lottery promoted for the members of a social or sporting club, is authorised in writing by the governing body of the social or sporting club to promote the lottery; and

(ii) the sale of tickets or chances in the lottery shall be confined –

(aa) to the persons for whom the lottery is promoted; and

(bb) in the case of a lottery promoted for the members of a social or sporting club, to any other person on the premises of such a club;

(xxi) **"promote"** includes conduct; and **"promotion"** has a corresponding meaning;

(xxii) **"society"** includes any club, institution, organisation or association of persons, by whatever name called, and any separate branch or section of such a club, institution, organisation or association;

(xxiii) **"society lottery"** means a lottery promoted on behalf of a society which is established and conducted wholly or mainly for –

(a) charitable purposes;

(b) participation in or support of sport or cultural activities; or

(c) purposes which are not described in paragraph *(a)* and *(b)*, but are neither purposes of private gain nor purposes of any commercial undertaking: Provided that any purpose for which a society is established and conducted and which is calculated to benefit the society as a whole, shall not be deemed to be a purpose of private gain by reason only that action in its fulfilment would result in benefit to any person as an individual;

(xxiv) **"sporting event"** means any football, rugby, cricket, golf or tennis match, any boxing, wrestling, shooting or swimming contest, any foot, cycle, motor, boat, dog or horse race, and any other sporting or athletic contest, competition, tournament or game usually attended by the public;

(xxv) **"sports pool"** means any scheme under which –

(a) any person is invited or undertakes to forecast the result of any series or combination of sporting events (whether or not in conjunction with any event other than a sporting event or series or combination of events other than sporting events) in competition with other participants; and

(b) a prize is to be awarded to the competitor who forecast the said result correctly or whose forecast is more nearly correct than the forecasts of other competitors, or a number of prizes are to be awarded on the basis aforesaid,

and for the purposes of this definition the forecast of a result includes not only the forecast of the person or team that is to be victorious or otherwise, but also any forecast relating to the system of scoring employed in the sporting event concerned, or to any person responsible for the score;

(xxvi) **"subscription"** means the payment or delivery of any money, article, matter or thing (including any ticket, coupon or entrance form purporting to be supplied free of charge to the readers of any newspaper or other periodical publication) for and in consideration of the right to compete;

(xxvi) **"this Act"** includes regulations made under this Act;

(xxviii) **"ticket"** means any symbol, sign, token, coupon, warrant or list or any other means or device of whatsoever nature purporting or intended to confer upon or to recognize in any person the right to compete for or receive a prize.

PART I

THE NATIONAL LOTTERY

CHAPTER 1

National Lotteries Board

Establishment of National Lotteries Board

2. There is hereby established a Board to be known as the National Lotteries Board which shall be a juristic person.

Composition of Board

3. (1) The Minister shall appoint the members of the Board, and the Board shall consist of –

(a) a chairperson, who, in the opinion of the Minister, shall be a person with applicable knowledge or experience with regard to matters connected with objects of the Board;

(b) one member designated by the Minister;

(c) one member designated by the Minister of Finance;

(d) one member who is admitted to practise as a legal practitioner in the Republic;

(e) one member who is qualified as a chartered accountant in the Republic;

(f) one representative of each province designated by the government of such province;

(g) not more than four members, who, in the opinion of the Minister, shall have proven business acumen or applicable knowledge or experience with regard to matters connected with the objects of the Board,

of which not less than six members shall not be in the full-time service of the State.

(2) The chief executive officer of the Board shall *ex officio* be a member of the Board.

(3) The members referred to in subsection (1)*(a), (d), (e)* and *(g)* shall not be appointed unless the Minister in respect of such members has invited interested parties through the media and by notice in the *Gazette* to nominate candidates, within 14 days of the invitation in the media and the publication of such notice, for consideration by the Minister.

(4) A member of the Board shall hold office for such period, not exceeding five years, as the Minister may determine at the time of his appointment, and shall be eligible for reappointment at the termination of his or her term of office.

(5) The Minister may at any time terminate the term of office of any member if there are good reasons for doing so.

(6) The Minister shall, subject to subsection (3), fill a casual vacancy on the Board, in the case of –

(a) the chairperson, by the appointment of another person as chairperson; and

(b) any other member appointed under subsection (1), by the appointment of another person as a member, for such period, not exceeding five years, as the Minister may determine at the time of his or her appointment.

(7) *(a)* A person shall not be appointed or remain a member –

(i) unless he or she is a fit and proper person;

(ii) if such person, whether personally or through his or her spouse, immediate family member, partner or associate –

(aa) has a direct or indirect financial interest in any lottery; or

(bb) has any interest in any business or enterprise that may conflict or interfere with the proper performance of his or her duties as a member of the Board;

(iii) if such person –

(aa) is a political office-bearer;

(bb) is an unrehabilitated insolvent;

(cc) has at any time been removed from an office of trust on account of misconduct; or

(dd) has at any time been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Corruption Act, 1992 (Act No. 94 of 1992), or any offence involving dishonesty.

(b) A person shall, prior to his or her appointment as a member, submit to the Minister a written statement in which he or she declares whether or not he or she has any interests as contemplated in paragraph *(a)*(ii).

(c) If any member during his or her term of office acquires an interest which is likely to be an interest as contemplated in paragraph *(a)*(ii), he or she shall as soon as practicable after the acquisition of such interest in writing declare such information to the Minister.

Meetings of Board

4. (1) Meetings of the Board shall be held on such dates and at such times and places as the chairperson may determine.

(2) The proceedings at a meeting of the Board shall, subject to the provisions of this section, be determined by the chairperson.

(3) The quorum for a meeting of the Board shall be the majority of the members of the Board.

(4) A decision of the Board shall be taken by a majority of the votes of the members present at a meeting of the Board, and in the event of an equality of votes on any matter, the chairperson shall have a casting vote in addition to his or her deliberative vote.

Executive committees of Board

5. (1) The Board may from time to time appoint an executive committee to perform the functions and exercise the powers delegated to it by the Board.

(2) An executive committee shall consist of such members of the Board as the Board may designate.

(3) The Board shall designate the chairperson of an executive committee.

(4) *(a)* An executive committee shall perform its functions and exercise its powers subject to the provisions of this Act and such directives of the Board as are not in conflict with such provisions.

(b) Any delegated function so performed or delegated power so exercised shall be deemed to have been performed by the Board.

Remuneration and allowances of members of Board and executive committees

6. (1) Members of the Board and executive committees who are not in the full-time service of the State may, in respect of their services, be paid such remuneration and allowances as may be determined by the Minister after consultation with the Board.

(2) The remuneration and allowances of the persons referred to in subsection (1) may differ according to the different offices held by them or the different functions performed by them.

Staff of Board

7. (1) The Board shall, subject to its directions and control, in the performance of its functions under this Act, be assisted by –

(a) a suitably qualified and experienced person as chief executive officer, appointed by the Board or seconded in terms of subsection (3), for the purpose of assisting the Board in the performance of all financial, administrative and clerical responsibilities pertaining to the functions of the Board, and shall in respect thereof be accountable to the Board; and

(b) such staff, appointed by the Board or seconded in terms of subsection (3), as may be necessary to enable the Board to perform its functions.

(2) The persons appointed by the Board in terms of subsection (1) shall receive such remuneration, allowances and other employment benefits and shall be appointed on such terms and conditions and for such periods, as the Board may determine.

(3) The Board may, in the performance of the functions contemplated in subsection (1), at its request and after consultation with the Public Service Commission, be assisted by officers in the public service seconded to the service of the Board in terms of any law regulating such secondment.

(4) *(a)* Any function or power which the Board may perform or exercise in terms of this Act, may be delegated (whether generally or specially) to the chief executive officer or any other member of the staff of the Board.

(b) Any delegated function so performed or delegated power so exercised shall be deemed to have been performed by the Board.

Funds of the Board

8. (1) The funds of the Board shall consist of –

(a) the payments to the Board in terms of section 34;

(b) application and licensing fees paid to the Board in terms of section 14(4); and

(c) other money lawfully paid to the Board.

(2) The Board may, with the approval of the Minister, raise short term loans at any time, by way of overdrawing its account with a bank or otherwise, to meet any casual deficits that may arise from time to time.

Finances

9. There shall be paid out of payments made to the Board in terms of section 34 such sums as are necessary to defray any expenses incurred by the Board, including the remuneration of the chief executive officer and a member of the staff of the Board appointed under section 7(1) and any other payments made under section 7(2).

Objects of the Board

10. The objects of the Board shall be to –

(a) authorise and control lotteries to be promoted as part of the National Lottery;

(b) exercise and perform its functions and duties in terms of this Act in the manner it considers the most likely to ensure –

(i) that the National Lottery is run, and every lottery that forms part of it is promoted, with all due propriety;

(ii) that the interests of every participant in a lottery that forms part of the National Lottery are protected;

(c) ensure that the net proceeds of the National Lottery are as great as possible;

(d) administer and hold in trust the fund;

(e) pay sums and allocate grants from the fund for the purposes mentioned in this Act;

(f) ensure that allocations are equitably distributed among the provinces;

(g) perform the functions relating to small, private and society lotteries as contemplated in Part II of this Act; and

(h) to advise the Minister of any matter relating to the National Lottery and other lotteries or any other matter on which the Minister requires the advice of the Board.

Consultation by Board

11. The Board may consult any person, organisation or institution with regard to any matter deemed necessary by the Board to enable the Board to achieve its objects.

Audit and annual report

12. (1) The Board shall –

(a) keep proper books and proper records in relation to receipts and payments;

(b) prepare a report of all its activities, including financial statements in respect of each financial year; and

(c) annually within three months after the end of each financial year, submit to the Minister the report and financial statements referred to in paragraph *(b)*.

(2) In subsection (1) "financial year" means –

(a) the period commencing with the date on which the Board is apointed for the first time and ending with the last day of March; and

(b) each successive period of twelve months ending with the last day of March.

(3) The financial statements shall comply with generally accepted accounting principles and any other directions that may be given by the Minister, as to the information to be contained in such a statement, the manner in which such information is to be presented or the methods and principles according to which such a statement is to be prepared.

(4) The financial statements of the fund shall be audited by an independent auditor registered in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), and appointed by the Board for that purpose.

(5) The report referred to in subsection (1) –

(a) shall be laid upon the table in Parliament within 14 days after it is submitted to the Minister, if Parliament is then in session, or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session; and

(b) shall be submitted to the Auditor-General within 14 days after it is submitted to the Minister.

(6) The report referred to in subsection (1), may contain the view of the Board with regard to the continued appropriateness of –

(a) the percentages referred to in section 26(3); and

(b) the matters for which grants may be made in section 32(3).

CHAPTER 2

LICENSING OF NATIONAL LOTTERY

Licensing of body to run National Lottery

13. (1) The Minister may, in consultation with the Board, by licence authorise a corporate body to run and promote the National Lottery: Provided that –

(a) only one corporate body may be licensed under this section at any one time; and

(b) the licence shall specify the lotteries or descriptions of lottery, the promotion of which it authorises.

(2) A licence shall not be granted under this section unless –

(a) the Board has invited interested parties through the media and by notice in the *Gazette*, to make applications in writing to the Board by such date as the Board has specified, containing such information as the Board has specified as necessary for enabling the Minister and the Board to determine whether to grant such a licence;

(b) the Minister and the Board are satisfied that the applicant is a fit and proper corporate body to promote lotteries under the licence, which shall include that –

(i) the corporate body has appropriate knowledge or experience or access thereto;

(ii) the corporate body has the necessary financial and other resources to run the National Lottery;

(iii) the corporate body shows a clear commitment to the advancement, upliftment and economic empowerment of persons or groups or categories of persons disadvantaged by unfair discrimination; and

(iv) no political party in the Republic or political office-bearer has any direct or indirect financial interest in such a corporate body.

(3) In determining whether to grant such a licence, the Minister and the Board may consider –

(a) whether any person who appears to them to be likely to manage the business or any part of the business of running and promoting the National Lottery under the licence, is a fit and proper person to do so; and

(b) whether any person who appears to them to be likely to be a person for whose benefit that business would be carried on, is a fit and proper person to benefit from it.

(4) A licence granted under this section –

(a) shall include a condition requiring the licensee to pay to the Board at such times as may be determined by or under the licence, such sums out of the proceeds of lotteries forming part of the National Lottery as may be so determined;

(b) shall include a condition requiring the licensee to obtain the Board's approval of the rules of any lottery before the lottery is promoted under the licence; and

(c) may include a condition requiring the licensee to make such arrangements as may be determined by or under the licence, for securing that, in circumstances specified in the licence, such sums as may be so determined are paid to the Board for payment to the fund in terms of section 21(2) or for distribution to participants in lotteries forming part of the National Lottery.

Requirements and conditions of licences

14. (1) A licence granted under section 13 shall be in writing and shall specify the period for which (subject to being revoked or suspended) it is to have effect.

(2) In addition to conditions required or authorised by section 13, such a licence may include such conditions as the Minister, in consultation with the Board, considers appropriate, and may in particular include conditions requiring the licensee –

(a) to obtain the consent of the Board before doing anything specified, or of a description specified, in the licence;

(b) to refer matters to the Board for approval;

(c) to ensure that such requirements as the Board may from time to time determine or approve are complied with;

(d) to provide the Board at times specified by it with such information as it may require;

(e) to allow the chief executive officer or any authorised member of the staff of the Board or any other person authorised by the Board to inspect and take copies of any documents of the licensee, including any information kept by the licensee otherwise than in writing, relating to the National Lottery;

(f) where any information referred to in paragraph *(e)* is kept by means of a computer, to give the chief executive officer or any authorised member of the staff of the Board such assistance as he may require to enable him to inspect and take copies of the information in a visible and legible form or inspect and examine the operation of any computer, and any associated apparatus or material, that is or has been in use in connection with the keeping of the information; and

(g) to do such things and, in particular, to effect such transfer of property or any other rights, as the Board may require in connection with the licence ceasing to have effect and the grant of a licence to another body.

(3) Conditions in a licence granted under section 13 may impose requirements to be complied with by the licensee after the licence has ceased to have effect.

(4) On the –

(a) submission of an application to the Board under section 13(2)*(a)*; and

(b) granting of a licence under section 13,

the applicant or the licensee, as the case may be, shall pay to the Board the prescribed fee.

Variation of conditions in licences

15. (1) The Minister, in consultation with the Board, may –

(a) with the consent of the licensee, vary any condition in a licence granted under section 13; and

(b) without the consent of the licensee, vary any condition in a licence granted under section 13, if the licensee has been given a reasonable opportunity or making representations to the Board in respect of the intended variation: Provided that a condition of such licence may not be varied –

(i) where the variation would result in a condition requiring the licensee to transfer any property or rights; or

(ii) in relation to a condition that the licence provides that such condition may only be varied with the consent of the licensee.

(2) Where the Minister varies a condition in a licence under subsection (1)*(b)* –

(a) the Board shall serve a notice on the licensee informing the licensee of the variation; and

(b) the variation shall take effect at a date specified in the notice, which date shall not be less than 21 days after the date of the notice.

(3) The power of the Minister to vary a condition in a licence under subsection (1) includes the power to add a condition to the licence or to omit a condition from the licence, and any reference in this section to the variation of a condition are to be read accordingly.

Enforcement of conditions in licence

16. (1) If the Board is of the opinion –

(a) that there is a reasonable likelihood that a person will contravene a condition in a licence granted under section 13;

(b) that a person has contravened such a condition and there is a reasonable likelihood that the contravention will continue or be repeated; or

(c) that a person has contravened a condition of the licence and there are steps that could be taken for remedying the contravention,

the Board may apply to the Supreme Court for the granting of an order prohibiting the contravention or, as the case may be, to make an order requiring the licensee and any other person who appears to the court to have been party to the contravention, to take such steps as the court may direct to remedy it.

(2) Any sum payable to the Board in accordance with a condition included in a licence by virtue of section 13(4)*(a)* shall be recoverable by the Board as a debt due to the Board from the licensee (and the liability of the licensee to pay any such sum shall not be affected by the licence ceasing for any reason to have effect).

Revocation of licences

17. (1) The Minister, in consultation with the Board, shall revoke a licence granted under section 13, if he or she is satisfied that the licensee no longer is, or never was, a fit and proper body corporate to run and promote the National Lottery.

(2) The Minister, in consultation with the Board, may revoke a licence granted under section 13 if the licensee consents or if it appears that –

(a) a condition in the licence has been contravened

(b) any information given by the licensee to the Board –

(i) in or in connection with the application for the licence;

(ii) in pursuance of a condition in the licence; or

(iii) in making representations under section 18(1)*(c)*,

was materially false;

(c) the licensee is not providing or proposing to provide facilities that are necessary or desirable for running and promoting the National Lottery;

(d) any person who is managing the business or any part of the business of running and promoting the National Lottery under the licence, is not a fit and proper person to do so;

(e) any person for whose benefit that business is carried on is not a fit and proper person to benefit from it; or

(f) the licensee is not taking or proposing to take steps that are necessary or desirable for preventing the commission of fraud by participants in any lottery promoted under the licence.

Notice of proposed revocation

18. (1) Where the Minister proposes to revoke a licence, the Board shall serve a notice on the licensee stating –

(a) that the Minister proposes to revoke the licence;

(b) the ground or grounds for revocation;

(c) that the licensee may within 30 days after the date of the notice –

(i) make written representations about the matter to the Board; or

(ii) notify the Board in writing of the intention of the licensee to make oral representations; and

(d) the effect of subsection (2).

(2) If, within the period mentioned in subsection 1*(c)*, the Board receives neither written representations nor written notification of the intention of the licensee to make oral representations, the revocation shall take effect at the end of that period.

Suspension of licence

19. (1) The Board may suspend a licence as from the date of any notice served in respect of it under section 18, if –

(a) the Board has reason to believe that the ground or any of the grounds specified in the notice involves fraud by the licensee;

(b) the ground or one of the grounds specified in the notice is the ground referred to in section 17(2)*(c)* and *(f)*;

(c) an application to the Supreme Court was brought in respect of the corporate body licensed under section 13 for the granting of a provisional or final judicial management order;

(d) an application to the Supreme Court was brought in respect of the corporate body licensed under section 13 for the winding-up of that corporate body; or

(e) a voluntary resolution passed by the members of the corporate body licensed under section 13 for the winding-up of that corporate body.

(2) Where a licence has been suspended under this section –

(a) such suspension shall be of force until the revocation of the licence in terms of section 17 takes effect or the Minister decides not to revoke the licence; and

(b) the notice served under section 18 shall inform the licensee of such suspension.

Decision by Minister to revoke licence

20. (1) If any written or oral representations against the revocation of a licence are made as contemplated in section 18(1)*(c)*, the Minister shall after duly considering the representations and in consultation with the Board –

(a) decide whether or not to revoke the licence; and

(b) serve a further notice on the licensee informing the licensee of his or her decision and, as the case may be, of the effect of subsection (2).

(2) If the Minister decides to revoke the licence, the revocation shall not take effect until the end of such period as may be specified in the further notice: Provided that the period specified in the further notice shall be a period not less than 30 days after the date of the notice.

CHAPTER 3

DISTRIBUTION OF THE NET PROCEEDS OF THE NATIONAL LOTTERY

Establishment of National Lottery Distribution Trust Fund

21. (1) There is hereby established a fund to be known as the National Lottery Distribution Trust Fund.

(2) The Board shall, as soon as practicable after receiving it, pay into the fund all sums that are paid to the Board by virtue of section 13(4)*(a)*.

Fund to vest in and to be held in trust by Board

22. (1) The fund shall vest in and be administered by the Board.

(2) The fund shall be held in trust by the Board for the purposes mentioned in this Chapter.

Revenue of fund

23. The fund shall consist of –

(a) the sums paid into the fund in terms of section 21 (2);

(b) interest derived from the investment of money standing to the credit of the fund; and

(c) other money lawfully paid into the fund.

Banking account

24. Money in the fund shall, pending the application thereof in terms of this Chapter, be paid into an account to be known as "The National Lottery Distribution Trust Fund" at a financial institution.

Investment of money not immediately required

25. (1) Any money of the fund which is not required for immediate allocation in terms of section 26, may be invested with the Public Investment Commissioners or with a financial institution approved by the Minister of Finance and may be withdrawn when required.

(2) Any unexpended balance of the money of the fund at the end of any financial year shall be carried forward as a credit of the fund to the next succeeding financial year.

Apportionment of money in fund

26. (1) Every sum that is paid into the fund shall be apportioned by the Board as set out in subsections (2) and (3).

(2) So much of the sum as the Minister considers appropriate shall be allocated for making payments under section 34 and held in the fund for that purpose.

(3) Of the balance in the fund –

(a) not less than the prescribed percentage shall be allocated for expenditure on or connected with reconstruction and development projects and other programmes referred to in section 3*(a)* of the Reconstruction and Development Programme Fund Act, 1994 (Act No. 7 of 1994);

(b) not less than the prescribed percentage shall be allocated for charitable expenditure;

(c) not less than the prescribed percentage shall be allocated for expenditure on or connected with sport;

(d) not less than the prescribed percentage shall be allocated for expenditure on or connected with the arts, culture and the national heritage; and

(e) not more than the prescribed percentage shall, subject to section 31(1), be allocated for expenditure on or connected with any term recommended by the Board and approved by the Minister for that purpose.

Allocation to Reconstruction and Development Programme

27. (1) The Board shall pay so much of any sum paid into the fund as is allocated for expenditure referred to in section 26(3)*(a)* into the Reconstruction and Development Programme Fund established in terms of section 2 of the Reconstruction and Development Programme Fund Act, 1994 (Act No. 7 of 1994).

(2) In utilising any sums paid into the Reconstruction and Development Programme Fund in terms of subsection (1), the Minister referred to in section 3*(a)* of the Reconstruction and Development Programme Fund Act, 1994 (Act No. 7 of 1994), shall have due regard to –

(a) financial requirements of provincial and local governments;

(b) equitable allocations to provincial and local government;

(c) any request by a provincial or local government that priority be given to specific projects or programmes.

Allocation to charities

28. (1) So much of any sum paid into the fund as is allocated for expenditure referred to in section 26(3)*(b)*, shall be held in the fund for distribution by the Board.

(2) The Board may, on application or otherwise, make grants to any eligible trusts, organisations or institutions referred to in the definition of "charitable expenses" in section 1 for the purpose of assisting them to meet their expenditure.

Allocation to sport

29. (1) So much of any sum paid into the fund as is allocated for expenditure referred to in section 26(3)*(b)*, shall be held in the fund for distribution by the Board.

(2) The Board may, on application or otherwise, make grants to any eligible trusts, organisations or institutions for the purpose of assisting them to –

(a) develop and promote sport;

(b) advance sportsmen and sportswomen;

(c) promote sports education;

(d) construct sporting facilities; and

(e) create and develop an infrastructure to promote the matters referred to in paragraphs *(a)*, *(b)*, *(c)* and *(d)*.

Allocation to Arts, Culture and National Heritage

30. (1) So much of any sum paid into the fund as is allocated for expenditure referred to in section 26(3)*(d)*, shall be held in the fund for distribution by the Board.

(2) The Board may, on application or otherwise, make grants to any eligible trusts, organisations or institutions for the purpose of assisting them –

(a) to preserve, protect and promote the arts in the Republic;

(b) to preserve, develop, foster and extend culture in the Republic and to foster cultural relations with other countries; and

(c) to preserve and protect the historical and cultural heritage in the Republic, to encourage and to promote the preservation and protection of that heritage in order to ensure it will be retained as tokens of the past and may serve as an inspiration for the future.

Allocation for miscellaneous purposes

31. (1) So much of any sum paid into the fund as is allocated for expenditure referred to in section 26(3)*(e)*, shall be held in the fund for distribution by the Board with the concurrence of the Minister: Provided that in the event of any such sums not being allocated for expenditure referred to in section 26(3)*(e)*, the Board may without the concurrence of the Minister distribute such sums for any expenditure referred to in section 26(3)*(a)*, *(b)*, *(c)* or *(d)*.

(2) The Minister may, on recommendation of the Board and if he or she is of the opinion that a specific expenditure on or connected with a matter which does not fall within the ambit of any expenditure referred to in section 26(3)*(a)*, *(b)*, *(c)* or *(d)*, approve that the Board may make grants to eligible trusts, organisations or institutions in respect of any expenditure of that matter.

(3) The Board may, subject to subsection (2), on application or otherwise, make grants to eligible organisations or institutions for the purpose of assisting them to meet their expenditure.

Payment of grants

32. (1) At such times as the Board deems appropriate, payments of such amounts as the Board deems appropriate may be made to any trusts, organisations or institutions in respect of any expenditure referred to in sections 28, 29, 30 and 31 out of so much of any money in the fund as is held for distribution for such expediture.

(2) In making any grants under sections 28, 29, 30 and 31 the Board may impose such conditions as it deems fit, including –

(a) conditions requiring the amount of a grant to be repaid forthwith on breach of any condition; and

(b) conditions that a percentage determined by the Board shall be allocated to recipients in a specified province:

Provided that such conditions shall at least include a condition that such a trust, organisation or institution shall in respect of funds granted to it from time to time provide the Board with audited accounts of all funds distributed.

(3) In considering to which trusts, organisations or institutions grants shall be made in terms of sections 28, 29 and 30, the Board –

(a) must be satisfied that any such trust, organisation or institution –

(i) is a national representative body which promotes its objectives in all the provinces;

(ii) is competent to distribute funds equitably –

(aa) among all the members it represents; and

(bb) among and in the provinces; and

(b) may consult any Minister or member of the Executive Council of a province who has a responsibility in respect of any of the matters referred to in those sections.

(4) In considering any grants in terms of section 28, 29, 30 and 31, the Board –

(a) shall comply with any directions given to it by the Minister as to the matters to be taken into account in determining the persons to whom the purposes for which and the conditions subject to which the Board distributes any money;

(b) shall have due regard to –

(i) general development in the Republic with specific reference to the regional, economic, financial, social and moral interests of the Republic and for the enhancement of the standard of living of all the peoples in the Republic;

(ii) provincial and local interests, including –

(aa) the number of lottery tickets sold in each province;

(bb) the population in each province; and

(cc) the financial requirements of each province.

(5) In exercising his or her function in terms of subsection (4)*(a)*, the Minister shall –

(a) consult with the Board before giving any directions to the Board; and

(b) publish such directions by notice in the *Gazette*.

Power of Minister to prohibit certain grants

33. The Minister may give directions to the Board prohibiting it from making any grants under sections 28, 29, 30 and 31 if any such grants are likely to be utilised for any unlawful or improper purposes: Provided that the Minister shall –

(a) consult with the Board before giving any such direction; and

(b) disclose to the Board any information at his or her disposal which may indicate that any such grants are likely to be utilised for any unlawful or improper purposes.

Payments from fund in respect of expenses

34. (1) At such times as the Minister determines to be appropriate, payments shall be made to the Board out of so much of any money in the fund as is held under section 26(2).

(2) The payments shall be of such amounts as the Minister determines to be appropriate for meeting payments made or to be made under sections 6(1) and 7(2), or any other expenses incurred by the Board.

(3) In determining what amounts are appropriate for meeting the payments referred to in subsection (2), the Minister, shall take into account sums paid or to be paid to the Board under section 14(4).

PART II

OTHER LOTTERIES

CHAPTER 1

Small and private lotteries

Small lotteries incidental to exempt entertainments

36. Where a lottery is promoted as an incident of an exempt entertainment, that lottery shall not be unlawful: Provided that –

(a) the whole proceeds of the entertainment, including the proceeds of the lottery, after deducting –

(i) the expenses of the entertainment, excluding expenses incurred in connection with the lottery;

(ii) the expenses incurred in printing tickets in the lottery; and

(iii) such sum, if any, not exceeding R3 000 or such other sum as may be determined by the Board for any expenses incurred in purchasing prizes in the lottery,

shall be devoted to purposes other than private gain;

(b) none of the prizes in the lottery shall be money prizes;

(c) tickets or chances in the lottery shall not be sold or issued, nor shall the result of the lottery be announced, except at the place where the entertainment takes place and during the progress of the entertainment; and

(d) the facilities for participating in lotteries under this section, or those facilities together with any other facilities for participating in lotteries or gambling, shall not be the only, or the only substantial, inducement to persons to attend the entertainment.

Private lotteries

37. (1) A private lottery shall not be unlawful: Provided that –

(a) the whole proceeds, after deducting only expenses incurred for printing and stationery, shall be devoted to the provision of prizes for purchasers of tickets or chances, or, in the case of a lottery promoted for the members of a society, shall be devoted –

(i) to the provision of the said prizes;

(ii) to purposes which are purposes of the society; or

(iii) as to part to the provision of the said prizes and as to the remainder to the purposes as referred to in subparagraph (ii);

(b) not any written notice or advertisement of the lottery shall be exhibited, published or distributed other than –

(i) a notice of it exhibited on the premises of the society for whose members it is promoted or, as the case may be, on the premises on which the persons for whom it is promoted work or reside; and

(ii) such announcement or advertisement of it as is contained in the tickets, if any;

(c) no person shall be employed for reward in connection with the promotion or conduct of the lottery;

(d) no tickets in the lottery shall be sent through the post; and

(e) the total value of the tickets or chances sold or to be sold is not more than R20 000 or such other sum as may be determined by the Board.

(2) For the purposes of this section each local or affiliated branch or section of a society shall be regarded as a separate and distinct society.

CHAPTER 2

SOCIETY LOTTERIES

Society lottery

38. A society lottery shall not be unlawful: Provided that –

(a) it is promoted in the Republic;

(b) the society is authorised to collect contributions from the public in terms of the provisions of the Fund-raising Act, 1978 (Act No. 107 of 1978);

(c) it is promoted in accordance with a scheme approved by the society;

(d) the society is registered with the licensing authority under section 41;

(e) the total value of the tickets or chances sold or to be sold in the lottery is not more than R500 000 or such other sum as may be determined by the Board;

(f) the whole proceeds of a society lottery, after deducting sums lawfully appropriated on account of expenses or for the provision of prizes, shall be applied to purposes of the society referred to in the definition of "society lottery" in section 1; and

(g) the society lottery is conducted in accordance with the rules set down in section 53.

Managing of society lotteries

39. No person shall manage a society lottery unless that person is –

(a) a member of the society on whose behalf the lottery is promoted, acting in his capacity as such;

(b) an employee of that society acting in the course of his employment;

(c) a corporate body that is wholly owned by the society;

(d) a person certified as a lottery manager under section 47; or

(e) an employee of a person referred to in paragraph *(d)* acting in the course of his employment.

Frequency of society lotteries

40. (1) The Board may determine –

(a) the maximum number of lotteries that may be promoted under section 38 in any period of twelve months on behalf of the same society; and

(b) the minimum number of days that must elapse between the dates of any two lotteries promoted under section 38 on behalf of the same society.

(2) A prescription under subsection (1) may make different provision for different cases or circumstances.

(3) The Board shall not determine anything in terms of subsection (1) unless he or she has consulted the various licensing authorities.

CHAPTER 3

POWERS AND FUNCTIONS OF LICENSING AUTHORITIES IN RESPECT OF SOCIETY LOTTERIES

Registration of societies

41. (1) An application to the licensing authority for the registration of a society shall –

(a) specify the address of the office or head office of the society;

(b) specify the purposes for which the society is established and conducted; and

(c) have attached to it a copy of any scheme approved by the society under section 38*(c)*.

(2) Subject to the provisions of this section the licensing authority shall register the society in a register to be kept for the purpose of section 38*(d)*.

(3) A society shall not be registered under this section unless –

(a) an application on behalf of the society has been made to the licensing authority in writing containing such information as the licensing authority has specified;

(b) the licensing authority is satisfied that –

(i) any person who is or will be a person connected with a lottery promoted or proposed to be promoted on behalf of the society is a fit and proper person;

(ii) the society has resources available to provide facilities that are necessary for promoting the lottery;

(iii) it complies with the requirements contemplated in section 38;

(iv) any information given by the society to the licensing authority in or in connection with the society's application for registration was not materially false;

(v) the address of the office or head office of the society is not the same as that of the office or head office of another society that is established for the same or a connected purpose and is registered under this section;

(vi) any lottery promoted on behalf of the society within the last five years has been properly conducted;

(vii) the society has not at any stage failed to comply with a requirement imposed on it under section 44 or 45; or

(viii) an act or omission of a person who is or will be a person connected with a lottery promoted or proposed to be promoted on behalf of the society was not a cause –

(aa) of the registration of another society being refused or revoked on a ground referred to in subparagraph (iv) or section 44, 45 or 46;

(bb) of a lottery, in the promotion of which such person was involved, being improperly conducted;

(ix) any scheme attached to its application for registration, or any other scheme subsequently approved by the society under section 38*(c)*, is lawful.

Revocation of registration of societies

42. (1) The licensing authority –

(a) shall revoke the registration of a society if the society requests the licensing authority to do so; or

(b) may revoke the registration of a society if it appears to the licensing authority that the society fails to comply with any requirements in sections 41(3), 44, 45 or 46: Provided that –

(i) the registration shall not be revoked without giving the society an opportunity of being heard; and

(ii) in the event of the revocation of the registration of a society, the society shall be notified in writing of the revocation and the ground therefore.

(2) *(a)* If it appears that there are grounds in terms of subsection (1) to revoke the registration of a society and the registration is not revoked accordingly by the licensing authority, the Board may on any grounds referred to in and subject to subsection (1), revoke such registration: Provided that the Board –

(a) shall not exercise such power, unless the Board has notified the licensing authority of its intention to do so; and

(b) if such registration has been revoked by the Board, shall inform the licensing authority thereof in writing.

(3) The revocation of the registration of a society shall not have effect in relation to any lottery in respect of which any tickets or chances have already been sold at the date of revocation.

Fees and levies

43. A society that is registered under this Act shall pay to the licensing authority –

(a) a fee or levy at such interval whilst the society is so registered as the licensing authority may determine; and

(b) a fee or levy determined by the licensing authority for each society lottery promoted on behalf of the society whilst it is so registered.

Requirements after registration of society

44. (1) Any society registered under section 41 shall –

(a) notify the licensing authority in writing of any change in the address of the society's office or head office within the period of 21 days from the day on which such change takes effect;

(b) subject to subsection (2), notify the licensing authority in writing of any modification of, amendment to or substitution for the scheme approved by the society under section 38*(c)*;

(c) within three months after the promotion of a society lottery, submit to the licensing authority a return in respect of a society lottery in such form, manner and containing such information as the licensing authority may require;

(d) preserve all documents of the society, including all information kept by the society otherwise than in writing, relating to a lottery promoted on behalf of the society until the end of the period of five years from the date of the lottery;

(2) Any notification in terms of subsection (1)*(b)* shall be given to the licensing authority at least four weeks before any tickets or chances in a lottery promoted in accordance with the scheme as modified, amended or substituted, are sold, distributed or offered for sale.

(3) Any return submitted to the licensing authority in terms of subsection (1)*(c)* shall be preserved by the licensing authority for at least 18 months and be open to the public for inspection.

Control of registered societies

45. The licensing authority may require a society registered under section 41 or a society that has applied for such registration –

(a) to provide the licensing authority with such information relating to any lottery promoted or to be promoted on behalf of the society as it may require;

(b) to allow any person authorised by the licensing authority thereto, to inspect and take copies of any documents of the society, including any information kept by the society otherwise than in writing, relating to such a lottery;

(c) where such information is kept by means of a computer, to give the licensing authority such assistance as it may require to enable it to inspect and take copies of the information in a visible and legible form and to inspect and check the operation of any computer, and any associated apparatus or material, that is or has been in use in connection with the keeping of the information; and

(d) to allow the licensing authority to inspect any aspect of the management of such a lottery.

Aludit of society lottery

46. (1) Where the total value of the tickets or chances sold in all lotteries held in any one year and promoted on behalf of the same society is more than R1 000 000 or such other amount as may be determined by the Board, the society shall submit to the licensing authority financial statements in respect of those lotteries together with a report on such statements prepared by an independent auditor registered in terms of the Public Accounts' and Auditors' Act, 1991 (Act No. 80 of 1991).

(2) The financial statements referred to in subsection (1), shall –

(a) be submitted to the licensing authority within three months of the end of the year in which the lotteries to which such statements relate, were held; and

(b) comply with generally accepted accounting principles and any other directions that may be given by the licensing authority, as to the information to be contained in such a statement, the manner in which such information is to be presented or the methods and principles according to which such statements are to be prepared.

(3) The report of the auditor referred to in subsection (1), shall state whether in the auditor's opinion –

(a) the financial statements have been properly prepared in accordance with the principles and any directions envisaged in subsection (2)*(b)*;

(b) proper accounting records have been kept by the society; and

(c) the society's accounts are in agreement with the financial statements:

Provided that if the said auditor fails to obtain all the information and explanations that, to the best of his or her knowledge and belief are necessary for the purposes of his or her audit, his or her report shall state accordingly.

(4) Subsection (1) does not apply to a society in relation to any year if the promotion of every lottery promoted on behalf of the society held in that year is managed by a person certified as a lottery manager in terms of section 47.

(5) For the purposes of this section –

(a) a lottery is held in the year in which the date of the lottery falls; and

(b) "year" means a period of 12 months starting with 1 January.

Application and certification of lottery managers

47. (1) An application for a person to be certified as a lottery manager shall be made to the licensing authority in the form, manner and contain such information as the licensing authority may require.

(2) A fee determined by the licensing authority shall be payable when the application is made.

(3) Subject to the provisions of this section, the licensing authority shall grant a certificate to an applicant certifying him or her as a lottery manager.

(4) A person shall not be granted a certificate under this section, if it appears to the licensing authority that –

(a) any person who would be likely to manage the business or any part of the business of managing lotteries under the certificate is not a fit and proper person to do so;

(b) any person for whose benefit that business would be likely to be carried on is not a fit and proper person to benefit from it;

(c) any information given by the applicant to the Board in connection with the application is false in a material particular; or

(d) the applicant does not have the appropriate knowledge, experience or resources available to manage the society lottery.

(5) If the licensing authority refuses to grant a certificate, it shall notify the applicant in writing of the refusal and the ground for it.

Conditions of certificate

48. A certificate may, subject to the provisions of this Chapter, include such conditions as the licensing authority considers appropriate –

(a) for protecting the interests –

(i) of any society whose lotteries the certificate-holder may manage; or

(ii) of the persons who participate in any lottery that the certificate-holder may manage; and

(b) that is necessary for the proper managing of a society lottery.

Variation of conditions of certificate

49. (1) The licensing authority may, after giving the certificate-holder an opportunity of being heard, vary any condition in a certificate.

(2) If the licensing authority varies a condition under this section it shall serve a notice on the certificate-holder informing him or her –

(a) of the variation; and

(b) of the effect of subsection (3).

(3) The variation shall take effect at the end of the period of 21 days after the date of service of the notice.

Duration of certificate

50. A certificate shall have effect until it is revoked by the licensing authority

Revocation of certificate

51. (1) The licensing authority shall revoke a certificate if it is satisfied that he or she is no longer, or never was, a fit and proper person to manage a lottery.

(2) The licensing authority may revoke a certificate if –

(a) the certificate-holder consents; and

(b) it appears to the licensing authority that –

(i) any person who is managing the business or any part of the business of managing lotteries under the certificate is not a fit and proper person to do

(ii) any person for whose benefit the business of managing lotteries under the certificate is carried on is not a fit and proper person to benefit from it;

(iii) any information given by the certificate-holder to the licensing authority in or in connection with the application for the certificate was false in a material particular; or

(iv) the certificate-holder has failed to comply with a condition in the certificate or with a requirement imposed on him by or under this Act.

(3) If the licensing authority revokes a certificate under this section it shall serve a notice on the certificate-holder informing him –

(a) of the revocation;

(b) of the ground for the revocation; and

(c) of the effect of subsection (4).

(4) The revocation shall take effect at the end of the period of 21 days after the date of service of the notice.

Control of lottery managers and audit

52. The provisions of sections 44(1)*(c)* and *(d)*, 45 and 46(1), (2), (3) and (5) shall apply *mutatis mutandis* to the control and submission of financial statements of lottery managers, and in such application a reference in those sections to a society shall be construed as a reference to a lottery manager.

Rules of society lotteries

53. (1) Any society lottery shall be conducted in accordance with the rules set out in subsection (2).

(2) *(a)* The promoter of the society lottery shall be a member of the society authorised in writing by the governing body of the society to act as the promoter.

(b) Every ticket distributed or sold shall specify the name and address of the promoter and the date of the lottery.

(c) No ticket or chance in a society lottery shall be sold at a price exceeding R5 or such other amount as may be prescribed.

(d) The price of every ticket or chance shall be the same, and the price of any ticket distributed or sold shall be stated on the ticket.

(e) No person shall be admitted to participate in a society lottery in respect of a ticket or chance except after payment to the society of the whole price of the ticket or chance, and no money received for or on account of a ticket or chance shall in any circumstances be returned.

(f) No payment other than the price of a ticket or chance shall be required of a person as a condition of his admission to participate in a society lottery.

(g) No prize in a society lottery shall exceed in amount or value R100 000 000 or such other amount as may be determined by the Board.

(h) The total value of the tickets or chances sold in any one society lottery shall not exceed R500 000 or such other amount as may be determined by the Board.

(i) (i) The total value of the tickets or chances sold in all society lotteries held in any one year and promoted on behalf of the same society shall not exceed R6 000 000 or such other amount as may be determined by the Board.

(ii) For the purposes of subparagraph (i), a lottery is held in the year in which the date of the lottery falls.

(j) The amount of the proceeds of a society lottery appropriated for the provision of prizes shall not exceed 50 per cent of the whole proceeds of the lottery.

(k) (i) The amount of the proceeds of a society lottery appropriated on account of expenses, excluding prizes, shall not exceed whichever is the less of –

(aa) the expenses actually incurred;

(bb) whichever of the amounts specified in subparagraph (ii) applies.

(ii) The amounts referred to in subparagraph (i)*(bb)* are –

(aa) where the whole proceeds of the lottery do not exceed R100 000 or such other amounts as may be determined by the Board, 25 per cent of those proceeds or such lesser percentage as may be determined by the Board; or

(bb) where the whole proceeds of the lottery exceeds R100 000 or such other amount as may be determined by the Board, 15 per cent of those proceeds or such larger percentage, not exceeding 25 per cent, as may be determined by the Board in general or in the case of a particular lottery.

(iii) For the purposes of paragraph *(k)*(i), the amount of any expenses that are met –

(aa) by the society on whose behalf the lottery is promoted; or

(bb) by any beneficiary of the lottery,

shall be deemed as having been appropriated on account of expenses from the proceeds of the lottery.

(iv) The amount of the proceeds of a society lottery appropriated for the provision of prizes and the amount of those proceeds appropriated on account of expenses, excluding prizes, shall not exceed in aggregate a prescribed percentage of the whole proceeds of the lottery.

(3) *(a)* In subsection (2)*(k)*(iii)*(bb)*, "beneficiary of the lottery" means a person other than the society on whose behalf the lottery is promoted, to whom or for whose benefit any of the proceeds of the lottery, other than amounts appropriated in respect of expenses or prizes, are lawfully paid or applied.

(b) In this section, unless the context otherwise indicates, "year" means a period of twelve (12) months staring with 1 January: Provided that if this Act comes into force on a date other than 1 January –

(i) the period starting with such date and ending with the last day of the next December, shall be taken to be the first year for the purposes of subsection (2)*(i)*; and

(ii) in relation to the period mentioned in subparagraph (i) the reference to R6 000 000 or such other amount as may be determined in subsection (2)*(i)* shall be read as a reference to a proportionately smaller amount.

CHAPTER 4

SPORTS POOLS

Licensing of body to run sports pools

54. (1) The Minister may, in consultation with the Board, by licence authorise a corporate body to run and promote a national sports pool: Provided that the licence shall specify the sports pools, or descriptions of sports pools, the promotion of which it authorises.

(2) The provisions of Chapters 2 and 3 of Part I of this Act shall apply *mutatis mutandis* to the licensing of a sports pool and the distribution of the net proceeds of a sports pool, and in such application a reference in those Chapters to the National Lottery or a lottery shall be construed as a reference to a sports pool: Provided that the power of the Minister to prescribe the percentages in terms of section 26 may be exercised so as to make different provision in relation to sports pools.

PART III

GENERAL PROVISIONS

Newspaper and other competitions

55. No person shall conduct in or through any newspaper, broadcasting service or any other electronic device, or in connection with any trade or business or the sale of any article to the public –

(a) any competition in which prizes are offered for forecasts of the result either –

(i) of a future event; or

(ii) of a past event the result of which is not yet ascertained, or not yet generally known; or

(b) any other competition in which such success does not depend to a substantial degree on the exercise of skill.

Offences in general

56. (1) Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence.

(2) Subject to the provisions of this Act, any prson who in connection with any lottery or sports pool promoted or proposed to be promoted in the Republic of elsewhere –

(a) establishes or commences a lottery or sports pool, or be partner or shareholder or have any financial interest in any organisation conducting a lottery or sports pool;

(b) promotes, conducts or in any way assists in promoting or conducting a lottery or sports pool;

(c) allows any place under his or her control or in his or her charge to be used in any way for the promotion or conduct of any lottery or sports pool or for any business purpose connected therewith;

(d) prints any tickets for use in a lottery or sports pool;

(e) sells or dispose of or have in his or her possession, or offers or advertises for sale or distribution, or have any interest in any ticket in a lottery or sports pool;

(f) prints, publishes or distributes, or has in his or her possession for the purpose of publication or distribution –

(i) any advertisement of a lottery or sports pool;

(ii) any list, whether complete or not, of prize winners or winning tickets in a lottery or sports pool; or

(iii) any such matter descriptive of the drawing or intended drawing of a lottery or sports pool, or otherwise relating to a lottery or sports pool, as is calculated to act as an inducement to persons to participate in a lottery or sports pool;

(g) perform any act with the object of acquiring or assisting any other person to acquire from any source in the Republic or elsewhere any ticket in a lottery or sports pool or any interest in any such ticket;

(h) brings, or invites any person to send into the Republic from a place outside the Republic, for the purpose of sale or distribution, any ticket in or advertisement of the lottery or sports pool;

(i) sends or attempts to send out of the Republic to a place outside the Republic any money or anything of value in respect of the sale or distribution, or any document recording the sale or distribution, or the identity of the holder, of any ticket or chance in a lottery or sports pool; or

(j) distributes or causes to be distributed or delivers or causes to be delivered to any person any hand-bill or entrance form or other document conveying in print, writing or in any other way, notice of or information with regard to any lottery or sports pool,

shall be guilty of an offence.

(3) *(a)* In any prosecution for a contravention of subsection (2), any ticket which by any word, code, figure or any sign whatsoever indicates that such ticket is a ticket in a lottery or sports pool shall constitute *prima facie* evidence that it is a ticket in a lottery or sports pool.

(b) In any prosecution for a contravention of paragraph *(b)* of subsection (2), any person is proved to have been the occupier of any place in which a lottery or sports pool was promoted or conducted at the time when such person occupied such place, it shall constitute *prima facie* evidence that such person assisted in promoting or conducting such lottery or sports pool.

(4) In any prosecution for a contravention of subsection (2) –

(a) it shall be a defence to prove that the lottery or sports pool, as the case may be, to which the prosecution relate was –

(i) a lottery forming part of the National Lottery for the purposes of Part I of this Act, or that at the date of the alleged offence the accused person believed, and had reasonable grounds for believing, it to be such a lottery;

(ii) a lawful lottery referred to in sections 36, 37 and 38, and that at the date of the alleged offence the accused person believed, and had reasonable grounds for believing, that it was being conducted in accordance with the requirements of this act; and

(iii) a sports pool licenced in terms of section 54; and

(iv) not promoted wholly or partly outside the Republic and constitutes a lottery or sports pool in terms of this Act;

(b) in respect of the printing, sale or possession of any tickets, advertisements or other documents or in respect of anything done with a view to or in connection with the printing, sale or export from the Republic of any tickets, advertisements or other documents, it shall be a defence to prove that at the date of the alleged offence the accused person believed, and had reasonable grounds for believing –

(i) that the lottery or sports pool to which the prosecution relate was not being, and would not be promoted or conducted wholly or partly in the Republic; and

(ii) that the tickets, advertisements or other documents were not being, and would not be, used in the Republic or in connection with that or any other lottery or sports pool.

Offences relating to National Lottery and sports pools

57. Any person who –

(a) advertises or offers the opportunity to participate in a lottery, competition or game of another description gives, by whatever means, a false indication that it is a lottery forming part of, or is otherwise connected with, the National Lottery or is a sports pool licensed in terms of section 54;

(b) with the intent to defraud, falsely makes, alters, forges, utters, passes, or counterfeits a state lottery ticket or a sports pool ticket;

(c) influences or attempts to influence the winnings of a prize through the use of coercion, fraud, deception, or tampering with lottery or sports pool equipment or materials; or

(d) fails to comply with any regulation made under section 59,

shall be guilty of an offence.

Prohibition of activities in the Republic in relation to lottery or sports pool conducted outside the Republic

58. No person shall be exempt from liability under any provision of this Act in respect of any act or thing done or authorised or permitted by him to be done in the Republic in connection with any lottery or sports pool, merely by reason that the management, conduct or business of or concerning such lottery or sports pool is in whole or in part carried on at some place outside the Republic.

Regulations in respect of National Lottery and sports pool

59. The Minister may, with the concurrence of the Board, make regulations regarding –

(a) the promotion of lotteries that form part of the National Lottery or sports pools as he or she considers necessary or expedient, including –

(i) the minimum age of persons to whom or by whom tickets or chances may be sold;

(ii) the persons who shall be disqualified from participation;

(iii) the places, circumstances or manner in which tickets or chances may be sold or persons may be invited to buy such tickets;

(iv) the circumstances under which lotteries and sports pools may be advertised and the information that shall appear in an advertisement for a lottery and sports pool;

(v) the places, circumstances or manner in which signs relating to a lottery and sports pool may be displayed;

(vi) the rules of any lottery or sports pool referred to in section 13(4)*(b)*;

(vii) application and licensing fees in terms of section 14(4);

(viii) the percentages of the sums to be allocated in terms of section 26; and

(ix) in general any other matter which the Minister may consider necessary or expedient to prescribe in order to achieve or promote the objects of Part I of this Act; and

(b) the procedure to be followed where the intention of a licensee to make oral representations is notified to the Board as mentioned in section 18(1)*(c)*, including –

(i) provision for the revocation of the licence to take effect if the licensee fails to comply with any requirements imposed by or under the regulations; and

(ii) the manner and form in which oral representation is to be presented to the Board.

Regulations in respect of society lotteries

60. (1) The Minister may, with the concurrence of the Board, make regulations regarding the promotion of society lotteries as he may consider necessary or expedient, including –

(a) the nature and requirements of any scheme envisaged in terms of section 38*(c)*;

(b) the persons to whom and by whom tickets or chances in a lottery may or may not be sold;

(c) the circumstances in which tickets or chances may be sold and in which persons may be invited to purchase tickets or chances;

(d) the minimum age at which any person may buy a ticket or chance;

(e) any information which must, or must not, appear on a ticket;

(f) the manner in which a lottery may be advertised;

(g) the use of postal services in connection with lotteries;

(h) the matters in respect of which expenses in a lottery may be incurred; and

(i) in general, any other matter which the Minister may consider necessary or expedient to prescribe in order to achieve or promote the objects of the provisions of Part II of this Act.

(2) Any power to make regulations under this section may be exercised so as to make different provision in relation to different cases or different circumstances.

(3) The Minister shall not make any regulations under this section unless he or she has consulted the various licensing authorities.

Penalties

61. Any person convicted of an offence in terms of this Act shall be liable to a fine or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

Savings

62. Nothing in this Act contained –

(a) shall be construed as restricting the powers conferred under paragraph 8 of the First Schedule or paragraph 12 of the Second Schedule to the Financial Relations Act, 1976 (Act No. 64 of 1976);

(b) shall apply in relation to any lottery, sports pool or competition in respect of which no subscription is to be made.

Transitional provisions

63. (1) Any valid licence for –

(a) a state lottery, issued in terms of the State Lotteries Act, 1984 (Act No. 14 of 1984) (Ciskei), or the Lotteries Decree, 1989 (Decree No. 14 of 1989) (Transkei), shall at the commencement of this Act be of no force; and

(b) any valid licence for a lottery or sports pool issued in terms of an Act or provision repealed in terms of section 65, or the Gaming and Betting Act, 1989 (Act No. 39 of 1989) (Bophuthatswana), shall be deemed to have been issued in terms of this Act, and the promotion of such a lottery or sports pool shall, from a date to be determined by the Minister by notice in the *Gazette*, be conducted in accordance with the provisions of this Act: Provided that –

(i) such notice shall precede the date of termination by not less than three months;

(ii) the promotion of such a lottery or sports pool prior to the determined date, be limited to the area for which the licence was granted.

(2) All unexpended funds in –

(a) the Distribution Account referred to in the State Lotteries Act, 1984 (Act No. 14 of 1984) (Ciskei); and

(b) the State Lottery Trustee Account referred to in the Lotteries Decree, 1989 (Decree No. 14 of 1989) (Transkei), immediately before the commencement of this Act, shall be paid into the fund.

Lottery debts enforceable

64. Any lottery debt lawfully incurred by a person in the course of the promotion of any lottery and sports pool shall, notwithstanding provisions of any law or the common law, be enforceable in a court of law.

Repeal or amendment of laws

65. The laws mentioned in the Schedule are hereby repealed or amended in so far as indicated in the third column thereof.

Short title and commencement

66. (1) This Act shall be called the Lotteries Act, 1995, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of the different areas in the Republic.

SCHEDULE

Laws repealed or amended

No. and year of Act	Title	Extent of repeal or amendment
Act No. 44 of 1958	Post Office Act, 1958.....	The following section to substitute section 35: **"Articles addressed to persons conducting a lottery or sports pool or dealing in indecent or obscene matters** **35.** When the postal company is satisfied on enquiry or by any advertisement, letter, circular or other documentary evidence that any person is conducting or assisting as agent or otherwise in conducting a lottery or sports pool in contravention of the Lotteries Act, 1995, or is dealing in indecent or obscene matter, and is using the services of the postal company for the purpose, the postal company may detain or delay all postal articles addressed to such person (whether under his own or under a fictitious or assumed name) or his agent or representative, or to any address of any such person, agent or representative without the name of any person appearing thereon, and all such postal articles may be opened and returned to the senders thereof or otherwise disposed of as the postal company may deem fit.".
Act No. 51 of 1965	Gambling Act, 1965.....	*(a)* Amendment of section 1 by the deletion of the definitions of "lottery", "sporting event", "sports pool", "subscription" and "ticket". *(b)* Repeal of sections 2, 3, 4, 5 and 10. *(c)* Amendment of section 8 – (i) by the deletion of paragraphs *(a)*, *(b)* and *(c)*; and (ii) by the deletion of subparagraphs (i) and (ii).
Act No. 23 of 1982	Gambling Act, 1982 (Ciskei)	*(a)* Amendment of section 1 by the deletion of the definition of "lottery", "sporting event" and "sports pool". *(b)* Amendment of section 7 – (i) by the deletion of subparagraph (iii) of paragraph *(c)* of subsection (1); and (ii) by the deletion of subsection (4). *(c)* Amendment of section 9 by the substitution for paragraph *(a)* of subsection (1) of the following paragraph: "*(a)* grant such application subject to such conditions and restrictions as the President-in-Council may deem necessary **[, including a condition requiring the holder of a lottery licence or a sports pool licence to furnish security in the amount fixed by the President-in-Council for the due payment of prizes; or]**. *(d)* Amendment of section 10 by the deletion of paragraph *(b)* of subsection (1). *(e)* Amendment of section 12 by the deletion of paragraph *(c)* of subsection (2). *(f)* Amendment of section 17 of the deletion of paragraph *(b)* of subsection (1).

No. and year of Act	Title	Extent of repeal or amendment
		(g) Amendment of section 18 by the substitution for subsection (1) of substitution for sub-section (1) of the following sub-section: "(1) No person shall participate, and no licence-holder or any person employed by him in connection with the management, supervision, control or administration or any activity authorized by such licence shall permit any person to participate, in any game in a casino or gaming room **[or in any lottery or sports pool]** unless payment therefor is in current money or by cheque: Provided that the licence-holder may, at his discretion, grant credit facilities to any person who furnishes a satisfactory guarantee of payment.". *(h)* Amendment of section 19 – (i) by the deletion of subparagraph (iii) of paragraph *(a)* of subsection (1); (ii) by the deletion of paragraph *(c)* of subsection (1); (iii) by the substitution for paragraph *(d)* of the following paragraph: "*(d)* perform any act with the object of acquiring or assisting any other person to acquire from any source in Ciskei or elsewhere any ticket in an unlicenced game or chance **[, sports pool or lottery]**;"; (iv) by the substitution for paragraph *(e)* of the following paragraph: "*(e)* print or publish, either in a newspaper, periodical publication or any printed document, any notice or advertisement of any unlicenced gaming house or gambling activity **[, sports pool or lottery]**;"; and (v) by the substitution for paragraph *(g)* of the following paragraph: "*(g)* distribute or cause to be distributed or deliver or cause to be delivered to any person any hand-bill or entrance form or other document conveying in print, writing or other way, notice of or information with regard to any unlicenced gaming-house, **[sports pool or lottery]** or place where games of chance are played or any activity prohibited by this Act is performed; or". *(i)* Amendment of section 24 by the deletion of paragraph *(b)* of subsection (2). *(j)* Amendment of Part A of the Schedule by the deletion of items 2 and 3. *(k)* Amendment of Part B of the Schedule by the deletion of the last two items.
Act No. 14 of 1984	State Lotteries Act, 1984 (Ciskei)	Repeal of the whole Act.
Decree No. 14 of 1989	Lotteries Decree, 1989 (Transkei)	Repeal of the whole Decree.

DRAFT NATIONAL GAMBLING BILL, 1995

BILL

To provide for the establishment of a National Gaming and Wagering Board with a view to the co-ordination between the provinces of certain gambling activities; and to provide for matters connected therewith.

PREAMBLE

WHEREAS section 126 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provides that a provincial legislature shall be competent to make laws for the province with regard to casinos, racing, gambling and wagering;

AND WHEREAS section 126 of the Constitution also provides that Parliament shall be competent to make laws regarding casinos, racing, gambling and wagering if, to be performed effectively, such matters require to be regulated or co-ordinated by uniform norms or standards that apply generally throughout the Republic;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows: –

Definitions

1. In this Act, unless the context otherwise indicates –

   (i) **"Board"** means the National Gaming and Wagering Board established under section 2;

   (ii) **"gambling"** means the playing of any game for stakes and betting or wagering on any lawful event, excluding a lottery and sports pool as defined in the Lotteries Act, 1995;

   (iii) **"Minister"** means the Minister responsible for the administration of this Act;

   (iv) **"policial office-bearer"** means a person as defined in section 190A of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), including members of the Provincial Houses of Traditional Leaders, the Council of Traditional Leaders, the Volkstaat Council and local government.

Establishment of National Gaming and Wagering Board

2. There is hereby established a Board to be known as the National Gaming and Wagering Board which shall be a juristic person.

Composition of Board

3. (1) The Board shall consist of –

   (a) a chairperson, who, in the opinion of the Minister, shall be a person with applicable knowledge or experience with regard to matters connected with the objects of the Board;

   (b) one member designated by the Minister;

   (c) one representative of each province designated by the government of such province; and

   (d) not more than four members, who, in the opinion of the Minister, shall have applicable knowledge or experience with regard to matters connected with the objects of the Board,

who shall be appointed by the Minister.

(2) The members referred to in subsection 1*(a)* and *(d)* shall not be appointed unless the Minister in respect of such members has invited interested parties through the media and by notice in the *Gazette* to nominate candidates, within 14 days of the invitation in the media and the publication of such notice, for consideration by the Minister.

(3) A member of the Board shall hold office of such period, not exceeding five years, as the Minister may determine at the time of his appointment, and shall be eligible for reappointment at the termination of his or her term of office.

(4) The Minister may at any time terminate the term of office of any member if there are good reasons for doing so.

(5) The Minister shall, subject to subsection (2), fill a casual vacancy on the Board, in the case of –

(a) the chairperson, by the appointment of another person as chairperson; and

(b) any other member appointed under subsection (1), by the appointment of another person as a member, for such period, not exceeding five years, as the Minister may determine at the time of his or her appointment.

(6) *(a)* A person shall not be appointed or remain a member –

(i) unless he or she is a fit and proper person;

(ii) if such person, whether personally or through his or her spouse, immediate family member, partner or associate –

(aa) has a direct or indirect financial interest in any matter related to the objects of the Board; or

(bb) has any interest in any business or enterprise that may conflict or interfere with the proper performance of his or her duties as a member of the Board;

(iii) if such person –

(aa) is a political office-bearer;

(bb) is an unrehabilitated insolvent;

(cc) has at any time been removed from an office of trust on account of misconduct; or

(dd) has at any time been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Corruption Act, 1992 (Act No. 94 of 1992), or any offence involving dishonesty.

(b) A person shall, prior to his or her appointment as a member, submit to the Minister a written statement in which he or she declares whether or not he or she has any interests as contemplated in paragraph *(a)*(ii).

(c) If any member during his or her term of office acquires an interest which is likely to be an interest as contemplated in paragraph *(a)*(ii), he or she shall as soon as practicable after the acquisition of such interest in writing declare such information to the Minister.

Meetings of Board

4. (1) Meetings of the Board shall be held on such dates and at such times and places as the chairperson may determine.

(2) The proceedings at a meeting of the Board shall, subject to the provisions of this section, be determined by the chairperson.

(3) The quorum for a meeting of the Board shall be the majority of the members of the Board.

(4) A decision of the Board shall be taken by a majority of the votes of the members present at a meeting of the Board, and in the event of an equality of votes on any matter, the chairperson shall have a casting vote in addition to his or her deliberative vote.

Executive committees of Board

5. (1) The Board may from time to time appoint an executive committee to perform the functions and exercise the powers delegated to it by the Board.

(2) An executive committee shall consist of such members of the Board as the Board may designate.

(3) The Board shall designate the chairperson of an executive committee.

(4) *(a)* An executive committee shall perform its functions and exercise its powers subject to the provisions of this Act and such directives of the Board as are not in conflict with such provisions.

(b) Any delegated function so performed or delegated power so exercised shall be deemed to have been performed by the Board.

Remuneration and allowances of members of Board and executive committees

6. (1) Members of the Board and executive committees who are not in the full-time service of the State, may, in respect of their services, be paid such remuneration and allowances as may be determined by the Board after consultation with the Minister.

(2) The remuneration and allowances of the persons referred to in subsection (1) may differ according to the different offices held by them or the different functions performed by them.

Staff of Board

7. (1) The Board shall, subject to its directions and control, in the performance of its functions under this Act, be assisted by such staff, appointed by the Board as may be necessary to enable the Board to perform its functions.

(2) The persons appointed by the Board in terms of subsection (1) shall receive such remuneration, allowances and other employment benefits and shall be appointed on such terms and conditions and for such periods, as the Board may determine.

(3) *(a)* Any function or power which the Board may perform or exercise in terms of this Act, may be delegated (whether generally or specially) to any member of the staff of the Board.

(b) Any delegated function so performed or delegated power so exercised shall be deemed to have been performed by the Board.

Funds of the Board

8. (1) The funds of the Board shall consist of –

(a) money provided by provincial legislative authorities in proportion to the taxation received from gambling by each province; and

(b) other money lawfully paid to the Board.

(2) There shall be paid out of the funds of the Board such sums as are necessary to defray any expenses incurred by the Board, including the remuneration, allowances and other employment benefits of the members and staff of the Board.

(3) The Board may, with the consent of the Minister, raise short term loans at any time, by way of overdrawing its account with a bank or otherwise, to meet any deficits that may arise from time to time.

Audit and annual report

9. (1) The Board shall –

(a) keep proper books and proper records in relation to receipts and payments;

(b) prepare a report of all its activities, including financial statements in respect of each financial year; and

(c) annually within three months after the end of each financial year, submit to the Minister the report and audited financial statements referred to in paragraph (b).

(2) The financial statements of the fund shall be audited by an independent auditor registered in terms of the Public Accountants' and Auditor's Act, 1991 (Act No. 80 of 1991), and appointed by the Board for that purpose.

(3) The report referred to in subsection (1) –

(a) shall be laid upon the table in Parliament within 14 days after it is submitted to the Minister, if Parliament is then in session, or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session; and

(b) shall be submitted to the Premiers of the various provinces and the Auditor-General within 14 days after it is submitted to the Minister.

Objects of Board

10. The objects of the Board shall be to –

(a) co-ordinate the regulation of and control over casinos, racing, gambling and wagering;

(b) to promote uniform norms or standards that apply generally throughout the Republic regarding the matters referred to in paragraph *(a)* and the bringing about of uniformity in the legislation in force in the various provinces;

(c) to advise the Minister and the provinces on any matter on which the Minister or the provinces requires the advice of the Board;

(d) to do research with reference to any matter referred to in paragraphs *(a)* and *(b)* and to study and investigate all such matters in order to make recommendations for the development, improvement, modernization or reform thereof;

(e) to facilitate the resolution of any disputes which may arise between the various provincial authorities regarding the regulation and control of gambling activities; and

(f) to liaise with any foreign or international body having any objects similar to the objects of the Board.

Functions of Board

11. (1) In order to achieve its objects referred to in section 10 the Board –

(a) shall have due regard to –

(i) the powers of the provinces, and the regional, economic, financial, social and moral interest of the Republic;

(ii) the promotion of the principles underlying gambling in the Republic referred to in section 13; and

(iii) international developments in the field of gambling;

(b) may advise and provide guidelines to the provincial authorities on the regulation and control of gambling or wagering activity, including –

(i) in general or in connection with a specific gambling activity, the manner and nature of such regulation and control;

(ii) the granting, issuing, suspension, withdrawal and amendment of gambling licences;

(iii) the criteria to be complied with before any licence is granted;

(iv) the nature and manner of the auditing of licensees and the documents and records which shall be kept and submitted to the provincial licensing authorities;

(v) the imposition of taxes, levies and duties on any gambling activities;

(vi) the number of casino licenses to be awarded in the Republic or in any one province;

(vii) the types of games that may be played in a casino;

(viii) the types of gambling equipment that may be used by any licensee;

(ix) the restriction and control of the game of bingo or any similar game;

(x) any matter relating to wagering on horseracing;

(xi) any matter relating to wagering on sporting events;

(xii) measures relating to the advancement, upliftment and economic empowerment of persons or groups or categories of persons disadvantaged by unfair discrimination; and

(xiii) any matter on which the Minister or a provincial authority requires the advice of the Board;

(xiv) in general, any other matter which the Board may consider necessary or expedient to give advice to the Minister or a provincial authority.

Consultation

12. The Board may consult any person, organization or institution with regard to any matter deemed necessary by the Board to enable the Board to achieve its objects.

Principles underlying gambling in the Republic

13. In the making of any law with regard to casinos, racing, gambling and wagering as envisaged in Schedule 6 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), a provincial legislature shall in such legislation include –

(a) the principles –

(i) of, in general, effective regulation, control and policing of gambling activities;

(ii) of the protection of members of the public who participate in any licensed gambling acitivity;

(iii) of the protection of society in general against the over-stimulation of a latent demand for gambling;

(iv) of the promotion and maintenance of standardization and quality in connection with equipment used by any licensee;

(v) of the imposition of levies and duties on any licensee;

(vi) of, in general, transparency, fairness and equity in the process of licensing any gambling activity; and

(vii) that the State or any agent thereof shall, apart from taxes, not have any financial interest in any gambling activity;

(b) measures for the establishment of an independent provincial licensing and control body for the regulation and control of any gambling activity, including the functions and powers of such a body; and

(c) measures that no political office-bearer or other designated person shall –

(i) be a member of the body referred to in paragraph *(b)*; and

(ii) have a direct or indirect financial interest in any gambling activity.

Gambling debts enforceable

14. Any gambling debt lawfully incurred by a person in the course of any gambling activity shall, notwithstanding provisions of any law or the common law, be enforceable in a court of law.

Repeal of laws

15. The Lotteries and Gambling Board Act, 1993 (Act No. 210 of 1993), is hereby repealed.

Short title and commencement

16. This Act shall be called the National Gambling Act, 1995, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

LOTTERIES AND GAMBLING BOARD

PRESENTATION

OF A

SUPPLEMENTARY REPORT

TO THE

MINISTER FOR GENERAL SERVICES

OF THE

REPUBLIC OF SOUTH AFRICA

PRETORIA: **APPROVED BY THE BOARD ON 14 JULY 1995**
SIGNED BY THE CHAIRMAN ON 18 JULY 1995

FOREWORD

The legislation of gambling in South Africa as proposed by the Board in its Interim and Main Reports, constitutes a dramatic change in many spheres of the broad society of South Africa. First, it represents a break with the policies, laws and conventions of more than two centuries of prohibition on gambling – a dramatic change the consequences of which will manifest themselves in many ways in time to come. Second, gambling worldwide is proliferating rapidly and has established itself as one of the most profitable leisure-time industries with a very comprehensive range of activities. It has many facets and features and a terminology of its own, all of which require a depth of investigation extending a longer period than the three months within which the Board had to complete its Main Report.

Against this background the Main Report of the Board, which was submitted to Government on 9 March 1995 in Cape Town, deals with the widest possible range of subjects on gambling. The intention was to provide legislatures, in the shortest time possible, with a basis for the industry encompassing the principles set out in that Report.

However, certain matters were reserved for further consideration by the Board as they, because of their peculiarities and characteristics, required additional investigation. The question as to how many casino licences a province should award within its borders relates to a subject which required more research and analysis than was generally assumed. As will appear from the discussion in this Supplementary Report, the answer to the question is dependent on a variety of inter-related factors on which, in the current stage of transformation in South Africa, information is more speculative than accurate. As the investigation on this subject progressed the Board became more convinced that its recommendations to Government cannot be more than guidelines and that, more than anything else, market forces will be a major determining factor with regard to the allocation and distribution of casino and machine licences. Nevertheless the Board edeavoured to be as realistic as possible in its recommendation based on the evidence and information at its disposal.

As will be recalled, the Board recommended in its Main Report that no more than 40 casino licences (inclusive of the existing 17 licences) be awarded in the country. This recommendation was based on a statistical, rather than an empirically researched formula. The reaction to this recommendation varied widely: from those who believe that no fixed number should be set and that the system should be open and free, on the one hand, to those who believe that 40 licences are too many and should be reduced, on the other hand.

The number of 40 licences is, as indicated in the Report, based on the statistically calculated formula of between 300 and 400 slot machines and between 20 and 30 tables per average sized casino.

The Board also recommended that gaming machine licences be awarded to operate a maximum of 5 gaming machines on premises not primarily used for gaming, such licences to be limited with regard to the number of machines, stakes, prizes and other related matters.

Subsequent to the submission of the Main Report the Board was requested to also advise Government on the number of casino licences per province as a guideline for provincial licensing authorities. In considering this subject the Board discovered that it is even more difficult to determine the number of licences per province than for the country since great differences exist between the provinces with regard to population, size, income, disposable income of individuals, propensity and a host of other factors. An attempt to involve international research organisations in this investigation proved too costly. However, the Board needed some scientifically researched information to consider and arrive at an appropriate guideline as to how many licences a province may award.

The Bureau for Market Research of the University of South Africa, with an excellent reputation built up over many years, was contracted for this investigation. Its report was completed within a short span of time. The results of the Bureau's research have been incorporated in the reasoning and recommendations of the Board in this Supplementary Report. Provincial legislatures in the meantime, through the Inter-Provincial Liaison Committee on Gambling, Gaming and Betting, obtained the services of an international and reputable consultant, Ernst & Young, to conduct, from their perspective, an investigation into the number of casino licences which each province may award. The Board was also fortunate to have had access to the scientifically researched information obtained by the provinces from this expert international organisation. The results of both institutions also indicate the maximum number of slot machines plus gaming tables (gaming units) and gaming positions or stations which provinces may authorise within their respective

jurisdictions. This enabled the Board, against the background of numerous uncertainties and variables to arrive at, as realistic as possible, guidelines as to how many casino licences, gaming units and gaming stations may be authorised in the country and per province.

The second subject on which the Board recommends in this Supplementary Report relates to Greyhound racing, betting thereon and associated issues. This is done on the request of Government which, recognising that all forms of racing and matters related thereto are constitutionally within the legislative competencies of the provinces, nevertheless wishes to determine, as a matter of principle, whether the present ban should continue or whether it should be repealed.

The history of Greyhound racing here and the emotion surrounding the subject as well as the dearth of information thereon called for further information and investigation. The Board consequently requested interested persons and organisations to submit written representations on or before 13 April 1995. For those who wanted to give *viva voce* evidence to the Board, oral sessions were conducted on 6 and 7 June 1995. The Board received approximately 40 presentations by the return date and ten organisations, represented by 26 persons, formally appeared before the Board to present oral evidence on their standpoints on this matter. In addition the Board also viewed different videos on the subject of Greyhound racing in certain countries. The results of the Board's enquiry are thus based on the evidence collated from video films, research obtained from local and overseas sources, written submissions and oral evidence.

During the oral evidence sessions a society for the protection of animals against cruelty published advertisements in certain newspapers giving details of certain deeds of cruelty to Greyhounds and calling upon the public to voice their opposition to the legalisation of Greyhound racing in the country. Many submissions in the form of written representations, letters, petitions with hundreds of signatures of individuals, telefaxed messages, telephone calls and verbal communications on the subject of Greyhound racing were made to the Board subsequent to the return date of 13 April 1995. Strictly speaking the Board whould have ignored all those that were submitted after that date. However, in view of the high emotion that surrounds the subject, the fact that the presenters consisted of supporters and opposers and also the obligation of the Board to give Government its duly considered opinion, the Board did not consider these representations in detail in its deliberations, but has taken note of the nature of the comments. The third subject which the Board deals with in this Supplementary Report relates to a motivation for the Board's recommendation on value added tax contained in Chapter 4, paragraph 7 of its Main Reports.

That recommendation states that all forms of gambling should be exluded from value added tax on the basis of an exempted status. Subsequent investigation suggests that the basis for such exclusion should rather be a zero-rated status. The recommendation for the zero-rated status has been submitted to the Minister by memorandum and is now included in this Supplementary Report:

- Prof J H Martins – Director of the Bureau for Market Research, University of South Africa, Pretoria;
- Prof A A Ligthelm – Research Professor in the Bureau for Market Research, University of South Africa, Pretoria; and
- Ernst & Young – International consultant for allowing the Board access to information contained in its report to the provinces.

All those persons who and organisations which responded so willingly and enthusiastically to the Board's request for information and data on the subjects dealt with in this Supplementary Report.

PRETORIA: 18th JULY 1995



SECTION 1

THE NUMBER OF CASINOS IN THE COUNTRY AND PER PROVINCE

1 NUMBER OF CASINOS IN THE COUNTRY

1.1 The Board recommended in its Main Report that until such time as the necessary research had been conducted on the factors that play a role in determining the maximum number of casinos to be allowed in South Africa, no more than 40 casino licences, inclusive of the existing 17 legal licences, be awarded in the country. That recommendation was made on the request of Government and is based on a conservative formula of approximately 1 casino per one million of the population which is conservatively representative of a number of gambling countries which, more or less, are comparable in most respects with South Africa. It must also be pointed out that an accurate and strict calculation of the total population of comparable gambling nations divided by the number of casinos in these countries arrive at a formula of approximately 750 000 persons per casino. In terms of this formula South Africa could have 53 casinos. The Board, however, believes that the novelty of legalised gambling in South Africa and the advice it received from local and overseas sources in this regard compel a conservative approach to the number of licences for the country. Hence the Board's recommendation of 1 casino per one million of the population. However, as was stated in the Main Report, these formulae have a statistical – and little of an empirical – or scientific basis. Analyses of worldwide trends prove that the number of casinos per country at any rate developed more as a result of a laissez faire approach and market related developments rather than a planned and researched programme.

1.2 Notwithstanding the haste of the investigation and lack of research with which the maximum number of casinos for South Africa was arrived at, it would now appear that the number of 40 is generally accepted as an appropriate and feasible target – for the time being at least. It must be added, however, that this number indicates what the Board also researched and found, namely that a medium sized casino has, on an average, 354,5 slot machines and 26,4 tables based on the casino industries of a number of comparable countries. Obviously, should only mega-casinos or, on the other hand, only small casinos be allowed, the number of 40 casinos would be eiher too high or too low respectively. The size, i.e. number of machines and tables, is of vital importance in determining the number of casinos to be allowed in a country or in a province, state or region. It should also be noted that in Chapter 7, paragraph 3.6 of its Main Report, the Board recommended that a system of gaming machine licences be introduced. In terms of this, suitable applicants could be licensed to operate a maximum number of five gaming machines each on premises not primarily used for gaming. Such a licence shall be endorsed by the licensing authority with regard to the number of machines, stakes, prizes and other related matters as deemed necessary by the authority. These stakes and prizes will be limited to much lesser amounts than for machines authorised for casino licences and a maximum prize of R2 000 for a single win was recommended by the Board. Should there be no proper control over and regulation of these gaming machines by provincial legislatures, obviously the lack of prohibition thereof would constitute a serious threat to casino operators and the industry as a whole.

1.3 In its research the Bureau for Market Research of the University of South Africa (hereafter referred to as the Bureau) proceeded from the basis of the Board's recommendation that no more than 40 licences (i.e. 14 350 slot machines and 1 025 tables) for the whole country should be awarded. This, obviously, restricted the Bureau's investigation and certainly could lead to wrong assumptions and unrealistic calculations. Subsequently the Board requested the Bureau to also determine, during its research on provincial numbers, the number of casinos which the country ideally could have. This would then be determined objectively and independently, based more on empirical than statistical research.

1.4 The purpose of this request was not to find another formula for the determination of a maximum number of licences or for a motivation for the Board to deviate from the recommendation of 40 licences in its Main Report, but rather to determine whether the statistical formula of the Board, derived from a worldwide survey, differs much from the more empirical formula of the Bureau. By this comparison, the Board hoped to provide a more realistic guideline for the proposed National Gaming and Wagering Board as to how many casino licences the country can ideally afford from a political, social, and economical perspective.

1.5 The current 17 legal casinos in the new South Africa is estimated to have approximately 6 870 slot machines and 230 tables, the ratio of slot machines to tables being approximately 30:1. This ratio differs substantially from the ratio which is contained in the Board's formula namely 14:1 based on 354,4 slot machines to 26,4 tables in the relevant countries studied by the Board. Futhermore, from the information available it would appear that the ratios in South Africa differ also markedly from casino to casino, ranging from 29 slot machines per table in a mega-sized casino to a low as 11:1 in a medium to small casino. In neighbouring countries the ratio is even lower, ranging from 7:1 in Lesotho to 10:1 in Botswana. The variations in Southern Africa are great as can be seen from the above. It is therefore important to heed the caution expressed by international experts, namely not to rely too much on international comparisons for the reason that gaming activities differ greatly from country to country. Another complicating factor which neither the Board nor the Bureau for Market Research and Ernst & Young could take into account is the existence of very many illegal casinos in the country, the number of which is alleged to be several thousand. The number of machines and tables operated in these illegal casinos is even more unknown, but is estimated to be many thousands. If they are not closed down as the Board has so frequently urged the relevant authorities to do, their existence and continued operations will also constitute a threat to the economic viability of legal operators and the industry as a whole.

1.6 The estimated gross gaming revenue (GGR) per slot machine of licensed casinos during 1994 in South Africa also showed great variations – from as high as more than R220 000 per machine in one casino to as low as approximately R96 000 in another. According to this, each slot machine, on average, earns almost 2,5 times more in one casino than in the other. The average GGR per table also showed great variations in 1994 – from approximately R1,6 million per table at one casino to less than R0,5 million at another. The ratio of GGR earned by slot machines to that earned by tables during 1994 therefore was approximately 80% to 20% i.e. slot machines were by far the biggest revenue earners.

1.7 The Bureau's finding on the optimal number of casinos for South Africa is based on: first, expenditure of the public on gambling; and third, the average revenue per gambling unit (slot machines and tables).

1.7.1 The Bureau initially estimated the propensity for gambling at 0,76% of personal disposable income which means that persons over 18 years spend that percentage on casino gambling. This calculation was made after adjustments were made for the very distorted distribution of income over the population of South Africa. Casino gambling in the United States, for example, represents approximately 17% of holiday expenditure.

However, there is also no empirically researched basis for this percentage. It represents approximately half of the estimated expenditure for recreation and sport. Even authoritative literature cannot account for this percentage. It follows that much more scientific research is required in this area. On the assumption that people of 18 years and over spend 0,76% of their disposable income on casino gaming, the total casino gaming expenditure is calculated at approximately R2 300 million or approximately 0,76% of the total personal disposable measure of R295 311 million per annum.

An authoritative tourist organisation estimates that the casino industry of South Africa could have an annual spend of approximately R3 200 million. In terms of this estimate approximately 1% of personal disposable income would be spent on casino gaming annually. There are views, however, that this percentage could be more than 1%. In its supplementary document to the Board, after further investigation, the potential gambling expenditure is estimated by the Bureau to be at between 1% and 1,25% of personal disposable income. In terms of this the expected total expenditure per annum on casino gambling could be between approximately R3 000 million and R3 700 million for the country. However, the Board believes that 1% of personal disposable income is a more realistic percentage for South Africa. In terms of this assumption the amount of money that will be spent on casino gaming by persons of 18 years and over in South Africa, will be approximately R2 950 million per annum.

1.7.2 The ratio of slot machine to tables in South Africa has already been referred to above and, as was shown, the international ratio which the Board calculated is 14 slot machines to 1 table, whereas the ratio in South Africa at present is almost 30 to 1. The four major casinos in South Africa operate almost 70% of the slot machines and almost 75% of the tables. In these four major casinos the ratio is 28:1. This ratio, in the Bureau's view, is more representative of the type of casino that gamblers in South Africa frequent.

1.7.3 According to the Bureau's calculations the average gross gaming revenue per slot machine in South Africa is approximately R156 000, while that of each table is R1 188 000, rounded to R1 092 000, being seven times that of a slot machine.

1.8 On the above-mentioned assumptions and calculations the Bureau draws two scenarios: using 1% and 1,25% of personal disposable income respectively as a basis for determining the optimal number of casinos for South Africa.

1.8.1 Assuming 1% of personal disposable income as a propensity for gambling, the casino gaming industry's yield would be R2 950 million per annum. On the basis of a slot machine-to-table-ratio of 28:1 and a GGR per unit as set out above, licences for the following number of slot machines and tables can be awarded in South Africa.

	Slot machines	**Tables**	**Total**
No of Units	15 127	540	15 667
Total Revenue	R2 360 million	R590 million	R2 950 million
Average GGR	R156 000	R1 092 000	R188 294

1.8.2 Assuming 1,25% of personal disposable income as a propensity for gambling, the casino gaming industry yield would be R3 690 million per annum. Based on a slot machine-to-table-ratio of 28:1 and a GGR per unit as set out above, the Bureau calculates that licences can be granted as follows in South Africa:

	Slot machines	**Tables**	**Total**
No of Units	18 923	676	19 599
Total Revenue	R2 952 million	R738 million	R3 690 million
Average GGR	R156 000	R1 092 000	R188 275

1.9 The Bureau concludes that based on a 1% or 1,25% personal disposable for casino gaming, licences can be granted for between 15 667 (15 127 slot machines and 540 tables) and 19 599 gaming units (18 923 slot machines and 676 tables) in South Africa respectively. The exact number of units for which licences can be granted will depend on the degree to which the propensity for gambling of 1% of personal disposable income is exceeded. On the basis of a ratio of 28:1 (the ratio which the Bureau deduced from the present South African situation) according to which an average-sized casino comprises 354 slot machines and 12,5 tables, the following number of average-sized casinos can be established:

(a) On the basis of a 1% propensity for gambling – 42 casinos.

(b) On the basis of a 1,25% propensity for gambling – 53 casinos.

According to the Bureau for Market Research the number of average sized casinos can therefore vary between 42 and 53 casinos for South Africa. These estimates, as can be seen, show almost no significant difference from those of the Board, namely 40 licences based on the statistical formula of 1 licence per 1 million of the population (estimated to be 40 million for South Africa) or 53 licences had the international statistical formula of 1 licence per 750 000 of the population been used. In conclusion then the Board is more than satisfied that its recommendation in its Main Report of 40 licences is as realistic as can be.

2 THE NUMBER OF CASINOS PER PROVINCE

2.1 The Board has been requested to also determine the optimal number of casino licences per province. Obviously more factors than those influencing the number of licences for the country play a role with regard to the number of licences to be determined for each province. For example the agrarian *vis-à-vis* industrial characteristics; the population density; the developmental level of the people in a province; the relative wealth or poverty; and, still others of a society differ from province to province. In its search for an appropriate and

relevant norm the Board placed much reliance on information and research provided by the Bureau, Ernst & Young, other organisations, and individuals as well as those derived from literature and other sources. The following have been identified by the Board as the most important factors of a social, economic, geo-demographic, political, and general character that play a role in the determination of a guideline on the number of casinos per province. They will be dealt with in those categories.

2.2 *Social Factors*

Social factors relate to the stage of development of a society which in turn depends on a host of other elements: degree of industrialisation, value system, degree of maturity and exposure to international influences through tourism, technology, communication, entertainment and other aspects of modern civilisation. The average age of persons, particularly those of 18 years and over, as well as the degree of "liberalism" or "conservatism" are also important indicators. Few even hold the view that the crime rate and the society's propensity for crime at a given time should also be introduced into the formula. This, in the Board's view, is extremely difficult to determine and is at any rate, in turn dependent upon many other circumstances.

From most of these, the propensity for or inclination towards gambling can be determined. Certain sources intimate that the level and type of sport and other forms of entertainment or leisure-time activity which a society indulges in can also be indicative of the inclination of a society towards gambling. South Africa is a sunny country and South Africans love sport. Sport loving nations generally have a higher gambling propensity than others. More religious societies tend to be less gambling inclined. The church, particularly in societies where one denomination predominates, plays a significant role with regard to the peoples' propensity to gamble.

The social factors are not easily quantifiable, but it must be assumed that differences with regard to these do exist. In the new South Africa where new boundaries between provinces have recently been drawn and new societies are being formed, the weights or values which are to be attached to these factors are very difficult to determine at this stage.

2.3 *Economic Factors*

The economic factors cover a wide spectrum and relate to, *inter alia*, issues such as: the economically active population in a province; the gross domestic product; the income and disposable income of people; their expenditure on entertainment, recreation, sport, social life and other non-essential activities and commodities; tourist traffic and potential growth in tourism; concentrations of people in a province; access to gaming venues; the degree of industrialisation or agriculturalisation; and, the state of the economy at a given time. Important economic factors such as the level and distribution of income, play a key-role in any attempt to determine the optimal number of casinos per province.

2.4 *Geo-demographic Factors*

These factors relate to a range of subjects which must be considered in order to give guidance with regard to the number of casinos to be allowed per province: the physical size of the province; population; physical features and geographical attractions of the province; closeness to resorts and other leisure-time attractions of neighbouring provinces; climate; accessibility; status and importance of the province in relation to others; and, its own resorts and leisure-time attractions. These, according to research and overseas experience, all play a role in the decision as to whether a particular market can bear more than a certain number of casinos.

2.5 *Political Factors*

Factors that are relevant under this heading relate to the so-called domino-effect in the gambling activities of neighbouring provinces and countries. No doubt, for example, the Eastern Transvaal Province will be affected by casino activities in Gauteng, KwaZulu/Natal, Northern Province, Swaziland and Mozambique. The economic ideology of the government of a neighbouring territory is also of prime importance. Gambling tends

to flourish in a market related economy – it does less so in a centrally controlled economic system. In short, should a provincial government politicise casino gambling by controlling it directly and so become involved in its operational, administrative, and financial affairs, operators and gamblers will react negatively with certain long term consequences for the industry in that province.

2.6 *Miscellaneous Factors*

Factors under this heading include the number of existing licences in a particular province which are legally operating as well as any other factor which cannot be dealt with under any of the above-mentioned categories.

3 DELIBERATIONS

3.1 South Africa is divided into nine provinces consisting of the Western Cape; Northern Cape; Eastern Cape; Free State; KwaZulu/Natal; Eastern Transvaal; Northern Province; Gauteng; and, North West Province. Certain areas have not as yet been allocated – the so-called affected areas. Their final "home" will be determined in time to come. To a large extent the nine provinces correspond to the previous development regions. The Northern Cape province is the largest (361 800 km²) and Gauteng the smallest (18 810 km²). The population numbers also vary greatly – from 8,6 million in KwaZulu/Natal to barely 0,75 million in the Northern Cape.

3.2 In determining the number of casino licences per province, the Board also considered the significant differences in the affluence or wealth of the provinces. Some provinces are much wealthier than others while some are not so well off with a fairly even spread in between. This is due to many factors: degree of industrialisation *vis-à-vis* that of agriculturisation; population density; climatic conditions; scenic and geographic attractiveness; developmental level of population; infrastructures; and, a host of other interrelated aspects of each province. Accurate data on the gross domestic product and other related information per province are not readily available as yet. However, this does not detract from the fact that there are vast differences between the "haves" and the "have-nots" of provinces. The Board was requested by Government to consider the possibility of allocating fewer licences to the "have"-provinces while giving more to those which are less affluent. The Board deliberated whether some "mild form" of "affirmative action" could be applied in the allocation of casino licences per province. This would have the effect that, as the request to the Board implies, licences should be taken away from the "haves" and be given to the "have-nots" of provinces. Currently that would mean that one licence each could be deducted from the wealthier provinces such as KwaZulu/Natal, Gauteng, and Western Cape and be added to the numbers of the Northern Cape, North West and Northern Province. However this, in the Board's opinion, is a political-economic consideration which should form the basis of a political decision – it is therefore a decision to be taken by central Government. The Board cannot include this consideration in its formula and recommendation as it would distort the calculation of the final determination. The Board's calculations are based on scientific and empirical research done by itself, the Bureau for Market Research and Ernst & Young. Such an adjustment cannot, therefore, be justified on their findings on estimated casino spend in each province. Central Government may, however, decide on grounds of compassion to take away from some provinces, and add to the numbers of licences for the poorer provinces.

3.3 The number of people of 18 years and over relates to the section of the population who have attained the minimum age required of potential gamblers for admission to a casino. Statistics concerning the number of persons over 65 seem to be becoming increasingly irrelevant worldwide in determining potential markets and the propensity for gambling. Although, on the other hand, more and more elderly people are contributing to the world's tourist industry. For purposes of this study the total population of 18 years and over will be classed as potential gamblers, even though this assumption may cause overestimation of potential expenditure on gambling. The population of 18 years and above per province is as follows:

Province	Population 18+ (000)	% Distribution
Western Cape	2 440	10,5
Northern Cape	458	2,0
Eastern Cape	3 276	14,1
Free State	1 688	7,3
KwaZulu/Natal	4 719	20,3
Eastern Transvaal	1 616	7,0
Northern Province	2 263	9,7
Gauteng	4 892	21,1
North West	1 855	8,0
South Africa	23 207	100,0

3.4 The personal disposable income of the population denotes the amount that is available for expenditure after deduction of direct personal tax. In view of the very biased distribution of income of the population in South Africa it would be unrealistic to make calculations on the basis of average personal disposable income per capita. For instance the distribution of income in South Africa appears to be as follows:

% of the population	% of total personal disposable income
• Poorest 20% of population	2,1%
• 21 – 40%	4,8%
• 41 – 60%	8,6%
• 61 – 80%	17,9%
• Richest 20% of population	66,6%

It is apparent from the above that the poorest 20% of the South African population commands only 2,1% of personal income, and the richest 20% no less than 66,6%. The income distribution by province likewise reveals marked differences, with Gauteng showing the least biased and KwaZulu/Natal the most biased distributions. Thus the propensity for gambling may vary quite considerably from one province to another and from the poorest to the richest sections of the population in a province. Also, approximately more than a third of the population is unemployed, which means that such persons necessarily fall into the category of the poorest of the population and have limited, if any, funds available for gambling.

In the calculation of income per capita of the population, total personal disposable income is allocated to the population aged 18 years and over.

Considering that a proportion of such income goes towards supporting the population under 18 years, a measure of over-estimating of the income per capita of the population of 18 years and over and, therefore also of their potential expenditure on gambling, is virtually inevitable. In the Western Cape, for instance, the income per capita of the population over 18 years is, according to the Bureau, as follows:

Western Cape: Population quintiles	Annual personal income per capita (population 18 years and over) p.a.
• Poorest 20% of population	R 2 714
• 21 – 40%	R 6 446
• 41 – 60%	R10 956
• 61 – 80%	R20 537
• Richest 20% of population	R51 620

3.5 As was stated before, a society's propensity or inclination for gambling is equally difficult to determine, even if a society has an established gambling industry. In South Africa it obviously is even more so at this early stage. This element, as stated before, depends on a variety of factors, many of which, apart from being economic, are social and even psychological: social attitudes towards gambling; preference for lotteries compared to casino gaming; religious convictions; society pressure; novelty of gambling in the country; positive or negative publicity; locality of and attractions offered by casinos; size of prizes; and, still others, are all factors which determine the inclination of a society for gambling.

In estimating the propensity for gambling, the expenditure of households on recreation, entertainment and sport as well as holidays has great impact on the calculations. The percentage expenditure by income group varies greatly from one income group to another and equally so with regard to these items. For example, according to the Bureau, the statistics for the Western Cape are as follows:

Population quintile	**Percentage expenditure on**	
	Recreation	**Holidays**
• Poorest 20% of population	0,32%	0,43%
• 21 – 40%	0,81%	0,56%
• 41 – 60%	1,68%	0,60%
• 61 – 80%	1,80%	0,75%
• Richest 20% of population	2,36%	0,91%

However, it must not be assumed that these percentages represent expenditure on casino gaming. Calculations of the latter are based on the experience of a gaming country such as the United States of America.

The great difference in personal income per capita between the provinces obviously leads to great variations in the average sum spent on casino gaming. For example, as can be seen from the following comparisons, in the Northern Province it is as low as R40,51 per person as compared to R240,87 in Gauteng.

Province	**Annual average per capita expenditure on gambling**
Western Cape	R198,32
Northern Cape	R125,45
Eastern Cape	R 63,52
Free State	R104,33
KwaZulu/Natal	R102,99
Eastern Transvaal	R 97,29
Northern Province	R 40,51
Gauteng	R240,87
North West	R 59,95

Clearly the estimate of the propensity for gambling calculated above is conservative. The reason is that the income and expenditure pattern surveys on which the calculations are based were conducted at a time when gambling opportunities in South Africa were rather limited. Expenditure on gambling is likely to increase rapidly once casino licences have been awarded, especially in the beginning. However, it was decided not to allocate a hypothetical sum to this item because an empirical study would be needed to determine the possible increase in expenditure on gambling once more facilities are available.

3.6 According to the Bureau for Market research, after making ajdustments for population quintiles, the potential casino gaming expenditure of South Africans of 18 years and over per province will be distributed as follows:

Province	Total casino gambling expenditure (R000)	% Distribution
Western Cape	483 903	16,4
Northern Cape	57 455	1,9
Eastern Cape	208 095	7,1
Free State	176 112	6,0
KwaZulu/Natal	486 017	16,5
Eastern Transvaal	157 217	5,3
Northern Province	91 673	3,1
Gauteng	1 178 318	39,9
North West	111 210	3,8
South Africa	2 950 000	100,0

These figures suggest that the bulk of the R2,9 billion that is estimated will be spent on casino gaming will come from the populations in Gauteng (39,9%), KwaZulu/Natal (16,5%) and the Western Cape (16,4%). The inhabitants of the other provinces, except Northern Cape, will spend between 3,1% and 7,1%. The share of the Northern Cape will be 1,9%. As is to be excpected, the potential gambling figures are related to the distribution of income and population in the provinces. The distribution of personal disposable income per province is as follows: Western Cape (15,3%), Northern Cape (1,9%), Eastern Cape (8,0%), Free State (6,3%), KwaZulu/Natal (15,2%), Eastern Transvaal (5,6%), Northern Province (3,6%), Gauteng (39,0%) and North West (5,1%). These numbers refer only to the potential casino gaming expenditure of the *de facto* population of the provinces and have not been adjusted for the flow of casino gaming expenditure across provincial boundaries; the relationship between gambling expenditure and holiday patterns; and, gambling expenditure by tourists from abroad.

If, however, it is assumed that all gambling expenditures takes place in the provinces where the population is resident (without the addition of gambling expenditure by foreign tourists), the 40 casino licences which the Board recommended **could** be allocated as follows to the provinces (also assuming no distinctions are made on the basis of casino size):

Province	% distribution of gambling expenditure	Number of casinos
Western Cape	16,4	7
Northern Cape	1,9	1
Eastern Cape	7,1	3
Free State	6,0	2
KwaZulu/Natal	16,5	7
Eastern Transvaal	5,3	2
Northern Province	3,1	1
Gauteng	39,9	15
North West	3,8	2
Total	**100,0**	**40**

3.7 The mobility of expenditure on gambling across provincial borders would require empirical research once gambling has established itself in the country. It is very difficult if not impossible to determine it now. The establishment of casinos in the Gauteng province will, for example, certainly impact on the gambling expenditure in the existing casinos of the Northwest province. So also would the present uncertainty of the location of casinos complicate the assumptions about the flow of gambling expenditure between provinces. Information available to the Board indicates that visitors to casinos in South Africa originate mainly from within a 150 km radius of a particular resort. The location of future casinos will definitely impact on the transborder flow of visitors and gaming expenditure.

3.8 With regard to the correlation between gambling facilities and holiday resorts a study by a well-known and authoritative South African tourist organisation during the latter part of 1994 revealed that at least 33% of the South African population had been on holiday in that year. The average incidence of holiday trips is 2,2. In terms of the total population of South Africa it amounts to approximately 7,9 million domestic tourists per year. The average length of a trip is seven days, and visits to family and friends are the most frequently mentioned reasons for trips. Approximately 43% of all holiday trips are taken from September to December of each year.

The most popular tourist destinations are KwaZulu/Natal (25%), Western Cape (13%) and Gauteng (16%). The distribution per province is as follows:

Province	% of domestic tourists
Western Cape	13%
Northern Cape	2%
Eastern Cape	9%
Free State	7%
KwaZulu/Natal	25%
Eastern Transvaal	8%
Northern Province	9%
Gauteng	16%
North West	10%

A further finding of the said tourist organisation is that most of the tourists in a particular province originate from the province. The table below shows, for example, that 46% of the domestic tourists in the Western Cape originate from the Western Cape, and 49% of the tourists in KwaZulu/Natal are from that province.

Province	% of domestic tourists from same province
Western Cape	46%
Northern Cape	27%
Eastern Cape	32%
Free State	43%
KwaZulu/Natal	49%
Eastern Transvaal	37%
Northern Province	43%
Gauteng	25%
North West	44%

Because of these patterns of tourism a large proportion of the expenditure of domestic tourists on gambling will probably occur in the tourists' province of origin.

However, the provinces known as important tourist destinations also attract a fair percentage of tourists from the provinces that are less popular. The following has been found in this connection:

- Western Cape: 23% of its tourists are from Gauteng and 12% from the Eastern Cape.
- KwaZulu/Natal: 32% of its tourists are from Gauteng, 6% from Northern Province and 5% from Eastern Transvaal.
- Gauteng: 24% of its tourists are from Northern Province, 16% from North West and 13% from KwaZulu/Natal.
- Eastern Transvaal: 42% of its tourists are from Gauteng and 15% from Northern Province.
- Eastern Cape: 24% of its tourists are from the Western Cape, 18% from KwaZulu/Natal and 13% from Gauteng.

Despite the strong flow of inter-provincial tourism the survey also reveals that entertainment destinations such as casinos and other places of gambling are not seen as very appealing to domestic travellers as illustrated in the following table:

An appealing holiday	Average rating out of 10
Sea	8,1
Mountains	6,4
Game Park	7,6
Walk and hike	5,6
Sport	5,4
Beautiful shops	6,9
Playground for kids	7,1
Peace and quiet	7,9
To get away	8,1
Educational holiday	7,6
New places and destinations	8,6
Casino and gambling	5,8

However, gambling is rated an enjoyable aspect of a holiday by approximately one-third of the domestic travellers in the organisation's survey. Gambling is therefore not a primary motivation for going on holiday.

3.9 It would appear from surveys that if casinos are to succeed in South Africa they will have to be developed in such a way that they are complementary to holiday trips. Their location is of prime importance and provincial licensing authorities will have to liaise with their neighbouring colleagues on the placing of casinos within their respective jurisdictions. Casinos will have to be established at popular tourism and leisure destinations or in proximity to large population concentrations. In South Africa casinos so far have been largely dependent upon day visitors (gamblers) for their survival. About 93% of the estimated 12 million annual patrons of South Africa's casinos are day-visitors, originating mainly from within a 150 km radius of a particular casino resort. The effect of the above on the allocation of licences to provinces is also of importance.

3.10 During 1994 approximately 3,6 million foreign tourists visited South Africa. Of these, about 2,9 million originated from Africa and 700 000 from overseas. The average length of a visit is 19,5 days. The main centres visited by overseas tourists in 1994 are as follows:

Centre	Average duration of stay in days
Cape Town	4,98
Johannesburg	4,52
Durban	2,03
Eastern Transvaal	1,26
Pretoria	1,24
Garden Route	0,93
PE or East London	0,76
South Coast	0,41
Bloemfontein	0,26
Kimberley	0,09
Ex Bophuthatswana	0,29
Other Transvaal	0,87
Other Cape	0,51
Other Natal	0,75
Other Free State	0,19
Rest of SA	0,14

From this it is clear that about 50% of the time overseas tourists spend in South Africa is spent in Cape Town (4,98 days) and Johannesburg (4,52 days). If Durban (2,03 days), Eastern Transvaal (1,26 days) and Pretoria (1,24 days) are added, about three-quarters of the overseas tourists' days are spent in the above-mentioned five places.

Scenic beauty (25,1%) is consistently voted the most popular feature of South Africa, followed by climate (23,1%) and wildlife (15,2%). Value for money, African culture, diversity of attraction and available facilities are all of lesser importance than the top three. Predictably a large percentage of business visitors voted for "not a matter of choice". The organisation's study has also revealed that foreign tourists to South Africa do not see gambling as a primary attraction. Only an estimated 2% to 4% of overseas tourists visit South Africa's casinos.

3.11 The 1994 survey of the said tourist organisation indicates that overseas visitors each spent R4 700 on average before arriving: R3 500 on airfare and R1 200 on other pre-paid expenses. While in South Africa, each visitor spent an average of R3 500 or R185 per person per day.

Their daily expenditure per person was made up as follows:

Item	R per day	%
Accommodation	67	36
Meals outside places stayed	28	15
Transport	29	16
Entertainment	20	11
Other	41	22

From this it appears that a sum of approximately R250 million is spent annually on entertainment by overseas tourists to South Africa . Even a sizeable percentage of this sum, if it were spent at casinos, would represent a small percentage of the estimated R2,95 billion that will be spent on gambling by South Africans. Furthermore, such monies would probably be spent at major tourist destinations such as Cape Town, Johannesburg, Durban and the Eastern Transvaal, wich would merely serve to strengthen the relevant provinces' claims to casino business. Visitors from Africa spend an average of between R500 and R1 000 per visit and would therefore not have a major impact on gaming expenditure.

3.12 It is clear from the above that the inter-provincial and foreign casino gaming expenditure will not have any significant impact on the allocation of licences to the respective provinces. Although a slight adjustment could be made to the final allocation on this ground, the Board does not regard it fully justifiable to do so at this stage.

3.13 Several other factors of a qualitative nature should also be taken into account in the final recommendation regarding the allocation of casino licences per province. These are the urban/rural population spread; domino effect; existing legal casinos; and, population density.

3.13.1 It goes without saying that provinces with major urban and industrial concentrations will experience more gambling activity than provinces where rural communities and agriculture predominate. Irregularity of income, distance from gambling centres, conservative – *vis-à-vis* liberal-mindedness, the greater degree of exposure to international influences and the technology and communication media of an industrialised society – all these are indicators of opportunities for investors and operators in the gambling industry.

The calculations made so far have taken into account the fact that urban and industrialised populations generally have a much higher level of economic activity and, therefore, of income per capita than rural populations. For instance, income per capita in Gauteng – R16 570 – is approximately 7,8 times higher than the corresponding figure – R2 112 – in Northern Province. However, this factor does not justify an amendment of the allocation.

3.13.2 Like a row of dominoes falling, the extent of gambling in one province or country seems to stimulate a similar degree of gambling in a neighbouring province or country – it is contagious. This phenomenon is termed the domino effect in gambling and was first observed in casino-gaming in the United States. Authoritative sources state that the effect of gambling in an adjacent state or country is a powerful force driving proliferation. The opportunity cost of not having gambling in one state is significant when the citizens are spending their money in a neighbouring state.

3.13.3 South Africa had much the same experience when the existing legal casinos opened in the former TBVC territories. Millions of Rand were spent in these casinos by South Africans, particularly from the then PWV region. The proliferation effect manifested itself in the many illegal casinos which sprang up in South Africa from about 1989 onwards. The existence of casinos in neighbouring provinces and countries is one of the factors which each provincial licensing authority will have to consider very carefully in the planning and location of casinos within its borders. The location of casinos within a province, as has been stated above, can have a severe impact on the propensity for casino-gaming in neighbouring provinces. Another is, presumably, ways and means of utilising its full allocation of licences. For example, the immediate awarding of all available licences by a province or the "breaking-up" of licences into smaller units allowing more but smaller casinos, if allowed, would certainly impact on this aspect.

3.13.4 The anomalous situation of already having seventeen legal casino licences in the country makes the process of allocating the appropriate number of licences to individual provinces more difficult. These licences were awarded in terms of a political dispensation which has since been abandoned – their basis is largely political. Now they stand fosaken or deserted by political rulers who 'midwifed' their birth. From their location and size it is apparent that their authorisation was not based on all the factors now being considered by the Board in determining the appropriate number of casinos per province in its Report. This was, however, not their fault – they were not constrained by cross-border competition. The distribution of existing licences is as follows:

Province	Number of licences
Eastern Cape	7
Free State	2
Northern Province	1
North West	7

The picture will change drastically in the new South Africa. These legal casinos, while on the one hand having an advantage of already being in operation, will on the other have to compete with new casinos whose locations and sizes will be determined largely by social and economic factors.

In view of the Board's conservative approach to the maximum number of casino licences to be authorised for the country, namely 40 (inclusive of the existing licences), the Board's recommendation must take account of such legal casinos already operating in a particular province. Their survival in the new dispensation will be dependent upon their successful integration into the new system and their profitable operation.

In its Main Report the Board alluded to the significant investments of many billions of Rand which these casino owners have made in the erstwhile TBVC-territories which now form part of the new greater South Africa. Apart from contributing many millions of Rand in tax, these casinos still contribute substantially to the communities surrounding them, providing employment to thousands of people, assisting substantively in maintaining basic services and being strongly supportive of schooling, health services, water supply, transport and many other infrastructural aspects in the areas around them. They also contribute to tourism in South Africa. To close them down or drastically reduce them in number and activities would not only amount to penalising them but also be a disservice to those communities.

On the basis of socio-economic grounds – investments made and commendable services rendered to the communities they support, the Board reiterates its previously stated belief that the proposed provincial licensing authorities should negotiate with the present licence holders with a view to facilitating their integration into the new gaming dispensaton of South Africa. Whereas they have declared themselves in full support of this proposal and the consequent economic empowerment of previously disadvantaged groups, the Board believes that this process of integration should commence as soon as possible involving the licence-holders, the relevant provincial gaming boards and licencing authorities and the proposed National Gaming and Wagering Board. This negotiation process should start without delay as soon as all the relevant statutory structures have been established in terms of the new laws. The first step should be to determine the procedures of such negotiations towards the rationalisation and integration of the seventeen casino-operations into the new casino industry. A time limit should be set on this process of integration within which it should definitely be completed. The Board is, however, of the opinion that until this process of integration has been completed, no new licences should be awarded in those provinces where, because of the existing legal casinos, they exceed the number intimated in this Report. New licences should only be awarded once an affected province is within the parameters suggested in this Report. Because of this current situation and in order not to penalise the unaffected provinces, initially there could be more than the 40 casinos that have been recommended. This would also apply to the number of gaming stations recommended in this Report.

3.13.5 There are marked differences in the surface area and population density of the provinces. As can be seen in the table below, the Northern Cape extends over approximately 30% of South Africa's surface area compared with the corresponding figure of only 1,5% for Gauteng. Because of the wide variation in surface area and population there are considerable differences in the provinces' populaton density as well, ranging from 365 persons per square kilometre in Gauteng to 2,1 persons per square kilometre in the Northern Cape Province. This is clear from the following table:

Province	**Area (km^2)**	**% of SA**	**Population density per km^2**
Western Cape	129 370	10,6	28,1
Northern Cape	361 800	29,8	2,1
Eastern Cape	169 600	13,9	38,3
Free State	129 480	10,6	21,4
KwaZulu/Natal	92 180	7,6	92,8
Eastern Transvaal	78 370	6,4	37,1
Northern Province	123 280	10,1	40,7
Gauteng	18 810	1,5	364,9
North West	116 190	9,5	28,8
Total	**1 219 080**	**100,0**	**33,1**

These differences in area and population density will have to be accounted for in the allocation of licences to provinces as well as the fact that casino visitors are mostly drawn from within a 150 km radius of a particular casino.

If for example, Kimberley is chosen as the location of a casino allocated to the Northern Cape the inhabitants of the next largest town, Upington, which is 464 km from Kimberley, whould have limited access to it. If for example 15 casinos are allocated to Gauteng, not all of them may be established because of the high density and concentration of the population in virtually a single major metropolitan area.

3.14 The analysis so far shows that the following factors play a role in the determination of the number of casino licences per province:

- The propensity for gambling of the people in a province;
- The personal disposable income of people of 18 years and older;

- The total casino gaming expenditure per province;
- The mobility of gaming expenditure across provincial borders;
- The tourism industry and potential tourist traffic in a province;
- The difference in affluence/impecuniousness between provinces; and,
- Other factors such as the density of population in urban and rural areas, the domino effect of casino gaming, the existence of seventeen licences spread over certain provinces, and, the extent of their investments and charitable work they do, and the population density in relation to the area size of provinces.

3.15 The operators who presently have legal casino licences, as was stated before, will have to negotiate with the relevant provincial gaming and licensing authorities on the rationalisaton of their casino operations to bring the number of licences in those affected provinces as close as possible to acceptable numbers. In this proposed process of negotiation the proposed National Gaming and Wagering Board must play a leading role with a view to establish procedures and methods of integration into the new gaming dispensation.

The recommendation which the Board will make on the number of licences per province is based on the assumption, derived from the statistical survey of local and overseas casinos, that a medium size casino has approximately 350 slot machines and an average of 12,5 tables per casino. Obviously licences for larger or smaller casinos would affect the number accordingly.

3.16 As was stated before, the notion of the maximum number of casino licences which a province may award, has presented the Board with grave difficulties. Although the Board did its best with the information and data at its disposal to calculate the relevant numbers of licences its recommendations in this regard may be considered to be speculative. It is of the opinion that a more accurate and realistic guideline to government would revolve around the number of gaming stations rather than the number of licences for the country and per province. Gaming stations refer to the number of persons who can gamble at any given time at a slot machine or table. The norm used by the Bureau for Market Research, is one station per slot machine and seven stations per table according to the relevant average revenues generated.

To determine the number of stations which a province can grant licences for, the potential gaming expenditure of a province is divided by the gross gaming revenue per machine in a year. According to the Bureau's estimate of a total gaming expenditure of R2,95 billion per annum, divided by average GGR of machines on the assumption that the average gaming expenditure in South Africa is 1% of personal disposable income, the total number of gaming stations is calculated at 18 910 for South Africa.

According to the percentage distribution of gaming distribution per province, set out before, the following allocation of gaming stations can be made:

Province	**Bureau for Market Research**	**Ernst & Young**
Eastern Cape	1 346	1 224
Eastern Transvaal	994	847
Free State	1 153	1 192
Gauteng	7 564	8 804
KwaZulu/Natal	3 141	2 620
Northern Cape	353	148
Northern Province	577	345
North West	705	857
Western Cape	3 077	3 016
Total	**18 910**	**19 053**

The comparative number of gaming stations as proposed by Ernst & Young is also reflected and it is interesting to note that, apart from Gauteng due to a higher urban concentration, their proposal does not differ materially from that of the Bureau for Market Research.

Although the Board was requested to furnish Government with the number of casino licences each province could be allocated, it will also recommend on the number of gaming stations which each province could be granted. The considerations which the Board have taken into account for its recommendation are set out above. The numbers of casino licences could therefore differ according to the number of gaming stations allocated to casinos. This, however, remains in keeping with the recommendation of 40 casino licences of average size.

3.17 As was alluded to before, another factor in determining the number of gaming stations available for casinos to be considered is the effect that the limited pay-out gaming machine licences may have on these numbers. The Board's recommendation on gaming machine licences is noted in Chapter 7, paragraph 3.6 of its Main Report. Ernst & Young, in their report to the provinces, estimated that a single gaming station could on average generate the revenue of the equivalent of eight of these limited pay-out gaming machines. If that is the case, the number of proposed gaming stations for casinos recommended above would have to be reduced by one for every eight limited pay-out gaming machines. (It is considered that the greater majority of these limited pay-out gaming machines would be available to a different public.) If, of course, the estimated gaming spend of one percent of disposable income is still going to be spent at casinos and the limited pay-out gaming machines will create an incremental spend, the above proposals will not be affected. Consideration will, however, have to be given to this factor by provincial licensing authorities and the proposed National Gaming and Wagering Board.

RECOMMENDATION

THE BOARD RECOMMENDS TO GOVERNMENT THAT THE FOLLOWING ALLOCATION OF CASINO LICENCES, SLOT MACHINES, TABLES AND GAMING STATIONS PER PROVINCE IN SOUTH AFRICA BE ACCEPTED AND NEGOTIATED WITH THE PROVINCES:

PROPOSED NUMBER OF LICENCES, MACHINES, TABLES, UNITS AND GAMING STATIONS PER PROVINCE

PROVINCE AFTER	LICENCES FOR AVERAGE SIZED CASINOS	MACHINES	TABLES	UNITS	GAMING	LICENCE ADJUSTMENTS IN TERMS OF PAR. 3.2 (PAGE 18) *
Eastern Cape	3	1 076	38	1 114	1 346	3
Eastern Transvaal	2	795	28	823	994	3
Free State	2	923	33	956	1 153	3
Gauteng	15	6 051	216	6 267	7 564	13
KwaZulu/Natal	7	2 513	90	2 703	3 141	6
Northern Cape	1	282	10	292	353	2
Northern Province	1	462	17	479	577	2
North West	2	564	20	584	705	2
Western Cape	7	2 461	88	2 549	3 077	6
TOTAL	40	15 127	540	15 667	18 910	40

*Note: *The figures in this column are merely guidelines and not recommendations. (See par. 3.2, page 152)*

SECTION 2

GREYHOUND RACING IN SOUTH AFRICA

INTRODUCTION

Precisely how man and dog became associated many thousands of years ago is uncertain. In palaeolithic cave paintings in southern Europe and the paintings of Ancient Egypt and Mesopotamia the dog is depicted as a domestic animal. A popular theory is that the domestic dog is descended from a specific species of the wolf, but the existence of so many breeds of dogs seem to deny a common ancestry in one animal. Many other theories and speculations about the origin of man's association with the dog exist: through hunting in which dogs proved to be valuable partners of hunters; as means of protection of tribes against hostile groups or simply as domesticated animals when pups were caught and reared by tribal families, are but some of the speculative theories put forward on the subject. The cave paintings of Altamira (approximately 12 000 BC) and Lascaux (approximately 15 000 – 10 000 BC) contain reliefs of animals that represent dogs without distinction of breed.

By the time of the New Kingdom in Egypt (approximately 1 570 BC) there were clearly different breeds in existence and from that time onward there is enough evidence to suggest that a variety of breeds were produced by "man's insatiable desire to improve on nature".

Sources about the history of ancient civilisations contain convincing evidence indicating that highly sophisticated societies of Egypt and also of the Far East spent time and skill on the breeding of dogs with different characteristics and appearances. As the relationship between man and dog developed, dogs were bred for different functions and this in itself led not only to the evolution of new breeds but to a natural grouping of those breeds according to the work they had to do. This development took place at different rates in different parts of the world. The manner in which people lived, their relative safety, their pursuits and their sports differed widely. In the Far East, where the cultural centres were the emperor's courts and where women, though subservient, wielded considerable power in the household, the companion dog was an important part of the family. In the Middle East where the culture was based more on a system of sheikdoms and where sport, rather than the arts, was considered an accepted pastime, coursing dogs were more important. This led to the development of a whole race of running dogs of which the Saluki, the Afghan Hound and Persian Greyhound are examples.

This development of running dogs spread to France and Southern Europe where the original running-for-sport dog became a hunting dog after the invention of gunpowder. A whole new race of dogs was developed to help the huntsman with his gun and retrieve game. The difference between races of dogs varied with the sport-interest that was indigenous to their respective countries. For example a much smaller dog was needed to chase and catch the hare of Europe than the antelope of Afghanistan, and a much stronger dog was required to put down the wild boar of Germany than the deer of Scotland. Thus a grouping of dogs developed on a national as well as on a "use" basis: France produced more scent-hunting dogs, Spain more gundogs, and the middle European countries heavier dogs.

From very early times a certain race of large dogs was used to hunt by sight and speed – their speed being the prime factor in their success. They were extremely fast and long-legged being evolved for the sole purpose of catching game by running them down rather than by the sheer persistence of the scent-hunting dogs. Also in the Far East they were the much prized elegant dogs kept by tribes for sport and for replenishment of the larder. Examples, as was mentioned before, were the Saluki and the Afghan. In Britain it became the Greyhound which is one of Britain's oldest breeds of dogs. According to sources there were many variations but the common features to all of these were the long legs, slim body, tremendous speed and a touch of the killer instinct.

The Greyhoud has been described as "swift as a ray of light, graceful as a swallow, and wise as a Solomon" and therefore will never disappear. From time immemorial it has been a symbol of aristocracy yet its innate qualities made it acceptable to all levels of society. The first traces of the Greyhound go back to the Tomb of Amten, in the Nile Valley which in modern chronology would be approximately almost 3 000 BC. Its history, until now, therefore covers almost

5 000 years. The origin of the name Greyhound is uncertain. A number of theories have developed concerning this issue: one is that it stems from the Greek word Graius (meaning Grecian) as the dog was held in high esteem in ancient Greece. Another is that it derives from the old English grech or greg meaning a dog, while another theory is that the name came from the prevalent colour of grey which these dogs had all along.

The Greyhound always had a cultural and aristocratic background. It frequented the royal houses of Ancient Egypt and was bred and raised in luxurious circumstances. Ownership of this dog was restricted to the ruling classes and denied the commoner in order to prevent him from poaching game.

The Greyhound is found in England at a very early date – as early as the ninth century – though there are views that it had been there long before that time. It had been used on practically all kinds of small game from time to time but the hare is its natural quarry and running for it has been the sport in England for nearly two centuries.

In recent years the Greyhound has been developed along three distinct lines; the show dog which is bigger and narrower; the coursing dog (pursuit of game rather by sight than scent) which is hardier and more agile; and, third, the track Greyhound which was evolved for racing after an artificial lure. The finest dogs for the latter purpose are bred in Ireland.

The Greyhound has a wonderful temperament, is friendly, refined and as gentle with children as it is affectionate with adults. It is very trainable and can be developed into a magnificent show-dog. In spite of its natural killer instinct, it is among the most sympathetic and even sentimental of dogs.

The racing Greyhound has a long and impressive track record on race courses in England dating back many decades. It was introduced into America in approximately the early 1500s "to guard, hunt, intimidate and punish the enemies" of the Spaniards. Greyhound shows were also among the earliest of American dog shows. Track racing for Greyhounds came with the invention of the mechanical lure in 1912 – a development which led to a new dimension in the breeding of these dogs.

The Whippet, an English miniature of the Greyhound, is also a sporting dog, fast, intelligent and with a charming and affectionate character. The origin of the name Whippet is rather obscure. It has been suggested that it came from the word "whip" – to snap or crack like a whip, and that the sharp quick character of the dog let to the use of the name "Whippet" or little whip. There is, however, information on a breed of dogs called Wappit. Around the latter part of the previous century the racing of small dogs over a short straight course was extremely popular among the working classes of the North East of England. The Whippet was an ideal dog for this purpose.

It is allegedly the fastest dog of that weight-size and capable of speeds in excess of fifty kilometres per hour. It is capable of outdistancing even the Greyhound on its initial burst over short distances. It is a dog of beauty, grace and smoothness of action and is rated among the aristocracy of dogs. It is an excellent race dog and has an equally well established record as a hunting dog. It is further described as an intelligent, quiet, unobtrusive "and above all, highly decorative" animal.

The Whippet developed during the previous century in England. Originally it was used mainly for the hunting of rabbits but later it became primarily a racing dog on straight tracks of approximately 200 metres distance. This sport had its inception in Lancashire and Yorkshire in England where it still flourishes. There the Whippet is known as "the poor man's race horse". Their method of racing is unique. Each dog has two attendants – a slipper and a handler. All dogs are held on their handicap marks by their slippers while their handlers trot up the track and across the finish line, all the while yelling encouragement and frantically waving towels or rags, (which the Whippets are trained from puppyhood to run to) to their charges. At the "Get set!" command of the starter, each slipper picks his dog up by the tail and the skin of the neck and when the pistol cracks the animals are literally thrown into their stride. They then race at top speed up the track and grab the waving rags of their handlers, who are some twenty yards behind the actual finish. Different coloured wool collars are worn to distinguish the entries. Times as fast as eleven and one-half seconds have been recorded. Any dog that achieves twelve seconds flat from its handicap mark is rated excellent. Bitches, being slightly faster, are handicapped in some or other way. The sport has also moved to America where Baltimore in Maryland is regarded as the centre for Whippet racing in that country. Many refinements have been developed and "have improved racing immensely". Electric starting boxes are used, steeplechases introduced and the entire establishment pattterned after the best of horse tracks.

Races in Maryland are now being conducted on circular tracks with an electric lure. Whippets also make ideal exhibition dogs. In addition they are very well behaved, clean and very friendly.

Although, as is alluded to in literature and other sources of information, other breeds of dogs are also raced, these two, the Greyhound and Whippet, are the most important race-dogs in the world. Whereas the Board primarily focussed on the Greyhound in its investigations and deliberations, what is stated and recommended in this Report, applies equally to the Whippet breed of dogs.

1 TERMS OF REFERENCE

1.1 The original terms of reference of the Board did not include a specific request to investigate the question of whether Greyhound racing should be legalised or continued to be banned in South Africa. The objects of the Board as stated in Section 14 of the Lotteries and Gambling Board Act, 1993 (Act 210 of 1993) are wide and cover, *inter alia*, investigations and recommendations to Government on "the determination of a national policy on betting on sporting events".

1.2 In its Interim Report submitted to Government during October 1994, the Board recommended with regard to this subject that betting on sports and other contingencies as distinguished from sports pools, be legalised except in those cases where the sporting event is illegal, *contra bonos mores*, or against public policy or interests or amounts to cruelty to animals. It was further recommended that all betting on sports and other contingencies be allowed only under officially issued licences and that strict controls be applied to such licences.

1.3 During preparations for its Main Report which was submitted to Government during March 1995, the Board received a number of submissions on the subject of Greyhound racing, most of which revolved around the question whether such races should be allowed or not in South Africa. The Board briefly dealt with the question against the background that Greyhound racing was not originally included in the Board's terms of reference. Consequently interested parties had not been specifically invited to submit representations on the subject. This, in turn, resulted in little information being submitted on Greyhound racing at the time. The Board concluded in its Main Report that it requires further information and research to determine whether such races should be permitted in South Africa or not.

1.4 For the purposes of this Report the Board reverted to Government for a clear brief on what it should investigate and report on with regard to Greyhound racing. In response the Board was given very wide terms of reference: to investigate Greyhound racing and all matters related thereto in South Africa and to advise Government thereon. The procedural aspects of the investigation are dealt with in the Foreword of this Report. In what follows the substantive content and merits will be dealt with.

2 LEGAL PROVISIONS RELATING TO DOG RACING IN SOUTH AFRICA

Dog racing, that is in this context Greyhound racing, whether amateur or professional, was and still is, prohibited in the erstwhile provinces of Transvaal, Cape and Orange Free State. Natal Ordinance 23 of 1985 also prohibits such racing except when it forms an integral part of trials and held under the auspices of an organisation approved by the Administrator. The relevant legal provisions are: Ordinance No. 11 of 1986 – (Cape): Ordinance No. 11 of 1976 – (Orange Free State); and, Ordinance No. 4 of 1949 – (Transvaal).

However, it is generally accepted that, despite these prohibitions, Greyhound racing does take place in, for example, the Free State, to the extent, as a witness testified before the Board, that organised Greyhound races, on an amateur basis, are run once a month at which between 80 and 90 races are conducted per day. This particular witness, an organised Greyhound association, also informed the Board that it had obtained legal opinion that such races *per se* are not prohibited since on a strict interpretation of the relevant legal provisions, according to the witness, only races attended by the public fall under the prohibition. This legal opinion has, however, not as yet been tested in a court of law. The Board accepts that given the provisions and spirit of the law in South Africa, judged against the background of the anti-gambling ethos prevalent at the time when the laws were made, Greyhound racing is legally prohibited in South Africa. However, in the light of the Board's recommendations so far, namely that gambling

should be legalised in South Africa, the Board is requested to advise whether this legal position should be reversed or not.

3 EVIDENCE PRESENTED TO THE BOARD

3.1 The volume of information and evidence and the intensity with which it was presented to the Board by many witnesses, gives credence to the age-old adage that "dog is man's best friend". The horse or, for that matter, most other animals, do not appear to arouse so much emotion and empathy in humans as dogs do. The dog, according to many writers, has throughout history, always been taken for granted – hence the dearth in information on the origin and development of the relationship between man and dog. As George Vest in his "Eulogy on the Dog" states, "the one absolutely unselfish friend that man can have in this selfish world, the one that never deserts him, the one that never proves ungrateful or treacherous, is his dog". The information and evidence before the Board speak clearly of this special affection between humans and dogs.

3.2 The evidence submitted to the Board can be divided into three categories: First, evidence and information that strongly oppose the legalisation of Greyhound racing in South Africa; second, that which support the legalisation of Greyhound racing but preferably only on an amateur basis; and, third, that which support the legalisation of Greyhound racing but preferably under the auspices of a professional organisation which could control and supervise such an industry. The evidence in each of these categories will be dealt with individually.

3.2.1 Those witnesses and interested parties who oppose the legalisation of Greyhound racing base their standpoint on the following arguments:

(a) Greyhound racing is presently banned in South Africa for good reasons which existed at the time it was done. It should remain so and no strong enough reason to change the *status quo* has as yet been put forward by those who favour Greyhound racing. Apart from the cruelty to the dogs, about which people were not so aware of and concerned about at the time, the socio-economic aspect of betting on dog racing, namely of wage-earners who hardly can afford to do so, gambled their money away was emphasised. This will happen again if Greyhound racing is legalised.

(b) Greyhound racing and gambling thereon are easily manipulable particularly by the owners of the dogs. The Beardmore Commission which investigated dog racing in Transvaal during the late 1940s, found that owners would feed and water some dogs while they would, at the same time, starve potential winners before a race. Knowing that the latter dogs would win against the others they would bet heavily on them at the cost of other punters. This, the opposers to Greyhound racing maintain, will happen again as it is uncontrollable.

(c) The cruelty done to racing dogs, in and out of races, is immeasurable. This consists of the cages or dens in which they are kept being far too small; dogs compete in the races against their will – they have no say over their participation and thus lose their freedom of decision and action; the non-racers are culled in the most cruel way resulting in the killing of up to hundreds of thousands of dogs per annum; dogs are badly injured during races as a result of which hundreds must be destroyed per annum; dogs are stressed and become highly strung before and during races which affects their relationships with humans and other dogs; dogs are drugged before races to stimulate them for best performances and to mask injuries; and, finally, at the end of their racing career they are disposed of in a most unthankful manner as obsolete and useless. Against this background "dog racing has inherent cruelties which a civilised society" should not tolerate or bear under any circumstances.

(d) The legalisation of Greyhound racing will stimulate breeding of these dogs and will, in particular, "encourage breeding for best" with the result that thousands of so-called "inferior pups" will be cruelly killed in an attempt to curb over-population.

(e) The horse racing industry which is long and well established in South Africa is "experiencing difficulties" and "needs cleaning-up". This should first be tidied up before Greyhound racing could even be considered – in fact if the horse racing industry cannot avoid difficulties it is

hardly likely that Greyhound racing will be able to do so. This is particularly so with regard also to the disposal of old horses.

(f) Vivisection is applied to old racing dogs at the end of their lives – a very cruel and inhuman practice. This is brought about and encouraged by Greyhound racing.

(g) Cruelty to dogs cannot be controlled at present and it will even be more difficult if Greyhound racing were to be allowed in the country. To imagine that inspectors of a dog racing industry can do so is an illusion.

(h) Horse racing is also opposed but is a fact of life and is in itself only tolerable and justifiable on the basis of historical precedent. As a phenomenon of cruelty to animals it is more than the nation can bear. Greyhound racing will only exacerbate this situation.

(i) Greyhounds are peace-loving dogs and not inclined to violence. Racing them makes them hostile towards each other with the result that they fight during races and consequently need to be muzzled. This makes them unnaturally violent and causes stress in them. After their racing career it takes a long time for them to adjust to a normal Greyhound's life – if they ever do.

(j) Owners of Greyhounds that lose a race in a competition would be inclined to "punish" those dogs in an inhumane and cruel manner. This would happen particularly when such owners lose vast amounts of money.

(k) Live bait is often used to train Greyhounds for racing. Allowing dog racing will encourage the use of live bait by "throwing live cats, kittens, rabbits or hares into an arena to train Greyhounds". This is not only cruel to the dogs but very much so to the animals used as live bait.

(l) The world is becoming more and more conscious of animal rights and concerned about cruelty to animals. It could be argued in the light of this development, that the cruelty caused to dogs bred, reared and trained for racing, is in contravention of the provisions of the Animal Protection Act of 1962 because it causes unnecessary suffering and psychological stress to the animals. "A developing ethical consciousness in our society and culture that views the exploitation of animals for any non-essential purpose as inappropriate; even abhorrent."

(m) Very few entertainment sports involving animals do not result in cruelty, discomfort and suffering to the animal. Therefore sport and betting thereon should be limited to sports involving people, not animals. "Animals are unable to bear witness to abuses on them – humans can choose whether or not to subject themselves to undue risks."

(n) The States in America which have legalised Greyhound racing, regret it now and wish they could reverse their decision because of the evils which manifested themselves since the inception of that form of racing in their respective jurisdictions and some states have in fact reversed such decisions. Dog racing is banned in some civilised countries.

(o) Nowhere in the world is the industry a continued success. It is not as high a revenue generator as people believe it to be and neither can it maintain its employment. It has declining attendances and on-track betting figures.

(p) Legislation to prevent cruelty to racing dogs is not a success in any country and neither is the policing thereof effective. The industry's police or inspectors are not enough and also liable to be biased since they are being paid by the industry.

(q) The present prohibition has "saved" the lives of many thousands of dogs. Had it not been for the ban, a dog racing industry would have given a great impetus to a breeding programme which would have resulted in many thousands of Greyhounds being born, most of which would have been culled close after their birth.

(r) President Nelson Mandela is the patron of an animal protection society and consequently, him being a non-violent person, cannot be in favour of Greyhound racing because of the inherent cruelty in it.

(s) The use of animals for sport and entertainment of man is against the Bible, particularly so if such use is commercialised and for the purpose of money-making. Greyhound racing therefore is a sin against the Bible because it exceeds the boundaries of the biblical obligation imposed on humans to care for all animals.

3.2.2 Those witnesses and interested parties who favour the lifting of the ban on Greyhound races in South Africa but to be conducted only on an amateur basis, motivate their standpoint on the arguments set out below – the difference between amateur racing, on the one hand, and professional racing, on the other, being that in the latter case betting on Greyhound racing would be conducted and controlled according to laid down rules under the auspices of a national body.

(a) Greyhounds are born runners. Not to allow them to do so would be cruel. When they run in a group they tend to compete with each other – this is natural to them. When two owners get together with their dogs on an informal occasion nothing in the world can prohibit them from allowing their dogs to run spontaneously competing against each other – "doing what comes naturally". It is also good exercise for the dogs and necessary for their health.

(b) The Greyhound enjoys running. His long legs and slim build are his natural attributes which are conducive to impressive running speeds. Some of the best racing Greyhounds have been bred in South Africa. In fact one of them holds a world speed record in running. This shows how good the breeding is in South Africa. The dog's owner enjoys it when the dog runs which all in all makes for good family fun. It is the owner's hobby and they do not want betting on such races.

(c) Dogs cannot be forced to run but horses can. Unlike in horse racing where a jockey whips the horse to a win, in dog racing this "cruel" practice is not necessary.

Consequently, if there is a difference between horse racing and dog racing it would lie in the fact that horse racing is "more cruel" than dog racing.

(d) Cruelty to dogs (also at dog shows) does exist as is the case with all other animals, but it is no more than would be the case if Greyhound racing were conducted. The allegations about cruelty to dogs made by those who oppose Greyhound racing are totally exaggerated and without proof. In fact the cruelty that is allegedly done to the dogs under the current prohibition, proves the anomaly of an uncontrolled situation. In a legalised and transparent situation, cruelty to the Greyhounds can be better and stricter controlled than it is now.

(e) A legalised system of Greyhound racing, subject to strict control and regulation, would also help to control the birthrate, culling and pensioning of race dogs. Such a system would include a registration system of all dogs used in the industry – from birth until retirement.

(f) The veterinary surgeons' profession can and must play an important and active role in a legalised system and shall supervise at every racing event. The members of this profession can also play an important role in the policing of a legalised system.

(g) It is not true to aver that puppies are tested for their suitability for racing soon after birth and if found to be of inferior quality, they are then destroyed. Puppies show their racing quality only at approximately 15 months after their birth. By that time they have endeared themselves to such an extent to their owner that only the most cruel of humans will kill them.

(h) Racing Greyhounds are fed the best of food and liquids containing many vitamins, minerals and proteins with a view to get the best performance from them. A starved and undernourished Greyhound cannot perform.

(i) Pension funds for retired Greyhounds, so it is averred, do exist. A legalised system should make the establishment and maintenance of such funds statutorily compulsory – an obligation which owners would only be too willing to contribute to.

(j) Retired racing Greyhounds make wonderful pets and most owners retain them for companionship and breeding purposes. More than 100 organisations and countless individuals across the USA,

Canada, UK and Europe are dedicated to help find homes for racing Greyhounds after their retirement.

(k) It is not true that the racing career of a good racer is only two years. This period extends over an average period of 4 to 5 years.

(l) Amateur racing can be well controlled in a legalised system because, first, the owners love their dogs and enjoy to see the dogs run, in turn, enjoying the fun while they are running, and, second, the owners would legally be empowered to control and police amateur racing; not for commercial purposes, but for the continued pleasure of human and animal. Because of their love for their dogs it is unimaginable that they will ill-treat them.

(m) The prohibition on Greyhound racing contained in the Ordinances has not worked. Only one prosecution has been recorded since their promulgation many years ago. Despite the ban "dog racing is as real as it was in 1948. Despite the ban on betting it prospered". The fact of the matter is that the law is not applied and is thus ineffective.

(n) Racing with animals is on the increase. New developments include racing with camels and ostriches for the benefit of tourists while Denmark has just officially introduced reindeer racing with betting thereon – all subject to strict control.

(o) There is tremendous support in the Black community of South Africa for Greyhound racing with one of the best breeders currently being a Black family living in Soweto.

(p) The Queen of England, who is the patron of the Royal Society for the Protection of Cruelty to Animals (RSPCA), and her family, own Greyhounds which participate in dog races.

(q) There are far fewer dogs involved on an amateur basis compared to a professional basis. All the problems evidenced by those against Greyhound racing occur only in professional racing and there are no more problems of cruelty etc. in the amateur Greyhound ranks than there are with any other dog breed.

(r) Finally, there is no difference in principle, between horse racing and dog racing and to continue the one and ban the other amounts to gross discrimination which will, if the ban continues, be contested in the Constitutional Court of South Africa. While such a case is pending in the Constitutional Court an interdict against the continuation of horse racing will be sought in the Supreme Court on the grounds of discrimination.

3.2.3 The third point of view expressed by witnesses and interested parties, is that Greyhound racing should be legalised, conducted and controlled under the auspices of a professional organisation in South Africa. This entails that not only should Greyhound racing be allowed but also betting thereon. As in the case of the plea for the legalisation of amateur Greyhound racing, the proponents for professional racing, also propose strict control and regulation over such racing. The evidence and information gleaned from their presentations submitted to the Board are similar to that of the supporters of amateur Greyhound racing and will not be repeated here. In so far as their proposal for professional Greyhound racing is concerned, they base their stance on the following arguments:

(a) Professional Greyhound racing would allow betting thereon which would be a major revenue generator and creator of many job opportunities in South Africa.

(b) The State would get its fair share in the form of taxes, levies and licence fees from the industry.

(c) The professional Geyhound racing industry wants to and also will contribute to the Government's Reconstruction and Development Programme (RDP) and is convinced that it would be able to give this programme a major thrust if allowed to do so.

(d) A professionally organised and controlled Greyhound racing industry would be a major contributor towards Black economic empowerment through sharing and participation of Black people in all spheres of the industry. In fact thousands of Black people, in some way or other, already participate in the current illegal system in the form of breeding of Greyhounds, racing them, illegally betting thereon, conducting agencies and still others.

(e) It is alleged that a code of conduct, rules and regulations and other prescriptions for Greyhound racing already exist and are applied by an existing professional race-track organisation in South Africa. These regulatory measures, together with other infrastructural elements, are already in existence and therefore need to be started from scratch.

(f) With the exception of those who oppose the legalisation of Greyhound racing, other participating and interested organisations all favour a strictly controlled and regulated system which can take care of all the so-called evils which stand in the way of legalising a system which currently, though illegal, has all the characteristics of a professionally run industry.

The above-mentioned points reflect the standpoint of the three views on Greyhound racing in South Africa.

4 ANALYSIS OF EVIDENCE AND INFORMATION

4.1 The evidence and information contained in the submissions made to the Board have many statements of fact and opinions in support of the one or other viewpoint on the legalisation of Greyhound racing or not in South Africa. Statements to the effect that "bush racing" of these dogs does take place; thousands of dogs (big or small) are euthanased every year; cruelty of all forms to the dogs take place; Greyhound racing is on the decline in other countries; Greyhound racing is an important industry and on the increase; Greyhound racing is or is not properly controlled in other countries; doping of racing dogs takes or does not take place on a big scale; and, still many others have been made in evidence and the presentations to the Board. As was stated in the beginning, the intensity and enthusiasm with which these were made reflect that emotion and deep feelings which people have about Greyhound racing in South Africa. Commendable as these attitudes may be, their subjectivity does put a question mark over the credibility of many of them – if not over the substance thereof then at least over their magnitude.

Consequently the Board does not regard it as appropriate to test the veracity of some of the statements made in the presentations e.g. whether the number of dogs culled per year is only a few thousand or in excess of hundreds of thousands as is averred in some submissions. In this case for example, the Board accepts as a fact that, as in the case of other animals (pigeons and others) culling does take place. The Board therefore is not prepared, without further corroborating evidence, to weigh the one contradicting statement off against another. The Board is not a court of law and therefore has no power to judge. It regards the evidence and information as supportive of a general statement made in support of the one or the other standpoint with regard to Greyhound racing.

4.2 There are, however, points on which most witnesses and interested parties are in agreement and which serve as important guidelines for the Board in its deliberations and recommendations. These points of consensus are the following:

(a) All forms of dog racing, as distinct for Greyhound racing, should be prohibited. Greyhound racing is in a different category.

(b) Greyhounds are born to run and they enjoy doing so – it is good exercise for them and necessary for their health.

(c) Cruelty to racing Greyhounds does exist. The extent to which this happens is a big point of controversy.

(d) The current prohibition contained in the law is not effective. The laws are not applied and would appear to be ineffective.

(e) "Bush racing" with Greyhounds does take place and thousands of these dogs participate in these races.

(f) Greyhound racing and betting thereon take place in many countries in the world.

(g) Culling of Greyhounds takes place but the extent to which is a point of controversy.

(h) An excess of dogs is a distinct possibility and some of these may very well be used or sold for hunting purposes.

(i) Not all Greyhounds are necessarily born as champion runners.

(j) Greyhounds are affectionate dogs and do make good pets.

(k) The racing career of a dog extends over 4 – 5 years after which it must be retired. That stage of its life is of concern to all animal lovers.

(l) Doping and malpractices can occur in any industry which uses animals as its basis for operation.

5 DELIBERATIONS AND RECOMMENDATIONS

5.1 After analysing the evidence and deliberating the information, the Board finds as follows with regard to Greyhound racing in South Africa:

(a) Greyhound racing and betting thereon is a prohibited acitivity in South Africa in terms of the provisions of the relevant provincial ordinances promulgated years ago. Any legal opinion to the contrary, good as it may be, must first be tested in court.

(b) These ordinances have not been properly applied in the country since their inception for unknown reasons. One can only speculate on these. However, this is not relevant for the purposes of this Report.

(c) As a result of this non-application of the law, illegal Greyhound races have developed and are being conducted in South Africa. Together with this, many owners of racing Greyhounds breed them with a view to race them. This illegal racing has reached a well organised and structured level with a national amateur and a professional dog racing organisation existing. Therefore breeding, training and racing do take place in South Africa.

(d) These organisations have in the meantime developed codes of conduct, rules, prescriptions and other regulatory measures to control the activities of racing Greyhounds and their owners and in this way introduced forms of self-discipline in this illegal activity.

(e) The Black community, on a big or small scale, participates in some form or other in the currently illegal Greyhound racing activities.

(f) Cruelty to Greyhounds does take place, the extent of which is unknown to the Board. This cruelty includes the doping of Greyhounds before racing.

(g) The testing of Greyhounds for their suitability does not take place before the 15th month after their birth and their racing career has an average of 4 to 5 years after which they are retired. It is a real concern of animal lovers as to what happens to these retired Greyhounds.

(h) Greyhound racing is conducted in many overseas countries of which Ireland is an example where probably the best racing Greyhounds are bred and many of them exported to other countries. The industry in that country is supported financially by both the Irish government and the European Community.

(i) Public opinion on the issue of Greyhound racing is deeply divided. Many organisations and many individuals are against the legalisation of Greyhound racing and would prefer that it be banned completely on the basis of mainly the cruelty to the dogs and their abuse. On the other hand there is an opinion that it should be legalised subject to strict control and regulation which should be applied by the industry and not so much by government.

(j) The Board reiterates its observation made in its previous Reports that it is an anomaly that despite the ethos of prohibition on gambling in South Africa and the legal bans flowing therefrom, horse racing and betting thereon has been allowed as the conspicuous exception in the country. It is to be expected that public dissatisfaction, pressure against and questioning of this state of affairs will grow, as has been experienced by the Board with regard to the whole question of gambling in South Africa.

(k) As with casinos, Greyhound racing is a provincial legislative competence in terms of Schedule 6 of the Interim Constitution of the Republic of South Africa, 1993 (Act 200 of 1993). This competence includes the power to make laws which are reasonably necessary for or incidental to the proper regulation of

Greyhound racing in a particular province. In this regard the Board takes note of the intention of one of the provinces to introduce legislation to legalise Greyhound racing "which will compel the industry to maintain the strictest standards and that will ensure that the welfare of the dogs before, during, and after their racing careers is optimised". This province foresees "job creation and revenue from taxes generated by betting on Greyhound racing through the regularisation of the 'underground' dog racing system which currently exists in South Africa". The Board also takes note that strict standards will have to include dope testing which, based on the experience of the horse racing industry, may cost about R700 per test, excluding the capital cost of a laboratory and building (or extensions to a building). The Board further takes note that the strict standards adhered to by the Jockey Club cost many millions of Rand per annum.

5.2 Deliberation of the subject and all the information at the Board's disposal indicates that the members of the Board are as divided as witnesses and other interested parties on the issue of Greyhound racing. Those who favour the continuation of the present ban on Greyhound racing and obviously betting thereon form the majority. They also prefer a stricter and more efficient application of the provisions of the law. Since theirs is the majority standpoint, it also is that of the Board. The motivation appears hereunder, while the other views appear by way of minority reports.

5.3 The Board will recommend that Greyhound racing or any other dog racing in South Africa not be legalised.

5.3.1 Evidence was led that owners of Greyhounds love their dogs and would do everything in their power to ensure proper care be taken of the dogs both during and after their racing careers. The Board finds that there is a greater likelihood of a bond developing between an owner and one or two dogs than might be the case when an owner, owner/trainer or trainer has many more dogs under his care. The Board is, however, concerned that, even under present (amateur) conditions, some breeders/owners/trainers will simply regard the animals as racing machines with very little concern for their well-being, especially after their racing careers are over. The Board is supported in this view by a protagonist submission which referred to "the callous and mercenary attitude of some dog breeders and racers". Furthermore, uncontested evidence was led to the effect that the sport in Spain led to large-scale maltreatment of the animals. The Board therefore does not accept the statement that ownership and a desire for best performance necessarily guarantee the well-being of the dogs.

5.3.2 The Board is concerned about non-racers. Submissions have been made that retirement funds could be launched but no single submission has convinced the Board that such funds abroad are indeed sufficiently funded – under professional racing conditions with supposedly greater financial resources. Indeed, submissions to the contrary have been made and the Board have very serious misgivings about the financial soundness of such a fund, especially under amateur conditions. It is not claimed that all owners will simply discard their dogs when they become retired. Some owners will certainly keep the animals as pets – especially where an owner has very few dogs and where the dogs have been part of the family for some time. We do however take note of a protagonist agreement that "…an excess of dogs may occur…" and believe that there are also those who will discard the dogs or even "…sell them at a good price as hunting animals" (translation from another protagonist).

5.3.3 On the matter of hunting, attempts were made to convince the Board that "a greyhound is not a hunting dog…" since "it is wholly unsuited therefor…". Other quotes, all from different protagonists, however tell their own story, viz.

"…greyhounds that were formerly used for hunting…";

"…owners will use dogs to hunt…" (Translation);

"…dogs will be sold at a good price as hunting dogs" (Translation);

dogs could "…be used for hunting and the destruction of our wildlife resources".

The Board therefore rejects the notion that the dogs are not suitable for hunting and accept the evidence by opponents of Greyhound racing that the dogs can and that some are being used for hunting. Furthermore, the Board believes that should any form of Greyhound racing be allowed, there is a danger of an increase in such hunthing.

5.3.4 Submissions from various opponents of dog racing contain many claims that live lures are being used in training by unscrupulous trainers. This is obviously being vigorously denied by protagonists but many of them at least agree that the possibility not only exists, but that by implication, it is a good training method. The following quotations, all taken from written protagonist submissions illustrate the point: "...the use of live lures will be vigorously discouraged ...";

"...vigorous prosecution shall apply to anyone suspected of using any live lure ...";

the use of any live lures "...may be true ..." (Translation);

"...the use of any live lures must be prohibited...". The Board must therefore conclude that there is more than a suspicion of the existence of this abhorrent pactice, and finds it impossible to support an activity in which some participants' behaviour could well be described as barbaric.

5.3.5 The Board finds that the problem of doping of the racing animals could well be somewhat less acute in amateur racing than in professional racing. It would appear that doping a dog to perform beyond its normal capabilities would sooner be suspected over an amateur (straight) course than over an oval track. This is however not true in the case of doping in order to mask injuries and doping therefore remains a problem. This is substantiated by protagonist statements that "One can not be sure that ...prohibited substances ..." will not be used and that "...doping and malpractices can occur in any industry which uses animals as its basis for operation ..." and that there is "...no guarantee that drug abuse will not occur" (the latter from a protagonist for amateur racing solely). It therefore follows that drug testing will have to be done for both amateur and professional racing. The Board has been informed that it costs R700 per specimen, at a level of 5 000 specimens a year, to do dope testing for the horse racing industry. This does not include the capital cost of some R8,5 million for a building and the equipment necessary to conduct the tests. The Board has not been convinced that the professional industry will have the resources to fund expenditure of this magnitude. It, quite frankly, appears to be prohibitively expensive for amateur racing and may have contributed to the same protagonist for the amateur "sport" (quoted above) stating "It is not envisaged at this stage to have tests conducted as it ...cannot be afforded." The Board cannot support a sport whose protagonists, quite boldly and in writing, state that drug abuse might very well occur, yet they (or at least some of them) do not intend testing for it.

5.3.6 The Board accepts the statement, put forward in several submissions, that Greyhounds love to run, but contend that running and racing are not synonomous. Running implies the freedom to move, either at full pace or not, as and when it pleases the runner. Racing means to perform at full pace at such moments as it pleases the trainer or owner. The Board agrees with the argument that it will be cruel not to allow a Greyhound to run, but feels it will be even more cruel not to allow it to run or rest whenever it pleases by confining them to small areas or even cages for 18 or more hours per day.

5.3.7 Whether the expectations that Greyhound racing might be allowed in South Africa are justified or not, matters little. The fact is that these expectations have been raised both locally and overseas, hence the Board has received both written and oral representations. Allowing amateur racing now would heighten these expectations and would provide a very useful avenue through which racing could be performed professionally under the guise of amateurism. Under-cover betting (e.g. bucket shops) could and probably would be run, sponsorships by organisations wishing to export dogs to South Africa could suddenly appear (dog-trailers, cars, flats) as could some other forms of non-professional "re-imburse-ment of expenses", not unknown in some human amateur sports. It would be a small step from here to full professionalism.

Allowing racing but disallowing betting thereon, would in the face of the recent introduction of sports betting not make very good sense.

5.3.8 In its Main Report (Chapter 5), the Board has stated that lotteries are important generators of revenue for the state as well as for good causes in society. In Chapter 7 the Board stated that casino-gaming has been the fastest growing form of gambling in most countries. It therefore behoves the Board to also express itself on the growth and revenue generating possibilities of Greyhound racing.

In some of the several hundreds of pages of submissions that the Board has been inundated with, attempts were made to prove that Greyhound racing is an international success story and that it is an extremely popular spectator sport. However, some submissions by protagonists include that the British industry is in decline with dropping total turnover and attendance figures, that the number of race meetings, attendance figures and betting income is dropping in Ireland and that Australia is experiencing dropping figures in numbers of tracks, meetings and bookmaker turnovers. Added to this, the Board has been provided with information that attendance figures in Britain have dropped from some 15 million in 1960 to less than 4 million in 1990, that the number of tracks in that country has declined from just over 60 to less than 40 over the same period, that a number of tracks have closed in the USA in recent years and even in recent months, that roughly 90% of U.S. tracks have experienced drops in betting, that some tracks in the U.S.A. are running up losses of millions of dollars annually, and that some U.S. states have reversed their decisions to legalise Greyhound racing. It is therefore clear that while protagonists and opponents disagree on matters such as humane treatment of the racing animals, there is substantial agreement on the decline in attendances. The Board therefore has no alternative but to conclude that Greyhound racing in some very important societies is far from a growing activity and that it is indeed declining.

The argument that cricket, for example, may also be experiencing declining attendances, matters little. The Board has not been instructed to express itself on cricket, ten-pin bowling or any other sport. They, in any event, all have existing infrastructures. To introduce an activity experiencing a world-wide decline in the face of other forms of gambling and to expose provincial or central authorities to the risks involved in allowing an activity with an extremely dubious future is, however, quite another matter.

How serious the decline in Greyhound racing is, can possibly best be summarised by the following quote from a protagonist: "In addition to Ireland the sport of Greyhound racing is also statutorily recognised and is in receipt of state subsidies and assistance in the major countries where Greyhound racing is promoted viz. the United States, Australia and the United Kingdom". This quote will possibly put claims that millions of Rands will be generated for the RDP or provincial governments in perspective.

Should Greyhound racing be allowed, it will be interesting to see how long it will be before the Government or provinces will have to provide "annual grants – in aid" to bolster funds for development works at Greyhound stadia, prize money and racing integrity services as in Ireland. South Africa has no European Community to provide funding for the industry, including grant aid for breeders, marketing and promotion as in Ireland. Nor can we hope that the O.A.U. will provide such assistance as Greyhound racing is not legally operative in any country in Africa.

5.3.9 It has been argued that the undeniable drop in overseas attendances is, at least partially, due to televised races and people watching live TV coverage in their homes and/or pubs, hotels and the like and betting off-course, perhaps in entertainment centres. Whether this is true or not is really immaterial since the further people are removed from the actual race the less their involvement in and knowledge of the participants become and consequently the more betting on the races become purely gambling activities, of which South Africa is about to experience a substantial increase in the not-too-distant future. It is worth noting that the Board has been advised that the new forms of gaming – e.g. casinos – have a clear edge over Greyhound racing. Lounge chair betting on televised Greyhound racing could certainly be classified, or at the very least, come very close to being classified as "over-stimulation of latent demand for gambling" which the Board recommended in its Main Report that society should be protected against.

5.3.10 The matter of potential employment creation has also received the Board's attention. The Board does not deny that the industry could create some employment, but is not convinced that this employment would be either new or permanent.

With the advent of sports betting, more casinos in wider spread locations as well as a national lottery, the gambling Rand will probably be increased, perhaps even to the point of being stretched. The question therefore is one of how much further Greyhound racing can stretch the gambling Rand and one

of how many of the employment opportunities will be new opportunities and how many would perhaps simply have been diverted from other avenues. One should furthermore bear in mind that legal Greyhound racing is not conducted in any African country (14 have horse racing and 26 have casinos) and should it, possibly after an initial flurry, be abandoned as happened in Zimbabwe, whatever employment opportunities it may have created would be lost and that whatever infrastructure would have been created would have constituted fruitless expenditure.

5.3.11 The Board is sympathetic to the opinion that owning a Greyhound could be achieved at a much lesser cost than owning a thoroughbred race horse and that less affluent members of society would therefore be able to take part in racing as owners, rather than merely as onlookers. Oral evidence by protagonists on the annual cost of caring for a Greyhound varied extremely widely, viz. from R1 800 to R10 500 per year. (No mention was made that this would include training fees.) If one should take the average of the four (probably expert) protagonist opinions, it appears that it will cost upwards of R5 000 per annum to properly care for one animal. Added to this would be the purchase cost of the dog (anything between R100 and R25 000) and travel over relatively long distances to race meetings. (A major protagonist group advises that there should be no more than three to five tracks in the country.) Cost of this magnitude could hardly be afforded by the less affluent members of society.

5.3.12 The Board has taken note of a protagonist's opinion that "...the absence of gambling has resulted in an overwhelming decrease in public interest in Greyhound racing", that revenue derived from betting taxes would be required for effective control, that "...public interest will never regain the popularity it enjoyed during its heyday in the 1940s", and that amateur racing is, under specified circumstances, still permissible in KwaZulu/Natal. No evidence has, however, been submitted that the "sport" is prospering in KwaZulu/Natal. This certainly paints a picture of extremely limited interest in the "sport". Therefore, to allow an activity which few support but many find unacceptable, would make very little sense indeed.

5.3.13 The Board does not believe that it would be in breach of the Constitution to advise against Greyhound racing. The Constitution does provide for freedom of choice and certain competencies of the provinces. It does not, however, allow people to do whatever they want – e.g. murder, and theft. Gambling generally, and casinos specifically also fall in this category, yet the Board was asked to provide advice on these, as it had been asked to do on Greyhound racing. Despite provincial competencies on casinos, the Board was never inhibited in providing advice thereon and is likewise not inhibited in providing advice on Greyhound racing.

5.3.14 The Board does not accept the argument that legalising Greyhound racing would bring the "sport" out in the open allowing better control thereof. Had this argument been true "bush-racing" with horses would have disappeared in South Africa. This has of course not happened.

5.3.15 The Board has found that there are indeed differences between Greyhound racing and horse racing. Quite apart from the fact that the Board has not been instructed to express itself on horse racing or any other "sport" which some might regard as cruel or *contra bonos mores*, the following represent clear differences with horse racing.

(a) In horse racing there are no possibilities of:

(i) using live lures in training;

(ii) hunting in packs for survival or otherwise;

(iii) being transported to race meetings in car boots;

(iv) racing unnaturally due to sharp curves, (statements have been made to the Board of banked curves for Greyhounds but the Board has not seen any hard evidence thereof).

(b) The potential for over-breeding is smaller with horses.

(c) Horse racing is well established and controlled by a controlling body with an annual income of some R10 million and with a laboratory with a replacement cost of some R8,5 million.

(d) Horse racing is successful in 14 African countries, Greyhound racing in zero.

5.3.16 The Board does not accept the arguments that since society will unfortunately always experience some degree of drug trafficking, murder and vice, Greyhound racing should also be allowed. One evil certainly does not justify the existence, or worse still, the introduction of another.

5.3.17 The Board contends that the ban on Greyhound racing is no anomaly. There certainly are other banned animal "sport" like dog- and cock fighting.

RECOMMENDATION

THE BOARD THEREFORE RECOMMENDS THAT:

(a) No form of Greyhound racing or any other dog racing, be it amateur or professional, be allowed; and,

(b) Legislation be vigorously enforced.

5.4 Members N E Wiehahn; J H Viljoen; J T M Edwards; T Mufamadi; A J L Geyser; M A Tshabalala; T M Manyoni; and, T R Ramphele are in favour of lifting the ban on Greyhound racing in South Africa and that provinces should be allowed to introduce such racing within their respective jurisdictions. Their motivation for the lifting of the prohibition is as follows:

5.4.1 Illegal Greyhound racing, as was stated before, is a fact of present day life. The existing bans have not worked and are doomed to become more ineffective particularly so now that gambling will be introduced in South Africa. In fact the current ban on Greyhound racing will stand out as the most conspicuous and inexplicable anomaly among all other forms of animal sport.

MINORITY RECOMMENDATION

IT IS RECOMMENDED THAT:

(a) In principle the present prohibitions on Greyhound racing be repealed and that such racing be allowed in South Africa;

(b) Should a particular province decide to allow Greyhound racing within its jurisdiction, its legislation shall provide for the following:

(i) Only licensed operators be allowed to conduct such races;

(ii) Strict controls and regulations be provided as measures with which breeders, owners and operators shall comply;

(iii) Strict criteria with regard to cage size, feeding of dogs, health and medical care, the condition of dogs, the role of veterinary surgeons, frequency of races and participation therein, registration of Greyhounds and still many others be drawn up by a national Greyhound racing organisation and be regulated by provincial legislation;

(c) The proposed national gaming and wagering Board be involved where and whenever it is needed by the industry;

(d) The assistance, guidance and involvement of veterinary surgeons, societies for the protection of animals and other animal welfare organisations be sought with a view to help the industry;

(e) Provincial legislation provide for the necessary inspection services, the inspectors of which should have wide powers to conduct spot checks, have access to premises and to documentation; and,

(f) The Greyhound racing industry, where applicable, seek guidance from and co-operation with the well established horse racing fraternity of South Africa with a view to establish and maintain a clean, tidy, credible, transparent and worthy Greyhound racing industry.

5.5 As stated above, the above-mentioned members of the Board are in agreement on the lifting of the ban on Greyhound racing in South Africa for the above-mentioned reasons. However, two members of this group, T M Manyoni and T R Ramphele, are of the opinion that such racing should only be allowed on an amateur basis which in effect means that no betting of any kind should be allowed. The motivation for their standpoint is as follows:

5.5.1 This group accepts that Greyhounds are born to run and that they enjoy doing so and, further, that it is necessary for them and their welfare.

5.5.2 This group also accepts that the owners of such dogs love and care for their dogs and that, as a consequence, will not do or allow anything to be done that will harm their dogs.

5.5.3 Amateur owners train their own Greyhounds which in the main they keep as pets after their racing careers. There is therefore no difference to people who show dogs. This however is totally different to professional Greyhound racing where owners' dogs are kennelled with professional trainers and where there is no relationship between owner and dog.

5.5.4 This group also accepts that the owners and their racing dogs have a close and affectionate relationship which endures for long after the dogs' racing careers.

5.5.5 It is a natural trait of racing dogs to compete while they are running and nothing should stand in the way of different owners that want to allow their dogs to compete against each other to do so on a properly organised basis. This is their hobby and gives great pleasure and fun for humans and animals in the process. It is another form of "showing" dogs.

5.5.6 In line with the recommendations in the Main Report of the Board, this group is also of the opinion that only licenced organisations which will comply with the strictest criteria for a licence should be allowed to conduct such amateur Greyhound races. Such criteria should be extensive and strict. They should be contained in provincial legislation.

5.5.7 The closest involvement of veterinary surgeons, animal protection societies and other animal welfare organisations in the organisation, conduct of and running of dog races should be compulsory.

5.5.8 No betting on Greyhound races should be allowed for the following reasons:

(i) It would commercialise a well loved hobby of humans and animals for monetary purposes;

(ii) It would estrange human and animal from each other and consequently dehumanise an otherwise affectionate relationship;

(iii) Brutality comes with greed. This would aggravate cruelty to dogs which will be experimented upon by owners and breeders;

(iv) Betting takes the fun out of Greyhound racing and turns it into a strenuous and exhausting experience for dog and man;

(v) Amateur Greyhound racing would be more easily controlled than both illegal and professional Greyhound racing.

(vi) Commercialisation would create all the problems which are mentioned in this Supplementary Report due to proliferation of Greyhounds required for professional racing. No satisfactory evidence was submitted that substantiated that a professional Greyhound racing industry could be viable let alone be able to afford all the necessary controls and retirement home programmes. Controls that are necessary on an amateur basis are far more limited and affordable for the amateurs as the betting public do not have to be protected.

(vii) Amateur Greyhound racing would satisfy both those who are against Greyhound racing and those who favour professional Greyhound racing. It is a sensible and acceptable compromise between two extremes; and,

(viii) The social evil of the poor or "have-nots" squandering their money away on betting will become a grave problem for the country.

5.5.9 Provincial legislation should provide for proper and efficient inspection services which must have the power to do spot checks, enter upon any premises related to Greyhound racing and have access to books, records and other relevant documentation.

5.5.10 Co-operation with and guidance from the established horse racing fraternity with a view to etsablish and maintain a clean, tidy, credible, transparent and honourable amateur Greyhound racing industry should be sought.

5.5.11 Association and relationship with international Greyhound racing organisations should be sought with a view of acquiring and sharing knowledge, expertise and experience in the Greyhound racing world to the benefit of all concerned.

MINORITY RECOMMENDATION

Members T M Manyoni and T R Ramphele recommend that no professional Greyhound racing be allowed in South Africa. (i.e. that the ban on Greyhound racing be lifted subject to certain conditions but that betting thereon be prohibited.)

5.6 The other members of the minority group namely, N E Wiehahn, J H Viljoen, J T M Edwards, T Mufamadi, A J L Geyser and M A Tshabalala, are of the opinion that the prohibition on Greyhound racing should be lifted and that it should be left to the industry to decide for itself whether Greyhound racing should be conducted on an amateur or a professional basis provided, of course, all the principles, requirements and criteria spelled out in the Main Report of the Board as well as those set out above for the lifting of the ban are complied with by breeders, owners, operators, punters and all other role players in the industry. This in effect, means that provincial legislatures should not be constrained from exercising their competencies which they have in terms of the Interim Constitution of the Republic of South Africa.

These members base their opinion on the following arguments:

(a) Illegal Greyhound racing, as was stated above, is a fact of present day life and there is evidence that betting thereon takes place. The existing laws have not worked and are dooomed to become more ineffective particularly so now that gambling will be introduced in South Africa. In fact the current ban on Greyhound racing will stand out as the most conspicuous and inexplicable anomaly among all other forms of animal sport.

(b) Greyhound racing, as was stated earlier in this Report, is a provincial legislative competence in terms of the country's interim Constitution. This means that the legalisation of Greyhound racing and betting thereon fall squarely within that competence. Provincial legislatures have autonomy in this matter. In its Main Report (paragraph 2 Chapter 4 on page 64) the Board recommended as one of the principles in gambling in South Africa that, in view of the sensitivity of the relationship between the central and provincial governments "the closest liaison and co-operation between them be sought and maintained" for the benefit of the gambling industry in South Africa. For central Government to prescribe to provincial legislatures not to allow professional Greyhound racing will not only introduce an element which could seriously strain those sensitive relations between the two levels of government but could also lead to an unneccessary confrontation with the matter possibly ending in the Constitutional Court for decision.

(c) Not to allow professional Greyhound racing with betting opportunities thereon would deprive the provincial legislatures of badly needed revenue in the form of taxes and levies. As was stated earlier, there is evidence that illegal betting at illegal Greyhound races currently does take place under which circumstances the fiscus gets nothing. Legalised professional dog racing with the proper controls and regulation of books of account and financial statements will ensure that the provincial fiscus is paid its fair share in taxes.

(d) Coupled to the preceding paragraph and for the same reasons, the Reconstruction and Development Programme would also be deprived of a source of income which, if not legally recognised and properly controlled, will only feed the pockets of the owners and operators.

(e) It was averred, and this group accepts it, that black economic empowerment and other forms of reparation of imbalances in our society will not be possible if the present ban continues. According to a conservative analysis, Greyhound racing, if properly controlled, can generate a large revenue. A legalised, strictly controlled

and transparent professional Greyhound racing industry can play a major role in the process of Black economic empowerment.

(f) Control and regulation are key concepts in Greyhound racing. According to the evidence of those witnesses in favour of Greyhound racing, namely, that if the sport is to survive and develop as well as ensure the welfare of the dogs, strong and effective controls are essential. However, these cost money to implement and maintain. It would be very difficult to do this in terms of an amateur set-up in Greyhound racing. The horse racing industry would certainly not survive in an amateur environment. Therefore to allow Greyhound racing only on an amateur basis would not only threaten the feasibility of the industry but would also amount to discrimination which, as is mentioned earlier in this Report, could lead to an action in the Constitutional Court.

(g) The question whether Greyhound racing conducted on a professional basis would be financially viable or not is neither for the Board nor for the Government to decide. No such questions was a precondition for any of the other forms of gambling which the Board has dealt with in its Report. It is none of the business of the Board or the Government in a market related gambling industry. This is particularly so in the total absence of any financial information of a hitherto banned activity to support such a precondition. To consider this question amounts to prejudging an issue in regard of which no evidence is available.

(h) A legalised professional Greyhound racing industry in South Africa should be given the opportunities of proving itself, controlling and disciplining itself and of learning from the failures and successes of Greyhound racing industries elsewhere in the world. The owners, breeders, operators and other relevant role players have a fundamental right to this opportunity.

MINORITY RECOMMENDATION

Members N E Wiehahn, J H Viljoen, J T M Edwards, T Mufamadi, M A Tshabalala and A J L Geyser recommend that:

1. Whilst they fully concur with the legalisation of Greyhound racing in South Africa subject to all the conditions, strict controls and regulations and criteria set out above, it should be left to the Greyhound Industry whether betting on such races should be conducted or not: Provided that, should it be so decided, such betting should be conducted under the auspices of a well organised professional body.

2. The South African Greyhound Racing Industry, once established, seek association and relationship with international dog racing organisations with a view to acquiring and sharing knowledge, expertise and experience in the world of Greyhound racing for the benefit of all concerned.

5.6 Two members of the Board did not formally vote on the issue of Greyhound racing.

"The poor dog in life

The firmest friend

The first to welcome

Foremost to defend"

Byron

SECTION 3

VALUE ADDED TAX IN THE GAMBLING INDUSTRY

As stated in the Main Report of the Board, most gambling jurisdictions in the world are compelled to pay taxes on the principle that as an industry, the respective governments are entitled to their share of the revenue generated by gambling. The Board therefore recommended in Chapter 4, paragraph 7 that, as a principle, income tax be levied on operators of gambling activities but that income on gambling wins not be taxable and with regard to value added tax (VAT) all forms of gambling have exempted status.

In reaction to this recommendation the Board was requested to reconsider the grounds for its recommendation that all forms of gambling shall be exempted from paying VAT. Again the Board cannot reverse or deviate from its recommendation in principle on this aspect namely that no VAT should be payable by the gambling industry. It has decided however, after considering presentations made *ex post facto* the finalisation of the Main Report, to provide a different ratio for its recommendation in principle and that is that the gambling industry should be granted a zero rating rather than an exempted status.

All the reasons for excluding gambling from paying VAT and, particularly the principle that double taxation should not be imposed, still apply. The motivation for excluding gambling from paying VAT on a zero rating basis rather than an exempted rating basis is as follows:

Exempt Status

(a) If an activity is granted exempt status, it is not liable for output taxes on its sales, but it can also not recover the VAT which it pays on the goods and services which it purchases. Apart from placing this type of business activity at a disadvantage compared to normal business entities which can recover the VAT which is levied on their purchases, it creates practical problems in the policing of these activities for Inland Revenue. All gambling entities will have other activities which are subject to VAT and the carrying on of mixed activities will entail the apportionment of inputs and the attendant administrative difficulties therewith. It also creates increased scope for abuse on the part of the enterprise in determining the levels of input tax to be claimed by them in respect of their taxable activities.

(b) Another very real problem is that in terms of the VAT legislation, an activity that is granted exempt status, is liable to pay input VAT on the value of its capital assets. This would create enormous difficulties with the apportionment of assets between the gambling exempt activity and the other normal activities subject to VAT. The affordability thereof for the present affected enterprises would also be a major problem.

(c) This option would also not totally adhere to the principal of not applying double taxation, as gambling enterprises would still be subject to input VAT.

Zero Rated Status

(a) If an activity is zero rated for VAT purposes, it is not liable for output taxes on its sales and more importantly, it can however recover the input VAT which it pays on its purchases. In other words, it is in a tax neutral position with regard to VAT – a situation which is effectively similar to that of normal business entities.

(b) This alternative option of zero rating also eliminates all those problems relating to exemption. Zero rating also adheres to the principle of not applying double taxation as the enterprise will only be subject to provincial tax on its gambling activities. The provinces obviously wish to maximise as far as possible their revenue from gambling with the result that they will take into account the fact that gambling is zero rated for VAT purposes when setting the percentages of provincial tax to be levied. Furthermore, the provinces will ensure that they have the necessary expertise and systems for ensuring that all the correct taxes are collected. This will relieve Inland Revenue of acquiring the necessary skills in a specialised field and will also eliminate the duplication of having to collect independently both VAT and provincial taxes. No tax will therefore be lost to government.

(c) In the light of the above, it can be seen that the most practical and effective method of excluding gambling from VAT is by zero-rating gambling transactions. This method also fully complies with the principle that double taxation should not be imposed.

RECOMMENDATION

The Board therefore recommends that the exclusion of the gambling industry from paying value added tax be based on a zero rating and not on an exempted status.

EPILOGUE

With this supplementary report the Board has completed its task of investigation and reporting to government on gambling in South Africa. It was a short but highly exciting and enriching task, the experience of which has made every member of the Board so more the wiser about the intricacies of the human mind and soul. The Board now understands why so many regard gambling as evil – because it is universally natural and its practice is so pleasurable! The Board needs no sympathy nor any praise for the work it has done. As Franklin Roosevelt said "Far and away the best prize that life offers is the chance to work at work worth doing". This was indeed a task worth doing.

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The submissions that arrived after 13 April 1995, the return date for presentations to the Board, were noted in the deliberations but are not in this official sources of reference.