



KWAZULU-NATAL PROVINCE  
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ISIFUNDAZWE SAKWAZULU-NATALI

**Provincial Gazette • Provinsiale Koerant • Igazethi Yesifundazwe**

**GAZETTE EXTRAORDINARY—BUITENGEWONE KOERANT—IGAZETHI EYISIPESHELI**

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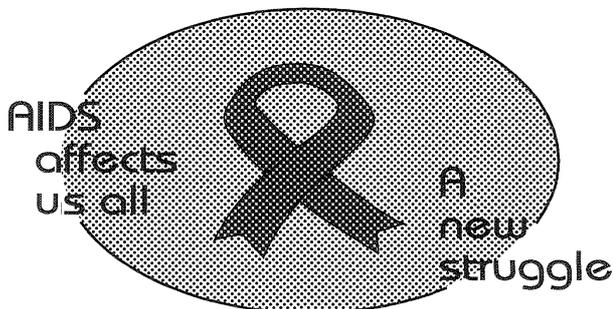
**Vol. 7**

**PIETERMARITZBURG,**

31 MAY 2013  
31 MEI 2013  
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**No. 959**

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**PROVINCIAL NOTICE**


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No. 87

31 May 2013




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**DISCUSSION DOCUMENT ON PROPOSED TRANSFORMATION MINIMUM STANDARDS  
GUIDELINE FOR THE LIMITED PAYOUT MACHINE SECTOR AND  
BINGO SECTOR OF THE GAMING AND BETTING INDUSTRY**

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**1. INTRODUCTION**

- 1.1 Notwithstanding the progress made by the LPM and Bingo sectors within the Gaming and Betting Industry in respect of their transformation initiatives over the past few years, and their efforts to provide ownership and employment opportunities for historically disadvantaged persons, in terms of the Board's mandate, it is necessary for the Board to maintain standards in respect of transformation within the Gaming and Betting Industry of the Province.
- 1.2 To this end, and to ensure transformation alignment across all sectors of the Gaming and Betting Industry, this document is intended to serve as an initial discussion document towards the development of structured transformation minimum standards for the LPM and Bingo sectors of the Gaming and Betting Industry.
- 1.3 The status of this document is that of a discussion paper and as such should not be accorded any legal status until such time as a consultation process has been completed. This document will assist in facilitating discussions that will drive the development of industry guidelines in respect of transformation.

**2. DEFINITIONS**

<b>Terms</b>	<b>Definitions</b>
The Act	means the KwaZulu-Natal Gaming and Betting Act, No. 08 of 2010.
The Board	means the KwaZulu-Natal Gaming and Betting Board established in terms of the KwaZulu-Natal Gaming and Betting Act.
B-BBEE Act	means the Broad-Based Black Economic Empowerment Act, 2003.
CSI	means corporate social investment which is a project aimed primarily at Black groups, rural communities, and individuals (especially priority population group) that have a strong developmental approach and contribute towards transformation and a better life for the disadvantaged

Terms	Definitions
	people of KZN.
Direct ownership	means ownership of an equity interest together with control over all of the voting rights attached to that equity interest.
Economic interest	means the entitlement of historically disadvantaged persons to dividends, capital gains and other economic rights of shareholders.
Enterprise	means a natural or juristic person, or any form of co-operative, conducting a business, trade or profession in South Africa.
Exercisable Voting Right	means a voting right of a participant that is not subject to any limit.
Flow-through principle	means the principle used to determine the level of effective ownership held by previously disadvantaged persons in complex business structures that comprise multiple ownership chains.
Historically Disadvantaged Person or "HDP"	means (a) a natural person, who before the Constitution of the Republic of South Africa Act, 1993 (Act 200 of 1993), came into operation, was disadvantaged by unfair discrimination on the basis of race, gender, disability, sexual orientation or religion; or (b) a juristic person or association, and individuals referred to in paragraph (a) who own and control a majority of its issued share capital or members' interest and are able to control a majority of its votes.
LPM	means limited payout machine.
Licensee	means a person who holds a valid licence or temporary licence issued in terms of the KwaZulu-Natal Gaming and Betting Act, No 08 of 2010.
Management control	means the authority and power to influence the operational and strategic direction of an enterprise. Indicators of management control may include: determination of policies; management of assets; exercising voting rights; participation in control structures of the enterprise, such as shareholding meetings; board of directors; controlling equity etc.
Ownership	means direct ownership of a minimum of 26% percent of the shareholding or membership interest belonging to historically disadvantaged persons.
Priority Population Group	means HDP who fall into groups that were not offered a franchise in the national elections before or after the introduction of the 1984 tri-cameral parliamentary system and only received a franchise during 1994.
Public Entity	means a public entity listed in Schedule 2 or 3 to the Public Finance Management Act, 1999.
Renewal Application	means a process where an application is made by a licensee to renew a license or certificate annually or otherwise as prescribed by the Act.

Terms	Definitions
Senior Management	means employees who are appointed by or on authority of the Board of Directors of the licensee/applicant to undertake the day-to-day management of that enterprise and who: (a) have individual responsibility for the overall management and for the financial management of the enterprise; and (b) are actively involved in developing and implementing the enterprise's overall strategy.
Skills Development	means the process of engaging in activities that advance the knowledge, experience, attitude, and general ability needed in the work place of historically disadvantaged persons.
Skills Transfer	means the process of conveying requisite knowledge, experience, attitude and general abilities needed in the work place to persons or groups who previously may not have had such work place knowledge, experience, attitude and general abilities.
Top Management	means employees who hold rights of ownership, serve on the Board of Directors of the licensee/applicant, undertake the day-to-day management, have overall responsibility for the overall financial management and are actively involved in developing and implementing the overall strategy in so far as it relates to his/her particular area of responsibility within the enterprise.

### 3. BACKGROUND

- 3.1 The KwaZulu-Natal Gaming and Betting Board is, in its capacity as both an organ of state as well as public entity, committed to promoting Black Economic Empowerment and Socio-Economic Development within the Province.
- 3.2 The objectives of the proposed transformation minimum standards are to substantially increase participation of historically disadvantaged persons in the LPM and Bingo sectors of the Gaming and Betting Industry and to develop a framework that includes targets and criteria for B-BBEE within the sector.
- 3.3 The KwaZulu-Natal Gaming and Betting Board has adopted the principles set out in the B-BBEE Act and has developed its approach to achieve its transformation objectives (as contained in Section 6 of the Act<sup>1</sup>), through the establishment of the principles contained within the proposed Transformation Minimum Standards Guideline.

<sup>1</sup> Section 6 (1) (b) of the KwaZulu-Natal Gaming and Betting Act, No. 08 of 2010

- 3.4 The Board in discharging its responsibilities in respect of B-BBEE is guided by the B-BBEE Act, The KZN Gaming and Betting Act 2010, the KZN B-BBEE Strategy. and the DTI Codes of Good practice.
- 3.5 The proposed transformation minimum standards provide clarity on the implementation of B-BBEE and outline the Board's expectations to the LPM and Bingo sectors on B-BBEE. They contain criteria to be applied by licensees under the Act. All licensees in the sector are expected to apply these minimum standards and to report their levels of B-BBEE to the Board.
- 3.6 The proposed transformation minimum standards do not replace the B-BBEE Act in any way, but should be read in conjunction with the Act.
- 3.7 The proposed Transformation Minimum Standards Guideline:
- 3.7.1 is not a sector code as defined in Section 12 of the B-BEE Act<sup>2</sup>, however is in line with the KwaZulu-Natal Provincial B-BBEE Strategy and reflects National B-BBEE policies. The transformation position adopted by the Board is designed to support such national policy on transformation and socio-economic development;
- 3.7.2 constitutes a framework and establishes the minimum standards to be applied by the Board to implement B-BBEE with specific focus to the LPM and Bingo sectors;
- 3.7.3 establishes compliance targets and qualitative undertakings for licensees, (within the LPM and Bingo sectors) in respect of the various elements of B-BBEE.
- 3.7.4 outlines processes for implementing the objectives and commitments of the Board, as well as the mechanisms to monitor and report on progress in the implementation of transformation within the sector.

#### 4. OBJECTIVES OF THE TRANSFORMATION MINIMUM STANDARDS GUIDELINE

- 4.1 Section 6 of the Act<sup>3</sup> outlines the objectives of the Board which include to:

*"6(1)(b) ensure that all gaming authorized under this Act promotes the Province's objectives for developing a gaming industry which objectives are the promotion of tourism, employment and economic and social development in the Province;"*

- 4.2 These proposed minimum standards prescribe the minimum standards to be observed by licensees and provide clarity on the criteria that will be considered by the Board to drive an increase in ownership stakes in the LPM and Bingo sectors and to increase access to skills, capital and economic opportunities.

<sup>2</sup> Section 12 of the Broad-Based Black Economic Empowerment Act, 2003  
<sup>3</sup> Section 6 of the KZN Gaming and Betting Act, No. 08 of 2010

- 4.3 These proposed minimum standards further outline BEE compliance targets, and the standards' criteria to be followed by licensees.
- 4.4 Taking into account the objectives listed above, this proposed Transformation Minimum Standards Guideline aims to, without limitation:
- 4.4.1 Promote economic transformation in the LPM and Bingo sectors to enable meaningful participation and ownership of historically disadvantaged persons, particularly people from the priority population group;
- 4.4.2 Increase ownership and participation in the LPM and Bingo sectors by historically disadvantaged persons;
- 4.4.3 Substantially change the racial and gender composition in ownership and management control, thereby enhancing the participation of historically disadvantaged persons in the LPM and Bingo sector; and
- 4.4.4 Promote and facilitate the advancement and participation of historically disadvantaged persons by means of skills development, skills transfer, management control, employment equity, ownership and procurement.

## **5. SCOPE OF APPLICATION OF THE TRANSFORMATION MINIMUM STANDARDS GUIDELINE**

- 5.1 Sector transformation needs to be an inclusive process with the participation and commitment of all stakeholders in the sector.
- 5.2 These proposed minimum standards are applicable to licensees within the LPM and Bingo sector of the Gaming and Betting Industry in KwaZulu-Natal.

## **6. FOCUS OF APPLICATION OF THE PROPOSED TRANSFORMATION MINIMUM STANDARDS GUIDELINE**

- 6.1 The requirements of the B-BBEE Act<sup>4</sup> and the Codes of Good Practice<sup>5</sup> are binding on licensees and this guideline in no way suggests deviation from the B-BBEE Act.
- 6.2 As the proposed Transformation Minimum Standards Guideline supports the components of the B-BBEE Codes of Good Practice, these minimum standards and future compliance requirements for licensees focus on specific elements of such Code in order to meet the Board's objectives.
- 6.3 The Board has identified certain B-BBEE components as priority compliance requirements.
- 6.4 The following **priority B-BBEE elements** have been identified by the Board:

- **Ownership;**

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<sup>4</sup> Broad-Based Black Economic Empowerment Act, 2003

<sup>5</sup> Broad-Based Black Economic Empowerment Codes of Good Practice, 2007

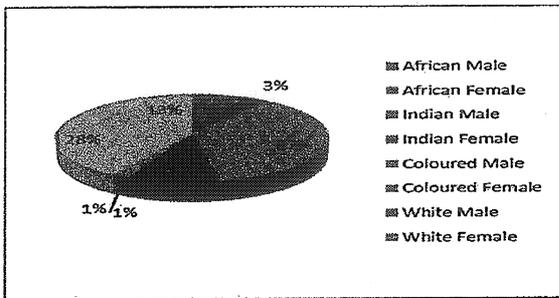
- Management Control / Employment Equity;
- Skills Development / Skills Transfer;
- Socio-Economic Development; and
- Procurement

6.5 This proposed guideline will highlight the following core criteria:

- 6.5.1 Direct empowerment of historically disadvantaged persons through the objective of ownership and management control within the Industry;
- 6.5.2 Development of skills and operational knowledge through the transfer of skills;
- 6.5.3 Continued compliance with B-BBEE codes; and
- 6.5.4 Licensees must reach Level 2 B-BBEE compliance by 2015.

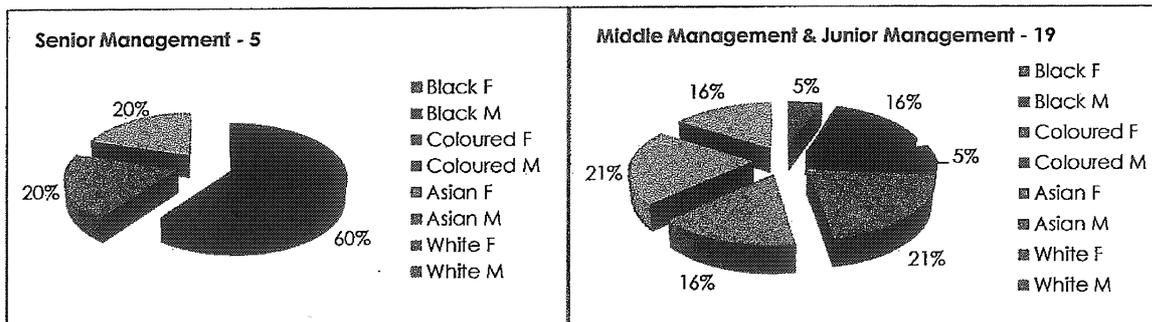
**7. CURRENT STATISTICS WITHIN LPM INDUSTRY**

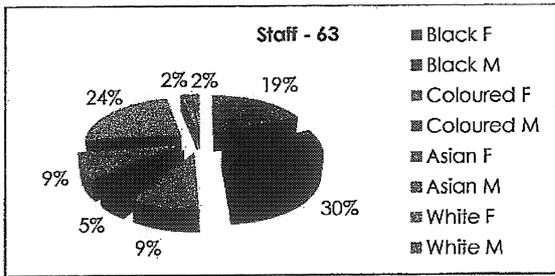
7.1 Route Operators percentage statistics for licensed sites in KwaZulu-Natal:



7.2 Current Staff complement percentage breakdown in respect of LPM Route Operators:

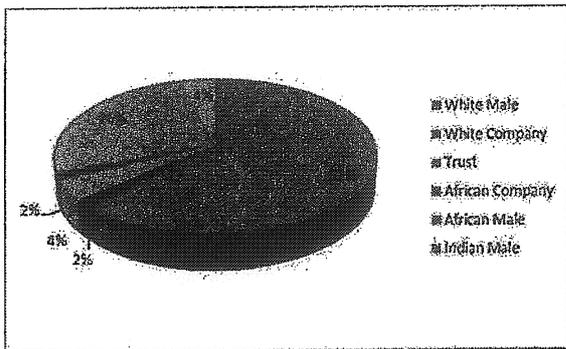
Total of 87 staff members, with the demographic profile as follows:





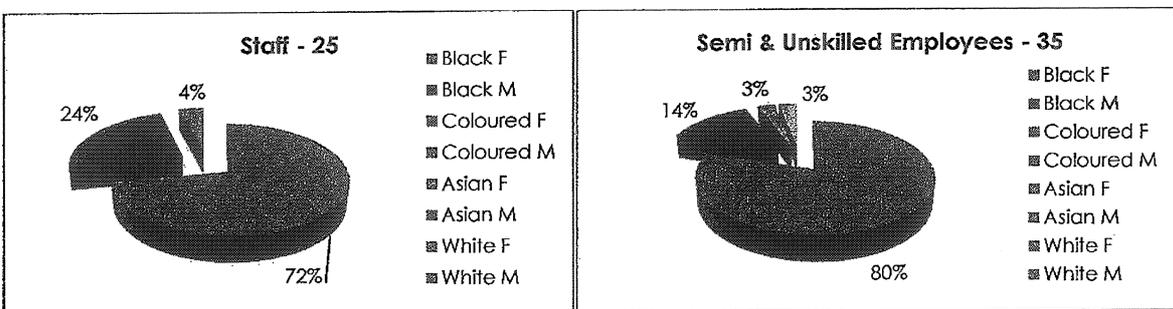
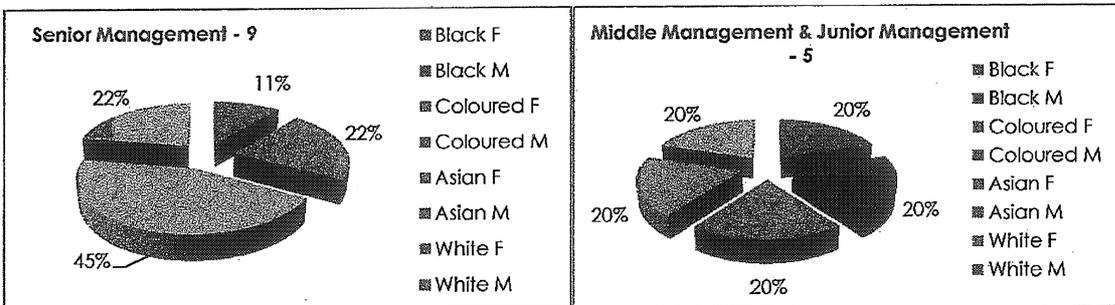
**8. CURRENT STATISTICS WITHIN BINGO INDUSTRY**

8.1 Bingo percentage statistics for licensed sites in KwaZulu-Natal:



8.2 Current Staff complement percentage breakdown in respect of Bingo Industry:

Total of 74 staff members, with the demographics profile as follows:



## **TRANSFORMATION PILLARS**

The below proposed requirements do not in any way alter or provide relief from bid commitments and/or license conditions currently binding on existing licensees.

### **9. OWNERSHIP**

This section sets out the Board's proposed requirement for the application of the element of ownership which has been identified as a priority element and cannot be replaced by other elements.

#### **9.1 Objectives of Ownership Element**

The core objectives of this element include the following:

- 9.1.1 Address past imbalances within this sector by increasing the ownership stakes of HDPs;
- 9.1.2 Promote economic transformation in order to enable meaningful participation of historically disadvantaged persons in the economy;
- 9.1.3 Promote opportunities for HDPs to participate in the sector in the capacity of any persons required to be licensed in terms of the Act;
- 9.1.4 Ensure direct empowerment of HDPs through ownership; and
- 9.1.5 Diversify ownership to ensure a substantial increase in the number of historically disadvantaged persons who enjoy ownership participation of existing and new enterprises.

#### **9.2 Key Principles of the Ownership Element**

##### **9.2.1 Direct Ownership**

- 9.2.1.1 Each Route Operator / Independent Site Operator will have a minimum requirement of 26% ownership of historically disadvantaged persons; and
- 9.2.1.2 Route operators are required to include at least 30% HDP sites with every batch of applications submitted to the Board.
- 9.2.1.3 Direct ownership should reflect genuine participation in decision making by historically disadvantaged persons by means of voting rights, economic interest and economic benefit.
- 9.2.1.4 Direct ownership includes the following:
  - A right or say in the disposal of any assets, operations, businesses or subsidiaries by the operators as a going concern; and

- Direct shareholding or ownership with control, commensurate with the level of ownership concerned.

9.2.1.5 Historically disadvantaged persons may hold their rights of ownership in an applicant or licensee as direct participation through some form of business which may include, but is not limited to:

- a company with shares;
- a sole proprietorship;
- a co-operative;
- any form of juristic person recognized under South African law; and
- a partnership or other association of natural persons recognized by law.

The Board recommends that businesses that are yet to transform, take into account the demographics of the Province thereby ensuring that the HDP groups which have been excluded from the LPM and Bingo sector of the Gaming and Betting industry (i.e. Black Africans), are equitably accommodated.

### 9.2.2 Economic Interest

The economic interest of historically disadvantaged persons in a Route Operator and independent Site Operator business must be a minimum of 26%.

### 9.2.3 Economic Benefit

The economic benefit of historically disadvantaged persons must be quantifiable in terms of monetary benefits.

### 9.2.4 Flow Through Principle

If the rights of ownership of historically disadvantaged persons pass through a juristic person, then the rights of ownership of historically disadvantaged persons in that juristic person must be measurable. This principle applies across every tier of ownership in a multi-tiered chain of ownership until that chain ends with a HDP holding rights of ownership.

## 9.3 Application of Ownership Element to Licensees

Below is a table summarizing the principles in clauses 9.2.1, 9.2.2, 9.2.3 and 9.2.4 above. These principles will be applied by the Board when considering new licence applications and applications for renewals:

CATEGORY	OWNERSHIP INDICATOR
Direct Ownership	Each Route Operator / Independent Site Operator will have a minimum requirement of 26% ownership of historically disadvantaged persons. Route operators are required to include at least 30% HDP sites with every

CATEGORY	OWNERSHIP INDICATOR
	batch of applications submitted to the Board.
Voting Rights	Exercisable Voting Rights in the business in the hands of historically disadvantaged persons.
Economic Interest	Economic Interest of historically disadvantaged persons in the business.
Economic Benefit	Benefits quantifiable in terms of money.
Flow Through	Traceable ownership measurement through the chain of ownership to historically disadvantaged persons.

#### **9.4 General**

In an attempt to devise mechanisms to overcome the obstacles that may restrict the ability of historically disadvantaged persons to enjoy equity ownership and to participate in the LPM and Bingo sectors, the Board will:

9.4.1 consider constraints by licensees as part of the application process; and

9.4.2 consult with industry stakeholders to engage on any obstacles identified.

### **10. MANAGEMENT CONTROL / EMPLOYMENT EQUITY**

#### **10.1 Introduction**

10.1.1 This section sets out the Board's proposed requirement for the application of management control / employment equity which has been identified as another priority element.

#### **10.2 Objectives of Management Control / Employment Equity**

The management control / employment equity element aims to:

10.2.1 address the challenge of low participation rates of historically disadvantaged persons in senior executive leadership and management positions which enable the incumbents to exercise effective control over the strategic and operational direction of an enterprise; and

10.2.2 ensure racial and gender representivity in the LPM and Bingo sectors, especially at junior, middle and senior management levels.

#### **10.3 Key Principles of the Management Control / Employment Equity Element**

10.3.1 This element provides for not only financial gain, but also skills transfer to ensure operational involvement and participation in decision making within this sector.

10.3.2 This element will further provide suitably qualified historically disadvantaged persons with the opportunity to exercise meaningful, active control over the operational and strategic direction of enterprises.

10.3.3 A concerted effort must be made by the sector role players in promoting the image of the industry, succession planning, implementing skills development programmes and recruiting suitable management staff, all of which are necessary to achieve meaningful participation and representation senior management level.

#### 10.4 Application of the Management Control Element

10.4.1 All of the principles reflected below will be applied by the Board when considering applications:

CATEGORY	MANAGEMENT CONTROL INDICATOR
Board Participation	Exercisable Voting Rights of HDP Board members as a percentage of all Board members.
Operational Involvement: Top Management	HDP Top Management as a % of all such employees (where applicable).
Operational Involvement: Senior Management	HDP employed in Senior Management as a % of all such employees (where applicable).

### 11. SKILLS DEVELOPMENT

#### 11.1 Introduction

In general, historically disadvantaged persons have historically been denied formal opportunities to acquire the requisite skills and competencies to underpin their effective participation in economic activities.

#### 11.2 Objectives of Skills Development Element

The core objectives of this element aim to:

- 11.2.1 Significantly increase the number of young historically disadvantaged persons (preferably rural young people) who acquire skills within this sector through the implementation of skills development initiatives; and
- 11.2.2 Promote opportunities for HDPs to participate in the LPM and Bingo sectors in the capacity of persons required to be licensed or registered in terms of the Act<sup>6</sup>, thereby positively contributing to poverty eradication and job creation.

<sup>6</sup> Section 6(1)(c) of the KZN Gaming and Betting Act, No. 08 of 2010

### 11.3 Key Principles of the Skills Development Element

11.3.1 **Skills Transfer** initiatives must be implemented and closely monitored to ensure comprehensive transfer of operational knowledge and skills to new entrants into the sectors. Sector enterprises are encouraged to invest in developing the skills of historically disadvantaged employees at all levels by means of effective workplace skills training plans.

### 11.4 Application of the Skills Development Element

11.4.1 All of the principles reflected below will be applied by the Board when considering applications:

CATEGORY	SKILLS DEVELOPMENT INDICATOR
Skills Development	Historically disadvantaged persons participating in structured and supervised learning in the workplace with mentoring or coaching provided by experienced registered employees to equip young HDPs with skills to be employed in the LPM and Bingo sectors of the Gaming and Betting Industry.

## 12. PROCUREMENT

### 12.1 Introduction

One of the major barriers to the growth of sustainable small and medium-sized enterprises in general and Black owned small and medium-sized enterprises in particular, is the lack of market access for their goods and services.

### 12.2 Objectives of Procurement Element

The core objective of this element aims to:

12.2.1 address the market access challenge by encouraging the LPM and Bingo sectors to procure goods and services from the enterprises mentioned above, thereby improving working conditions and sustainability of suppliers.

### 12.3 Key Principles of the Element of Procurement

12.3.1 Licensees must comply with the prescribed targets and timetable for procurement of goods and services from small and medium-sized enterprises, enterprises that are at least 50% Black-owned and enterprises that are at least 30% Black women-owned in accordance with the Codes of Good Practice for Broad-Based Black Economic Empowerment.

## 12.4 Application of the Procurement Element

12.4.1 All of the principles reflected below will be applied by the Board when considering applications:

CATEGORY	SKILLS DEVELOPMENT INDICATOR
Procurement	B-BBEE procurement spend from all suppliers based on the B-BBEE procurement recognition levels as a percentage of Total Measured Procurement Spend.
	B-BBEE procurement spend from Qualifying Small Enterprises or Exempted Micro Enterprises based on the B-BBEE procurement recognition levels as a percentage of Total Measured Procurement Spend.
	B-BBEE procurement spend from any of the following suppliers as a percentage of Total Measured Procurement Spend: <ul style="list-style-type: none"> <li>• Suppliers that are 50% Black-owned; or</li> <li>• Suppliers that are 30% Black women-owned.</li> </ul>

## 13. SOCIO-ECONOMIC DEVELOPMENT

### 13.1 Introduction

The LPM and Bingo sectors of the Gaming and Betting Industry have embarked on socio-economic development initiatives, however further participation is encouraged.

### 13.2 Objectives of Socio-Economic Development Element

13.2.1 This element seeks to promote socio-economic development within the Province and to address the challenges posed by the prevailing socio-economic conditions of under-development, which has resulted in continuous dependence and poverty.

### 13.3 Key Principles of the Element of Socio Economic Development

13.3.1 Licensees are expected to utilize the resources at their disposal to initiate and contribute to socio-economic development programmes that may take the following forms:

- 13.3.1.1 Development programmes for women, youth, people with disabilities and people living in rural areas;
- 13.3.1.2 Support of healthcare and HIV/AIDS Programmes;
- 13.3.1.3 Support for education programmes, resources and materials at primary, secondary and tertiary education level as well as bursaries and scholarships;

- 13.3.1.4 Community training, skills development for unemployed people and ABET;
- 13.3.1.5 Support of arts, cultural or sporting development programmes;
- 13.3.1.6 Environmental conservation, awareness, education and waste management; and
- 13.3.1.7 Infrastructural development, enterprise creation or reconstruction in underdeveloped areas.

#### 13.4 Application of the Socio-Economic Development Element

13.4.1 Notwithstanding that compliance requirements in respect of CSI will be contained within a separate CSI Minimum Standards Guideline document adopted by the Board for implementation within the LPM and Bingo sectors of the Gaming and Betting Industry, the principles reflected below will be applied by the Board when considering applications:

CATEGORY	SOCIO-ECONOMIC DEVELOPMENT INDICATOR
Socio-Economic Development	Initiatives undertaken to create business and employment opportunities for previously disadvantaged persons.
Corporate Social Investment	Annual value of all qualifying contributions made by the enterprise.