



National Gambling Board

a member of **the dti** group

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PRESS STATEMENT FROM THE NATIONAL GAMBLING BOARD:

Northern High Court declares interactive gambling illegal to operate in South Africa

The Northern Gauteng High Court last week dismissed the application of Casino Enterprises (known as Piggs Peak Casino which operates and is licensed in terms of Swaziland laws) to declare that it lawfully advertises in South Africa as a licensed entity. Piggs Peak Casino relies on a website with a computer server that is located in Swaziland.

The order is in response to a suit filed by Piggs Peak seeking to declare their advertisements and operations in South Africa as lawful.

Legal basis:

Expert evidence was heard at the trial hearing to determine the fundamental issue of where gambling takes place i.e. whether it is where the punter is situated [in Gauteng] or where the gambling equipment/server is based [in Swaziland]. On its analysis of section 11 of the National Gambling Act No 7 of 2004, which explicitly prohibits engaging in or making available a gambling game, the court found out that the conduct [of the punter] taking place in Gauteng is significant. The fact that the plaintiff's servers in Swaziland make it possible for the gambler in Gauteng to connect interactively with them through the internet and enable him/her to engage in a gambling game constitutes interactive gambling. It does not matter whether or not the critical elements comprising a gambling game are to be found or generated within the borders of South Africa or not.

This ruling affirms the South African laws that interactive gambling taking place in South Africa currently remains illegal. The court could not make an order that is contrary to an express prohibition imposed by the legislature as it cannot be requested to order the performance of a prohibited or criminal act.

Impact on current SA licensed online betting activities:

There is a need to clearly articulate whether or not the explicit prohibition of interactive gambling in the Act and the ruling have any effect on current licensed online betting activities

This ruling does not impact on licensed online betting activities regulated in South Africa. South African licensed online betting sites and any other SA bookmaker websites remain legal to operate and do not fall into this

category. A clear distinction between interactive gambling and online betting within the context of racing and betting should be drawn. The latter involves the communication of a bet via the internet with the licensed bookmaker/totalisator operator in South Africa. Betting via the internet is merely a communication medium used between the bookmaker or totalisator operator and the customer. Customers can physically walk into a betting outlet and place their bets or they can communicate their bet via the telephone or internet as long as they have an account. Another distinct difference is that the outcome of events bet on, is decided outside the betting environment.

The South African public should remain wary of the fact that online gambling/interactive gambling is illegal in South Africa. For this reason, none of the entities advertising or offering the South African public to engage in online gambling on their websites have been licensed in terms of South African laws, and therefore remain illegal to advertise and operate in South Africa.

The NGB is aware of the developing unregulated IG market and is putting a process that will advise policy makers on how to curtail and address the legality of IG in South Africa. The NGB is equally aware of the challenges that come with IT as it evolves and penetrates the country; hence, this ruling will allow regulators some space to ensure that we understand the developing patterns of IG gambling as well as proceed with the best approaches of legalizing and policing this form of gambling.

Policy considerations

Illegal interactive gambling activities pose a tremendous threat to the citizens of South Africa because of ease of availability and anonymity. It has repercussions that far exceed its monetary losses to the country.

As regulators, the NGB is of the view that unlicensed interactive gambling activities significantly undermine national policy, legislation and threaten licensed gambling operations by creating an unregulated and untaxed competition:

- The unregulated gambling lacks consumer protection to ensure that individuals who choose to gamble are actually paid for their winnings;
- IG operators prey on the South African public including the young and vulnerable and deprive South Africa of millions in revenue and taxes.

The NGB is hopeful that with this landmark ruling, South Africa will be off limits to unlicensed gambling purveyors and that the intention of the legislature to outlaw interactive gambling shall be observed. Severe and harsh penalties will be meted out on perpetrators of illegal gambling activities who may be fined up to R10 million and or 10 years imprisonment. Perpetrators in this context include individual punters who engage in interactive gambling, unlicensed gambling operators making available such activities, banking institutions, advertising media who are deemed to aid and abet illegal gambling activities or are seen as promoting/facilitating illegal online gambling by flighting such matter.

It shall also be a requirement that unlicensed operators use readily available technology to block their domains from being accessed in South Africa.

Statement on behalf of the NGB

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