



**Phumelela Gaming and Leisure Limited
(in Business Rescue)**

Turffontein Racecourse
14 Turf Club Street, Turffontein, 2190
P O Box 82625, Southdale, 2135
Gauteng, South Africa
Tel: (+2711) 681-1500
Fax: (+2711) 681-1895

e-mail: phumelela@phumelela.com
registration number 1997/016610/06
website: www.phumelela.com

Notice to affected persons

31 October 2024

**REPORT IN TERMS OF SECTION 132(3)(a) and (b) OF THE COMPANIES ACT 71 OF 2008 (AS AMENDED)
(“the Act”)**

**PHUMELELA GAMING AND LEISURE LIMITED (IN BUSINESS RESCUE) (REGISTRATION NUMBER
1997/016610/06) (“the Company”)**

Dear Sir/Madam,

1. I refer to my previous status reports issued in respect of the business rescue of the Company.
2. The BRP continues to implement the business rescue plan, by, *inter alia*:
 - 2.1. maintaining financial records and filing all tax returns;
 - 2.2. attending to share transfer requests and maintaining the Company’s share register;
 - 2.3. paying distributions from the Plan Fund in terms of the adopted business rescue plan;
 - 2.4. attending to the finalisation of litigation which was ongoing at the commencement of business rescue.
3. Department of Labour
 - 3.1. During the month of January and February 2024 the department of labour commenced 6 separate audits of Phumelela’s various UIF and other payroll related submissions and claims spanning the period 2010 to 2024. These are being attended to and will hopefully be resolved efficiently.
4. Gauteng Gambling Board Review Application
 - 4.1. The Company, prior to commencement of business rescue launched an application in the high court to review and set aside an amendment to legislation made by the Gauteng Gambling Board and Gauteng MEC to the Gambling legislation. This amendment removed the payment of a 3% levy on winning fixed odds bets on horse racing to the Company.
 - 4.2. Prior to this amendment, Phumelela received and was paid this levy. This levy contributed substantially to the Company’s revenue.

- 4.3. The matter was heard on 6 May 2024.
- 4.4. Judgement, as follows, was handed down on 30 May 2024:
 - 4.4.1. 4Racing is granted leave to intervene in these proceedings.
 - 4.4.2. The decision of the first respondent to amend Regulation 276 of the Gauteng Gambling Regulations, 1997 ("Regulation 276") is reviewed and set aside.
 - 4.4.3. It is declared that the amendment to Regulation 276 is invalid, unconstitutional and of no force or effect.
 - 4.4.4. The respondents are directed to pay the applicant the total amount of the levy that is payable in terms of Regulation 276 in the form it took before the amendment was made, for the period from 1 April 2019 to 30 November 2021.
 - 4.4.5. The respondents are directed to pay the intervener the total amount of the levy that is payable in terms of Regulation 276 in the form it took before the amendment was made for the period from 1 December 2021 to 30 May 2024.
 - 4.4.6. The respondents are directed to pay interest on the sums envisaged in paragraphs 50.4 and 50.5 above at the prescribed rate of interest.
 - 4.4.7. The sums identified in paragraphs 50.4 to 50.6 (of the order and 4.4.4 to 4.4.6 above) must be paid on or before 1 December 2024.
 - 4.4.8. The counter-application is dismissed.
 - 4.4.9. The applicant's and the intervener's costs in Part B of this application, in the counter-application and in the application for leave to intervene, including the costs of two counsel, are to be paid by the first and third respondents jointly and severally, the one paying the other to be absolved.
- 4.5. The Gauteng Gambling Board's application for leave was heard on 8 August 2024 and dismissed by the High Court in a judgement handed down on 12 August 2024.
- 4.6. The MEC for Economic Development, Environment, Agriculture and Rural Development (Gauteng) and the Gauteng Gambling Board have filed a Notice of Motion in the Supreme Court of Appeal of South Africa as follows:
 - 4.6.1. Leave to appeal to this Court is granted against the whole of the judgement and all of the orders (except the order granting leave to appeal to 4Racing (Pty) Limited) to intervene) by the Gauteng Local Division of the High Court per Wilson J on 30 May 2024.
 - 4.6.2. The Cost of this application be costs of the appeal.
- 4.7. Phumelela has opposed this application and has filed its answering affidavit in this regard.

- 4.8. 4Racing has also opposed the application.
- 4.9. The MEC for Economic Development, Environment, Agriculture and Rural Development (Gauteng) and the Gauteng Gambling Board have filed their replying affidavits.
- 4.10. The filing of affidavits in the application for leave to appeal is now complete and the Supreme Court of Appeal will now consider whether to grant leave to appeal the decision of the High Court.
- 4.11. The court file is available on request and will be provided to affected persons should they submit a request in writing to the business rescue practitioner at johnevans@rsadvisors.co.za.

5. Input VAT Claims

- 5.1. The Company has, in accordance with legal opinion in this regard, claimed input VAT on stakes paid for the period from July 2017 to 30 November 2021, the date the horse racing business was transferred to 4Racing. The total value of the input VAT claimed is R97.5 million.
- 5.2. SARS identified the above tax periods for an audit and have issued Letters of Findings in relation to the input VAT claims on 15 September 2023 and 24 November 2023 and the Company responded setting out its opinion and legal grounds in respect of its right to claim the input VAT for the above tax periods, on 27 October 2023 and 28 November 2023.
- 5.3. SARS on 1 December 2023 issued assessments in respect of the input VAT claimed in respect of Stakes paid.
- 5.4. The Company has filed a notice of objection including the grounds on which it objects to the assessments.
- 5.5. SARS disallowed the objection on 19 July 2024.
- 5.6. Phumelela has filed the necessary documents to appeal the decision of SARS.

6. Distributions to shareholders

- 6.1. The Company has returned capital to shareholders since adoption of the business rescue plan of R3.25 per share.
- 6.2. Payment of the above distributions to shareholders who have not yet and subsequently update their FICA and banking details will be processed monthly.
- 6.3. Further distributions to shareholders will only be considered by the Company after either the Gauteng Gambling Board Review Application or the Input VAT Claims have been fully finalised including all legal processes which may include appeal to the Supreme Court of Appeals and any funds that are or become due to the Company have been received.

Yours faithfully

A handwritten signature in black ink, appearing to be 'JE', with a long horizontal stroke extending to the right.

JOHN EVANS

Duly signed in his capacity as business rescue practitioner of the Company.