

## **GUIDE TO PROCEDURE FOR CLUB MERGERS UNDER SECTION 95 GAMBLING ACT 2003**

Section 95 sets out the following sequence of steps that must be taken by clubs that intend to merge under the section 95 procedure and wish to apply to the Minister for approval to operate up to 30 machines.

The clubs should seek advice from their own lawyers at an early stage as the procedure is complicated. Clubs can also obtain information about the section 95 procedure from the Department's Operational Policy unit, Gambling Compliance Group.

The preparation of a new constitution for the merging clubs will be required but the formal merger cannot take place until a late stage in the procedure. There will probably also be related property transactions.

The requirements and steps are outlined in the chronological order suggested by section 95:-

- The clubs must each be corporate societies as defined in the Act-section 95 (1)
- At least two of the clubs must each hold class 4 venue licences- section 95 (1) (a)
- Each club must be able to demonstrate a significant history of-
  - (i) operating as a club for club purposes
  - (ii) operating the number of machines specified in any class 4 venue licences held immediately before applying to the Minister-section 95 (1)(b)
- Each club must be able to demonstrate that they intend to merge into a single club operating at a single class 4 venue to which section 92 applies. That means that the proposed venue must have held a class 4 venue licence on 17 October 2001 and that since that date gaming machines have been operating on that site continuously with no break of more than 6 months- section 95 (1) (c)
- The clubs must be able to demonstrate that the proposed single venue is not a commercial premises- section 95 (1) (d)
- The clubs must be able to demonstrate that the merged club will have a substantial active membership- section 95 (1) (e)
- The clubs must obtain territorial authority consent for the proposed venue- section 95 (1)(f) and section 98 (a). The application to the territorial authority is made in terms of section 99

- If the territorial consent is granted the clubs should then apply jointly to the Minister under section 95 (2) for approval to operate up to the number of gaming machines consented to by the territorial authority. The application to the Minister must contain the information required by section 95(1)
- If the Minister gives approval, the two or more merging clubs may then jointly (but in their separate existing names) apply to the Secretary for a class 4 operator's licence in accordance with section 50
- At the same time the existing clubs should apply jointly for a class 4 venue licence in accordance with section 65- section 95(5)
- The legal formalities of the merger of the clubs must then be completed
- The Secretary considers the operator's and venue licence applications and makes a decision. Section 95(5) states that if a venue licence is approved the Secretary cannot issue it until the clubs have merged and the new club has obtained an operator's licence- section 95(5)
- On the issue of the new class 4 venue licences to the merged club the previous venue licences are cancelled-section 95(6)

Section 95 does not give a clear indication of the timing of the formal merger but implies that it should follow the Minister's approval and after the clubs have applied for a new class 4 operator's licence and a class 4 venue licence.

Clubs will be aware that under the Gambling Act there are detailed and onerous requirements to meet before a society can be granted an operator's licence or venue licence.

If a club wishes to apply under Section 96 for Ministerial approval to operate up to 18 machines at a post-17 October 2001 venue the club should ask the Department for guidance as to the information required for this application.