



LEGAL ALERT

Recent Developments Shaping Kenya's Betting and Gaming Sector

April 2024

Introduction

The betting and gaming sector continues to see significant legal changes in recent times as the Kenyan Government seeks to regulate the sector. These new measures include higher taxes and rigorous advertising regulations. It is evident that betting and gaming has become a popular activity in Kenya, especially with the proliferation of the internet and mobile phones coupled with the enthusiasm and passion for sports and gaming in the country that has provided numerous opportunities for many to participate in these activities. As a result, it has been reported that the number of adults engaging in betting and gaming has increased from 1.9% to 13.9% between 2019 and 2021. The surge in participation has inevitably drawn the Government's attention and response which has been felt in myriad of ways.

Against the above background, two legislative bills emanated from the National Assembly in the course of 2023, that is, the Gambling Control Bill, 2023 (the **Gambling Control Bill**), and the National Lottery Bill, 2023 (the **National Lottery Bill**). The Gambling Control Bill seeks to repeal and replace the current Betting, Lotteries and Gaming Act (Chapter 131, Laws of Kenya) (the **BLGA**) which is an Act of Parliament that was enacted in 1966 and has been long outdated.

The aim of the Gambling Control Bill is to secure the framework for responsible betting and gaming in light of the technological developments and innovations that have been seen in the sector in the course of the years. The National Lottery Bill, which has since been assented to into the National Lottery Act, 2023 effective from 29 December 2023 (the **National Lottery Act**), provides for the framework for the establishment and regulation of a first-of-its-kind national lottery in Kenya that shall be directed towards social good causes to promote benefits to Kenyan citizens.

A summary of the proposed changes in relation to the Gambling Control Bill, and the key provisions of the National Lottery Act have been highlighted in this legal alert.

The Gambling Control Bill

1. Current Status

The Gambling Control Bill (the **Bill**) was published on 31 October 2023, went through the First Reading in the National Assembly on 8 November 2023, and was then referred to the Departmental Committee on Sports and Culture (the **Committee**) for consideration. The Committee released its report dated 28 November 2023 for tabling back to the National Assembly following which it was passed. The Bill has now been forwarded to the Senate for further consideration as at the date of this note.

2. Scope of Application

The Bill is intended to repeal the existing BLGA and proposes to overhaul the current legal framework governing the betting and gaming sector in keeping with the developments in the sector and the development of technology. For instance, the Bill introduces “amusement games” (which are games played through amusement machines), *bingo*, online casinos and online gambling. This in effect widens the scope of the activities under regulation as compared to the previous regime which had gaps relating to these new inventions therefore highlighting that technological advances have rendered the BLGA, which was enacted in 1966, outdated and archaic.

The Bill also widens its scope as compared to the BLGA by outlining the application of the Bill to persons, who include a partnership, association, trust or a juristic person. Interestingly, the Bill also clearly delineates the functions of National and County governments in relation to gambling, setting out the National Government to be responsible for regulation, policy making and enforcement while the County Governments are tasked with localised administrative functions such as issuance of business permits for gambling premises, monitoring and evaluation, and handling of complaints and arbitration. This distinction of roles between the two levels of government is a new area of focus for the regulatory regime.

The Bill also defines a “winning” as the difference between the bet or stake placed by a punter, and the pay-out received on receipt of a prize. This definition is timely as it aligns with how the courts have recently interpreted the definition of winnings which has been a contentious issue in the past few years for taxation purposes.

3. The Gambling Regulatory Authority

The Bill, in repealing the BLGA, also seeks to replace the Betting Control and Licensing Board (**BCLB**), which is established under the BLGA, with the Gambling Regulatory Authority (the **Authority**) and a corresponding board which shall run the affairs of the Authority.

The scope and functions of the Authority, in addition to issuance of licences, as has been the case with the BCLB, have been extended to include:

- a) developing standards and norms for gambling activities;
- b) regulating and controlling gambling activities;

- c) developing and monitoring policies for gambling activities at national and county levels including incorporating a savings component for social health insurance or social retirement benefits;
- d) establishing and maintaining a register of gambling machines and devices;
- e) conducting security checks, vetting and due diligences in respect of gambling activities and the relevant personnel (which function is currently conducted by the National Intelligence Service (NIS));
- f) establishing an electronic central real time gambling monitoring system to monitor regulatory compliance;
- g) conducting research and surveys, monitoring the socio-economic impact of gambling, alleviating illegal cross border gambling activities; and
- h) coordinating with county governments to improve their capacity in the regulation of such activities.

4. Notable Licensing Requirements

Currently, an application for a licence or permit under the BLGA is made to the BCLB in a prescribed form and a security provided to the BCLB either as a deposit or another acceptable manner such as bank guarantees. Further, an applicant for a licence or permit under the BLGA may be a natural person or a company.

The Bill maintains the requirement to provide security and to make a licence application in the prescribed form. However, the Bill proposes that only body corporates may apply for a licence and such a corporate ought to have at least 30% of its shareholding being comprised of Kenyan citizens. The corporate is also required to maintain an account with an authorised financial institution registered in Kenya into which all monies relating to the proposed betting and gaming activities are paid. The proposals seem to be aimed at curbing anti-money laundering activities which has been prevalent in sectors such as betting and gaming in the world over by imposing local shareholding requirements and maintenance of local bank accounts.

Further, the applicant ought to make a declaration of the good causes they intend to undertake and to provide a budget for the same. Importantly, the Bill states that the Cabinet Secretary may prescribe percentages of gross gambling revenue that an applicant may be required to devote to good causes as a condition for obtaining a licence. It should be noted however that the Committee in its deliberations recommended a deletion of this condition on recommendation by the Association of Gaming Operators in Kenya. This should however be considered carefully should the Bill be passed into law as is.

5. The Introduction of Online Gambling

The Bill provides the first attempt at regulating online gambling in Kenya. In this regard, it provides for online gambling under a gambling control system approved by the Authority. However, before approving an online gambling system, the Authority shall consider the online security of information, safety against criminal activities, the online payment ecosystem, protection against vulnerability, the system's compliance with data protection laws and responsible advertising.

6. Focus on Socio-Economic Impact of Betting and Gaming

It is noteworthy that the Bill considers the socio-economic impact of gambling and has proposed ways to reduce the negative impact and ways to create public awareness on overindulgence in gambling activities. This is a step in the right direction as the Bill for the first time has by inference acknowledged the socio-economic impact of gambling and betting.

While it remains to be seen how this impact will be measured, this is a major development in mitigating the effects of gambling considering how betting affects relationships and livelihoods of those who partake in these activities and those closest to them. In addition to this, the Bill introduces a minimum betting amount for gamblers, by capping the least amount to be used for betting and gaming as KES 20 (approx. USD 0.14). This is targeted to limit betting amongst certain age groups like children and those with low incomes although it may be argued that the minimum stake amount is too low to achieve this purpose.

To further mitigate the socio-economic impact of gambling, the Bill restricts betting and gaming entities from providing a credit to a player's account, or from acting as an agent for a credit provider to facilitate the provision of a credit to a player. Betting and gaming entities are also prohibited from making any arrangements geared towards inducing, permitting or assisting persons to gamble.

7. Taxation of Betting and Gambling

The Bill proposes to do away with the current betting tax, gaming tax and lottery tax for betting, gaming and lottery activities respectively, and introduces one gambling tax at the rate of 15% of the gross gambling revenue, which is to be paid to the Kenya Revenue Authority on the 20th day of the following month. The "gross gambling revenue" has been defined as "*total revenue received from a gambling activity before any deductions are made.*" The funds are to be directed to the Sports, Art and Social Development Fund established under the Public Finance Management Act, 2012.

The Bill also seeks to introduce a monthly levy, which currently does not exist in the present regime. This monthly gambling levy, although not prescribed in the Bill, has been proposed to not exceed 1% of the monthly gross gambling revenue and should be paid to the Authority on the 20th day of the following month. The funds are to be utilised towards the Authority's operations, research, creation awareness to the public, and establishment of treatment and rehabilitation programs.

We note that the Committee proposed a deletion of this provision during its deliberations however this should be considered carefully should the Bill be passed into law as is.

8. Dispute Resolution Mechanism

The Bill also seeks to introduce an internal dispute resolution mechanism through the establishment of the Gambling Appeals Committee which is a new invention in the sector. This is aimed to ensure expeditious resolution of disputes arising from the application and enforcement of the provisions of the Bill and will hopefully assist to reduce backlog of disputes in other dispute resolution forums.

The National Lottery Act

The purpose of the National Lottery Act is to establish a national lottery for the pooling of additional resources to be directed towards good causes. While there have been public lotteries in Kenya in the past, a national lottery has not been established before therefore this is the first national lottery in Kenya.

- a) The good causes referred to in the National Lottery Act have been categorised into five (5) main groups which are:
- b) charitable causes such as protection for those challenged in society, rehabilitation of gamblers, environmental conservation and religious purposes;
- c) economic empowerment including supporting small businesses, supporting research and innovation and supporting education;
- d) sports, recreation, arts, culture and national heritage including supporting national teams to participate in events, financing development of sports and recreational facilities, acquisition of equipment, training, marketing, innovation and research;
- e) signature transformation projects such as strategic projects by Government, affordable housing, community centres, healthcare programs, sustainable agriculture or energy initiatives and research activities; and
- f) response to emergencies and disaster risk reduction initiatives.

The national lottery is to be run by the National Lottery Board (the **Lottery Board**) which is also established under the National Lottery Act. The Lottery Board may however decide to appoint an operator with experience and sufficient knowledge to run the national lottery on its behalf. The Lottery Board or such appointed person will be required to procure a licence from the BCLB (or the Authority should the Gambling Control Bill be passed into law) to operate the national lottery, which shall be valid for an initial period of seven years.

In terms of the operations of the national lottery, the BCLB (or the Authority should the Gambling Control Bill be passed into law) in consultation with the Lottery Board, will be responsible for issuing guidelines that shall provide the types of games, selling of tickets and determination of winners in each game among other related issues.

Participation in the national lottery excludes children, directors, agents or employees of the operator (where appointed), members and employees of the Lottery Board or the BCLB, printers of the tickets or their employees, suppliers of the electronic devices used, illegal immigrants and any other person prohibited under any other law.

The National Lottery Act also establishes the National Lottery Fund (the **Lottery Fund**) into which proceeds from games of chance operated under the national lottery shall be paid into. The Lottery Fund shall also be financed through interest from its investments, assets that may accrue to it in the course of its operations and other sources such as donations.

Contact Us

Should you require more information, please do not hesitate to contact:



Daniel Ngumy
Managing Partner
ALN Kenya | Anjarwalla &
Khanna

daniel.ngumy@aln.africa



Kenneth Njuguna
Partner
ALN Kenya | Anjarwalla &
Khanna

kenneth.njuguna@aln.africa



Salma Khamala
Principal Associate
ALN Kenya | Anjarwalla &
Khanna

salma.khamala@aln.africa

Contributor

Onyango Owino - Trainee Lawyer

The content of this alert is intended to be of general use only and should not be relied upon without seeking specific legal advice on any matter.