

THE LOTTERIES ACT

Date of commencement: 29th November, 1963.

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An Act to consolidate and amend the law relating to lotteries and to make provision for the promotion and conduct of a public lottery.

PART I
PRELIMINARY

Short title.

1. This Act may be cited as the Lotteries Act, 1963.

Interpretation.

2. In this Act, unless the context otherwise requires —

“lottery” means a lottery in the general and accepted meaning of that word, which is founded on subscription, and more especially a scheme, institution, system, plan or design by means of which a prize or prizes may be won, drawn or awarded according to what may be determined by chance or lot, whether by throwing dice, withdrawing cards or tickets, sweepstakes, drawing lots or by wheel or other mechanical means or other methods of selection by chance;

“Minister” means the Minister responsible for Tourism;

“prize” includes —

- (a) land, houses, goods, wares, or other property, movable or immovable;
- (b) the right to claim money; and,
- (c) the right to property, user, usufruct or occupation of lands, houses, goods, wares or other properties;

“public lottery” means a lottery promoted and conducted under a licence in accordance with Part IV; and “licensee” means a person to whom such licence is granted;

“registration” means registration under Part III, or deemed, in accordance with section 10(5), to be under Part III;

“society” includes club, institution, association or organization of persons, by whatever name called, and a separate branch or section thereof;

“subscribe” means for the purposes of —

- (a) Part II, pay or deliver, whether or not through the intervention of an agent, to a person any sum of money or other article or thing, movable or immovable, and whether or not such article or thing has a value in money, in consideration of, and with the object of, obtaining from a person a right or the acknowledgment of a right to participate or secure a chance of winning a prize in a lottery; and,

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- (b) Part IV, pay to the licensee money for the right to participate in the draw for prizes in a public lottery, and "subscription" has a corresponding meaning;

"subscription" means, for the purposes of Part II the —

- (a) sum of money, article or thing so subscribed;
 (b) proceeds of such article or thing if sold or otherwise disposed of for money; or
 (c) other article or thing received in exchange therefor or otherwise;

"ticket" means the certificate given to a subscriber;

"ticket seller" means a person appointed under section 15 to sell tickets.

PART II

UNLAWFUL LOTTERIES

Application of Part.

3. This Part shall apply to all lotteries other than a —
- (a) lottery exempted under, and promoted and conducted in accordance with the conditions prescribed by Part III; or
- (b) public lottery.

Restriction on lotteries.

4. (1) Any person who, personally or by his duly authorized representative, or as the representative of some other person, known or unknown —
- (a) establishes or starts a lottery or participates, whether as a partner or in any other way, in the profits of a lottery;
- (b) conducts, manages or in any way whatever helps in the conduct or management of a lottery;
- (c) sells or otherwise disposes of a ticket in a lottery or offers to sell or otherwise dispose of any such ticket; or
- (d) knowingly permits a house, room or other place under his supervision to be used for the conduct or management of, or an object in connection with, a lottery;

shall be guilty of an offence.

- (2) A person convicted of an offence under subsection (1) shall be liable to a fine not exceeding —
- (a) one thousand emalangeni or, in default of payment, imprisonment for a period not exceeding one year or both for the first offence; and,
- (b) two thousand emalangeni or, in default of payment, imprisonment for a period not exceeding two years or both for a second or subsequent offence.

Prohibition of legal action.

5. (1) No subscriber to a lottery shall be entitled to take any legal steps for obtaining the transfer, delivery or payment of a prize.
- (2) A transfer of immovable property won as a prize in a lottery shall be unlawful and shall not be permitted by the Registrar of Deeds.

Responsibility.

6. No person shall, by reason merely of the fact that a lottery is held either wholly or partly beyond the limits of Swaziland, be deemed to be exempt from liability in any proceeding, whether criminal or civil, under this Part, in respect of any act done by him or which he may have caused to be done with reference to or in connection with such lottery.

PART III

EXEMPTION OF CERTAIN SMALL LOTTERIES

Application of Part.

7. This Part shall apply to a lottery promoted in Swaziland on behalf of a society —
- (a) registered under this Part by a Regional Administrator; and
 - (b) established and conducted wholly or mainly for —
 - (i) charitable purposes;
 - (ii) participation in or support of athletic sports or games or cultural activities; or,
 - (iii) other purposes approved by the Regional Administrator which are not purposes of private gain or of a commercial undertaking;
- and which is so promoted for raising money to be applied for the purposes of such society.

Conditions to be observed.

8. (1) In the promotion and conduct of a lottery to which this Part applies —
- (a) the promoter of such lottery shall be a member of the society authorized in writing by the governing body of the society to act as promoter;
 - (b) remuneration in respect thereof shall not be paid to the promoter or any person employed by him in connection therewith who carries on a betting business or is otherwise engaged by way of business in the organization of betting;
 - (c) a ticket or chance shall not be sold at a price exceeding one lilangeni; (Amended K.O-I-C. 32/1974.)
 - (d) after the deduction of sums lawfully appropriated on account of expenses, or for the provision of prizes, the whole of the remaining proceeds shall be applied to the purposes described in section 7 of the society;

- (e) the amount of the proceeds appropriated —
- (i) on account of expenses, shall not exceed the expenses actually incurred, or ten *per centum* of the whole proceeds, whichever is the less; and,
 - (ii) for the provision of prizes, shall not exceed one-half of the total proceeds;
- (f) the price of every ticket or chance shall be the same, and the price of a ticket shall be stated on the ticket;
- (g) the total value of the tickets or chances sold shall not exceed two thousand emalangeni and if, on a day in which tickets or chances in such lottery are on sale, tickets or chances are on sale in another lottery to which this Part applies, promoted on behalf of the society, the total value of the tickets or chances sold in such lotteries, taken together, shall not exceed one thousand emalangeni; (Amended K.O-I-C. 32/1974.)
- (h) every ticket and every notice or advertisement of such lottery lawfully exhibited, distributed or published shall specify the —
- (i) name of the society;
 - (ii) name and address of the promoter; and,
 - (iii) date on which the draw, determination or event will take place by or by reference to which the prize-winners will be ascertained;
- (j) no person shall be admitted to participate in such lottery in respect of a ticket or chance except after payment to the promoter of the whole price of such ticket or chance, and money received by such promoter for or on account of a ticket or chance shall in no circumstances be returned;
- (k) no payment on account of expenses or prizes shall be made out of moneys of the society which are not proceeds of such lottery; and,
- (l) no ticket or chance shall be sold by or to any person under eighteen years of age.

(2) For the purposes of this section, tickets or chances in a lottery are deemed to be on sale on each day between the dates on which the tickets or chances are first and last sold, whether or not any such ticket or chance is sold on any such day.

Penalty for failure to observe conditions.

9. (1) Subject to subsection (2), if a condition required by section 8 to be observed is not observed —

- (a) the promoter of the lottery; and
- (b) any other person who is a party to such failure;

shall be guilty of an offence and liable, on conviction, to a fine not exceeding two hundred emalangeni or, in default of payment thereof, imprisonment not exceeding six months.

(2) It shall be a defence for any person, charged with an offence by reason only of his being the promoter, to prove that such contravention took place without his knowledge.

- (3) It shall be a defence for a person charged with an offence in respect of an appropriation or payment made in contravention of section 8(1)(e) or (j) to prove that the —
- (a) proceeds of the lottery fell short of the sum reasonably estimated;
 - (b) appropriation or payment, as the case may be, was made in —
 - (i) respect of expenses actually incurred; or
 - (ii) order to fulfil an unconditional undertaking as to prizes given in connection with the sale of the relevant tickets or chances; and
 - (c) total amounts so appropriated or paid in respect of expenses and prizes did not exceed the amounts which could lawfully have been appropriated, in accordance with section 8(1)(e), out of the proceeds of the lottery, if such proceeds had amounted to the sum reasonably estimated.

Registration of societies.

10. (1) Subject to this section, an application for registration of a society shall —
- (a) be made to the Regional Administrator in whose region the head office of such society is situated; and,
 - (b) specify the purposes for which such society is established and conducted.
- (2) Subject to this section, the Regional Administrator may, upon application duly made on behalf of a society, and payment of a fee of two emalangeni or such sum in lieu thereof as may be prescribed, register such society in a register to be kept for the purposes of this Part and notify it in writing that he has done so.
- (3) After giving the society concerned an opportunity of being heard, the Regional Administrator may refuse or revoke the registration thereof where it appears to him that —
- (a) any person employed by or connected with the management of such society has been convicted of an offence, under this Act or the law in force immediately prior to the commencement of this Act, committed in connection with a lottery promoted or proposed to be promoted on behalf of such society;
 - (b) such society is not, or has ceased to be, a society on behalf of which lotteries may be promoted under this Part; or,
 - (c) for any other reason, it is in the public interest to do so.
- (4) If registration has been refused or revoked under this section the Regional Administrator shall forthwith notify the society accordingly.
- (5) A society registered under the repealed Small Lotteries Proclamation, 1960, shall, for all purposes, be deemed to have been registered under this Part.

Appeal against refusal or revocation of registration.

11. (1) Within a period of fourteen days after notification in pursuance of section 10(4) has been given, the society may appeal in writing, against such refusal or revocation, to the Minister whose decision shall be final and shall not be questioned in any court.
- (2) If under section 10 a Regional Administrator revokes a registration, such registration is deemed to continue in force until the time has expired within which an appeal under this section may be made, and if such appeal is duly made, until the determination thereof.

(3) A society for the time being registered under this Act may, at any time, apply in writing to the Regional Administrator for cancellation of such registration, and the Regional Administrator shall cancel such registration accordingly.

(4) On the first day of January in every year, a registered society shall, while it is registered, pay the Regional Administrator a fee of two emalangeni or such sum in lieu thereof as may be prescribed which shall be paid into the Consolidated Fund.

(5) While such fee remains unpaid, the society shall be deemed to be unregistered.

Returns to be made.

12. (1) Not later than the end of the third month after the month in which the winners of prizes in the lottery are ascertained, the promoter of a lottery to which this Part applies shall send the Regional Administrator, in whose region the office or head office of the society is situated, a return, certified by two other members of such society, being persons of full age appointed in writing by the governing body of such society, showing the —

- (a) whole proceeds of such lottery;
 - (b) respective sums appropriated out of such proceeds on account of expenses and prizes;
 - (c) particular purpose or purposes to which the proceeds of the lottery were applied in pursuance of section 8(1)(d) and the amount applied for each such purpose; and
 - (d) dates between which tickets or chances in such lottery were sold.
- (2) The Regional Administrator to whom a return under this section is sent shall —
- (a) preserve such return for a period of at least one year; and,
 - (b) during such period keep it deposited at his office; and permit members of the public to inspect it free of charge during office hours.
- (3) Any person who —
- (a) fails to send a return in accordance with this section;
 - (b) in a return so sent by him, knowingly gives false or misleading information; or
 - (c) certifies a return to be sent under this section knowing it to contain any such information,

shall be guilty of an offence and liable, on conviction, to a fine not exceeding one hundred emalangeni, or in default of payment thereof imprisonment not exceeding six months.

PART IV

PUBLIC LOTTERY

Public lottery licence.

13. (1) Subject to this Act, the Minister may, upon such conditions as he deems fit, grant and issue to any person an exclusive licence to promote and conduct public lotteries if he is satisfied that such person is a person of integrity, and has adequate financial resources and experience to conduct a public lottery properly.

(2) A licence issued under subsection (1) shall be valid for a period of fifteen years and may be renewed by the Minister in his discretion for a further period or periods not exceeding ten years in all.

Application of proceeds.

14. Within thirty days of the completion of each draw in a public lottery the licensee shall apply the gross proceeds thereof in accordance with the terms of any written agreement signed by such licensee and the Minister in respect of the grant and issue by the Minister of an exclusive licence referred to in section 13.

(Amended A.16/1972.)

Licensee's powers.

15. (1) Subject to the conditions of his licence, the licensee may do all things he considers necessary or expedient for the promotion of public lotteries under this Part and, without prejudice to the generality of the foregoing, may —

- (a) appoint ticket sellers and fix the places at which, and the periods and hours during which, tickets may be sold;
- (b) determine the number of public lotteries to be held in any one year;
- (c) design and create the official stamp to be used for the stamping of tickets sold;
- (d) fix the selling price of tickets;
- (e) receive subscriptions to be dealt with in accordance with this Act;
- (f) make all arrangements for the drawing of prizes;
- (g) determine the manner in which a prize is to be claimed;
- (h) decide the mode of payment of prizes;
- (j) after consultation with the Minister, provide for the disposal of prizes as to which a dispute has arisen;
- (k) subject to subsection (2), declare an unclaimed prize forfeited and determine, with the consent of the Minister, its disposal;
- (l) publish lists of prize-winning numbers; and
- (m) incur and defray expenses.

(2) A forfeiture declared under subsection (1)(k) shall not take effect until twelve months after the date of the award of such prize.

Restriction on sale of tickets.

16. (1) No ticket in a public lottery shall be sold by or to a person apparently under the age of eighteen years of age and no person under that age shall be entitled to recover a prize in a public lottery.

(2) The licensee and all persons in any way concerned in the management, regulation, supervision, control or administration of a public lottery or who are in any way employed by the licensee in connection with such lottery are not entitled to recover any prize in such lottery.

Freedom from penalties.

17. Any person—

- (a) subscribing to a public lottery; or
- (b) acting under the authority or on behalf of a subscriber or the licensee, in terms of this Act;

is hereby freed and discharged from all penalties, suits, prosecutions and liabilities to which by law he would be liable, but for this Act, as being concerned in an unlawful game or as offending against any provision of any other law which is repugnant to, or inconsistent with, this Act.

Conduct of draws.

18. (1) The draw for prizes shall be by chance.

(2) All draws shall be conducted in public under the supervision of a person designated by the Minister and, with the approval of the Minister, may be conducted at or in conjunction with a public function.

(3) The licensee shall determine whether prizes may be granted with or without references to the happening of an uncertain event other than the issue or result of the application or employment of such mode of chance.

Auditing and inspections.

19. (1) The licensee shall keep proper books of account and records of all transactions connected with such public lottery and shall appoint auditors to audit his accounts as the Minister may approve.

(2) Auditors in the employment of the Government may, at all reasonable times, examine such accounts and all books and other relevant documents.

(3) The Minister may appoint inspectors with power to examine any equipment used in connection with a public lottery, and to require the licensee to repair or replace any equipment which may be found to be defective.

Taxation.

20. Notwithstanding any law imposing taxation, the licensee is hereby exempted from all taxes in respect of income he may at any time derive from the public lotteries.

Transfer, surrender and revocation of licence.

21. (1) A licence may be transferred at any time with the consent of the Minister.

(2) The licensee may at any time surrender his licence provided that he furnishes security to the satisfaction of the Minister that he will fulfil all his outstanding obligations in relation to public lotteries.

(3) The Minister may revoke a licence issued by him under this Part if the licensee —

- (a) fails within a reasonable time to comply with any condition of such licence;
- (b) fails to make the payments required to be made by him under section 14; or,

(e) commits or condones any contravention of this Act.

(4) If a licence is revoked under this section, the Minister shall appoint three trustees to take charge of all subscriptions and other moneys in the hands of the licensee, his servants and agents, and to prepare and submit to the Minister a distribution account showing in what manner such subscriptions and other moneys shall be allocated.

(5) The Minister may confirm or vary such account, or direct the trustees to submit a new account.

(6) If such account is confirmed or varied, the moneys referred to in subsection (4) shall be distributed by the trustees in accordance therewith.

(7) Any decision of the Minister under subsection (5) shall be final.

Non-liability of Government.

22. The Government shall not be liable at the suit of any person in respect of anything done or omitted to be done in relation to the conduct or promotion of a public lottery.

Penalties.

23. (1) Any licensee who contravenes section 14, 16, or 19 or any regulation made by the Minister under section 24, or any condition imposed in his licence under section 13, shall be guilty of an offence and liable on conviction, to a fine not exceeding one thousand emalangeni or, in default of payment thereof, imprisonment not exceeding twelve months or both.

(2) Any person other than a licensee who contravenes or fails to comply with section 16 or any regulation made by the Minister under section 24 shall be guilty of an offence and liable, on conviction, to a fine not exceeding five hundred emalangeni or, in default of payment thereof, imprisonment not exceeding six months or both.

PART V

GENERAL

Regulations.

24. The Minister may make regulations generally to implement the purposes of this Act, and, without limiting the generality of the foregoing, may make regulations governing the —

- (a) number and value of prizes in public lotteries;
- (b) furnishing by a licensee of a public lottery of such guarantees or securities as to the due fulfilment of his obligations under this Act as the Minister may consider suitable;
- (c) protection of purchasers of tickets in public lotteries; and,
- (d) framing of accounts and returns.

(ISSUE 2)

Employees of lotteries.

25. No person who has been convicted of an offence involving dishonesty or fraud or an offence under this Act or any law in force immediately prior to the commencement of this Act relating to lotteries shall manage or be employed in connection with a lottery authorized under this Act.