

REGULATION AND TAXATION OF LOTTERY AND GAMING BUSINESS IN NIGERIA



Regulatory Oversight of Lottery and Gaming

The Federal Government, through the National Lottery Regulatory Commission (NLRC), regulates lottery and gaming under the National Lottery Act, 2005 and the National Lottery Regulation, 2007(as amended). At the state level, some states also pass laws to regulate the industry such as the Lagos State Lotteries and Gaming Authority Law 2021. The question of who should regulate has lingered over the industry for some time and has led to court actions with a view to establishing whether the federal government, the state governments or both are charged with regulatory powers. By a 2022 decision of the Federal High Court sitting in Lagos,² it was held that lotteries fell under the exclusive list of the Constitution and gave the Federal Government sole regulator status over gaming business to the exclusion of states. This position aligns with the earlier decision of the Court of Appeal in *Nigeria Employers Consultative Association & Anor v. A.G., Federation & Ors*,³ where it was held that the National Assembly could legislate on lottery and gaming pursuant to the provisions of Item 62 and 67 of Part 1 of the Second Schedule to the 1999 Constitution. Importantly, the court interpreted cross border and interstate trade and commerce connoted in the Second Schedule to the Constitution as sufficiently wide to empower the National Assembly to exclusively enact national legislation on lottery and gaming. Moreso, the virtual nature of most lottery and gaming activities makes them inter-state. Remarkably, the Court of Appeal by an earlier decision⁴ had held that pools betting and casino gaming are residual matters. The Taxes and Levies Act,⁵ relegates pools betting, lotteries and gaming to the taxing jurisdiction of states. This Act has however been the subject of litigation and has been found at both high court and appellate court levels to be invalid. Pending a decision of the Supreme

Introduction

The old industry of lottery and gaming has continued to develop with several innovations globally. With an estimated twenty-six percent of the world's total population involved in gambling, and about two billion dollars estimated to be spent on sports betting daily in Nigeria,¹ the industry remains a viable source of tax revenue to governments. Regulating and taxing the industry in Nigeria has not been without its greys on who should regulate, what should be taxed and how taxes should apply. The Finance Bill, 2022 ("the Finance Bill") currently awaiting presidential assent, introduces amendments to the Companies Income Tax Act amongst other tax laws. Significantly, it alters section 15 of the Companies Income Tax Act (CITA) to include taxation of lottery and gaming businesses. While this amendment aids in clarifying the tax status of the industry, it is important it is juxtaposed with existing financial obligations of players in the industry in terms of licence fees and other statutory payments.

¹ www.bettingsites24.ng/gambling-statistics-in-nigeria/ assessed 19 January 2023.

² *Association of Nigerian Bookmakers v NLRC & 5 Ors* FHC/L/CS/1599/2020

www.sskohn.com

³ (2021) LPELR-54042 (CA)

⁴ *Edet v. Chagoon* [2008] 2 NWLR pt. 1070 p 85

⁵ Cap T2, LFN 2004

Court overturning the decision of the Court of Appeal in *Nigeria Employers Consultative Association & Anor v. A.G., Federation & Ors*,⁶ industry players must obtain requisite permits and licences from the NLRC.

The NLRC, issues licences such as lottery permits, sports betting licences, promotional permits SMS/USSD, among others. The licensing approval process is divided into the application stage, the pre-approval stage, and the post-approval stage. Requirements for licensing include submitting application letters, completed forms, comprehensive proposals, supporting documents, evidence of payment of the prescribed fees, the inspection of the technical and operational facilities of the company by NLRC officials, connection to NLRC monitoring and reporting platform, website advert materials in soft and hard copies, picture frames of the trademark logo, execution of terms and conditions of operating a sports betting business, and a due diligence visit on the technical provider among other requirements. The NLRC indicates the timeline for the fulfilment of the licensing requirements and issues permits to successful applicants. Sports betting permits are issued for five years renewable for another full term while lottery permits are issued for a period of ten years.

Tax Obligations for Lottery and Gaming Businesses

An important aspect of regulating the industry is the statutory fee hurdle businesses must cross. The statutory fees whether tagged licence fees or levies are in effect taxation on the revenue of the business. Companies wishing to engage in the business of lottery and gaming have statutory minimum share capitals. For sport betting and gaming businesses, the minimum issued share capital is N30,000,000 (Thirty Million Naira). At the application stage, the

prescribed fee is N2,000,000 (Two Million Naira) payable to the NLRC. At the pre-approval stage, a further payment of a licensing fee in the sum of N50,000,000 (Fifty Million Naira) for sports betting licences and N100,000,000 (One Hundred Million Naira) for lottery licences is required. In addition, applicants must provide a bank guarantee from a reputable commercial bank to cover the sum of N25,000,000 (Twenty-Five Million Naira). Upon commencement of operations, licensed companies are required to remit 2% of their monthly turnover to the National Lottery Trust Fund and 1% to the NLRC. In instances where short code services are used by operators to provide betting services, 2% and 3% on the gross monthly sales turnover are remitted to the NLRC and National Lottery Trust Fund respectively as and when due.⁷ While company income taxes now specifically provided for by the Finance Bill might be considered *sui generis*, a holistic review of the regulation of the industry reveals that its players are currently subject to multiple statutory payments and remittances.

By the provisions of the Finance Bill, business activities such as gambling, wagering, video poker, roulette, crops, bingo, slot machines and gaming machines are considered gaming, while lottery is considered to cover betting, game, scheme, arrangement, system, plan, promotional competition or other device whether real or virtual, for the distribution of prizes by lot or chance. Importantly, the Bill makes provision for the President to subsequently expand the scope of lotteries by gazette. In arriving at the assessable profits, lottery and gaming businesses will be granted allowable deductions including amounts paid as winnings, prizes or similar payments from the relevant prize fund or contributions to the Lottery Trust Fund; agent commission expenses incurred; taxes and levies paid to relevant regulatory and government authorities; and other allowable deductions applicable to companies

⁶ (n3)

⁷ General Guidelines, available at <https://nlrc.gov.ng/guidelines/> accessed on 17 January 2023.

taxable under the CITA.

While the proposed section makes lottery and gaming profits chargeable under the CITA, the justification for the provision put forward by the Committee on Finance of the Federal House of Representatives specifically states that existing supervisory and regulatory functions at federal and state level remain in place. This indicates that the question on whether state governments can regulate and by extension tax lottery and gaming may not yet be laid to rest. It also remains to be seen whether the inclusion of existing taxes and levies as allowable deductions under the Finance Bill, will cure the incidence of multiple taxation in the industry.

Conclusion

Lottery and gaming business continues to thrive as a lucrative industry both locally and globally. The courts have made pronouncements establishing the federal government through the NLRC as the sole regulator of the industry in Nigeria. It is expected that this will provide clarity on industry players on who to approach for licences and where to pay taxes. While lottery and gaming are highly profitable, participation in the industry may be discouraging owing to the high statutory fees levied on businesses within the sector. The Finance Bill 2022 introduces a provision in the proposed section 15 (2) to bring lottery and gaming business under the application of CITA. This clarifies the position on company tax obligations of lottery and gaming businesses.

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