



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 228 2002

#### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 15 of 2002: Lotteries Act, 2002.

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## ACT

**To establish a Lotteries Board for the promotion and conduct of the National Lottery and the administration of the National Lottery Trust Fund and the Social Upliftment Fund; for the authorization, supervision and control of benevolent lotteries; and for matters incidental thereto.**

*(Signed by the President on 23 December 2002)*

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**BE IT ENACTED** by the Parliament of the Republic of Namibia, as follows:-

#### CHAPTER 1

##### PRELIMINARY

##### Definitions

1. In this Act, unless the context otherwise indicates -

“agency agreement” means an agreement entered into by the board with an agent in terms of section 18 to conduct the National Lottery;

“agent” means any person, body corporate or association of persons appointed under an agency agreement to conduct the National Lottery on behalf of the board;

“benevolent lottery” means a lottery contemplated in section 24;

“board” means the Lotteries Board established by section 2;

“lottery” means any game, competition, scheme or other procedure in which or whereby prizes are distributed by lot or chance (whether or not an element of knowledge or skill is also involved) among persons participating in the game, competition, scheme or other procedure through the purchase of tickets;

“Minister” means the Minister of Environment and Tourism;

“Ministry” means the Ministry of Environment and Tourism;

“National Lottery” means the National Lottery promoted and conducted by the board in terms of this Act, either as principal or through an agent, and includes all lotteries conducted for, and being part of, the National Lottery;

“Permanent Secretary” means the Permanent Secretary: Environment and Tourism;

“prescribe” means prescribe by regulation;

“prize”, in relation to a lottery, means any money or thing of value, or any right to or share in any money or thing of value, which is offered to be won to persons entering the lottery;

“promoter”, in relation to a benevolent lottery, means the person in control of and responsible for the conduct of the lottery;

“secretary” means the secretary of the board appointed in terms of section 11;

“Social Upliftment Fund” means the Social Upliftment Fund established by section 21;

“staff member” means a staff member as defined in section 1(1) of the Public Service Act, 1995 (Act No. 13 of 1995);

“this Act” includes any regulation made thereunder;

“ticket” in relation to a lottery, means a ticket, coupon, token, or other thing sold or issued to a person entering the lottery and by reference to which entitlement to any prize or prizes in the lottery may be determined;

“Trust Fund” means the National Lottery Trust Fund referred to in section 14.

## CHAPTER 2

### ADMINISTRATION OF ACT

#### Establishment of Lotteries Board

2. There is established a board to be known as the Lotteries Board.

#### Functions of board

3. The functions of the board are -
  - (a) to promote and conduct the National Lottery, either as principal or through an agent;
  - (b) to ensure that -

- (i) the National Lottery is conducted with all due propriety and strict compliance with this Act, and if conducted through an agent, in accordance with the conditions of the relevant agency agreement; and
- (ii) the interests of every participant in the National Lottery are adequately protected;
- (c) to administer the Trust Fund;
- (d) to advise the Minister on any matter relating to the National Lottery and other lotteries and any other matter on which the Minister requires the advice of the board; and
- (e) generally, to perform such functions as are necessary or expedient to achieve the objectives of this Act.

#### **Constitution of board**

4. (1) The members of the board are appointed by the Minister and consist of -

- (a) one staff member of the Ministry;
- (b) one staff member of the Ministry of Health and Social Services nominated for appointment by the Minister of Health and Social Services;
- (c) three other persons who are not staff members.

(2) The Minister must endeavour to ensure that the board will have available among its membership expertise with regard to matters relevant to the functions of the board.

(3) The Minister must designate one of the members appointed under subsection (1)(c) to be the chairperson of the board.

(4) The Minister may appoint for each member a person to be the alternate of the member to act in the place of the member if the member is absent from a meeting of the board.

#### **Persons disqualified from membership of the board**

5. (1) A person is not eligible for appointment as a member of the board or as an alternate member if he or she -

- (a) is under the age of 21 years;
- (b) is an unrehabilitated insolvent;
- (c) is a member of the National Assembly, a regional council or a local authority council;
- (d) has at any time been convicted of an offence involving an element of dishonesty or has, within the last 10 years before the date of the proposed appointment, been sentenced for any other offence to a period of imprisonment of more than 12 months without the option of a fine;

- (e) has at any time been removed from an office of trust on account of misconduct;
- (f) whether personally or through his or her spouse or business partner or associate has any interest in any business conducted by an agent that may conflict or interfere with the proper performance of his or her functions as a member of the board.

(2) For the purposes of subsection (1)(f), a person nominated or considered for appointment as a member of the board may not be appointed unless that person, upon notification by the Minister of the proposed appointment, submits to the Minister a written statement in which he or she declares that he or she does not have any financial interest as contemplated in that subsection.

(3) A member of the board who acquires or intends to acquire a financial interest contemplated in subsection (1)(f) must disclose full details of such financial interest in writing to the board and to the Minister.

(4) A member of the board or his or her spouse or business partner or associate may not, without the prior approval of the Minister, within a period of one year after termination of the member's membership of the board take up employment with, or in any way receive any benefit from, any person who upon the termination of the membership is acting as agent under an agency agreement.

(5) For the purposes of this section "spouse" includes a life partner living with a person as if they were married or with whom a person habitually cohabits.

- (6) A person who knowingly -
  - (a) in a statement referred to in subsection (2), fails to disclose any interest which that person has as contemplated in that subsection; or
  - (b) fails to comply with subsection (3),

is guilty of an offence and liable on conviction to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding 1 year or to both such fine and such imprisonment.

### **Tenure of office**

6. (1) Subject to section 8, a member of the board who is not a staff member holds office for three years, but continues in office thereafter until a successor is appointed.

(2) A member of the board who is a staff member holds office until the Minister revokes his or her appointment.

(3) A member of the board may upon expiry of his or her term of office be reappointed as a member.

### **Remuneration**

7. A member of the board who is not a staff member, is entitled to be paid from the Trust Fund, as part of the administrative expenses of the board, such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

**Vacation of office and filling of vacancies**

8. (1) The office of a member of the board who is not a staff member becomes vacant if he or she -

- (a) becomes subject to a disqualification referred to in section 5(1);
- (b) resigns from office by written notice given to the Minister;
- (c) has been absent without leave of the board from three consecutive meetings of the board of which the member has had notice; or
- (d) is removed from office under subsection (2).

(2) The Minister may by notice in writing remove a member referred to in subsection (1) from office if the Minister is satisfied, after giving the member a reasonable opportunity to be heard, that the member -

- (a) is incapable of performing the duties of his or her office by reason of physical or mental illness; or
- (b) is guilty of neglect of duty or misconduct.

(3) If the office of a member or an alternate member of the board becomes vacant the Minister may, in accordance with section 4(1), and subject to section 5(1), appoint another person to fill the vacancy for the remaining term of office of the member or alternate member whose office has become vacant.

**Meetings of board**

9. (1) The first meeting of the board must be held at a time and place that the chairperson of the board determines and any meeting of the board thereafter must be held at a time and place that the board determines.

(2) The chairperson may at any time convene a special meeting of the board and must do so if so requested in writing -

- (a) by the Minister; or
- (b) by two or more members of the board.

(3) If a meeting determined by the board cannot take place for any reason, the secretary must convene the next meeting of the board with the concurrence of the chairperson.

(4) The chairperson presides at a meeting of the board at which he or she is present, and in his or her absence from a meeting the members present must elect one of their number to preside at that meeting.

- (5) At a meeting of the board -
  - (a) a majority of the members of the board forms a quorum;
  - (b) all questions are decided by a majority of votes of the members present and voting; and
  - (c) the member presiding has a deliberative vote and, in the event of an equality

of votes, also a casting vote.

(6) A decision of the board or an act performed under a direction of the board is not invalid because of -

- (a) a defect in the appointment of a member of the board; or
- (b) the existence of a vacancy in the membership of the board.

(7) The procedure to be followed at a meeting of the board, in so far as it is not prescribed, must be determined by the chairperson of the board.

(8) The secretary must ensure that complete and accurate minutes of each meeting of the board are kept.

#### **Appointment of consultants**

**10.** The board, with the consent of the Minister, may engage persons to give advice to and perform services for the board on such terms and conditions of engagement as the board may determine.

#### **Administrative work**

**11.** (1) The administrative work incidental to the performance of the board's functions must be carried out by staff members of the Ministry designated for that purpose by the Minister.

(2) The Minister must designate one of the staff members referred to in subsection (1) to act as the secretary of the board.

### **CHAPTER 3**

#### **NATIONAL LOTTERY**

##### *Part 1: Conduct of National Lottery by board*

#### **Purpose of National Lottery**

- 12.** The National Lottery is to be conducted in terms of this Act -
- (a) for the benefit of one or more of the following:
    - (i) social welfare;
    - (ii) sport and cultural activities; and
  - (b) to support and enhance the social upliftment of the Namibian people through the payment of allocations to the Social Upliftment Fund.

#### **Powers of board in relation to National Lottery**

**13.** (1) The board may in general take any decision and perform any act which it considers necessary for the proper conduct of the National Lottery.

(2) Without prejudice to the generality of subsection (1), the board may in particular determine -

- (a) the number, type, frequency and duration of lotteries in the National Lottery to be held;



- (b) the method and conditions of participation in the National Lottery;
- (c) the manner of advertising the National Lottery;
- (d) the number, form and selling price of tickets in the National Lottery;
- (e) the method of accounting for tickets sold and unsold;
- (f) the places at which and the period and hours during which tickets may be sold;
- (g) the persons to be engaged for selling tickets and the remuneration payable to them;
- (h) subject to section 15, the number, nature and value of prize awards in the National Lottery;
- (i) the manner of prize drawings;
- (j) the manner how prizes must be claimed; and
- (k) the manner in which unclaimed prizes must be dealt with.

#### **National Lottery Trust Fund**

**14.** (1) There is hereby established a fund to be known as the National Lottery Trust Fund.

- (2) The funds of the Trust Fund consist of -
  - (a) proceeds received from the sale of tickets or, if a lottery is conducted through an agent, money paid to the Trust Fund in terms of section 20;
  - (b) interest and dividends derived from the investment of money under subsection (7);
  - (c) money advanced to the Trust Fund in terms of subsection (6); and
  - (d) money accruing to the Trust Fund from any other source.
- (3) Money in the Trust Fund must be applied for -
  - (a) the payment of amounts required for the provision of prizes in the National Lottery;
  - (b) in payment of amounts from time to time approved by the Minister, with the concurrence of the Minister of Finance, for the administrative and operating expenses of the board;
  - (c) repayments of advances in accordance with subsection (6);
  - (d) payment of amounts allocated in accordance with sections 16; and
  - (e) payment of amounts allocated to the Social Upliftment Fund in accordance with section 23.

(4) The board must open a banking account in the name of the Trust Fund with a banking institution registered in terms of the Banking Institutions Act, 1998 (Act No. 2 of 1998) -

- (a) into which all money received or accruing for the benefit of the Trust Fund must be deposited; and
- (b) from which all amounts payable from the Trust Fund must be withdrawn.

(5) The board may retain in the Trust Fund such amounts as are approved by the Minister, with the concurrence of the Minister of Finance, as being reasonably required for future administrative and operating expenses of the board.

- (6) (a) The Minister may, from money appropriated by the National Assembly for the purpose, make advances for the benefit of the Trust Fund of such amounts as are reasonably required for the administrative and operating expenses of the board.
- (b) Any amount advanced under paragraph (a) must be repaid from the Trust Fund to the State Revenue Fund before 31 March of each year, or within such extended period as the Minister, with the concurrence of the Minister of Finance, may approve.

(7) Money standing to the credit of the Trust Fund and not immediately required for the payment of prizes or any other amounts payable from the Trust Fund may be invested in such manner as the Minister, acting with the concurrence of the Minister of Finance, may in writing approve.

(8) The board must ensure that any money received for or accruing to the Trust Fund is paid into the banking account referred to in subsection (4) as soon as is practicable after the receipt thereof.

#### **Percentage of proceeds to be applied for prizes and operating expenses**

**15.** The Minister, with the concurrence of the board, determines the percentages of the gross proceeds of the National Lottery to be applied for the provision of prizes and for the defrayal of administrative and operating expenses, but not exceeding -

- (a) 50 per cent for the provision of prizes; and
- (b) 30 per cent for the defrayal of administrative and operating expenses.

#### **Allocations by board**

**16.** (1) The board, with the approval of the Minister and with due regard to the financial position of the Trust Fund, and subject to section 23, must from time to time allocate from the money standing to the credit of the Trust Fund such amounts as the board may deem fair and reasonable for any one or more of the purposes mentioned in paragraph (a) of section 12.

(2) The Board may impose conditions subject to which an allocation is made in terms of subsection (1).

(3) As soon as is practicable after an allocation is made in terms of subsection (1), the board must publish details thereof in the *Gazette* and in a newspaper widely circulated in Namibia.

**Keeping of accounts and audit**

17. (1) The board must cause proper accounts to be kept of all transactions of the Trust Fund and cause to be prepared in respect of every financial year of the Trust Fund, ending on 31 March in each year, financial statements reflecting, with appropriate particulars, all money received by and payments made from the Trust Fund, and the assets and liabilities of the Trust Fund as at the end of that financial year.

(2) The accounts and financial statements referred to in subsection (1) must be audited annually by the Auditor-General.

(3) Within six months of the end of each financial year referred to in subsection (1), the board must submit to the Minister -

- (a) a copy of the audited accounts and financial statements of the Trust Fund; and
- (b) a report on the activities of the board during that financial year.

(4) The Minister must cause a copy of the financial statements and report referred to in subsection (3) to be laid before the National Assembly within 14 days of the receipt thereof if the National Assembly is then in session or, if the National Assembly is not then in session, within 14 days of the commencement the next session of the National Assembly.

(5) If, for the purposes of subsection (2), the Auditor-General engages the services of a person registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951) to carry out the investigation, examination and audit of the accounts and financial statements of the Trust Fund, any costs so incurred must be defrayed from the Trust Fund as part of the administrative expenses of the board.

*Part 2: Conduct of National Lottery through agent*

**Appointment of agent to conduct National Lottery**

18. (1) If, with the approval of the Minister, the board determines to conduct the National Lottery through an agent, it must by notice -

- (a) in the *Gazette*; and
- (b) in at least two newspapers widely circulated in Namibia;

invite interested parties to apply to the board in writing for appointment, subject to approval of the Minister, as agent and entering into an agency agreement with the board to conduct the National Lottery on behalf of the board.

- (2) A notice in terms of subsection (1) must specify -
  - (a) the last day, not being less than 30 days after the date of publication of the notice in the *Gazette*, by which applications must reach the board; and
  - (b) the information to be furnished by applicants in their applications.
- (3) For the purpose of considering applications the board may require any applicant -
  - (a) to furnish any additional information which the board directs;

- (b) to attend a conference with the board to discuss the applicant's application or any terms and conditions of the proposed agency agreement.
- (4) Subject to subsection (5), the board, with the approval of the Minister, may appoint an applicant as agent, and enter into an agency agreement with that applicant, if the board is satisfied that the applicant -
- (a) has, or will be capable of employing a person or persons with, sufficient appropriate knowledge or experience to conduct the National Lottery in accordance with this Act and the conditions of the relevant agency agreement;
- (b) has the necessary financial and other resources to conduct the National Lottery; and
- (c) is not disqualified in terms of subsection (5).
- (5) A person is not qualified to be appointed as an agent in terms of subsection (4), if such person or, in the case of a body corporate, partnership or other association of persons, any director, partner or member thereof -
- (a) is under the age of 21 years;
- (b) at any time within 10 years preceding the date of conclusion of the proposed agency agreement, has been convicted of an offence in respect of which he or she has been sentenced to imprisonment for a period exceeding 12 months without the option of a fine;
- (c) has at any time been convicted of an offence in terms of this Act or of any other offence of which dishonesty was an element;
- (d) is an unrehabilitated insolvent;
- (e) has at any time been removed from an office of trust on account of misconduct;
- (f) is a member of the National Assembly, a regional council or a local authority council; or
- (g) is employed as a staff member in the Public Service, or holds any other office in the service of the State, including a regional council or a local authority council.
- (6) An agency agreement must include all such terms and conditions as may be prescribed, and may include -
- (a) such other terms and conditions as the board may consider expedient; and
- (b) conditions regarding the payment of a refundable deposit or the furnishing of guarantees by the agent for the proper fulfilment of the terms and conditions of the agency agreement.
- (7) An agency agreement entered into with any person by the board does not have any effect unless it is submitted to and approved in writing by the Minister.
- (8) Only one agency agreement may be in force at any one time but the board may, in the event of a dispute in relation to an existing agency agreement, enter into short-term agency agreements to conduct National Lottery pending settlement of the dispute.

**Duration and termination of agency agreement**

**19.** (1) An agency agreement may be entered into for a period not exceeding five years and may be renewed for a further period or consecutive periods not exceeding ten years.

(2) The board, with the approval of the Minister, may terminate an agency agreement if -

- (a) the agent fails to settle any prize drawn in the National Lottery without just cause;
- (b) the agent fails to pay over any amount due to the Trust Fund within 7 days of the last day on which tickets were sold in the National Lottery concerned, or within such extended time as the board may determine;
- (c) the agent fails to submit to the board audited records, accounts and financial statements as prescribed within the specified time; or
- (d) the agent fails to comply with any provision of this Act or any condition of the agency agreement; or
- (e) the agent, or in the event of the agent being a body corporate, partnership or other association of persons, any director, partner or member thereof, becomes subject to any disqualification referred to in section 18(5).

(3) An agency agreement may not be terminated under subsection (2) unless the board -

- (a) has given the agent notice, in writing, of the proposed termination;
- (b) has invited the agent to make representations to the board, within the period specified in the notice, concerning the proposed termination; and
- (c) has, after the end of that period, considered any representations so made.

(4) The termination of an agency agreement under this section does not exempt the agent from the duty to settle any prize drawn in the National Lottery or pay over any amount due to the Trust Fund.

**Payments to Trust Fund by agent**

**20.** In respect of each lottery conducted for the National Lottery under an agency agreement, the agent must, not later than 7 days of the last date on which tickets were sold for the lottery, or such extended time as the board may determine -

- (a) prepare and submit to the board a statement showing -
  - (i) the gross proceeds of all tickets sold in the lottery;
  - (ii) the amount allocated for the provision of prizes;
  - (iii) the agent's commission;
  - (iv) the allowable expenses incurred in accordance with the agency agreement for the conduct of the lottery; and

- (v) the balance which remains after the expenditures referred to in subparagraphs (ii), (iii) and (iv) are set off against the gross proceeds referred to in subparagraph (i).
- (b) pay the balance referred to in paragraph (a)(v) to the board for the benefit of the Trust Fund.

*Part 3: Establishment and purposes of Social Upliftment Fund*

**Social Upliftment Fund**

**21.** (1) There is hereby established a fund to be known as the Social Upliftment Fund which is to be administered subject to the control and directions of a committee consisting of the Minister of Finance, the Minister of Basic Education, Sport and Culture, the Minister of Women Affairs and Child Welfare and the Minister of Health and Social Services.

(2) The Permanent Secretary is the accounting officer responsible for the accounting of all money received for the benefit of the Social Upliftment Fund and of all payments made from that Fund.

(3) The Permanent Secretary must open, in the name of the Social Upliftment Fund, an account with a banking institution or other financial institution determined by the committee into which all money accruing to the Social Upliftment Fund under section 22 must be deposited and from which payments must be made in respect of allocations determined by the committee under section 23.

**Payments to be made to Social Upliftment Fund**

- 22.** (1) Within seven days of -
- (a) the last day for the sale of tickets for a lottery conducted by the board; or
  - (b) the date on which the amount referred to in section 20(b) is paid to the board by an agent in respect of the National Lottery conducted by the agent,

the board must cause an amount equal to 50 per cent of the nett proceeds of the National Lottery to be paid from the Trust Fund into the Social Upliftment Fund.

- (2) For the purposes of subsection (1), “nett proceeds” means -
- (a) in the case of a lottery conducted for the National Lottery by the board, an amount equal to the difference between the total value of all tickets sold in the lottery and the total value of the prizes awarded in the lottery, less an amount approved by the Minister, with the concurrence of the Minister of Finance, for the administrative and operating expenses of the board in conducting the lottery; and
  - (b) in the case of a lottery conducted by an agent, the amount contemplated in section 20(b) which the agent has paid over to the Trust Fund:

Provided that the committee referred to in section 21(1), after consultation with the board and the Minister, may direct that allowance be made for the deduction of any further expenditure from the amount contemplated in paragraph (a) or (b), in which event the balance remaining constitutes the “nett proceeds”.

### **Allocations from Social Upliftment Fund**

**23.** The committee referred to in section 21(1) must from time to time make allocations of money standing to the credit of the Social Upliftment Fund to any authority, institution, body or association of persons as the committee may determine for any purpose which the committee determines will support and enhance the social upliftment of the Namibian people.

## **CHAPTER 4**

### **BENEVOLENT LOTTERIES**

#### **Authorisation of benevolent lotteries**

**24.** (1) Any organization established or carrying on any activities wholly or mainly for -

- (a) social welfare or any other charitable purposes;
- (b) for the support or promotion of sport or cultural activities; or
- (c) any other purpose approved by the Minister, not being for the personal gain of any individual or for the benefit of a political party or organisation,

may apply to the Board in the prescribed form and manner for authorisation to conduct a benevolent lottery to raise money for the purpose stated in the application.

(2) The Minister, on recommendation of the Board, must decide on every application made in terms of subsection (1) and may, after consideration of the application and such information as may be submitted in support thereof, grant or refuse authorisation for the proposed lottery.

(3) Authorisation for the conduct of a benevolent lottery may not be granted under subsection (2) if the value of the main prize to be won in the lottery exceeds the prescribed amount.

#### **Conditions applicable to benevolent lotteries**

**25.** (1) Any benevolent lottery for which authorisation has been granted under section 24 must be conducted subject to the following conditions:

- (a) The promoter of the lottery must be a member of the organisation to which authorisation has been granted under section 24 and must be duly authorised in writing by the governing body of that organisation to act as promoter;
- (b) tickets must only be sold by persons authorised thereto in writing by the promoter of the lottery;
- (c) the nett proceeds derived from the lottery, after deduction from the gross proceeds of such expenses to conduct the lottery as may be prescribed and for the provision of prizes, must be applied for the purpose stated in the application;
- (d) every ticket, and every notice or advertisement published, distributed or exhibited in respect of the lottery, must specify -

- (i) the name of the organization conducting the lottery;
  - (ii) the price of the tickets;
  - (iii) the date on which the sale of tickets for the lottery will cease;
  - (iv) the date on which the draw of prizes in the lottery will take place; and
  - (v) the place where the draw of prizes will take place;
- (e) prizes awarded in the lottery must be settled as soon as practicable after the winners have been determined;
- (f) the proceeds of the sale of lottery tickets in the lottery must be deposited in a bank account and, except to the extent as may be prescribed, no part thereof may be used or applied for any purpose whatsoever until all prizes awarded in the lottery have been settled; and
- (g) such other conditions as may be prescribed.

(2) Except with the prior consent of the Minister, granted after consultation with the Board, the promoter of an approved benevolent lottery may not -

- (a) change the price of tickets referred to in subsection (1)(d)(ii);
- (b) postpone the date of cessation of the sale of tickets referred to in subsection (1)(d)(iii);
- (c) postpone the date for the draw of prizes referred to in subsection (1)(d)(iv);  
or
- (d) change the place for the draw of prizes referred to in subsection (1)(d)(v),

and if the Minister grants such consent, details of any such change or postponement must be published or notified in the prescribed manner or as the Minister may direct.

(3) If a postponement of the dates referred to in subsections (2)(b) and (c) has been consented to under that subsection to allow more time for the selling of tickets in order to procure sufficient funds for the provision of all the prizes offered in the lottery and such postponement also does not result in the procuring of sufficient funds, the promoter may apply to the Minister for permission to proceed with the winding up the lottery in the prescribed manner.

(4) An application in terms of subsection (3) must be made to the Minister through the board in the prescribed manner.

(5) The board must consider the application at a meeting and make a recommendation to the Minister.

(6) The board may invite any person to attend a meeting of the board referred to in subsection (5) in order to provide such information or produce such documents as the board may reasonably require for the purpose of making a recommendation to the Minister under that subsection.

(7) As soon as possible after the meeting of the board referred to in subsection (5), the board must submit to the Minister -



- (a) the application together with all the supporting documents and information;
  - (b) the minutes of the meeting of the board at which the application was considered; and
  - (c) the recommendation of the board.
- (8) The Minister must decide on the application and may -
- (a) reject the application; or
  - (b) grant permission for the winding up of the lottery in any of the following manners:
    - (i) The refunding of the selling price of the tickets to the ticket holders; or
    - (ii) the payment of the prizes reduced pro rata in accordance with the amount available from the sale of tickets after the deduction of such expenditure as the Minister may determine.

#### **Audited statements**

**26.** The Minister may require from any organization authorized to conduct a lottery to submit audited statements with regard to such lottery reflecting:

- (a) The number of tickets printed;
- (b) the number of tickets sold and the number of unsold tickets accounted for;
- (c) the gross proceeds of the lottery;
- (d) the expenditure incurred to conduct the lottery and set off against the gross proceeds of the lottery; and
- (e) the total amount appropriated from the gross proceeds of the lottery for the provision of prizes.

### **CHAPTER 5**

#### **OFFENCES IN RELATION TO LOTTERIES AND PENALTIES**

##### **General offences**

**27.** (1) A person who sells any ticket for participation in the National Lottery or a benevolent lottery -

- (a) to any person whom the seller knows is under the age of 18 years;
- (b) to any person at a price below the price fixed for tickets in the lottery in accordance with this Act; or
- (c) to any person on credit or with financial assistance in any form of the seller,

is guilty of an offence and liable on conviction to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding three months, or to both such fine and such imprisonment.

- (2) Any person who -

- (a) forges or in any other fraudulent way changes any ticket or any other document or thing pertaining to the National Lottery or a benevolent lottery;
- (b) knowingly sells or in any other way disposes of any forged ticket or any other document or thing pertaining to the National Lottery or a benevolent lottery;
- (c) with intent to defraud, alters any number or figure on any ticket or other document or thing pertaining to the National Lottery or benevolent lottery;
- (d) influences or attempts to influence the winning of a prize through the use of coercion, fraud or deception, or through the tampering with lottery equipment, systems, software, data, tickets or material,

is guilty of an offence and liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

#### **Contravention of conditions**

**28.** An agent or promoter or any other person who is in any way responsible for or involved in the conduct of any lottery authorized in terms of this Act and who contravenes any condition imposed by or under this Act is guilty of an offence and on conviction liable to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

#### **Lottery for personal gain**

**29.** A person who conducts or attempts to conduct a lottery for personal gain or for the benefit of any other individual is guilty of an offence and liable on conviction to a fine not exceeding N\$50 000 or imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

#### **Unauthorised lotteries**

**30.** A person who conducts or attempts to conduct a benevolent lottery which is not authorised in terms of this Act is guilty of an offence and liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

#### **Forfeiture**

**31.** Any court convicting any person for an offence referred to in this Chapter may declare any money, document or thing used in or in connection with the commission of the offence to be forfeited to the State.

### **CHAPTER 6**

#### **GENERAL PROVISIONS**

#### **Immunity against liability**

**32.** The Minister or a member of the board is not personally liable for any act or omission by him or her or the board done in good faith in the exercise, performance or discharge or purported exercise, performance or discharge of any power, function or duty under this Act.

#### **Exclusion of liability in respect of settled prizes**

33. The *bona fide* settlement of any prize in the National Lottery, to whomever made, discharges the Government, the Minister, the board and, where applicable, an agent, or any other person by whom the settlement was made, from liability whatsoever in respect of such settlement.

### Delegation

34. The Minister may delegate to the Permanent Secretary or any other staff member employed in the service of the Ministry any power conferred upon the Minister by this Act, except the powers conferred by sections 4, 7 and 36.

### Taxing of prizes

35. Notwithstanding the provisions of any other law no prize or other benefit won or gained in the National Lottery or a benevolent lottery authorized in terms of this Act is subject to any form of tax.

### Regulations

36. The Minister may make regulations in relation to -
- (a) the procedure to be followed at meetings of the board;
  - (b) the manner in which an invitation for applications for appointment of an agent must be advertised;
  - (c) the manner in which an application for appointment as an agent must be made and submitted;
  - (d) the procedures to be followed by the board for the consideration of applications for the appointment of an agent;
  - (e) the terms and conditions applicable to an agency agreement;
  - (f) the information and documents to be submitted to the board by an agent in relation to the conduct of the National Lottery and payments to be made to the Trust Fund in terms of section 20(b);
  - (g) the records, accounts and financial statements which must be kept by an agent and the auditing thereof;
  - (h) the powers of the board or any designated person to enter any premises or facilities and to carry out investigations necessary for ensuring compliance with the provisions of this Act or an agency agreement and for the protection of the integrity of the National Lottery;
  - (i) the manner in which an application must be made for authorisation to conduct a benevolent lottery;
  - (j) the manner in which allocations from the Social Upliftment Fund may be made; and
  - (k) any other matter which is required or permitted by this Act to be prescribed or which the Minister considers necessary or expedient to prescribe to achieve the objects of this Act.

### Application of Gambling Act

**37.** The Gambling Act, 1965 (Act No. 51 of 1965), does not apply in relation to the National Lottery or any benevolent lottery authorized in terms of this Act or any activity connected therewith.

**Short title and commencement**

**38.** This Act is called the Lotteries Act, 2002 and comes into operation on a date to be determined by the Minister by notice in the *Gazette*.

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