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THE NATIONAL LOTTERY ACT

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NATIONAL LOTTERY ACT

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SCHEDULES

NO. 20 OF 2023

NATIONAL LOTTERY ACT

[Date of assent: 11th December, 2023.]

[Date of commencement: 29th December, 2023.]

AN ACT of Parliament to provide for the establishment of the National Lottery; provide for the establishment, powers and functions of the National Lottery Board; provide for the establishment and administration of the National Lottery Fund; and for connected purposes

[Act No. 20 of 2023.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the National Lottery Act, 2023.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Board**” means the National Lottery Board constituted in accordance with section 4;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to the National Lottery;

“**child**” means an individual who has not attained the age of eighteen years;

“**Fund**” means the National Lottery Fund established by section 44;

“**good causes**” means charitable causes or events for charity set out in section 22(3);

“**National Lottery**” means the National Lottery established by section 22;

“**operator**” means the entity procured by the Board to run the National Lottery in accordance with section 24;

“**prize**” means the prize awarded to a winner of a lottery or a prize promotion;

“**regulatory authority**” means the government agency established by the law to regulate the gambling sector;

“**ticket**” in relation to any lottery or game of chance, includes any written or electronic document evidencing the claim of a person to participate in a chance of a lottery or a game of chance; and

“**winning**” includes a prize of any kind.

3. Objects and purpose of the Act

The objects and purpose of this Act is to—

- (a) establish a National Lottery for the pooling of additional resources to be directed to good causes; and
- (b) direct adequate funding to critical areas key to ensuring a socially responsible National Lottery.

PART II – THE NATIONAL LOTTERY BOARD

4. Establishment of the National Lottery Board

- (1) There is established a Board to be known as the National Lottery Board.
- (2) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name be capable of—
- (a) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
 - (b) borrowing money;
 - (c) entering into contracts;
 - (d) suing and being sued; and
 - (e) doing or performing all such other acts necessary for the performance of its functions under this Act which may be lawfully done or performed by a body corporate.
- (3) The headquarters of the Board shall be in Nairobi, but the Board may establish offices at such other places as may be necessary for the execution of its mandate.

5. Composition of the Board

- (1) The Board shall consist of—
- (a) a Chairperson appointed by the President;
 - (b) the Principal Secretary National Treasury or his or her representative, appointed in writing;
 - (c) the Principal Secretary in the State Department for the time being responsible for matters relating to the National Lottery or his or her representative, appointed in writing;
 - (d) the Attorney-General or his or her representative, appointed in writing;
 - (e) four other members who have proven business acumen or applicable knowledge or experience with regard to matters connected to the functions of the Board, appointed by the Cabinet Secretary comprising of—
 - (i) an Advocate of the High Court of Kenya;
 - (ii) a practising Certified Public Accountant;
 - (iii) a representative of persons with disability; and
 - (iv) a representative of the faith-based organizations.
 - (f) the Chief Executive Officer who shall be an *ex-officio* member of the Board.
- (2) In appointing the members of the Board under subsection (1)(e), the Cabinet Secretary shall ensure that not more than two-thirds of the members are of the same gender, shall observe the principle of regional and ethnic balance and shall have due regard to the principle of fair competition and merit as the basis of appointments.
- (3) A person shall be qualified for appointment as the Chairperson or a member of the Board if the person—
- (a) is a Kenyan citizen;
 - (b) holds a bachelor's degree from a university recognized in Kenya;
 - (c) has a minimum of ten years' working experience in a relevant field;

- (d) has not served in the same entity as an employee in the preceding five years;
- (e) meets the requirements of Chapter Six of the Constitution; and
- (f) has submitted to the Cabinet Secretary a written declaration stating that the person does not have any interests in the gambling sector or an interest in a business or enterprise that may conflict or interfere with the proper performance of the duties of a member of the Board.

(4) A person shall not be appointed as a Chairperson or member of the Board if the person—

- (a) is an undischarged bankrupt;
- (b) has been convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
- (c) at the time of appointment holds a political office;
- (d) has previously been removed from a public office on account of misconduct or any other lawful reasons; or
- (e) in the last three years immediately preceding the appointment, had personal direct or indirect commercial interest in the gambling sector.

(5) A member of the Board shall hold office for a term of three years and shall be eligible for reappointment for one further term of three years.

6. Vacancy in the Board

(1) The office of the Chairperson or a member of the Board appointed under section 5(1)(a) and (e) shall become vacant if the holder—

- (a) dies;
- (b) resigns from office by notice in writing-
 - (i) in case of the Chairperson, to the President; and
 - (ii) in case of a member, to the Cabinet Secretary;
- (c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months without the option of a fine;
- (d) has been absent from three consecutive meetings of the Board without a notice to the Chairperson; or
- (e) is removed in accordance with subsection (2).

(2) A member of the Board may be removed from office for—

- (a) violation of the Constitution or any other law;
- (b) gross misconduct, whether in the performance of the functions of the office of a member or otherwise;
- (c) physical or mental incapacity to perform the functions of the office of a member;
- (d) incompetence; or
- (e) bankruptcy.

(3) The Cabinet Secretary shall ensure that any vacancy in the Board is filled as soon as practicable in accordance with the provisions of the Act.

7. Functions of the Board

(1) The Board shall—

- (a) supervise, control and monitor the operations of National Lottery or National Lottery operator;
- (b) put in place measures to prevent fraud in the conduct of the National Lottery;
- (c) make recommendations to the Cabinet Secretary for the formulation of policies for the conduct of National Lottery;
- (d) advise the Cabinet Secretary on Regulations which would be required for the effective operation of the National Lottery;
- (e) advise the National Government on the National Lottery; and
- (f) perform such other functions as the Cabinet Secretary may assign to the Board.

(2) The Board may on its own or through legal agents or in collaboration, partnership or joint venture with any person, society, association or corporate entity or through procurement of an entity or person operate the National Lottery in accordance with this Act.

(3) Subject to subsection (2), losses that may arise from the running of a national lottery during such collaboration, partnership or joint venture shall not be compensated for by the State or from the National Lottery Fund.

8. Powers of the Board

(1) The Board shall have the powers necessary for the performance of its functions under this Act.

(2) Despite the generality of subsection (1), the Board shall have power to—

- (a) manage, control and administer the assets of the Board in such manner and for such purposes as best promotes the purpose for which the Board is established;
- (b) receive any gifts, grants, donations or endowments made to the Board or any other monies in respect of the Board and make disbursements therefrom in accordance with the provisions of this Act;
- (c) open and operate a bank account with the approval of the National Treasury;
- (d) conduct such investigations as may be necessary for the enforcement of this Act;
- (e) inquire into any complaint against an operator; and
- (f) offer services to any person upon such terms as the Board may determine from time to time.

9. Conduct of business and affairs of the Board

(1) The procedure for the conduct of the business and affairs of the Board shall be as provided in the Schedule.

(2) Subject to the Schedule, the Board shall regulate its own procedure.

10. Committees of the Board

(1) The Board may establish such committees as it may consider necessary to assist it in the performance of its functions and the exercise of any of its powers.

(2) Despite the provisions of sub-section (1), not more than four committees may be established under this section.

11. Remuneration of the members of the Board

The members of the Board shall be paid such allowances and disbursements for such expenses as may be approved by the Cabinet Secretary on the advice of the Salaries and Remuneration Commission.

12. Chief Executive Officer

(1) There shall be a Chief Executive Officer of the Board who shall be appointed by the Board through an open, transparent and competitive process, on such terms and conditions of service as the Board may determine.

(2) A person shall be qualified for appointment as the Chief Executive Officer if the person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years' experience in senior management in a public or a private institution; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

(3) The Chief Executive Officer shall be—

- (a) the custodian of all the records of the Board;
- (b) responsible for the day-to-day management of the affairs and staff of the Board;
- (c) responsible for the management and maintenance of efficiency of the staff of the Board; and
- (d) responsible for—
 - (i) executing decisions of the Board;
 - (ii) facilitating, coordinating and ensuring execution of the mandate of the Board;
 - (iii) preparing and submitting for approval, by the Board, programmes of work for the achievement of the mandate of the Board; and
 - (iv) the performance of such other duties as may be assigned by the Board or any written law.

(4) The Chief Executive Officer shall be appointed for a term of three years and shall be eligible for re-appointment for one further term of three years.

13. Corporation Secretary

(1) The Board shall competitively recruit a person qualified to serve as the Corporation Secretary.

(2) The Corporation Secretary shall—

- (a) provide guidance to the Board on the duties, responsibilities and powers of the Board;
- (b) ensure that the Board follows its procedures and complies with the respective laws and regulations;
- (c) prepare the work plans of the Board and assist the Chairperson to organise the activities of the Board including meetings, agenda of meetings, issuing notices to other members of the Board, circulating Board papers before meetings, keeping a record of attendance at meetings;

- (d) take and keep the minutes of the meetings of the Board, and circulating the minutes to the members of the Board;
- (e) keep a record of the usage of the seal of the Board, and prepare the annual meetings of the Board;
- (f) keep a record of the appointment letters, notices of appointment and the written acceptance of appointment by members of the Board;
- (g) keep a record of conflicts of interest declared by each member of the Board; and
- (h) perform such other duties as the Board may direct.

14. Staff of the Board

The Board may appoint such number of professional, technical and administrative staff as it may consider necessary for the discharge of the functions of the Board, on such terms and conditions as the Board may determine on the advice of the Salaries and Remuneration Commission.

15. Delegation of powers of the Board

The Board may by resolution either generally or in any particular case delegate to any committee of the Board or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act or under any other written law.

16. Seal of the Board

(1) The common seal of the Board shall be kept in the custody of the Corporation Secretary and shall not be used except upon the order of the Board.

(2) The common seal of the Board shall be authenticated by the signature of the Chairperson of the Board or the Chief Executive Officer:

Provided that the Board shall, in absence of either the Chairperson or the Chief Executive Officer, in any particular matter nominate one member of the Board to authenticate the seal of the Board on behalf of either the Chairperson or the Chief Executive Officer.

(3) The common seal of the Board shall, when affixed to a document and duly authenticated, be judicially and officially noticed and unless the contrary is proven, any order or authorization by the Board under this section shall be presumed to have been duly given.

17. Funds of the Board

The funds of the Board shall comprise of—

- (a) such monies as may be appropriated by Parliament for purposes of the Board;
- (b) such monies as may be payable by an operator of the National Lottery under section 27(c);
- (c) such monies as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act;
- (d) interest from the investment of money standing to the credit of the Board; and
- (e) all monies from any other source provided for, donated or lent to the Board.

18. Financial year

The financial year of the Board shall be the period of twelve months ending on the thirtieth June in every year.

19. Annual estimates

(1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that year.

(2) The annual estimates shall make provisions for all estimated expenditure of the Board for the financial year concerned, and in particular shall provide for the—

- (a) payment of salaries, allowances and other charges in respect of the staff of the Board;
- (b) payment of pensions, gratuities and other charges in respect of former staff of the Board;
- (c) proper maintenance of the buildings and grounds of the Board;
- (d) maintenance, repair and replacement of the equipment and other property of the Board;
- (e) payment of allowances of the members of the Board and the members of the Board; and
- (f) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance, replacement of buildings or equipment, or in respect of such other matters as the Board may deem fit.

20. Books of accounts

(1) The Board shall cause to be kept all proper books and records of accounts relating to the income, expenditure, assets and liabilities of the Board.

(2) The accounts of the Board shall be prepared and audited in accordance with the Public Finance Management Act (Cap. 412A) and Public Audit Act (Cap. 412B).

21. Reports of the Board

(1) The Board shall prepare quarterly and annual financial and non-financial reports in a format prescribed by the Public Sector Accounting Standards Board and submit the same to the National Treasury and the Auditor General.

(2) The Board shall continuously and on a regular basis monitor and report on its performance and on the performance of the operators on a quarterly basis, with a summary of performance reported through annual report of the Board on the basis of a clear outcome-based performance framework based on the policy developed by the national government.

PART III – THE NATIONAL LOTTERY**22. Establishment of the National Lottery**

(1) There is established a National Lottery to be operated within the Republic of Kenya.

(2) The National Lottery shall be conducted for the purpose of raising resources for the nation towards good causes in Kenya and for any other purposes provided in this Act.

(3) The good causes that shall be facilitated by the National Lottery under subsection (2) shall include—

- (a) charitable causes including—
 - (i) providing care and protection for the physically or mentally afflicted, the aged, orphans and vulnerable children;
 - (ii) promote social development including universal healthcare;
 - (iii) facilitate the protection and rehabilitation of vulnerable or problem gamblers;
 - (iv) promote the protection and conservation of the environment, efforts towards sustainable development or support animal welfare initiatives;
 - (v) aid to the needy, such as through the provision of food, shelter, or healthcare services; and
 - (vi) advancing religious or spiritual purposes, through the promotion of interfaith dialogue;
- (b) economic empowerment including—
 - (i) support for the development of small businesses or other economic development initiatives;
 - (ii) support education, including, among others, through the provision of scholarships or educational resources, including libraries, laboratories;
 - (iii) promotion of scientific research, innovation, and technological development; and
 - (iv) support for health and medical research, including through the funding of clinics or medical facilities;
- (c) sports, recreation, arts, culture and national heritage including—
 - (i) support for national teams to participate in regional and international events;
 - (ii) financing the development of sports and recreation facilities including stadia, gymnasia, buildings, tracks;
 - (iii) enhancing support and access to funding for sportspersons and sports organizations to enable their participation in sporting events and competitions;
 - (iv) facilitation for the acquisition and provision of equipment to sports and recreation facilities;
 - (v) support for the identification, nurturing and development of talent in sports and arts;
 - (vi) facilitating training and capacity building programmes for persons involved in sports and recreation, creative arts, artistic production, contemporary and cultural practitioners;
 - (vii) facilitating the identification, development and capacity building of technical personnel and sports support personnel involved in sports and recreation;
 - (viii) support for the development, marketing, and promotion of artistic production of contemporary or cultural goods and services;

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- (ix) support for linkages with domestic, regional, and international markets for sports, artistic productions and contemporary or cultural goods and services;
 - (x) facilitating the exhibition and promotion of contemporary or cultural artistic production of goods and services for national identity and pride;
 - (xi) financing the acquisition, development, and preservation of, among others, heritage sites, cultural centres, national monuments, tangible and intangible heritage and culture and heritage equipment and tools;
 - (xii) facilitate innovation, research and documentation in arts, culture and the creative industry, sports, and social development; and
 - (xiii) promotion of culture, arts, and heritage, such as through the support of museums or cultural events.
- (d) signature transformation projects including—
- (i) strategic initiatives, projects, or programmes developed by the National Government, county governments, non-governmental organisations, that are unique and distinctive, with high and visible impacts, including being key to positioning the country regionally or internationally economically, socially, or otherwise;
 - (ii) affordable housing;
 - (iii) community centres for youth programmes or underprivileged communities;
 - (iv) sustainable agriculture or energy initiatives;
 - (v) healthcare programmes; and
 - (vi) scientific research or innovations addressing challenges including climate change, infectious diseases, cybersecurity, or infrastructure projects improving access to water, sanitation, clean energy in remote or underdeveloped areas.
- (e) emergencies including—
- (i) response to emergencies or crises affecting communities or populations including natural disasters, conflicts, public health crises, or other unforeseen events that require urgent intervention; and
 - (ii) response as well as disaster risk reduction initiatives that help communities prepare for and respond to emergencies and disasters.

(4) The Board may, in consultation with the Cabinet Secretary, operate any other game of chance or enter into collaboration, partnership or joint venture with any person, society, association or corporate entity, to operate a game of chance in accordance with existing laws, but losses from the game of chance, the collaboration, partnership or joint venture shall not be compensated for by the State or from the National Lottery Fund.

(5) Any proceeds from any other game of chance operated by the Board under subsection (4) shall be paid into the Fund.

23. Exemption

Despite any other provision of this Act, the provisions of any written law relating to the regulation of public lotteries for charitable purposes, lotteries for charitable, sporting and other purposes and lotteries incidental to entertainment shall not apply to the National Lottery.

24. Procurement of an operator

(1) Subject to section 7(2), the Board may procure an operator to run the National Lottery on its behalf in accordance with Article 227 of the Constitution and the Public Procurement and Asset Disposal Act (Cap. 412C), and the Board may require payment for any document that may be required for the procurement process.

(2) A person shall be eligible to be the National Lottery operator if that person—

- (a) has appropriate knowledge or experience to conduct a national lottery in accordance with this Act and any condition imposed on the licence;
- (b) has the necessary financial and other resources to conduct the lottery;
- (c) is not a state or public officer, or the holder of a political office; and
- (d) is a fit and proper person to conduct the lottery.

(3) Without prejudice to the generality of subsection (1) the Board may, in considering whether a person is fit and proper person to run the National Lottery—

- (a) take into account whether the person—
 - (i) has contravened the provisions of any law, in Kenya or elsewhere, designed for the protection of members of the public against financial loss due to dishonesty, incompetence, or malpractice by persons engaged in gambling;
 - (ii) was a director of a licensed person who has been liquidated or is under liquidation or statutory management;
 - (iii) has taken part in any business practice which is proven to be fraudulent or prejudicial to the gambling market or public interest, or was otherwise improper, which would otherwise discredit the person's methods of conducting business;
 - (iv) has taken part or has been associated with any business practice which casts doubt on the competence or soundness of judgment of that person; or
 - (v) has acted in a manner that casts doubt on the person's competence and soundness of judgment;
- (b) take into account any information in the possession of the Board, whether provided by the applicant or not, relating to—
 - (i) any person who is to be employed by, associated with, or who shall be acting for or on behalf of, the applicant for the purposes of a gambling activity, including an agent; or
 - (ii) where the applicant is a company in a group of companies
- (c) take into account whether the applicant has established effective internal control procedures and risk management systems to ensure its compliance with all applicable regulatory requirements; and
- (d) have regard to the state of affairs of any other business which the person carries on or purports to carry on.

(4) The Board shall satisfy itself that the applicant has sufficient appropriate knowledge or experience to carry out the operation of a national lottery and will be able to conduct the National Lottery in accordance with this Act.

(5) The process of procurement of a new operator shall commence two years before the expiration of the current licence.

(6) Subject to subsection (5), an operator who would like to seek for an extension of the duration for running the National Lottery, shall commence the process at least two years before the expiration of the subsisting agreement with the Board.

(7) In case of procuring a new operator, it shall be the responsibility of the Board to commence the process two years before the expiration of the current licence.

25. Licensing the National Lottery

(1) The regulatory authority shall, upon application in the prescribed form and payment of the prescribed fee, issue one licence authorizing the Board or the person procured under section 24 to operate a National Lottery subject to such conditions as it may deem fit to impose.

(2) The regulatory authority shall, before granting a licence, satisfy itself that—

- (a) the applicant has the ability to commence operations not more than six months from the date of issuance of a licence;
- (b) the applicant has appropriate knowledge or experience to conduct a national lottery in accordance with this Act and any condition imposed on the licence;
- (c) the applicant has the necessary financial and other resources to conduct the lottery;
- (d) no direct or indirect financial interest exists on any applicant by a person who is the holder of a political office; and
- (e) the applicant, its directors and shareholders are fit and proper persons to conduct the lottery.

(3) A person issued with a licence under subsection (1), shall—

- (a) conduct the National Lottery subject to the standards, norms and requirements set by the regulatory authority, all other applicable laws and the conditions attached to the licence; and
- (b) ensure that the interests of every participant in the national lottery are adequately protected.

(4) The provisions of any written law relating to the requirements, standards, norms and conditions relating to licensing of gambling activity shall apply to National Lottery.

26. Duration of licence

(1) A licence for a National Lottery operator shall be valid for a period of seven years:

Provided that—

- (a) the regulatory authority may, in a case where the licence has been granted for seven years, and at least two years before the expiry of that licence, extend that licence for further period not exceeding three years which together with the initial period for which that licence was granted, shall not exceed ten years; and

- (b) the operator shall have no rights or legitimate expectations in respect of an extension of the period of validity of the licence other than the rights afforded by this section.

(2) The regulatory authority shall before granting an extension of a licence be satisfied that there exists a just and reasonable cause warranting such an extension including—

- (a) inability of the Board to get a suitable operator during the period of the extension;
- (b) demonstration by the existing operator of its failure to fully recoup the investment in the lottery; or
- (c) the need to recover any period of suspension of a licence occasioned by revocation proceedings conducted under this Act in instances where the outcome of the proceedings was in favour of the operator.

27. Obligations of the operator

The operator shall—

- (a) ensure that such requirements as the regulatory authority may from time to time, determine or impose are complied with;
- (b) provide such information regarding the conduct of a national lottery as the regulatory authority may require from time to time;
- (c) make such arrangements for the payment of such sums out of the gross revenue of the lottery as may be specified by the Board;
- (d) do such things within the terms of a licence, including the transfer of property or any rights, other than intellectual property rights as the Board or regulatory authority may require, upon the expiration of a licence;
- (e) obtain the approval of the regulatory authority for any lottery and the rules thereof before a lottery is conducted;
- (f) allow the regulatory authority or any person designated by the regulatory authority and the Board or any person designated by the Board to enter any premises or facility belonging to or under the control of the operator or a member of the management of the operator, or, premises to which the operator has a right of access, at any reasonable time, if such entry is necessary for the protection of the integrity of the lottery, to—
 - (i) examine or inspect any machine, document or data in a licensed premise or facility and make copies or extracts from it;
 - (ii) seize, for the purpose of examination of information any machine, document or data, on the conduct of a national lottery;
 - (iii) secure a valid and enforceable written undertaking from a person controlling the operator in any way not to change, transfer, cede the control of a licence or in any way encumber the licence to another person without the consent of the regulatory authority; and
 - (iv) take such steps as may be reasonably necessary to protect the integrity and conduct of the National Lottery.

28. Overriding responsibilities

(1) The Cabinet Secretary, the regulatory authority and the Board shall exercise their respective mandates under this Act in the manner that is most likely to—

- (a) ensure that the National Lottery is run, and every lottery that forms part of it is promoted, with all due propriety and in accordance with the relevant law; and
- (b) ensure that the interests of every participant in a lottery that forms part of the National Lottery are protected.

(2) Subject to subsection (1), the Cabinet Secretary, the regulatory authority and the Board shall in exercising their respective mandates under this Act—

- (a) ensure that the net proceeds of the National Lottery are maximised; and
- (b) adopt strategic and inclusive frameworks for responsible gambling and the conduct of a national lottery.

29. Variation of conditions of the National Lottery licence

(1) The regulatory authority may vary any condition of a licence issued under section 25—

- (a) with the consent of the operator; or
- (b) without the consent of the operator, where—
 - (i) a variation is provided for in this Act or to the extent provided for in the licence; and
 - (ii) the operator has been given a reasonable opportunity to make representation to the regulatory authority in respect of the intended variation and the representation is considered by the regulatory authority as insufficient.

(2) The regulatory authority may, in varying the conditions of a licence impose new conditions or reduce the conditions to the licence.

(3) Where the regulatory authority intends to vary a licence under subsection (1) (b), the regulatory authority shall serve the operator with the notice of the intended variation specifying the grounds for such variation and require the operator to, within fourteen days of service of the notice, give reasons why the licence should not be varied.

(4) A notice under subsection (3) shall be served not less than twenty-one days before the date of the intended variation and shall specify the grounds for such variation.

(5) Where the operator fails to give reasons within the period stated, the licence shall be deemed to be varied.

(6) If reasons are furnished by the operator, the regulatory authority, as the case may be, shall after considering such reasons—

- (a) decide whether or not to vary the licence; or
- (b) call upon the operator to appear before it on a specified date to make oral representations in support of any written representations made by the operator or to answer any questions which the regulatory authority, as the case may be, regarding such written representations, thereafter the regulatory authority shall determine whether or not to vary the licence.

(7) The variation of a licence shall not prejudice any liability or obligation incurred under or in relation to the licence prior to its variation.

30. Enforcement of conditions of a National Lottery licence

(1) Where the regulatory authority has reason to believe that—

- (a) a person has contravened any condition of a National Lottery licence which cannot be remedied; or
- (b) there is a reasonable likelihood that the contravention in a licence is of a continuous nature,

the regulatory authority may apply to the High Court for an order prohibiting the contravention, or, requiring the operator or any other person to take such steps as the Court may direct.

(2) The liability of the operator to pay any money under this Act shall not be affected by a licence ceasing to be valid for any reason.

31. Revocation of a National Lottery licence

The regulatory authority may revoke a National Lottery licence where—

- (a) in its opinion, the operator or his or her representative has grossly violated the provisions of this Act;
- (b) a person licensed is no longer a fit and proper person to conduct the National Lottery;
- (c) any condition of the licence has been breached;
- (d) any information given to the regulatory authority by the operator, or by any person who in any way controls the operator or any agent or representative of the operator is materially false in—
 - (i) connection with the application for the licence;
 - (ii) accordance with a condition of the licence; or
 - (iii) respect to the financial matters regarding the National Lottery or in respect of any aspect of the management of the National Lottery;
- (e) any person who is managing a business or any part of a business of the operator or who is a supplier of goods or services to the operator and connected to a lottery operation is in the opinion of the regulatory authority not a fit and proper person to do so due to insolvency, liquidation, imprisonment or for any other sufficient reason;
- (f) the operator has failed to take adequate steps to prevent a commission of fraud by his or her employees, agents, representatives, suppliers or by participants in a lottery;
- (g) the operator or any of his or her employees, agents, representatives or suppliers has prevented the regulatory authority or any person designated by the regulatory authority in carrying out their duties as contemplated under the Act; or
- (h) a person who in any way controls the operator is declared insolvent or is liquidated.

32. Notice of revocation of a National Lottery licence

(1) Where the regulatory authority is satisfied that there are grounds for the revocation of the National Lottery licence, the regulatory authority shall notify the

Board and the operator, in writing of the existence of such grounds and shall require the operator to furnish reasons, within fourteen days of service of the notice why the licence should not be revoked.

(2) Where the operator fails to give reasons within the period stated, the licence shall cease to be valid.

(3) If reasons are furnished by the operator, the regulatory authority, as the case may be, shall after considering such reasons—

- (a) decide whether or not to revoke the licence; or
- (b) call upon the operator to appear before it on a specified date to make oral representations in support of any written representations made by the operator or to answer any questions which the regulatory authority, as the case may be, regarding such written representations, thereafter the regulatory authority shall determine whether or not to revoke the licence.

(4) Where a licence for the National Lottery ceases to be valid under this section, the regulatory authority shall forthwith inform the operator and the Board, in writing, of the date upon which the licence shall cease to be valid.

(5) The revocation of a licence shall not prejudice any liability or obligation incurred under or in relation to the licence prior to its revocation.

(6) Where the regulatory authority revokes a licence, it shall forthwith inform the public through a notice in the *Gazette* and two newspapers of national circulation or other medium of information with national coverage.

33. Suspension of a National Lottery licence

(1) The regulatory authority may order the suspension of a National Lottery licence upon giving notice and giving the operator an opportunity to be heard.

(2) The procedure under section 32 shall apply with the necessary modifications when the regulatory authority is considering the suspension of a licence.

(3) Where the regulatory authority suspends a licence under subsection (1), it shall forthwith inform the public through a notice in the *Gazette*, and two newspapers of nationwide circulation or any media of national coverage.

(4) Where a licence for the National Lottery ceases to be valid under subsection (1), the regulatory authority shall inform the operator and the Board in writing the date upon which the licence was suspended.

(5) The suspension of a licence shall not prejudice any liability or obligation incurred under or in relation to the licence prior to its suspension.

PART IV – CONDUCT OF A NATIONAL LOTTERY

34. National Lottery games

(1) The operator may with the approval of the Board and regulatory authority, conduct such games as it may consider appropriate for purposes of the National Lottery.

(2) The regulatory authority in consultation with the Board shall prescribe guidelines, policies and procedures for the conduct of games comprising the National Lottery.

- (3) Guidelines issued under subsection (2) shall include guidelines relating to —
- (a) the type and number of games to be conducted by the operator;

- (b) the method and location of setting up or validating winning tickets;
- (c) the manner of payment of prizes to holders of winning tickets;
- (d) the frequency of games and draws or determination of winning tickets;
- (e) the method to be used in selling tickets, which may include the use of electronic or mechanical devices;
- (f) the conduct of draws and determination of winners of each game;
- (g) requirements governing lottery tickets; and
- (h) any other guideline necessary to ensure the efficient and effective operation of national lottery games.

35. Disclosure of odds

(1) The operator shall print all lottery tickets bearing its approved imprint and logo.

(2) Each ticket shall have—

- (a) a serial number;
- (b) a draw number;
- (c) a draw date; and
- (d) a designated space for the signature.

(3) The regulatory authority shall issue guidelines with respect to the purchase of tickets.

(4) The sale of a national lottery ticket shall be the responsibility of the operator and it may after consultation with the regulatory authority, authorize such suitably qualified persons as it may determine to act as its agents for the sale of the National Lottery tickets.

(5) The operator shall authorize agents subject to such terms and conditions as may be determined by the operator with the approval of the regulatory authority.

(6) The operator shall in consultation with the Board determine the form and prize of a lottery ticket sold under this Act.

(7) A person, other than the operator, who sells, offers or exposes for sale or invites an offer to buy or possess for sale a national lottery ticket, commits an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

36. Persons prohibited from participating in National Lottery

(1) A ticket purchased for value or awarded as a prize in a lottery is prohibited for sale to —

- (a) a child;
- (b) a director, agent or employee of the operator;
- (c) a member or employee of the Board or the regulatory authority;
- (d) a person who prints national lottery tickets or an employee of such a person, or a director of such company;
- (e) a person who supplies computers or other electronic devices of any kind or parts for the same, or equipment or programming or instructions for use, or who operates, maintains or repairs any such devices used by the operator;
- (f) an illegal immigrant; or

(g) any other person prohibited under any other law

(2) Despite subsection (1), persons who are not citizens or residents of Kenya shall only participate in games which have instant draws.

(3) The prohibition under subsection (1) shall cease to apply to a person specified in paragraphs (b), (c), (d) and (e) after the expiry of two years from the period their directorship, agency or employment with the operator, the Board or the regulatory authority

(4) For the purposes of ensuring that a child does not participate in the National Lottery, the operator shall obtain and verify information establishing the identity and age of the customer before the purchase of a lottery ticket.

37. Offences relating to National Lottery tickets

(1) Any person who allows a person prohibited to participate in unauthorized lottery commits an offence and shall be liable upon conviction to a fine not exceeding five million shillings or imprisonment for a term not exceeding five years or to both.

(2) In addition to the penalty imposed under subsection (1), in a case where a national lottery ticket is held in contravention of the provisions of section 36 —

- (a) a ticket in respect of which the offence is committed shall not be entered in the lottery draw, and if it is so entered and is drawn as the winning ticket, the owner of such a ticket shall not be entitled to any prize in respect of the ticket; and
- (b) where a prize is awarded in the lottery to the owner of such a ticket, the prize shall be returned to the operator within one month after receipt.

(3) Where a prize to which subsection (2)(b) applies is not returned as required, such a prize or an amount of money equal to its value may be recovered by the operator through a civil suit.

38. Disclosure by agents

An agent in any bid or proposal for a contract to supply lottery equipment, tickets or any material or service to the operator for use in the operation of the National Lottery shall furnish the operator with the names and addresses of the following with respect to the principal—

- (a) if a partnership, all the general and limited partners;
- (b) if a trust, the trustees and all persons entitled to receive income or benefit from the trust;
- (c) if an association, the members, officers and directors; or
- (d) if a corporation, the officers, directors and each owner or holder, directly or indirectly of any equity, security or other evidence of ownership of any interest in the corporation:

Provided that in the case of owners or holders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those owning or holding ten per cent or more of such securities shall be disclosed.

39. Draws

- (1) All draws and prize draws shall be open to members of the public.

(2) The draws for all games comprising of a lottery shall be conducted at such times and at such places as may be determined by the operator with the approval of the regulatory authority.

(3) The number or alphabet letter and permutation of numbers or alphabet letters drawn that constitute winnings of National Lottery shall be determined by the regulatory authority and published in the *Gazette*, a newspaper or other medium of information of national coverage.

(4) An officer of the regulatory authority shall supervise the selection of winning entries in all draws.

(5) Any equipment used in a public draw to select a winning number, alphabet letter or entry for a prize shall be examined and tested by the regulatory authority together with an internal auditor of the operator or a designated representative prior to and after each public draw.

(6) The operator shall adopt rules, policies and procedures to conduct fair and equitable draws and establish a system for verifying validity of tickets presented for the awarding of prizes.

40. Payment of prize

(1) A prize shall not be awarded upon a ticket purchased or sold in violation of this Act.

(2) The operator shall stand discharged from all liability to winners upon payment of prizes in accordance with the terms and conditions of a national lottery.

(3) The operator may provide for payment of prizes by agents where prizes are of such amount as the operator may specify whether or not the agents sold the winning tickets.

41. Prizes and tickets

(1) The winners of National Lottery shall be paid prize monies—

- (a) determined by the Board, and
- (b) published in the *Gazette*, a newspaper or other medium of information with national coverage.

(2) The operator shall pay the winners of the National Lottery their prize monies within seven days of the draw and at the times and places determined by the Board and published in the *Gazette*, a newspaper or other medium of information with national coverage.

(3) A prize that is not claimed within five years shall be presumed to be abandoned and shall be surrendered to the Unclaimed Financial Assets Authority.

(4) An operator shall keep and maintain a register of prizes surrendered under subsection (3).

(5) The right to a prize shall not be assignable but prizes may be paid to the administrator of a deceased winner's estate.

(6) A ticket shall be deemed to be owned by a person whose signature or mark appears on it, and if no such signature or mark appears, by the bearer of the ticket.

(7) The operator shall not be responsible for any lost or stolen tickets.

(8) A person who loses a National Lottery ticket shall report the loss to the operator before a draw is conducted.

(9) Where a ticket which is reported lost under subsection (8) is picked as a winning ticket at a draw, the person reporting the loss shall be entitled to claim the prize payable upon meeting such conditions as the operator may specify.

42. Audit of the National Lottery

(1) The regulatory authority may from time to time appoint a suitably qualified person to audit the conduct of the National Lottery and report to the regulatory authority.

(2) The audit under subsection (1) shall include an audit of the following—

- (a) the operator's management and procedures;
- (b) the system including ecosystem for selecting winning tickets and the methods employed to prevent fraud or manipulation;
- (c) the manner of the recruitment, organization and supervision of the staff of the operator engaged in—
 - (i) handling or processing and the selection of winning tickets; and
 - (ii) installation, operation, maintenance, or repair of computers or other electronic devices, or devices of any kind used for the purpose of a lottery or the supervision; and
- (d) the compliance with this Act and any regulations made thereunder in relation to a National Lottery.

(3) A person appointed under this section shall report to the regulatory authority

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- (a) at such intervals as the regulatory authority may determine in relation to any of the matters specified in subsection (2); and
 - (b) from time to time in relation to any matter relating to a lottery which the person considers should be reported to the regulatory authority.

(4) A person appointed under subsection (1), may enter the premises of the operator at all reasonable times and shall have access to and may inspect any tickets or any records kept by the operator whether in documentary or in electronic form relating to a National Lottery and may take copies or extracts from records.

(5) Directors and employees of the operator who are involved in the conduct of a lottery, shall give to a person appointed under this section such information in their possession relating to the lottery as may be required by that person.

(6) A director, employee or agent of the operator who fails or refuses to comply with a request made under this section, in relation to any information in his or her possession, or who obstructs or hinders a person appointed to perform his or her functions under this section, commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

43. Apportionment of the proceeds of the National Lottery

(1) The gross revenue of a National Lottery shall be distributed by the National Lottery Board after taking into account the following—

- (a) prizes and tax for prizes;
- (b) operator's profit, tax and operating costs;
- (c) the regulatory authority's operational and administrative costs; and
- (d) the operational and administrative costs of the Board.

(2) The amount payable for operational and administrative costs under subsection (1)(c) and (d) shall not exceed three per centum of the total gross revenue proceeds of the National Lottery for each institution and shall be approved by the Cabinet Secretary responsible for finance.

(3) The operator shall pay monies due to the Fund under this section on a weekly basis or at such other time as the Board may determine whichever is earlier.

(4) The Cabinet Secretary for finance may upon consultation with the Cabinet Secretary and the Board determine the operational and administrative costs under subsection (1)(c) and (d) above based on the preceding years gross revenue performance of the National Lottery.

PART V – THE NATIONAL LOTTERY FUND

44. Establishment of the National Lottery Fund

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

(2) The object of the Fund shall be to retain, and disburse the proceeds of the National Lottery in such manner as may be prescribed by this Act.

(3) The Fund shall consist of—

- (a) sums paid to the Fund under section 43;
- (b) interest from the investment of money standing to the credit of the Fund;
- (c) accrued earnings from investments;
- (d) such monies or assets as may accrue to or vest in the Fund in the course of the exercise of its powers or the performance of its functions under this Act; and
- (e) all monies from any other source provided for or donated or lent to the Board.

(4) The proceeds of the Fund shall be apportioned to the good causes set out in section 22(3) by the Board, in accordance with relevant legislation and guidelines, in consultation with the Cabinet Secretary for approval by the Cabinet Secretary for finance for the succeeding year at least six months before the commencement of the next financial year of government.

(5) The Cabinet Secretary may make regulations prescribing any additional criteria for consideration by the Board when proposing the apportionments under subsection (4).

45. Administration of the Fund

(1) The Board shall be responsible for the general administration of the Fund.

(2) Notwithstanding the generality of subsection (1), the Board shall—

- (a) approve the opening and closing of the bank accounts of the Fund in accordance to the provisions of the Public Finance Management Act (Cap. 412A);
- (b) determine, in accordance with relevant legislation and guidelines, the amount of money that will be allocated to various programmes and projects to promote good causes as provided for under section 22(3);
- (c) approve investments of funds not required immediately in Government securities;

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- (d) propose for approval by the Cabinet Secretary allocations to be channelled through the government agencies;
 - (e) propose grants with conditions or without conditions to be allocated to county governments in consultation with the Cabinet Secretary, the Cabinet Secretary for the National Treasury, and the Council of Governors including providing of matching funds, co-financing within government, specific programmes and projects to be funded by the grants;
 - (f) propose for approval by the Cabinet Secretary, statutory bodies or non-statutory bodies, or non-state actors who may receive monies from the Fund for further distribution to potential beneficiaries including any conditions attached to such grants to promote the object and purpose for which the Fund was established;
 - (g) approve the disbursements out of the Fund to further the objects and purpose of the Fund;
 - (h) manage, control and administer the assets of the Fund in such manner and for such purposes as to best promote the purpose for which the Fund is established;
 - (i) receive any gifts, grants donations or endowments made to the Fund or any other monies lent to the Fund;
 - (j) ensure that in any financial year, the distribution of the proceeds and the expenditure from the Fund shall not exceed the annual income of the Fund and any surplus income brought forward from the previous year;
 - (k) advise the Cabinet Secretary on matters relating to the distribution and application of its apportionment of the revenue of the National Lottery and any other matter which the Cabinet Secretary may require advice or general direction;
 - (l) ensure that the amount of money that may be spent from the Fund on administrative expenses does not exceed three per centum of the total funds in a fiscal year;
 - (m) advise the Cabinet Secretary on matters relating to the distribution and application of its apportionment of the revenue of the National Lottery and any other matter which the Cabinet Secretary may require advice or general direction;
 - (n) develop guidelines on savings for persons who purchase the National Lottery tickets; and
 - (o) perform such other functions as may be lawfully performed by the Board.

(3) The Board shall, while proposing and determining the allocation, setting the criteria and conditions for accessing the Fund, ensure equitable distribution across the country including allocations to state and non-state actors.

46. Annual programmes and projects

(1) The Board shall, at least six months before the beginning of each financial year, submit programme and projects being proposed for funding from the Fund to the Cabinet Secretary indicating—

- (a) the projected amount of money available for allocation in the succeeding fiscal year;

- (b) the proposed per centum limits to be allocated to the various good causes under each eligible sector of the economy;
- (c) the criteria to be applied in making allocations to various state and non-state actors based on the approved policy for allocation of resources under the Fund;
- (d) the per centum maximum limits to be applied for—
 - (i) administration costs of the Fund;
 - (ii) various programmes and projects under each sector;
 - (iii) amount to be left in the Fund for unforeseen needs;
 - (iv) allocation for sharing equitable share of revenue raised from the National Lottery;
 - (v) capacity building for receiving entities for each fiscal year to promote transparency and accountability of the resources received from the Fund; or
 - (vi) vetting out which allocations will be done through normal appropriations or outside the normal appropriation; and
- (e) the framework for monitoring, evaluation and reporting on the application of monies received from the Fund.

(2) The Board shall, through regular publications, inform the public of its activities and operations and ensure that such activities and operations shall be accessible to the public.

47. Administrator of the Fund

(1) The Chief Executive Officer of the Board shall be the Administrator of the Fund.

(2) The Administrator of the Fund, shall be subject to the Board, be responsible for the day to day running of the affairs of the Fund.

(3) In administering the Fund, the Administrator of the Fund shall—

- (a) open and operate such bank accounts approved by the Board and the National Treasury;
- (b) supervise and control the day-to-day administration of the Fund;
- (c) in consultation with the Board, develop such policies as may be necessary for the attainment of the objects of the Fund;
- (d) consult with the Board on matters relating to the administration of the Fund;
- (e) outsource services and enter into and sign commercial contracts or agreements in furtherance of the objects of the Fund, with the approval of the Board;
- (f) cause to be kept books of accounts and other books and records in relation to the Fund of all activities and undertakings financed from the Fund;
- (g) be the custodian of the assets and property of the Fund;
- (h) open a register of all beneficiaries who have received grants from the Fund and maintain a record of the amount disbursed and the balance thereof;
- (i) prepare, sign and transmit to the Auditor-General, in respect of each financial year and within three months after the end thereof,

a statement of accounts relating to the Fund and showing the expenditure incurred from the Fund, and such details as the Public Sector Accounting Standards Board may prescribe from time to time, in accordance with the provisions of the Act and Public Audit Act (Cap. 412B);

- (j) prepare quarterly and annual financial and non- financial reports in a format prescribed by the Public Sector Accounting Standards Board and submit the same to the National Treasury with copies to the Controller of Budget and the Commission on Revenue Allocation; and
- (k) implement any recommendations from the Board for policy guidance in furtherance of the objects and purpose of the Fund.

(4) The Administrator shall maintain an account for every person who purchases a National Lottery ticket for the purposes of the saving component.

48. Beneficiaries of the Fund

(1) The funds from the Fund shall be accessible to both state and non-state actors for the purposes of undertaking projects and programmes for good causes.

(2) A person or institution shall not be eligible for funding from the Fund if the person or institution is not tax compliant.

(3) A foreign institution shall not be eligible for funding from the Fund unless the institution—

- (a) is duly registered in Kenya;
- (b) has a local presence; and
- (c) has evidence of current or ongoing interventions with significant impact to citizen and communities of Kenya.

(4) An institution whose officials have not met any applicable prior clearance requirements shall not be eligible to receive funding from the Fund.

49. Financial year of the Fund

The financial year of the Fund shall be the period of twelve months ending on the thirtieth day of June in each year.

50. Investment of funds of the Fund

The Administrator may with the approval of the Board, invest any of the funds of the Fund, which are not immediately required for its purposes in accordance with the provisions of the Public Finance Management Act (Cap. 412A).

51. Retention of receipts

All receipts, earnings and accruals to the Fund, and the balance of the Fund at the close of each financial year, shall be retained by the Fund for use for the purpose for which the Fund is established.

52. Offence of misappropriation and penalty

A person who misappropriates any of the funds or, assets of the Fund, or assists or causes any person to misappropriate or apply funds, otherwise than in the manner provided in this Act, commits an offence and shall upon conviction, be liable to a fine not exceeding ten million shillings or imprisonment for a term not exceeding ten years, or to both.

CONDUCT OF BUSINESS AND AFFAIRS
OF THE NATIONAL LOTTERY BOARD (s.9)

1. Meetings

The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Unless three quarters of the members otherwise agree, at least fourteen days' notice in writing of a meeting shall be given to every member.

(3) A meeting shall be presided over by the Chairperson or in the absence of the Chairperson, the members present shall appoint one of their members to preside at the meeting.

(4) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in any case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(5) The chairperson shall, on the written application of one-third of the members, convene a special meeting of the Board.

(6) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Board.

2. Quorum

(1) Subject to subparagraph (2), the quorum of the meeting shall be two thirds of the members.

(2) A decision of the Board shall not be invalid by reason only of a vacancy among the members thereof.

3. Conflict of interest

(1) If a person has a personal or fiduciary interest in any matter before the Board and is present at a meeting of the Board or any committee at which such a matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching on such matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

4. Minutes

The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.
