

Malawi

Lotteries Act

Chapter 47:04

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Lotteries Act

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Malawi

Lotteries Act

Chapter 47:04

Commenced on 19 September 2003

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to provide for the regulation of National Lotteries and other lotteries; for the control and licensing of other lotteries, for the generation of funds for economic development and matters connected with or incidental thereto

Part I – Preliminary

1. Short title

This Act may be cited as the Lotteries Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"**Board**" means the National Lotteries Board established under [section 3](#);

"**Chairperson**" means the person designated as Chairperson of the Board under [section 6](#);

"**date**" means in relation to a lottery, the date on which the winners of that lottery are determined;

"**licensee**" means the person to whom the licence for the National Lottery has been issued under subsection (l) of [section 2](#);

"**lottery**" includes any game, scheme, arrangement, system plan, promotional competition or device of distributing prizes by lot or chance and any game, scheme, arrangement, system, plan, competition or device, which the Minister may by notice in the *Gazette* declare to be a lottery;

"**National Lottery**" means the lottery contemplated in [section 21](#) and includes all the lotteries conducted under the licence for the National Lottery, taken as a whole;

"**net proceeds of the National Lottery**" means the sums that are payable to the Board under paragraph (e) of subsection (3) of [section 22](#) but not the sums which are paid in prizes of the National Lottery;

"**newspaper**" includes a journal, magazine or other periodical publication;

"**participant**", in relation to a lottery, means a person who is in possession of a valid ticket in that lottery;

"**place**" means any place, whether or not it is a public place and includes any premises, building, dwelling, flat, room, office, shop, structure, vehicle, vessel or aircraft;

"**prescribe**" means prescribe by the Minister by regulation;

"**political office**" means the office of a Cabinet Minister, a Member of Parliament, a Member of a City, Town or District Council, as the case may be;

"**prize**" means the prize awarded to the winner of a lottery;

"**promoters**" means persons promoting other lotteries referred to in [section 36](#);

"**software**" means a set of instructions fixed or stored in any manner and which, when used directly or indirectly in a computer, directs its operation to bring about a result;

"**subscription**" means the payment, or delivery of any money goods article, matter or thing, including any ticket, coupon or entry form, for the right to compete in a lottery;

"**ticket**" means, in relation to a lottery, any symbol, sign, token, coupon, warrant, card, printed paper, document or list or any other means or device which confers or purports to confer the right to take part in a lottery and which is issued by or on behalf of the lottery in question.

Part II – Establishment of National Lotteries Board

3. Establishment of the National Lotteries Board

There is hereby established a Board to be known as the National Lotteries Board (hereinafter referred to as the "Board") which shall be a body corporate with perpetual succession and a common seal and shall have the capacity of suing and being sued and, subject to the provisions of this Act, of doing all such acts as a body corporate may by law perform.

4. Composition of the Board

- (1) The Board shall consist of not more than nine and not less than six members to be appointed by the Minister.
- (2) In order for the Board to fulfill its mandate effectively the composition of the Board shall include—
 - (a) a person with a business and an accounting background;
 - (b) a person with a social rehabilitation background who has been in practice for not less than five years;
 - (c) a person with a legal background and is registered to practice in Malawi;
 - (d) a person with law enforcement experience not below the rank of Commissioner;
 - (e) a person with knowledge and experience in the operation of lotteries and who is not in any gainful employment with any lottery operator; and
 - (f) four *ex officio* members.
- (3) In making an appointment under this section, the Minister shall require the person to be appointed to declare whether he has any, and if so what, financial interest in any lottery undertaking operating in Malawi.

5. Qualifications of members

The person to be appointed as a Member of the Board shall be—

- (a) a Malawian of not less than twenty-five years of age;
- (b) a person who has not been declared bankrupt for the last five (5) years;
- (c) a person who has not been convicted of any criminal offence for the past five years; and
- (d) a person who is not holding a political office.

6. Chairperson of the Board

The Minister shall designate one of the members appointed under [section 4](#), other than an *ex officio* member, as Chairperson.

7. Tenure and vacation of office of members

- (1) The members of the Board, other than *ex officio* members, shall hold office for a period of three years but shall be eligible for re-appointment for one more term.
- (2) Any member of the Board, other than an *ex officio* member, may at any time, by notice in writing to the Minister, resign from his office.
- (3) The office of a member, other than an *ex officio* member shall become vacant—
 - (a) upon his death;
 - (b) if he is adjudged bankrupt;
 - (c) if he is convicted of an offence and sentenced to imprisonment;
 - (d) if he is mentally or physically incapable of performing his duties as a member of the Board;
 - (e) if he is guilty of gross misconduct and is so notified in writing by the Minister; or
 - (f) if he is absent from three consecutive meetings of the Board, for which he has had notice, without any reasonable excuse.

8. Meetings of the Board

- (1) The Chairperson shall preside over every meeting of the Board, but in the event of the Chairperson being absent from any meeting of the Board, the members present shall elect from among their number a person to preside over that meeting.
- (2) At all meetings of the Board, six members shall form a quorum.
- (3) Meetings of the Board shall be held at least once in every three months and at such other times and at such places as the Chairperson may determine.
- (4) The Chairperson shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.
- (5) The Board may invite, for such a period of time as it thinks fit, any person whose knowledge or advice it may require, but a person so invited shall not be entitled to vote at any meeting of the Board or be counted as a member for the purpose of forming a quorum.

9. Remuneration of the Board

The members of the Board shall be paid such remuneration and allowances as the Minister may determine.

10. Functions of the Board

The Board shall have the following functions—

- (a) issue one licence to conduct the National Lottery as contemplated in subsection (1) of [section 21](#) and any matter contemplated in paragraph (g) of subsection (3) of [section 22](#);
- (b) ensure that—
 - (i) the National Lottery is conducted with all due propriety and strictly in accordance with the provisions of the Constitution, this Act, all other applicable laws and the licence for the National Lottery together with any agreement pertaining to that licence;
 - (ii) the interest of every participant in the National Lottery are adequately protected; and
 - (iii) subject to subparagraphs (i) and (ii), the net proceeds of the National Lottery are as large as possible;

- (c) monitor, regulate and police all lotteries;
- (d) advise the Minister of percentages of money to be allocated or review the percentage under paragraph (e) of subsection (3) of [section 22](#) as required;
- (e) advise the Minister on the efficacy of legislation pertaining to lotteries and ancillary matters;
- (f) administer and invest the money paid to the Board in accordance with this Act and the licence for the National Lottery;
- (g) perform such additional duties in respect of lotteries as the Minister may assign to the Board;
- (h) ensure that arrangements are made as may be specified in the licence for the protection of prize monies and sums for distribution;
- (i) advise the Minister on any matter relating to the National Lottery and on any other matter upon which the Minister requires the advice of the Board; and
- (j) set up a fund for prize money.

11. Powers of the Board

The Board shall have the following powers to—

- (a) acquire and dispose of assets of the Board;
- (b) set up a secretariat and employ management staff with appropriate qualifications;
- (c) generate revenue;
- (d) ensure that the winners in a lottery are paid their prize money promptly;
- (e) ensure that part of the funds generated are channeled towards poverty reduction programs, including to sectors such as sports, culture, small medium enterprises and social welfare services; and
- (f) develop guidelines for the operation of the National Lottery business in Malawi.

12. Secretariat of the Board

The Secretariat of the Board shall consist of a chief executive officer and other employees of the Board appointed under this Act.

13. Executive Director of the Board

- (1) The Board shall appoint, on such terms and conditions as it may determine, an Executive Director of the Board who shall be the Secretary of the Board as well as the Chief Executive Officer of the Board and in addition shall perform such duties as the Board shall assign to his office and ensure the effective administration and implementation of this Act.
- (2) Without derogation from the generality of the responsibilities and duties of the Executive Director conferred under subsection (1), the Executive Director shall be responsible for the day-to-day administration of the Board.
- (3) The Executive Director or such other officer of the Board as the Executive Director may designate, shall attend meetings of the Board and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require the Executive Director or such other officer to withdraw from such meetings.

14. Other employees

- (1) The Board may appoint, on such terms and conditions as it may determine, such other employees, subordinate to the Executive Director, as it considers necessary for the performance of its functions and to assist the Executive Director in discharging his duties.
- (2) The Board may delegate to the Executive Director the appointment of employees of such junior ranks, as the Board shall specify.

15. Procedures for the Board

- (1) The Chairperson or another person duly authorized by the Board shall sign all licences issued under this Act and all communications from the Board, and such documents may be published in the *Gazette*.
- (2) The application of the seal of the Board shall be authenticated by the signatures of the Chairperson or some other members of the Board duly authorized by the Board to authenticate the application of the seal thereof.

16. Annual Report

- (1) The Board shall, within three months after the end of each financial year, furnish to the Minister the full report on the exercise and performance of its functions during that year and such report shall include financial statements duly audited, the report of the auditors and such other information as the Minister may by notice in writing to the Board, require.
- (2) The Minister shall, after receiving the Report referred to in subsection (1), present it to Parliament at its next sitting.

Part III – Financial provisions

17. Funds of the Board

- (1) The funds of the Board shall consist of—
 - (a) such sums as may be appropriated by Parliament;
 - (b) subject to the provisions of this Act, the proceeds from the sale of tickets in any National Lottery;
 - (c) other money lawfully paid to the Board excluding any prize money paid by the licensee to the Board; and
 - (d) the payments to the Board in terms of [section 35](#).
- (2) Subject to the provisions of sections 72 and 73 of the Public Finance Management Act, the Board may with the approval of the Minister, borrow either temporarily, by way of overdraft or otherwise, such sum as it may require, for meeting its obligations or discharging its functions under this Act.

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18. Finances

There shall be paid out of payments made to the Board in terms of [section 35](#) such sums as are necessary to defray any expenses incurred by the Board, including the remuneration, allowances and other employment benefits of the Executive Director and members of staff of the Board.

19. Accounts and audit

- (1) The Board and the licensee shall keep proper books of accounts and records of all their transactions in respect of the National Lottery.
- (2) The Minister shall appoint independent auditors at the end of each financial year to examine and audit the accounts and all relevant documents of the Board.

20. Financial year

The financial year of the Board shall be the period commencing on the date of commencement of this Act and ending on the following 30th June and thereafter it shall be a period of twelve months ending on 30th June every year.

Part IV – Licensing of the National Lottery

21. License to conduct National Lottery

- (1) The Board shall issue one licence at any one time authorizing a person to conduct the National Lottery which for purposes of [section 46](#) will constitute a lottery, in accordance with the provisions of this Act.
- (2) Before a licence is granted under this section—
 - (a) the Board shall, by notice in the *Gazette* and in not less than two newspapers, invite interested parties to apply in writing for a copy of a request for proposal or any other document which may be made public and the Board shall require payments for such documents;
 - (b) the Board shall, before granting a licence, be satisfied that—
 - (i) the applicant for the licence contemplated in subsection (1) has sufficient and appropriate knowledge or experience to conduct the National Lottery, or has unconstrained and continuous access thereto, and shall be able to conduct the National Lottery strictly in accordance with this Act, the licence of the National Lottery and any agreement pertaining to the licence;
 - (ii) the applicant has the necessary financial and other resources to conduct the National Lottery; and
 - (iii) no political party in the country or political office bearer has any direct financial interest in the applicant or is a shareholder of the applicant.
- (3) In considering whether to grant the licence, the Board shall take into account—
 - (a) whether any person who appears before the Board is likely to manage the business or any part of the business of the National Lottery under the licence, is a fit and proper person to do so;
 - (b) whether any person for whose benefit that business is likely to be conducted is a fit and proper person to benefit from it; and
 - (c) whether any person who is likely to manage the business or any part of the business of the National Lottery under the licence, shall—
 - (i) do so with all due propriety and strictly in accordance with the Constitution, this Act, all other applicable laws and the licence for the National Lottery together with any agreement pertaining to the licence;

- (ii) ensure that the interests of every participant in the National Lottery are adequately protected; and
 - (iii) subject to subparagraphs (i) and (ii), ensure that the net proceeds of the National Lottery are as large as possible.
- (4) A licence granted under this section shall include the conditions contemplated in [section 22](#).
 - (5) The licence contemplated in subsection (1) may allow the licensee to appoint another person to conduct certain lotteries of the National Lottery on behalf of the licensee only with the written approval of the Board.
 - (6) The Minister shall inform Parliament regarding the person to whom a licence to conduct the National Lottery has been granted.

22. Requirements and conditions of licence

- (1) A licence granted under [section 21](#) shall—
 - (a) be in writing;
 - (b) specify the conditions attached to it; and
 - (c) be granted for a maximum period of five years and may be renewed for a further period of five years.
- (2) The Board may, in a case where the licence has been granted for less than five years, and at least one year before expiry of that licence, extend that licence for such further period as would, together with the initial period which that licence was granted, not exceed five years:

Provided that the licensee shall have no rights or legitimate expectation in respect of an extension of the period of validity of the licence other than the rights afforded by this subsection.
- (3) The conditions contemplated in subsection (1) shall include such conditions as the Board shall determine and shall in particular include conditions requiring the licensee to—
 - (a) obtain the consent of the Board before doing anything specified in the licence;
 - (b) refer specific matters to the Board, as the case may be, for approval;
 - (c) ensure that such requirements the Board may, from time to time, determine or approve in terms of the licence are complied with, including the imposition of penalties in the event of the licensee not complying with any provision of this Act or the licence;
 - (d) provide the Board, at times specified by the Board, with such information as the Board may require;
 - (e) make such arrangements as may be specified in the licence for the payment of such sums out of the net proceeds of the National Lottery as may be so specified to the Fund or the Board, at such times as may be specified;
 - (f) do such things in terms of the licence including the transfer of property or any rights, excluding intellectual property rights or proprietary software as the Board may require, upon the expiration of the licence;
 - (g) obtain the approval of the Board for any lottery and the rules thereof before the lottery is conducted under the licence for the National Lottery;
 - (h) allow the Board or any person designated by it to enter any premises or facility belonging to or under the control of the licensee or a member of the management of the licensee or,

premises to which the licensee has a right of access at any reasonable time if such entry is necessary for the protection of the integrity of the National Lottery and to—

- (i) examine or inspect anything, machine, document or data captured in any form, excluding proprietary software, found on or in the premises or facility, and make copies of or make extracts from that thing, machine, document or data;
 - (ii) seize, for the purpose of further examination or security information, anything, machine, document or data, excluding proprietary software, on or in such premises or facility which has a bearing on the conduct of the National Lottery;
 - (iii) seal or otherwise secure any such premises, facility, thing or machine on or in which any document or data which has a bearing on the conduct of the National Lottery is stored or captured; and
 - (iv) take such steps as may be reasonably necessary to protect the integrity and conduct of the National Lottery;
- (i) secure a valid and enforceable undertaking in a written form from—
- (i) the person controlling the licensee in any way whatsoever not to change that control of the licensee for the duration of the licence without the consent of the Board; and
 - (ii) the person controlling the licensee in any way whatsoever not to transfer, cede or in any other way encumber the licence to another person.
- (4) On—
- (g) requesting a copy of any document under paragraph (a) subsection (2) of [section 21](#);
 - (h) applying for the licence to be issued under subsection (1) of [section 21](#); or
 - (i) the granting of the licence under [section 21](#),
- [Please note: numbering as in original.]*

the person requesting a copy of a document, the applicant or the licensee, as the case may be, shall pay to the Board the prescribed fee.

23. Variation of conditions of licence

- (1) The Board may vary any condition in the licence granted under [section 21](#)—
 - (a) to the extent provided for in the proviso to subsection (1) of [section 22](#); or
 - (b) other than a condition contemplated in paragraph (a) only if the licensee consents to that variation, or if the licensee does not consent to that variation, only if—
 - (i) that variation is provided for in this Act or to the extent provided for in the licence; and
 - (ii) the licensee has been given a reasonable opportunity to make representations to the Board, as the case may be, in respect of the intended variation.
- (2) If the Board, after consideration of the licensee's representations to it, decides to vary a condition in accordance with that licence but without the consent of the licensee, the Board, shall cause a notice to be served on the licensee in which the licensee shall be informed of the variation and the date on which that variation shall take effect, which date shall not be less than twenty-one (21) working days after the date of service of such notice, unless the licensee agrees to a shorter period in writing.
- (3) The provisions of the licence to vary a condition in the licence under subsection (1) may allow the Board to add a condition to the licence.

24. Enforcement of conditions of licence

- (1) If the Board has reason to believe—
 - (a) that a person has contravened a condition in the licence granted under [section 21](#);
 - (b) that a person has contravened such a condition and there is a reasonable likelihood that the contravention will continue or be repeated; or
 - (c) that a person has contravened such a condition and that the contravention can be remedied, the Board, may apply to the High Court for an order prohibiting the contravention or, as the case may be, requiring the licensee and any other person who appears to the court to have been a party to the contravention, to take such steps as the court may direct.
- (2) The liability of the licensee to pay any money in terms of this Act or the licence or agreement pertaining thereto shall not be affected by the licence ceasing to be valid for any reason and such money may not be set off by the licensee against any amount due and payable.

25. Grounds for revocation of licence

The licence granted under [section 21](#) may be revoked by the Board on the following grounds if—

- (a) the licensee is no longer a fit and proper person to conduct the National Lottery, whether because of the commission of an act or insolvency, liquidation or for any other valid reason;
- (b) a condition contained in the licence has been materially contravened;
- (c) any information given by the licensee, any person who in any way controls the licensee or an agent or representative of the licensee to the Board—
 - (i) in or in connexion with the application for the licence;
 - (ii) in accordance with a condition in the licence; or
 - (iii) in making representations under subsection (1) of [section 26](#), in respect of financial matters regarding the National Lottery or in respect of any aspect of the management of the National Lottery, is materially false;
- (d) any person who is managing the business or any part of the business of the licensee or who is a supplier of goods or services to the licensee is not a fit and proper person to do so, whether because of the commission of an act or insolvency, liquidation, incarceration in a prison or other institution or for any other relevant reason, unless the licensee immediately takes steps to effectively disassociate himself or itself from that person;
- (e) any person for whose benefit the licence has been acquired or who is a holding company of the licensee or who in any other way controls the licensee, is not a fit and proper person to benefit from it, whether because of insolvency, liquidation, incarceration in a prison or other institution or for any other relevant reason;
- (f) the licensee has failed to take adequate steps to prevent the commission of fraud by his or its employees, agents, representatives, suppliers or by participants in the National Lottery after having been alerted to or becoming aware of conditions conducive to the commission of fraud or to instances of fraud or dishonesty;
- (g) the licensee, or any of his or its employees, agents representatives or suppliers prevent the Board or any person designated by it from exercising his or its rights contemplated in paragraph (h) of subsection (3) of [section 22](#);
- (h) application has been made to the High Court for the sequestration or liquidation, as the case may be, of a person who in any way controls the licensee;

- (i) the licensee or his representative contravenes the law; or
- (j) the licensee or his representative gives information in the application for a licence or on financial matters regarding the lottery which is materially false.

26. Notice of revocation

- (1) If the Board is satisfied that grounds exist for the revocation of the licence granted under [section 21](#), it shall notify the licensee in writing of the existence of such grounds and call upon the licensee to furnish reasons within fourteen days of service of that notice, sent to the registered physical address of the licensee, as to why the licence should not be revoked, failing which the licence will cease to be valid upon the expiration of the said period of fourteen days.
- (2) If the licence for the National Lottery ceases to be valid in terms of subsection (1), the Board shall forthwith inform the licensee in writing of that fact and of the date upon which the licence ceased to be valid.

27. Suspension of licence

- (1) The Board may order a suspension of the licence in the notice contemplated in subsection (1) of [section 26](#) as from the date of service of that notice for a period of not longer than thirty days after the licensee has furnished those reasons:

Provided that the Board or whoever acts under this section, shall inform the other of his or its actions.
- (2) If the Board decides to suspend the licence under subsection (1) the Minister shall forthwith inform Parliament of that fact and of the grounds for the suspension, and if Parliament is not then in session, on the first day of the next session of Parliament.
- (3) The licence shall immediately cease to be valid if it is suspended for a second time.

28. Revocation of licence

- (1) If reasons are furnished by the licensee as contemplated in subsection (1) of [section 26](#), the Board, shall after considering such reasons—
 - (a) decide whether or not to revoke the licence;
 - (b) call upon the licensee to appear before the Board on a specified date to make oral representations in support of any written representations made by the licensee or to answer any questions which the Board may have with regard to such written representations, thereafter the Board shall consider the matter and decide whether or not to revoke the licence.
- (2) If the Board decides to revoke the licence, it shall by written notice served at the registered head office of the licensee notify the licensee of that fact, of the grounds for the revocation and of the date on which the revocation shall take effect.
- (3) If the Board decides to revoke the licence in terms of subsection (1), it shall inform the Minister and the Minister shall inform Parliament of that fact and of the grounds for the revocation forthwith and if Parliament is not then in session, on the first day of the next session of Parliament.

Part V – Establishment of National Lottery Distribution Fund

29. Establishment of National Lottery Distribution Fund

There is hereby established a fund to be known as the National Lottery Distribution Fund (hereinafter referred to as "the Fund") which shall be managed by the Board.

30. Fund to vest in and administered by the Board

- (1) The Fund shall vest in and be administered by the Board.
- (2) The Minister shall include in his Report to Parliament information regarding the operations of the Fund.

31. Revenue of the Fund

The Fund shall consist of—

- (a) the sums paid to the Fund in terms of paragraph (e) of subsection (3) of [section 22](#);
- (b) interest and dividends derived from the investment of money standing to the credit of the Fund; and
- (c) other money lawfully paid into the Fund.

32. Banking account

- (1) Money in the Fund shall, pending the application thereof in terms of this Act be deposited into an account to be known as "The National Lottery Distribution Fund" at a financial institution.
- (2) The financial institution where the account referred to in subsection (1) is maintained, shall not in respect of any liability of the Board, not being a liability arising out of or in connexion with any such account, have or obtain recourse to any rights, whether by set-off, counter-claim, charge or otherwise, against money standing to the credit of such an account.

33. Investment of money not immediately required

- (1) Any money of the Fund or the Board which is not immediately required for allocation may be invested with a financial institution or in any manner the Board deems fit and approved by the Minister.
- (2) Any unexpended balance of the money of the Fund at the end of any financial year shall be carried forward as a credit to the next financial year.

34. Allocation of money in the Fund

- (1) The Minister, in consultation with the Board shall prescribe the amount of money and the manner in which the money in the Fund shall be allocated to different sectors, and other good causes for the welfare of the general public and contribution to the national economy.
- (2) The Minister in consultation with the Board shall allocate an amount from the Fund to the Board under [section 35](#).

35. Payments from Fund in respect of expenses

- (1) At such times as the Minister deems appropriate, payments shall be allocated to the Board out of money in the Fund held under subsection (2) of [section 34](#) in respect of the Board's expenses.
- (2) In determining what amounts are sufficient for meeting payments referred to in subsection (1), the Minister shall take into account sums paid or to be paid to the Board in terms of paragraph (e) of subsection (3) of [section 22](#).

Part VI – Authorization of other lotteries

36. Authorization of other lotteries

- (1) The Board may, in its absolute discretion authorize the promotion and conduct of a lottery, not being a lottery contemplated under the provisions of [section 21](#)—
 - (a) which is intended to raise funds for social service, public welfare, relief of distress or patriotic purposes or to provide recreational or sporting facilities;
 - (b) of which at least one-quarter of the gross proceeds is to be devoted to the object for which the lottery is promoted; and
 - (c) in respect of which an application, which shall state in detail the purposes for which the lottery is to be promoted, is made by the intended promoters to the Board.
- (2) The Board may, in its absolute discretion and subject to such conditions as it may think fit to impose, authorize the promotion and conduct of any lottery not otherwise authorized or permitted under the provisions of this Act.
- (3) Where in the case of a lottery authorized under the provisions of subsection (1), less than one-quarter ($\frac{1}{4}$) of the gross proceeds of the lottery is devoted to the object for which such lottery is promoted or any of the proceeds are devoted to any purpose, other than expenses and prizes, which is not such an object, each promoter of such lottery commits an offence and on conviction shall be liable to a fine of K100,000 and to twelve months imprisonment.

37. Powers of the Board in respect of other lotteries

- (1) The Board may—
 - (a) make such investigation, or require the submission of such information, as it may deem necessary, in order to enable it to examine any application made to the Board under the provisions of subsection (1) of [section 36](#);
 - (b) impose, in respect of any authorization granted under the provisions of the said subsection such conditions as it may deem necessary in order to ensure that the lottery concerned is promoted and conducted as efficiently as possible in the interest of the purposes for which it is being promoted and of the public in general;
 - (c) take such steps, as it may deem necessary, in order to ensure that any conditions imposed under paragraph (b) have been or are being complied with;
 - (d) require any lottery which it has authorized to render accounts to the Board in such form and within such periods as it may specify;
 - (e) guide and coordinate the proper and equitable distribution of the charitable funds from any lottery authorized by it;
 - (f) make recommendations from time to time to the Minister for the better control of lotteries with particular regard to the protection of the public from fraud.
- (2) If any condition, imposed under the provisions of subsection (2) of [section 36](#) or of paragraph (b) of subsection (1), is broken, each of the promoters of the lottery concerned and, where the person by whom the condition is broken is not one of the promoters, that person also, commits an offence and on conviction shall be liable to a fine of K100,000 and to twelve months imprisonment:

Provided that it shall be a defence for a person charged only by reason of his being a promoter of the lottery to prove that the offence was committed without his knowledge.

38. Imposition of condition in respect of other lotteries

Without prejudice to the generality of paragraph (b) of subsection (1) of [section 37](#), the Board may, in respect of any lottery authorized by it, impose conditions under the said paragraph—

- (a) providing for the amount, not exceeding twelve and one-half per cent (12 ½ per cent) of the gross proceeds of the lottery, which the promoters thereof may deduct from such proceeds in respect of operating expenses:

Provided that, in the case of a series of lotteries proposed to be promoted by the same persons, the Board may, in its discretion, allow the deduction of an amount in excess of the aforesaid percentage in respect of all or any of the lotteries drawn within the period of twelve months from the date of the draw of the first lottery in such series;

- (b) providing for the protection of purchasers of tickets or chances in the lottery against fraud;
- (c) providing for the submission of accounts to the Board by the promoters of the lottery;
- (d) restricting the amount of the proceeds of the lottery which may be used for the purposes of such lottery outside Malawi, which amount shall not exceed one-fifth (#) of the total amount devoted to the object for which the lottery is promoted; and
- (e) relating to the provision by the promoters of the lottery of guarantors to cover the expected proceeds, or any part thereof, of such lottery.

39. Utilization of gross proceeds of a lottery for certain purposes

- (1) Where the promoters of a lottery authorized under [section 36](#) wish to—

- (a) build up a reserve fund for prize stabilization;
- (b) create a reserve to meet extraordinary expenditure not attributable to any particular draw;
- (c) acquire premises for the purposes of providing office or staff accommodation; or
- (d) incur capital expenditure,

they shall apply to the Board for permission to do so setting out in such application details of their proposal.

- (2) Where an application is made to the Board under the provisions of subsection (1), the Board may, if it is satisfied that the application is made in respect of a recurrent lottery and that the lottery concerned would, if the application were approved, be promoted and conducted more efficiently in the interest of the purpose for which it is being promoted and of the public in general, approve the application.
- (3) Where the Board approves an application under the provisions of subsection (2), it may authorize the promoters of the lottery to utilize a portion of the gross proceeds of one or more future lotteries for such of the purposes set out in subsection (1) as are referred to in the said application:

Provided that the Board shall not authorize the promoters to utilize an amount in excess of one-twentieth ($1/20$) of the gross proceeds of any lottery for such of the said purposes as are referred to in the said application.

- (4) Notwithstanding the provisions of [section 38](#), any amount which the promoters are authorized to utilize under the provisions of subsection (3) shall be in addition to any amount deducted from the gross proceeds in accordance with the provisions of paragraph (a) of [section 38](#).
- (5) The Board may attach such conditions, as it may deem necessary, to any approval or authority given under the provisions of this section.

- (6) In the event of the promoters ceasing to promote further lotteries, any assets acquired with funds utilized in accordance with the provisions of this section shall be sold and the proceeds of such sale disposed of in meeting winding up expenses and accrued liabilities, not otherwise provided for, and any residue remaining after any such expenses or liabilities have been met shall be disposed of in such manner as the Board may direct.

40. Prescribed fees

- (1) The promoters of any lottery authorized under the provisions of [section 36](#) shall pay the Board such fee or fees in respect of such authorization as may from time to time be prescribed.
- (2) For the purposes of any condition imposed upon the authorization of a lottery of the limitation of operating expenses, any fee paid under the provisions of this section shall be deemed to be part of such expenses.

41. Invalid conditions by promoters

For the purposes of any civil proceedings brought in respect of any ticket or chance in any lottery authorized under the provisions of [section 36](#), a condition imposed by the promoters of the lottery requiring that tickets or chances in the lottery shall not be sold or prizes awarded, to any specified class or classes of persons shall be deemed to be null and void

42. Power to require incorporation of promoters

Before authorizing the promotion of a lottery under the provisions of subsection (1) of [section 36](#), the Board may require the promoters of the lottery to become a body corporate under any written law for the time being in force relating to incorporation.

43. Lotteries incidental to certain entertainment

- (1) A lottery may be promoted and conducted as an incident of any entertainment to which this section applies provided that all the conditions specified in subsection (2) are observed in connexion with the promotion and conduct of the lottery.
- (2) The conditions referred to in subsection (1) are that—
 - (a) the whole proceeds of the entertainment, including the proceeds of the lottery, after deducting—
 - (i) the expenses of the entertainment excluding the expenses incurred in connexion with the lottery;
 - (ii) the expenses incurred in printing tickets in the lottery; and
 - (iii) such sum, if any, as the promoters of the lottery think fit to appropriate on account of any expenses incurred by them in providing or purchasing prizes in the lottery, shall be devoted to the purpose other than private gain;
 - (b) tickets or chances in the lottery shall not be sold, or issued, nor shall the result of the lottery be declared, except on the premises on which the entertainment takes place and during the progress of the entertainment; and
 - (c) the facilities provided for participating in lotteries shall not be the only, or the only substantial, inducement to persons to attend the entertainment.
- (3) If any of the conditions specified in subsection (2) is broken or not complied with, every person concerned in the promotion or conduct of the lottery commits an offence and on conviction shall be liable to a fine of K100,000 and to twelve months imprisonment:

Provided that in any proceedings instituted under the provisions of this subsection it shall be a defence to prove that the offence was committed without the knowledge of the person against whom such proceedings are brought.

- (4) The entertainments to which this section applies are bazaars, sales or work, fetes, chances and other entertainments of a similar character, whether limited to one day or part thereof or extending over two or more days.

44. Private lotteries

- (1) In this section—

"private lottery" means a lottery within Malawi which is promoted for, and in which the sale of tickets or chances by the promoters is confined to, either—

- (a) members of one club or association established for social or common interest or recreational purposes only;
- (b) persons all of whom work in the same organization; or
- (c) persons all of whom reside in the same building,

and which is promoted by persons each of whom is a person to whom, under the foregoing provisions, tickets or chances may be sold to by the promoters and, in the case of a lottery promoted for the members of a club or association, is a person authorized in writing by the governing body of the club to promote the lottery.

- (2) A private lottery may be promoted and conducted provided that all the conditions specified in subsection (3) are observed in connexion with the promotion and conduct of the lottery.
- (3) The conditions referred to in subsection (2) are that—
 - (a) the whole proceeds, after deducting only expenses incurred for printing and stationery, shall be devoted to the provision of prizes for purchasers of tickets or chances or, in the case of a lottery promoted for the members of the club or association, shall be devoted either to the provision of prizes as aforesaid or to purposes which are purposes of the club or association, or, as to part, to the provision of prizes as aforesaid and as to the remainder, to such purposes as aforesaid;
 - (b) there shall not be exhibited, published or distributed any written notice or advertisement of the lottery other than—
 - (i) a notice thereof exhibited on the premises of the club or association for whose members it is promoted or, as the case may be, within the organization or in the building which the persons for whom it is promoted work or reside; and
 - (ii) the announcement or advertisement thereof as is contained in the tickets, if any;
 - (c) the price of each ticket or chance shall be the same, and the price of any ticket shall be stated on the ticket;
 - (d) every ticket shall bear upon the face of it the names and addresses of the promoters of the lottery and a statement of the persons to whom the sale of tickets or chances by the promoters is restricted, and a statement that no prize won in the lottery shall be paid or delivered by the promoters to any person other than the person whom the winning ticket or chance was sold, and no prize shall be paid or delivered except in accordance with the statement;
 - (e) no ticket or chance shall be issued or allotted by the promoters except by way of sale and upon receipt of the full price thereof, and no money or valuable thing so received by a promoter shall in any circumstances be returned; and

- (f) no ticket in the lottery shall be sent through the post or any electronic devices.
- (4) If any of the conditions specified in subsection (3) is broken, each of the promoters of the lottery and, where the person by whom the condition is broken is not one of the promoters, that person also, commits an offence and on conviction shall be liable to a fine of K100,000 and to imprisonment for twelve months:

Provided that it shall be a defence for a person charged only by reason of his being a promoter of the lottery to prove that the offence was committed without his knowledge.

Part VII – Offences and penalty

45. Offences by bodies corporate

Where a person convicted of an offence under this Act is a body corporate, every person who at the date of the commission of the offence was a director or officer of such body corporate shall also be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge.

46. Unauthorized lotteries

- (1) Any lottery promoted or conducted otherwise than in accordance with the provisions of this Act shall be deemed to be an unauthorized lottery.
- (2) Any person who opens, keeps or uses any place for carrying on an unauthorized lottery commits an offence and upon conviction shall be liable to a fine of K200,000 and to imprisonment for two years.
- (3) Any person who prints or publishes, or causes to be printed, or published, any advertisement or other notice of, or relating to an unauthorized lottery, whether promoted within Malawi or elsewhere, or relating to the sale of any ticket or chance in any such lottery, commits an offence and upon conviction shall be liable to a fine of K200,000 and to imprisonment for two years.
- (4) Where any person is convicted of an offence under the provisions of this section, the court may, in addition to or in lieu of any penalty which may be imposed, order the forfeiture of any instrument, apparatus or device used in connexion with the lottery.

47. General offences

- (1) Any person who—
 - (a) participates in a lottery; or
 - (b) conducts, facilitates, promotes or derives any benefit from a lottery unless such lottery is or has been authorized by or under this Act, commits an offence.
- (2) Any person who—
 - (a) contravenes or fails to comply with any provision of this Act;
 - (b) forges or in any other fraudulent way changes any ticket or any other document or thing pertaining to any lottery;
 - (c) knowingly sells or in any other way disposes of any forged ticket or any other document or thing pertaining to any lottery; or
 - (d) with intent to defraud, alters any number or figure on any ticket or any other document or thing pertaining to any lottery;
 - (e) obtains any direct or indirect financial gain which is not solely a share in the prize payout, by forming, conducting or in any other way promoting a syndicate for the purchase of a ticket; or

- (f) sells a ticket—
 - (i) at a price higher than that which is printed on the ticket;
 - (ii) on condition that the seller of the ticket shares in the prize in the event of a ticket sold by him being the ticket in respect of which a prize was paid;
 - (iii) on any condition not provided for in the rules of the lottery concerned;
 - (iv) on credit with the financial assistance in any form of the seller; or
 - (g) conducts, organizes, promotes, derives or manages any scheme, plan, competition, arrangement, system, game or device which directly or indirectly provides for betting, wagering, gambling, or any other game of risk on any outcome of any lottery unless authorized by or under this Act or any other law,
- commits an offence,

48. Offences relating to National Lottery

- (1) Any person who—
 - (a) advertises or offers the opportunity to participate in a lottery, promotional competition, competition or game of another description and who gives, by whatever means, a false indication that it is a lottery, competition or game forming part, or is otherwise connected with, the National Lottery;
 - (b) with intent to defraud, falsely makes, forges, utters, passes or counterfeits a National Lottery ticket;
 - (c) influences or attempts to influence the winning of a prize through the use of coercion, fraud or deception, or through tampering with lottery equipment, systems, software, data, tickets or materials; or
 - (d) fails to comply with any regulation made under [section 50](#), commits an offence.

49. Penalties

Any person convicted of an offence under this Act, for which no penalty is provided for, shall be liable to a fine of K500,000 and to imprisonment for four years.

Part VIII – Miscellaneous provisions

50. Regulations in respect of National Lottery and other lotteries

- (1) The Minister may, in consultation with the Board make regulations for the proper conduct of the National Lottery, other lotteries and generally for the carrying into effect of this Act.
- (2) Without prejudice to the generality of the foregoing, the Minister, in consultation with the Board, may make regulations regarding—
 - (a) the conduct of the National Lottery or other lotteries including—
 - (i) the minimum age of persons to whom or by whom tickets or chances may be sold;
 - (ii) the persons or categories of persons who shall be disqualified from participation;
 - (iii) the places where or circumstances or manner in which tickets or chances may be sold or persons who may be invited to buy such tickets or chances;
 - (iv) the circumstances under which lotteries may be advertised and the information that is to appear in an advertisement for a lottery;

- (v) the places where or circumstances or manner in which signs relating to a lottery may be displayed;
- (vi) application and licensing fees referred to in paragraph (a) of subsection (2) of [section 21](#);
- (vii) in general any other matter which may be necessary or expedient to prescribe in order to achieve or promote the objects of this Act;
- (b) the making of oral representations as contemplated in paragraph (b) of subsection (1) of [section 28](#);
- (c) prescribing the form in which any application for the authorization under the provisions of [section 36](#) shall be made;
- (d) prescribing the amount of fees payable under [section 40](#); or
- (e) management of the National Lottery Distribution Fund referred to in [section 29](#).

51. Savings

Nothing in this Act shall apply in relation to any lottery or competition in respect of which there is no subscription.

52. Lottery debts enforcement

Any lottery debt lawfully incurred by a person in the course of any lottery shall, notwithstanding provisions of any law or the common law, be enforceable in a court of law.

53. Confidentiality

- (1) Subject to the provisions of the Constitution, any legislation which may be enacted in pursuance of the Constitution or any other relevant law, no person, including the Minister, a member or employee of the Board or the Department, or a former member or employee of the Board or the Department, may—
 - (a) in any way disclose any information submitted by any person in connexion with any application for any licence, certificate or appointment under this Act, or;
 - (b) publish any information obtained in contravention of paragraph (a), unless ordered to do so by a court of law or unless the person who made such application consents thereto in writing.
- (2) Any person who contravenes subsection (1) commits an offence.