



ONG'ANYA OMBO
ADVOCATES

Summary: Betting, Lotteries and Gaming Act

About Us

Ong'anya Ombo Advocates specialises in proffering Strategic Legal Services to both natural and juristic persons in the Republic of Kenya, and beyond.

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The Government of Kenya regulates gambling activities through the Betting, Lotteries, and Gaming Act as the primary legislation. There is a proposed legislation known as Gaming Bill, 2019 that will repeal the BLGA, if it becomes law. The Gaming Bill, 2019 will have immense impact in the gambling industry.

Betting Control & Licensing Board

Powers of the Board

The Betting, Lotteries and Gaming Act (BLGA) establishes an agency named Betting Control and Licensing Board (BCLB) that regulates all activities concerning gambling in Kenya. BCLB has the power to issue licenses and permits, and vary, suspend, cancel, and investigate any licensee or permit-holder.

Application for licenses and permits

BCLB, when considering various applications for licenses and permits, can conduct further investigations or seek more information to reach an informed conclusion. In the event of a refusal, the BCLB is not required to issue reasons for the refusal.

Fit and proper criteria for casinos

The BLGA was amended in 2018 to provide specific conditions for what it refers to as **fit and proper criteria for casinos**. BCLB will consider factors such as financial status, education/qualifications/experience, other approvals or license status, and integrity while carrying on the business.

BCLB, regardless of the above, may consider factors such as contravention of any of Kenyan laws, liquidation, issues touching on fraud or improper practice, the applicant's associates, or activities that result in casting doubt about capacities.

While conducting assessment and investigation, BCLB relies on information shared by the applicant and any other sources.

Applicants to furnish Board with security

BCLB will require an applicant to provide security not exceeding Kenya Shillings Forty Thousand upon issuance of a license – the security is refundable and can be forfeited. The security does not double where the application is made through a partnership. Also, it can be varied reasonably based on the business.

Provisions of licenses and permits

A license or permit will indicate the location and premises that the business will be located and the set operation conditions will be endorsed on the license or permit. However, if a business wants to change the physical address, it must seek approval from BCLB – in certain instances, new conditions might be introduced.

Display of license and permit and surrender of same on suspension or cancellation

It is a requirement to openly display the license or permit at the head office and copies of the license or permit at the branches. In the event of cancellation or suspension of the license, it is required to have the license or permit surrendered to the BCLB.

Duration of the license and permit

A license or permit issued as per the BLGA will expire on June 30th unless BCLB provides any other terms to the contrary.

Books to be kept by licensee

It is essential that the business will keep books as prescribed and should at all times reflect true or verifiable information.

Submission of accounts by licensees and permit-holders

BCLB may ask for an audited statement of accounts of a licensee at least once every twelve months. Also, BCLB may require a specific group of permit holders to provide accounts ranging within a certain period. The accounts

submitted to BCLB may be subjected to further audit by an accountant who will act as the auditor – the licensee or permit-holder will be notified.

Licenses and permits not to be transferred

The licenses and permits are not transferrable, and the BLGA does not address whether a person can seek authority to transfer a license or permit.

Fees

The fee, which is prescribed by the BCLB, is paid for each license and permit that an applicant is seeking for purposes of carrying a business.

Control & Licensing of Betting

Offences relating to unlicensed betting premises

A person offering betting or betting oriented activities on premises without a license or requisite license is operating under unlicensed betting premises. The offences concerning unlicensed betting premises are keeping or using premises, permit the use of the premises, care or management or offering any assistance to the premises, making any publication/announcement or causes such a publication/announcement, exchange of money pertaining to any unlicensed betting premises.

Prohibition against unlicensed bookmaking

A person operating a business as a bookmaker contrary to the conditions or license issued or without a license is considered engaging in unlicensed bookmaking practices.

BCLB will factor activities such as accepting or receiving bets or settlements or pays money or money worth concerning bets or in possession of any piece of information that relates or appear to relate to the business of a bookmaker.

Bookmakers licenses

A person intending to operate as a bookmaker can secure any of the three licenses, which are on-the-course; off-the-course; and on and off the course. BCLB, while considering the application, will also factor in how far the business premises are far from businesses licensed for the sale and consumption of liquor.

Betting by means of unlicensed totalizator offence

Effecting a betting transaction by means or permit use of totalisator contrary to a license will be deemed an offence.

Totalisator licenses

BCLB may issue any of the three licenses, which are on-the-course; off-the-course; and on and off the course. Further, BCLB may authorize a licensee off-the-course to enter into a transaction through an agent regarding a totalizator to be used on-the-course. To operate as an agent, the person must be appointed by the licensee and approved by the BCLB.

Prohibition of laying of totalisator

A holder of a totalisator license is prohibited from engaging in a bet transaction whereby licensee agrees to pay for a win of the other party an amount that is dependent on the result of the working of that totalisator on the race; or sells or purchases anything that creates or entitles the purchaser or holder an interest in the result of the working of that totalisator on a horse race or other race; or contracts or bargains to pay or receive money upon an event determined or to be determined by the result of the working of that totalisator on a horse race or other race.

Betting transaction on totalisator after time of race

It is prohibited for the totalisator license holder to receive or permit betting transaction after a race has commenced; registering any money received on the totalisator once the race starts; taking into account any betting transaction not registered on the totalisator; or permit payment calculated contrary to s 31 of the BLGA.

<i>Pool betting schemes</i>	<p>Any person engaging in any activity related to pool betting contrary to a licensee issued or without a licensee is committing an offence. The offences include transferring money – resulting from that illegality – out of Kenya.</p> <p>However, where a publication of an advertisement or notice in a newspaper printed outside Kenya and normally circulating within Kenya shall not be an offence if the scheme to which the advertisement or notice refers is promoted outside Kenya.</p>
<i>Licenses in respect of pool betting schemes</i>	The licenses available under this bracket are promoter's license, principal-agent license, and agent license.
<i>Authorization of bookmaking at race meetings</i>	If the promoters of a race meeting desire bookmakers to carry on business at the race meeting, they will apply to the BCLB to secure approval.
<i>Prohibition against touting</i>	A person who touts or otherwise personally solicits the patronage of members of the public with a bookmaker off the licensee's betting premises, or authorised race meeting shall be guilty of an offence.
<i>Prohibition against advertising of betting</i>	A person holding a betting, bookmaking, or pool betting scheme license can only advertise upon securing approval from the BCLB.
<i>Prohibition against liquor on licensed premises</i>	Other than authorized race meetings, licensed betting premises are not allowed to allow the sell, supply, consumption, or permit consumption of any alcoholic beverage.
<i>Games of chance</i>	Licensed betting premises will not be used in any way to conduct games of chance.
<i>Betting with young persons</i>	<p>A young person, as per the BLGA, is an individual below the age of eighteen years.</p> <p>Betting with a young person entails employing a young person on licensed betting premises connected with a pool betting scheme or any betting activity. However, it does not include effecting betting by post or carriage of communication relating to betting for intended conveyance by post.</p> <p>Betting with a young person entails receiving or negotiating a bet through a young person, or sending any circular, notice, advertisement, letter, or other betting related information to a young person.</p>
<i>Betting in public places</i>	<p>Betting in public places is prohibited. A police officer may arrest a person for such an offence without a warrant of arrest.</p> <p>Public places include streets. Streets, as per the BLGA, includes bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not, which is for the time being open to the public; and the doorway and entrances of premises abutting upon ground adjoining and open to a street shall be treated as forming part of the street.</p>
<i>Tax</i>	There is a betting tax that must be paid to the Tax Collector on the 20 th of every month.

Unauthorised lotteries and offences relating to the same

A person who operates a lottery contrary to the conditions of its license or without a license is considered to be in contravention of the BLGA. Operating a lottery includes printing, publishing, issuing notices, or advertising.

However, where a publication of such an advertisement or notice in a newspaper outside Kenya and normally circulating within Kenya shall not be a contravention of this subsection if the lottery to which the advertisement or notice refers is promoted and conducted outside Kenya.

A person dealing in or intending to operate an unauthorised lottery in Kenya or elsewhere prints a ticket for use in the lottery; sells, distribute, offers, advertises, or in possession of tickets or chances in the lottery; distributes or has in possession any documents or information that relates to the lottery; finds a way to introduce tickets or advertise in Kenya; sending money or something valuable resulting from the unauthorized lottery; or causes or procures anyone to do such activities.

Authorization of public lotteries for charitable purposes

A licensee holding a public lottery may seek the BCLB to permit it to effect a charitable lottery that intends to raise funds for social services, public welfare, relief of distress or patriotic purposes or recreational or sporting facilities.

A minimum of 25% of the gross must be directed to that course. However, it should not exceed 45% of the gross proceeds.

Powers of the Board with respect to public lotteries

The BCLB has the authority to set terms that enhance the purposes of the intended activity. These measures will include protecting the purchasers of tickets or chances against fraud.

Promoters of public lotteries

The BCLB may require that the promoters of a public lottery to form a body corporate under any law.

Board's authorizing lotteries relating to horse racing

The BCLB may authorize lotteries with regards to horse races or any other type of race.

Exemption of certain lotteries conducted for charitable, sporting or other purposes

A lottery that is promoted wholly or mainly in favour of a society and for one or more reasons that are charitable; participation or in support of athletic sports, games or cultural activities; or any activity that is not for private gain or commercial nature.

Exemption of small lotteries incidental to certain entertainments

A lottery effected as an entertainment incident will be considered as such if the proceeds of the entertainment after the deduction are devoted to a purpose other than private gain.

The tickets or chances concerning the activity will be sold at the premises and during the entertainment only. The opportunity to win a prize should not be the main reason to have people attend.

The prizes in the lottery will be in possession, custody of and the disposal of the promoters; ticket or chance will be issued or allotted upon full payment; the pricing of ticket and chance will be the same and indicated on the ticket; all exhibits, notices or advertisements will be within the entertainment premises; no money prizes; and no ticket or chance will be sold at a price exceeding KES. 10.

<i>Private lottery</i>	<p>A Private Lottery refers to a lottery promoted to a confined group of people like a society established for social or recreational purposes only; people who work on the same premises; or reside on the same premises.</p> <p>If the lottery is promoted for society members, the person must have written authorization from society's governing body. In this case, a society includes a club, institution, organization, or other association of persons.</p>
<i>Who cannot be sold to lottery tickets</i>	The sale of lottery tickets is limited to or by a person aged sixteen and above.
<i>Submission of accounts and returns in respect of lotteries</i>	BCLB may require lotteries operating under s 40 [exemption of certain kind of lotteries conducted for charitable, sporting or other purposes], s 41 [exemption of small lotteries incidental to certain entertainment], and s 42 [private lotteries] to submit accounts and make returns in a prescribed form.
<i>Lottery tax</i>	There is a lottery tax that must be paid to the Tax Collector on the 20 th of every month.

Gaming

<i>Offences relating to unlicensed gaming activities</i>	A person offering gaming or gaming-oriented activities on premises without a license or requisite license is considered operating under unlicensed gaming premises. The offences concerning unlicensed gaming premises are keeping or using premises, permitting the use of the premises, care or management or offering any assistance to the premises, making any publication/announcement or causes such a publication/announcement, and exchanging money to any unlicensed gaming premises.
<i>Board may license public gaming premises</i>	The BCLB may issue licenses to a person to organize and manage the game other than small gaming parties [s 50] or gaming at entertainments not held for private gain [s 52]. The license will be issued in respect of each premise to use for gaming and will indicate the licensed games – and any other applicable conditions.
<i>Offences relating to licensed gaming premises</i>	<p>If a licensee uses or permits playing of games not authorized or provides room for unfavourable terms towards other players or fails to comply with the set conditions, will be guilty of an offence. However, if the licensee can establish that they were not aware of, part of, or authorise the activities in question and exercised all due diligence to prevent it, they will be let free.</p> <p>A person who conducts or authorizes any activity that requires a gaming license, authorization or approval without the set requirements will be acting in contravention of the BLGA.</p>
<i>Gaming with young persons an offence</i>	A person who allows a young person to engage in gaming, come to a gaming premises or employ such an employee will be committing an offence.
<i>Small gaming parties</i>	BLGA, through the <i>Small Gaming Parties</i> , differentiates Gaming on Premises and Gaming Premises . Small Gaming Parties will be within the confines of the law if the chances or gaming has no favouritism towards any player or players; no other payment in money or money's worth is required for a person to take part in the gaming; any contributions to a game must be paid out as player winnings only; no persons under the age of 18 to be included as players unless it is a private dwelling or in the presence of a parent/guardian and upon securing permission.

Saving for clubs

A game will be considered as falling under ***Saving for Clubs*** if the gaming is an activity of the club and not a substantial activity of the club; other than annual subscription, there was a fixed amount to be paid before the game began; only members of the club or a *bona fide* guest took part in the game; that not more than two bona fide guests of any one member took part in the gaming; and that the club is so constituted and conducted as not to be of a merely temporary character.

Gaming at entertainments not held for private gain

Games of chance or of chance and skill combined and conducted as an incident to an entertainment is lawful if conducted as per the provisions of the BLGA.

Entertainment means a bazaar, sale of work, fete dinner, dance, sporting or athletic event or other entertainment of a similar character whether limited to one day or part thereof or extending over two or more days.

Gaming machines

The BCLB must authorize all machines used in gaming.

Gaming in public place

Gaming in public places is prohibited. A police officer may arrest a person for such an offence without a warrant of arrest.

Public places include streets. Streets, as per the BLGA, includes bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not, which is for the time being open to the public; and the doorway and entrances of premises abutting upon ground adjoining and open to a street shall be treated as forming part of the street.

Gaming tax

There is a Gaming tax that must be paid to the Collector on the 20th of every month.

**Amusements with Prizes,
Prize Competitions and Chain
Letters**

Provision of amusements with prizes at certain non-commercial entertainments

In compliance with the BLGA, a person may provide amusement with prizes at non-commercial entertainments if the proceeds are not devoted for private gain.

Entertainment means a bazaar, sale of work, fête, dinner, dance, sporting or athletic event, or other entertainment of a similar character, whether limited to one day or part thereof or extending over two or more days.

Provision of amusements with prizes at certain commercial entertainments

Amusements with prizes at commercial entertainments need to be on-premises granted by the County Government; and at a pleasure fair consisting wholly or mainly of amusements provided by travelling showmen which is held on any day of a year on premises not previously used in that year on more than twenty-seven days for the holding of a pleasure fair.

Amusement machines

BCLB may issue authorization to use an amusement machine on premises approved by it. Further, BCLB can set conditions on the permit and at all times, there will be a condition not to allow persons under the age of eighteen to play unless in the presence of and permission of the parent or guardian.

Amusement machine means a machine other than the gaming machine operated by insertion of a coin into the machine, and a successful player neither receives nor is offered any benefit other than the opportunity offered by the automatic action of the machine to play the game again

without insertion of a coin; or the delivery by the machine of a coin or coins of a value not exceeding that required in order to play the game once.

Prohibition against competitions or prizes involving no skill

BLGA prohibits competitions that have an element of uncertainty and particularly where the success does not depend to a substantial degree upon the exercise of skill. However, this does not apply to a pool betting scheme licensed under s 22.

Prize competitions

BCLB may issue a permit authorizing the promotion and conduct of prize competitions success of which depends to a substantial degree upon the exercise of skill in connection with any trade or business or the sale of any article to the public.

Nothing in this section shall apply to any competition prohibited under s 59.

Prize competition tax

There is prize competition tax - chargeable on the cost of entry to the competition – that must be paid to the Tax Collector on the 20th of every month.

Chain letters

A person who sends or causes to be sent or supplies or delivers any chain letter or voucher or who sends or receives money or money's worth in connection with a chain letter or voucher shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

Chain letter or voucher means any document supplied or delivered from one person to another suggesting to the person to whom it is supplied or delivered that they should send, supply or deliver a document having the same or similar purport to another person or persons; and they should remit to a person or to an address specified in the first-mentioned document money or money's worth.



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