



LOTTERIES AND THE LAW

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INTRODUCTION

1. The Lotteries Act No. 57 of 1997 (the Act) was enacted to regulate lotteries conducted in South Africa by societies and others. The Act sets out the primary controls necessary for effective regulation aimed at eliminating fraud.
2. These notes are intended to provide guidance for societies and others who promote lotteries that may require registration with the National Lotteries Board (the Board). **These notes are not concerned with the National Lottery.**
3. These notes attempt to provide a simple guide to the main requirements of the Lotteries Act. They are not comprehensive and should not be treated as such. Societies and others who plan to conduct lotteries should refer to the Act and the Regulations (No. 21119) that can be obtained from the Government Printer or they should seek professional advice to ensure that they conform to the law.

WHAT IS A LOTTERY?

4. A "lottery" in terms of the Act "includes any game, scheme, arrangement, system, plan, promotional competition or device for 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".

SOCIETY AND OTHER LOTTERIES

5. Under the Act, all lotteries are unlawful, unless they comply with the relevant requirements of the Act. The different categories of lotteries are:
 - a) Lotteries incidental to exempt entertainment;
 - b) Private lotteries;
 - c) Society lotteries; and
 - d) Part of the National Lottery.

LOTTERIES INCIDENTAL TO EXEMPT ENTERTAINMENT

6. The Act defines "an exempt entertainment" as a bazaar, sale, fete, dinner, dance, sporting event or other entertainment of a similar character where there are no cash prizes.
7. Section 38 of the Act gives full details of the conditions that have to be observed in promoting a lottery as an incident to an exempt entertainment. Some examples of the conditions are that:
 - a) the proceeds, after deducting specified expenses, must, along with the proceeds of the "exempt entertainment" be used for the benefit of any deserving section of the public;
 - b) the total value of tickets sold or to be sold is not more than R10 000;
 - c) not more than R5 000 is used for the purchase of prizes;
 - d) the tickets may not be sold at more than R10 each.

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8. Whilst only the Court can give an authoritative interpretation of the law, it is the view of the National Lotteries Board that selling tickets in a shop is unlawful as exempt entertainment are construed as "one-off" events.

PRIVATE LOTTERIES

9. A "private lottery" is defined as a "lottery which is conducted in the Republic in accordance with section 37:
- a) for and by members of a social or sporting club for purposes not connected with any form of gambling;
 - b) for and by persons all of whom either work or reside on the same premises; and
 - c) in the case of a lottery conducted for members of a social or sporting club, has been authorised in writing by the governing body of the social or sporting club to conduct the lottery".
10.
 - a) The total value of tickets for any lottery may not exceed R10 000.
 - b) The total value of prizes in any one private lottery may not exceed R10 000.
 - c) The price of each ticket may not exceed R10.
11. The following are other rules that must be observed in promoting a private lottery:
- a) The promoter must be a member of the club or society who is authorised, in writing, by the club's governing body to run the lottery.
 - b) There can be no management fee or expense percentages. The only deductions allowed are for printing, stationery & notices.
 - c) There is no fixed percentage for the distribution of income; it can be used totally for prizes or divided between prizes and the club fund.
 - d) There may be no more than 12 lotteries per year.
 - e) No written notice or advertisement of the lottery may be exhibited except on the club or premises where the members work or reside or on the tickets.
 - f) No ticket may be sent through the post.

SOCIETY LOTTERY

12. The Act provides that a society wishing to promote a lottery must itself be registered with the National Lotteries Board.
13. A society is defined as "including any club, institution, organisation or association of persons, and any separate branch or section of such a club, institution, organisation or association".
14. A Society Lottery means a lottery promoted on behalf of a society that is established and conducted wholly or mainly for purposes not for private gain or any commercial undertaking.

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15. The total proceeds of a society lottery, after the deduction of amounts for expenses and prizes, must be applied solely to the following:
- a) recognised charitable purposes;
 - b) participation in, or support of, sport or cultural activities;
 - c) other purposes not described in (a) or (b) but which the Board approves and which are purposes neither of private gain nor of any commercial undertaking.

REGISTRATION PROCEDURE

16. Application forms for registration can be obtained from the National Lotteries Board, Society Lotteries section at the address shown at the end of this booklet.

No tickets or chances may be offered for sale before the society is registered

17. To seek registration, the following forms and information should be sent to the Board:
- a) A completed application form (SL10/00).
 - b) A copy of the society's constitution, rules or memorandum and articles of association. Where the society is not a formally constituted body, the Board will accept a copy of the minutes of a meeting recording the purposes of the society and the decision to apply for registration with the Board.
 - c) The names and addresses of the management committee.
 - d) The appropriate registration fee.
18. After registration the society shall be issued with a Certificate of Registration.
19. Upon registration a society shall forward the following to the Board:
- a) A copy of the Lottery Scheme approved by the society. *(The society may wish to complete and submit the Board's model scheme form SL11/00.)*
 - b) A copy of the minutes of the society's governing body's full meeting approving the promotion of lotteries under the scheme.
 - c) A letter or statement from the governing body authorising the promoter *(who must be a member of the society)* to act in that capacity.
 - d) A draft ticket. *(It is recommended that societies do not print tickets until the Board has examined a draft and given a view on whether it meets the requirements of the law.)*
 - e) A Personal Declaration form (SL9/00) completed by the promoter. *(The Board may subsequently require any other person connected with the lottery to complete such a form.)*
 - f) The appropriate fee for the registration of a scheme. *(This fee should be counted as a lottery expense in the society's return.)*

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20. **Where a person is connected with a lottery and is asked to complete a Personal Declaration form (SL9/00), a check will be made with the police to obtain details of any relevant convictions.**
 21. In view of the nature of these inquiries, it is possible that there may be some delay in reaching a decision on an application. Societies are therefore advised to submit their application **at least** two months before the date on which it is proposed that tickets for the first lottery under the scheme are to be placed on sale.
 22. Registration with the Board remains valid indefinitely, subject to a further fee being paid to the Board annually. The Board will write to societies at the appropriate time to advise them of the fee due. Failure to pay this fee, or any other fee payable to the Board, is likely to lead to revocation of the registration. Societies may at any time request the cancellation of their registration.
 23. Where a society approves a modification to its lottery scheme, it is required to notify the Board, in writing, and submit a copy of the modified scheme. The notification must reach the board **at least** four weeks before any tickets or chances under the modified scheme are distributed or put on sale.

DECIDING A SOCIETY'S APPLICATION

24. The Board may refuse or revoke a society's registration if:
 - a) it appears to the Board that the society is not established and conducted wholly or mainly for one or more of the acceptable purposes (see paragraph 15);
 - b) any person connected with one of the society's past or future lotteries has been convicted of an offence involving fraud or dishonesty, or one of a number of specified offences under the Lotteries Act;
 - c) the society's scheme is contrary to law;
 - d) any information given by the society in connection with the application was false in a material particular;
 - e) it appears to the Board that any lottery promoted on behalf of the society within the last five years has not been properly conducted;
 - f) any fees payable under the Act have not been paid;
 - g) any information requested has not been provided or the Board has not been allowed to inspect the management of the lotteries, including examining and taking copies of documents;
 - h) an act or omission of a person connected with the society's lotteries was a cause of another society's registration being refused or revoked;
 - i) the address of the office or head office of the society is the same as that of the office of another Board registered society that is established for the same or a connected purpose.

NOTE: The grounds on which registration of a scheme may be refused or revoked are the same as for the registration for societies, except for paragraph (a) and (i).

FREQUENCY AND DATES OF LOTTERIES

25. No more than six lotteries may be conducted by or on behalf of any society in any year. "Year" means a period of 12 months commencing 1 January. A lottery shall be deemed to have been conducted in the year in which the winners of prizes are announced.
26. The date of the lottery, which must be specified on the tickets, is the date on which the winners in that lottery are determined. Where the winners are determined by reference to a draw, the date specified will be the date of that draw.
27. In other lotteries, referred to as "Instant Lotteries", where there is no draw and the winners are determined solely by reference to what is printed on the tickets, the Board considers that the date specified should be the last day on which the tickets are to be on sale. In cases where an "Instant Lottery" also includes a later draw for a major prize, the Board considers that the date of such a lottery should be that on which the final or major prize winner is determined.
28. The Board's advice is that no two lotteries should have the same date. This is because the practice may lead to confusion for the public and administrative difficulties for societies in meeting the requirement to treat each lottery as entirely separate and account for it as such.

LIMITATIONS

29. All lotteries promoted by societies under Board registration are subject to the following limitations:
 - a) The total value of tickets or chances sold in a single lottery may not exceed R2million.
 - b) The total value of prizes shall not exceed R1million **per year** per society.
 - c) Where the proceeds of a lottery equal or are less than R1million, up to 15% of the proceeds may be used to meet expenses.
 - d) where the proceeds exceed R1million per lottery, the permitted percentage for expenses is 10%.

(However a higher level can be authorised by the Board in the case of a particular level. To apply for an increased expense level a society must send the Board a breakdown of the individual items of expense by using form (SL15/00). Promoters will need to demonstrate to the Board that the extra expenses do not derive from the payment of excessive commission, thereby reducing proceeds for the good cause supported by the society.)

30. An application for an authorised level of expenses must be approved by the Board before any tickets in lotteries requiring such authorisation are placed on sale. If it is decided to promote lotteries with a higher turnover than previously notified to the Board, a fresh application for an expense authorisation should be submitted.
31. In maintaining a record of the expenses of a lottery, it is important that societies take care to ensure that all expenses incurred are included. The records must show whether any expenses were met otherwise than out of the proceeds of the lottery and, if so, the amount and source of any sums used to meet them.

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32. It should be noted that the law requires that the amount of any expenses that are met by the society on whose behalf the lottery is promoted or by any beneficiary of the lottery, must be treated as having been taken for expenses from the proceeds of the lottery.

TICKET REQUIREMENTS

33. The price of every ticket or chance in a lottery must be the same (i.e. inducements such as 5 tickets for the price of 4 are not permitted) and a person cannot be required to make any payment beyond this as a condition of participating in the lottery.
34. A person cannot participate in a lottery unless the whole price of the ticket or chance has been paid to the society. Once money has been received for, or on account of, a ticket or chance it cannot be refunded to the participant.
35. Every ticket must specify:
- a) its price;
 - b) the society's name, and the Board's registration number;
 - c) the date and place of the lottery draw;
 - d) where the rules of the lottery may be obtained; and
 - e) the value of a cash equivalent for a prize won, if applicable.

In the case of a society lottery, the ticket must also state the name and address of the promoter.

36. Ordinarily, no ticket or chance in a lottery may be sold by or to a person under the age of 16. However a society wishing to sell tickets to this or by this category must state reasons for doing so in the Lottery Scheme application form (SL11/00).
37. Tickets or chances may not be sold by means of a machine.

LOTTERY RETURNS

38. After completion of each lottery promoted under its scheme, the society is required to submit to the Board a lottery return form (SL14/00):
- a) giving details of the proceeds, expenses and prizes; and
 - b) showing how the balance of the amount raised was distributed.
39. The return should:
- a) accurately reflect the results of that particular lottery;
 - b) be completed in every detail. The value of any "donations" from third parties towards expenses or prizes should be shown on the return forms. a brief explanation of the source of the donation should be given;

- c) include details of any interest earned by the proceeds of a lottery before their distribution. *(The Board would expect any such interest to be added to the final sum available for distribution to the beneficiary of the lottery.);*
- d) be signed, in the case of societies, by the promoter and another member of the society's governing body. This applies irrespective of whether the society employs the service of an external Lottery Manager and whether or not the external Lottery Manager prepares and/or submits the forms to the Board.
40. **It is a criminal offence for any person to give the Board any information that is false in any material particular.**
41. Where VAT is payable on an individual item of expenditure or on a prize, it should be included in the amount shown for that item on form (SL14/00).
42. Where VAT is reclaimable, it should be shown in brackets beside the item in question and not included in the total expenses or prizes.
43. It is a legal requirement for societies to submit a return to the Board within 3 months of the date of each lottery. *(In the case of an "Instant Lottery", a return must be dispatched to the Board within three months of the last date on which tickets/chances are on sale to the public.)*
44. In addition to completing returns, it is a legal requirement for societies to submit to the Board financial statements in respect of all lotteries conducted on their behalf. These statements must be prepared by an independent auditor registered in terms of the Public Accountant's and Auditors Act, 1991 together with a report by that auditor on such statements. The statements must be submitted within 3 months of the end of the year in which the lotteries were conducted.

FEES

45. Following the registration of a society with the Board, a fee is payable for **each** separate lottery promoted. The appropriate fee should be submitted to the Board in advance of the lottery. The Board will not object to a single beneficiary receipt covering a number of separate lotteries provided it clearly identifies the specific lotteries to which it relates.
46. The following fees are payable to the Board:

| <u>Registration fee</u> | <u>Amount</u> |
|---|---------------|
| The fee payable on application for the registration of a society : | R 500-00 |
| The fee payable by a society for the registration of a scheme : | R 100-00 |

Lottery fees

For each lottery promoted by a society under a scheme registered with the Board where:

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|---|----------|
| 1. the total prize value does not exceed R10,000: | nil |
| 2. the total prize value exceeds R10,000 but not R50,000: | R 200-00 |
| 3. the total prize value exceeds R50,000 but not R100,000: | R 300-00 |
| 4. the total prize value exceeds R100,000 but not R500,000: | R 500-00 |

5. the total prize value exceeds R500,000 up to R1million: R1,000-00

Certification of a Lottery Manager R5,000-00 p.a.

Inspection of a lottery return R 25-00

Guarantees

Where the total prize value is R10,000 or over, the society must satisfy the Board that it is capable of financing the lottery. This can be done by:

1. providing a bank guarantee for the total prize value; or
2. lodging a security deposit for the total prize value with the Board.

NOTE: The Board reserves the right to waive payment of fees and also reserves the right to review the fee structure on an annual basis.

EXTERNAL LOTTERY MANAGER

47. If a society wishes to employ an external Lottery Manager to run its lotteries, it is free to do so. Such managers are only permitted by law to manage lotteries provided they hold the necessary certificate issued by the Board. Societies will need to satisfy themselves that any external Lottery Manager they propose to employ is the holder of a valid certificate from the Board.
48. The Board acknowledges that individuals or firms can, and do, provide services to a society without assuming the role of an external Lottery Manager. When determining whether a third party is a "service provider" only, or has assumed the role of External Lottery Manager, the degree of management undertaken by both the promoter and the sub-contractor will be crucial factors.

Key indicators will include:
 - a) who has control of funds raised by the lottery;
 - b) who is responsible for the appointment and payment of other sub-contractors;
 - c) who controls promotional aspects of the lottery.
49. The fact that a Lottery Manager holds the Board's certificate does not absolve a society from its responsibility for the decision to employ one. The Board would therefore strongly advise societies to take proper care to ensure that any contract or arrangements into which they enter meets their requirements and provides adequate safeguards against the poor results of a lottery or the financial failure of the Lottery Manager.
50. External Lottery Managers holding the Board's certificate are required to submit annual audited accounts to the Board for inspection. Those considering applying for certificate as External Lottery Managers will wish to study sections 47, 48, 49, 50, 51 and 52 of the Act which set out, in full, the legal requirements. They may thereafter wish to contact the Board for the relevant application form SL8(C)/00 or SL8 (CC)/00.

LOTTERY INSPECTION AND RECORD KEEPING

51. The Board has power to require societies to allow it to inspect any aspect of the management of a lottery and to take copies of documents. The Board's Inspectorate will carry out a continuous programme of inspections of lottery operations to establish that lotteries have been properly and lawfully conducted.
52. Each society must determine for itself what administrative arrangements seem most appropriate for ensuring that its lotteries are properly controlled and remain within the law, but the following suggestions about organisation and record keeping may be helpful. These suggestions do not cover every aspect of a lottery about which an inspector may be concerned, but the points they cover are ones to which promoters will be expected to have paid careful attention.

INDIVIDUAL LOTTERIES

53. It is essential that the finances, tickets and records of each individual lottery are kept entirely separate from those of other lotteries. Unless this is done, promoters will find it impossible to maintain a proper control over their lottery operation and to satisfy the Inspectorate that each lottery has been properly conducted in accordance with the requirements of the Act.

RECORD KEEPING

54. Promoters should ensure before proceeding with a lottery that adequate record keeping and accounting procedures are in place. The Board recommends that the following basic records should be maintained.
 - a) details of tickets ordered and received from the printer;
 - b) details of all tickets issued to each point-of-sale; details of tickets sold, returned unsold and not returned (together with a reason for the failure to return unsold tickets);
 - c) details of all income received from the sale of tickets, together with banking records in support thereof;
 - d) details of all expenses, together with relevant invoices. The records should distinguish between those expenses met directly from the proceeds, those met by the society or the beneficiary, and those met by the donations from a third party;
 - e) details of all prizes together with relevant invoices;
 - f) details of winners and, in the case of an "instant lottery", winning tickets.
 - g) details of the distribution of the proceeds of each separate lottery to the beneficiary where the beneficiary is other than the society conducting the lottery. *(It may be a good idea to keep copies of the beneficiary receipts sent to the Board under form SL20/00.);* and
 - h) where agents are employed, records should be maintained showing their remuneration and the number of tickets sold and returned.

RETENTION OF RECORDS

55. It is a legal requirement for societies operating under Board registration to preserve all documents relating to their lotteries for at least 5 years after the date of the lottery. Failure to do so may lead to revocation of the registration of the society. While the Board expects this obligation to be carefully observed, it does recognise that lack of storage space may make it impracticable for societies to retain large numbers of unsold tickets.
56. The Board is prepared to agree that 12 months after completion of a lottery and the submission of the necessary return to the Board, unsold tickets may be destroyed. This however will be subject to the strict condition that precise records of destroyed tickets are kept and that such records include evidence that the destruction was witnessed by two responsible officers of the society.
57. Promoters should keep adequate records for unclaimed winning tickets to ensure that fraudulent claims are not successful.

INSPECTION OF LOTTERY OPERATIONS

58. The Board's Inspectorate may wish to inspect a lottery operation at any time and this will involve a detailed examination of all records. It is recommended therefore that all records and winning tickets are kept for as long as practicable.

GENERAL ADVICE

59. If a promoter wishes to seek advice about a lottery scheme at any time, he/she should not hesitate to contact the Board's Society Lotteries Section as following:

**Society & Other Lotteries
NATIONAL LOTTERIES BOARD
Private Bag X101
BROOKLYN SQUARE
Pretoria
0075**

**Telephone: 012-432 1300
Fax : 012-432 1387**