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NATIONAL COUNCIL FOR LAW REPORTING

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**THE BETTING, LOTTERIES AND GAMING
(AMENDMENT) BILL, 2016**

A Bill for

AN ACT of Parliament to amend the Betting, Lotteries and Gaming Act to provide for a legal framework for regulating and controlling gambling activities and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Betting, Lotteries and Gaming (Amendment) Act, 2016.

Short title.

2. The Betting, Lotteries and Gaming Act, in this Act referred to as “the principal Act”, is amended in section 2 by—

Amendment of section 2 of Cap 131.

(a) inserting the following definitions in their proper alphabetical sequence—

“Authority” means the Kenya Betting Control and Licensing Authority established under section 3;

“authorised financial institution” means a bank or a financial institution licensed under the Banking Act;

Cap. 488.

“casino” means premises where gambling games are played or are available to be played;

“excluded person” means a person who has been registered as such under this Act;

“family member” includes a spouse, child, daughter-in-law, son-in-law, brother, sister, mother, father and grandparent;

“gambling” includes gaming, betting, participating in a lottery and prize competitions;

“online gambling” means gambling by use of the internet, telephone, radio, television or any other electronic or other technology for facilitating communication;

“player account” means an account held in the name of a player by a licensee;

“telecommunication operator” means a telecommunication operator licensed under

Cap. 411A.

section 79 of the Kenya Information and Communications Act;

“young person” means a person under the age of twenty five years;

- (b) deleting the definition of the term “the Permanent Secretary” and substituting therefor the following new definition—

“Cabinet Secretary” means the Cabinet Secretary of the Ministry for the time being responsible for betting, lotteries and gaming;

- (c) deleting the definition of the term “the Board” and substituting therefor the following new definition in its proper alphabetical sequence—

“Board” means the Board of the Authority constituted under section 4A;

3. The principal Act is amended by inserting the following new section immediately after section 2—

Insertion of a new section in Cap. 131.

Objectives of the Act. 2A. The objectives of this Act are to—

- (a) provide a framework for regulating and controlling gambling activities;
- (b) promote the development of a responsible gambling industry;
- (c) protect young and excluded persons from the negative effects of gambling;
- (d) protect the society against the oversimulation of the demand of gambling in the society; and
- (e) prevent gambling from being a source of crime and from being used in money laundering activities.

4. The principal Act is amended by deleting the heading to Part II and substituting therefor the following new heading—

“PART II—KENYA BETTING CONTROL AND LICENSING AUTHORITY”

5. The principal Act is amended by repealing section 3 and substituting therefor the following new section—

Establishment of Authority.

3. (1) There is hereby established a body to be known as the Kenya Betting Control and Licensing Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) purchasing, acquiring, holding or disposing of property;
- (c) entering into contracts; and
- (d) doing or performing all such other acts as may be necessary for the proper performance of its functions under this Act.

Headquarters

3A. (1) The headquarters of the Authority shall be in Nairobi.

(2) The Authority may establish offices in other counties.

Functions of the Authority.

3B. The Authority shall—

- (a) regulate and control the operation of betting and gaming and the conduct of lotteries and prize competitions;
- (b) examine problems relating to the operation of betting and gaming and the conduct of lotteries and prize competitions;
- (c) conduct surveys and investigations for the purpose of obtaining information useful to the Authority in the execution of its mandate;
- (d) supervise the operations of all licensees to ensure that their operations are carried out within the law; and
- (e) perform such other functions as are incidental or conducive to the exercise, by the Authority, of any or all of the functions provided for under this Act.

6. The principal Act is amended by deleting section 4 and substituting therefor the following new section—

Repeal and replacement of section 4 of Cap 131.

Powers of the Authority.

- 4. (1) The Authority shall have all powers necessary for the execution of its functions under this Act.**
- (2) Without prejudice to the generality of subsection (1) the Authority shall have power to—**
- (a) issue licences and permits in accordance with this Act and any regulations made thereunder;**
 - (b) vary, or for good cause to suspend or cancel it; but the Authority shall not suspend a licence or permit for more than fourteen days and shall not vary or cancel a licence or permit without giving the licensee or permit-holder opportunity to show cause against the variation or cancellation;**
 - (c) inquire into complaints against licensees or permit-holders.**
 - (d) manage, control and administer the assets of the Authority in such manner and for such purposes as best promote the purpose for which the Authority is established;**
 - (e) receive any gifts, grants, donations or endowments made to the Authority or any other monies in respect of the Authority and make disbursements from such monies in accordance with the provisions of this Act;**
 - (f) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate so as to aid the furtherance of the purposes for which the Authority is established; and**

- (g) open and maintain a bank account or accounts for the funds of the Authority.

7. The principal Act is amended by inserting the following new sections immediately after section 4—

Insertion of new sections 4A, 4B, 4C, 4D, 4E, 4F and 4G in Cap 131.

Board of the Authority.

4A. (1) The management of the Authority shall vest in a Board which shall comprise—

- (a) a chairperson, not being a public officer, to be competitively appointed by the Cabinet Secretary;
- (b) the Principal Secretary to the National Treasury or a person deputed by him or her in writing;
- (c) the Principal Secretary of the Ministry for the time being responsible for betting, lotteries and gaming or a person deputed by him or her in writing; and
- (d) two county governors nominated to represent the Council of Governors.

(2) The Cabinet Secretary shall require a person to declare whether he or she has any, and if so what, financial interest in any betting undertaking operating in Kenya prior to appointing such person to the Board under this section.

(3) The Cabinet Secretary shall appoint the chairperson of the Board specified under section 4A(1)(a) within thirty days of the commencement of this section.

(3) In appointing the Chairperson of the Board under subsection (1)(a), the Cabinet Secretary shall take into account the gender, regional and other diversities of the people of Kenya.

(4) The Chairperson of the Board shall hold office for a period of three years from the date of appointment, but shall be eligible for re-appointment for one further term.

Vacancy in the Board. **4B.** (1) The office of the chairperson or of a member of the Board appointed under section 4A(1)(e) shall become vacant if the holder—

- (a) dies;
- (b) by notice in writing addressed to the Cabinet Secretary resigns from office;
- (c) is convicted of an offence and sentenced to imprisonment for a term of more than six months without the option of a fine;
- (d) is absent from three consecutive meetings of the Board without good cause; or
- (e) is removed in accordance with the provisions of the Constitution.

(2) The Cabinet Secretary shall as soon as practicable notify every resignation, vacancy or termination in the *Gazette*.

(3) Where a vacancy occurs in the membership of the Board, the appointment procedure provided for in this Act shall, with necessary modifications, apply.

Conduct of business and affairs of the Board.

4C. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Second Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

Remuneration of Board Members.

4D. There shall be paid to the members of the Board such remuneration, fees or allowances as the Cabinet Secretary, in consultation with the Salaries and Remuneration Commission, may determine.

Delegation by the Authority.

4E. The Authority may, by resolution either generally or in any particular case, delegate to any of its committees or to any member, officer, employee or agent of the Board, the exercise of any of the powers or

the performance of any of the functions or duties of the Board under this Act or under any other written law.

Chief Executive Officer.

4F. (1) There shall be a Chief Executive Officer of the Authority who shall be appointed by the Board through an open, transparent and competitive recruitment process.

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

- (a) holds a degree from a recognized university;
- (b) has at least ten years post-qualification experience;
- (c) has at least five years managerial experience in the relevant field; and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) The Chief Executive Officer shall be an *ex-officio* member of the Board.

(4) The Chief Executive Officer shall, in the performance of the functions and duties of office, be accountable to the Board.

(5) The Chief Executive Officer shall be—

- (a) responsible for the day to day management of the Authority;
- (b) the secretary of the Board;
- (c) the custodian of all of the Authority's records;
- (d) responsible for—
 - (i) executing decisions of the Board;
 - (ii) facilitating, coordinating and ensuring execution of the Authority's mandate;
 - (iii) preparing and submitting for

approval, by the Board, programmes of work for the achievement of the Authority's mandate;

- (iv) ensuring staff compliance with public ethics and values; and
- (v) the performance of such other duties as may be assigned by the Board or by any other written law.

(6) The Secretary shall hold office for a period of five years, on such terms and conditions of employment as the Board may determine, and shall be eligible for reappointment for a further and final term.

(7) The Chief Executive Officer may be removed from office by the Board only on grounds of—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct;
- (c) bankruptcy; or
- (d) incompetence.

(8) Prior to removal under subsection (7), the Chief Executive Officer shall be—

- (a) informed, in writing, of the reasons for the intended removal; and
- (b) given an opportunity to put in a defence against any such allegations either in person or through an advocate.

(9) Where the Board does not intend to re-appoint the Chief Executive Officer after the first term, the Board shall notify the Chief Executive Officer and shall cause the vacancy to be advertised at least three

months before the expiry of the incumbent's term.

Staff of the Authority.

4G (1) The Authority may appoint such officers as are necessary for the proper discharge of its functions under this Act or any other written law.

(2) The Authority shall ensure that in the appointment of staff—

- (a) not more than two-thirds of the staff shall be of the same gender;
- (b) the regional and other diversity of the people of Kenya is taken into account; and
- (c) persons with disabilities are afforded adequate and equal opportunities.

(3) The Authority may engage such experts or consultants to assist in the discharge of the functions of the Authority upon such terms as the Authority may determine.

8. Section 5 of the principal Act is amended by deleting subsection (4).

Amendment of section 5 of Cap 131.

9. The principal Act is amended by inserting the following new sections immediately after section 5—

Insertion of new sections 5A, 5B and 5C in Cap. 131.

Conditions for granting licences and permits

5A. (1) A person shall not hold a licence or permit issued under this Act, if that person—

- (a) is a young person;
- (b) is a public officer;
- (c) is listed on the register of excluded persons;
- (d) is a family member of a person who is a member or employee of the Board;
- (e) is bankrupt;
- (f) is not a fit and proper person to be

involved in the business concerned;

(g) is subject to an order of a competent court holding that person to be mentally unfit or deranged; or

(h) has been convicted of the offence of economic crimes under the Anti-Corruption and Economic Crimes Act.

Cap. 65.

(2) A person who knowingly makes a false statement or declaration in an application for, or a renewal or variation of, a licence or permit shall be liable on conviction to a fine of not less than three million shillings or to imprisonment for a term of not less than three years.

Request for additional information.

5B.(1) When considering an application for a licence or permit, the Authority may request for—

(a) written authorization from the applicant permitting the Authority to procure information directly from third parties and authorizing third parties to provide that information;

(b) a report relating to the applicant from—

(i) the Director of Criminal Investigations;

(ii) the Financial Reporting Centre;

(iii) Director of the National Intelligence Service; and

(iv) any other relevant body; and

(c) any additional information.

Restrictions on number of casino

5C.(1) The Authority may, in

Licences.

consultation with the Cabinet Secretary and by regulation made under this Act, prescribe a maximum number of casino licences that may be granted to applicants in the country which shall not exceed five casinos for each county.

(2) Before making the regulations under subsection (1), the Authority shall also consult the Competition Authority, and shall consider—

- (a) the number and geographic distribution of existing licensed casinos operating in each county; and
- (b) whether it is desirable to alter the maximum number of casinos in order to—
 - (i) address the incidence and social consequences of compulsive and addictive gambling;
 - (ii) promote new entrants into the industry;
 - (iii) promote competition in the gambling industry; or
 - (iv) promote diversity of ownership within the gambling industry.

10. Section 8 of the principal Act is amended in subsection (3) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both” appearing immediately after the word “valid” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than one year or to both.”

Amendment of section 8 of Cap. 131.

11. Section 10 of the principal Act is amended in subsection (2) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both” appearing immediately after the words

Amendment of section 10 of Cap. 131.

“material particular” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than four million shillings or to imprisonment for a term of not less than four years or to both”.

12. Section 11 of the principal Act is amended in subsection (4) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both” appearing immediately after the word “statement” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than four million shillings or to imprisonment for a term of not less than one year or to both”.

Amendment of
section 11 of Cap.
131.

13. Section 12 of the principal Act is amended by deleting the words “shall be guilty of an offence and liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding two months, or to both” appearing immediately after the word “permit” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than one year or to both”.

Amendment of
section 12 of Cap.
131.

14. Section 14 of the principal Act is amended—

Amendment of
section 14 of Cap.
131.

- (a) in subsection (1) by deleting the closing statement and substituting therefor the following new closing statement—

“commits an offence and shall be liable on conviction to a fine of not less than four million shillings or to imprisonment for a term of not less than four years or to both.”

- (b) in subsection (2) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to a term of imprisonment for a term not exceeding six months, or to both” appearing immediately after the words “this Act” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than two million shillings or to imprisonment for a term of not less than two years or to both”.

15. Section 15 of the principal Act is amended in subsection (1) by deleting the words "shall, without prejudice to his liability (if any), to be proceeded against under section 14, be guilty of an offence and liable a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year, or to both" appearing immediately after the words "this Act" and substituting therefor the words ", without prejudice to his liability (if any), to be proceeded against under section 14, commits an offence and shall be liable on conviction to a fine of not less than four million shillings or to imprisonment for a term of not less than four years or to both".

Amendment of section 15 of Cap. 131.

16. Section 17 of the principal Act is amended by deleting the closing statement and substituting therefor the following new closing statement—

Amendment of section 17 of Cap. 131.

"commits an offence and shall be liable on conviction to a fine of not less than four million shillings or to imprisonment for a term of not less than four years or to both."

17. Section 19 of the principal Act is amended in subsection (1) by deleting the closing statement and substituting therefor the following new closing statement—

Amendment of section 19 of Cap. 131.

"commits an offence and shall be liable on conviction to a fine of not less than two million shillings or to imprisonment for a term of not less than two years or to both."

18. Section 20 of the principal Act is amended by deleting the closing statement and substituting therefor the following new closing statement —

Amendment of section 20 of Cap. 131.

"commits an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than one year or to both."

19. Section 21 of the principal Act is amended—

Amendment of section 21 of Cap. 131.

(a) in subsection (2) by—

(i) deleting paragraph (f);

(ii) deleting the closing statement and substituting therefor the following new

~~closing statement—~~

“commits an offence and shall be liable on conviction to a fine of not less than two million shillings or to imprisonment for a term of not less than two years or to both.”

- (b) in subsection (2A) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both” appearing immediately after the words “section 22” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than one year or to both”
- (c) by deleting subsection (3);
- (d) in subsection (4) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both” appearing immediately after the words “section 22” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than one year or to both.”

20. Section 23 of the principal Act is amended in subsection (4) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both” appearing immediately after the words “subsection (3)” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than one year or to both.”

Amendment of
section 23 of Cap.
131.

21. Section 24 of the principal Act is amended by deleting the words “shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both” appearing immediately after the word “bookmaker” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than

Amendment of
section 24 of Cap.
131.

one million shillings or to imprisonment for a term of not less than one year or to both.”

22. The principal Act is amended by repealing section 25.

Repeal of section 25 of Cap. 131.

23. Section 26 of the principal Act is amended by deleting the words “shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both” appearing immediately after the word “liquor” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than three million shillings or to imprisonment for a term of not less than three years or to both.”

Amendment of section 26 of Cap. 131.

24. Section 27 of the principal Act is amended by deleting the words “shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both” appearing immediately after the word “chance” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than two million shillings or to imprisonment for a term of not less than two years or to both.”

Amendment of section 27 of Cap. 131.

25. The principal Act is amended by repealing section 28 and substituting therefor the following new section—

Repeal and replacement of section 28 of Cap. 131.

Protection of young persons.

28. (1) A person who permits a young person to engage in, conduct or make available a gambling activity, commits an offence and shall be liable on conviction to a fine of not less than five million shillings or to imprisonment for a term of not less than five years, or two both.

(2) It shall not be a defence in a court of law that a person did not know that the person engaging in a gambling activity was a young person.

26. The principal Act is amended by inserting the following new sections immediately after section 28—

Insertion of new section 28A, 28B, 28C, 28D, 28E and 28F in Cap. 131.

Excluded persons.

28A. (1) A person who wishes to be prevented from engaging in any gambling

activity may register as an excluded person by submitting a notice to the Authority in the prescribed manner and form.

(2) A person registered as an excluded person under subsection (1) may submit a notice in the prescribed manner and form to cancel the registration at any time.

(3) A notice filed under subsection (1) or (2) shall take effect on a date to be determined by the Authority.

(4) A person may apply to the Authority for an order requiring the registration as an excluded person of—

- (a) a family member;
- (b) a person on whom the applicant is economically dependent in whole or in part;
- (c) a person for whom the applicant is economically responsible in whole or in part;
- (d) a person who is subject to an order of a competent court holding that person to be mentally deranged; or
- (e) any other person —
 - (i) to whom the applicant has a duty of care; and
 - (ii) whose behaviour manifests symptoms of addictive or compulsive gambling.

(5) If in the circumstances of an application under subsection (4), the Authority considers it reasonable and just to prevent the person concerned from engaging in gambling activity, the Board may order the registration of that person as an excluded person.

(6) An excluded person affected by an order under issued subsection (5) may apply to the Board to set aside the order, and the

Board may do so if, after considering the grounds for making the original order and any new evidence, it is satisfied that it is no longer reasonable and just to prevent the person from engaging in gambling activity.

Authority to maintain a register for excluded persons.

28B. (1) The Authority shall—

- (a) establish and maintain a national register of excluded persons in the prescribed manner and form; and
- (b) make the information in the register continuously available to licensees.

(2) The Authority shall not charge a fee for registering a person as an excluded person.

Protection of excluded persons.

28C. (1) A person who permits an excluded person to engage in, conduct or make available a gambling activity, commits an offence and shall be liable on conviction to a fine of not less than five million shillings or to imprisonment for a term of not less than five years, or two both.

(2) It shall not be a defence in a court of law that a person did not know that a person engaging in a gambling activity was an excluded person.

Restrictions on granting credit to gamblers.

28D. (1) A person licensed to make any gambling activity available to the public shall not extend credit in the name of the licensee or a third party to a person for the purposes of gambling.

(2) A person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine of not less than three million shillings or imprisonment for a term of not less than three years.

Restrictions on advertising, promotion of gambling activities and granting of discounts.

28E. (1) A person shall not advertise gambling activity—

(a) in a false or misleading manner;
or

(b) in a manner intended to target
or attract young persons.

(2) An advertisement on any gambling activity shall include a statement, in the prescribed manner and form, warning against the dangers of addictive and compulsive gambling.

(3) A person shall not advertise or promote any gambling or related activity as being available to the public free of charge or at a discounted rate as an inducement for gambling.

(4) A person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than one year.

Restrictions on
payment of winnings
on gambling
activities.

28F. (1) A person shall not knowingly pay winnings from a gambling activity to—

(a) a young person;

(b) an excluded person; or

(c) a person where gambling activity is prohibited under this Act.

(3) A person prevented from paying winnings under subsection (2) shall remit the winnings to the Authority in the prescribed manner and form, to be held by the Board in trust, pending a decision in terms of subsection (4).

(4) Upon receiving any winnings under subsection (3), the Authority shall investigate the circumstances of the relevant gambling activity and either—

- (a) deliver the winnings to the person who won them, if the Authority is satisfied that the gambling activity was lawful and the winner was not a young person or excluded person at the time of the activity; or
- (b) apply to the High Court for an order declaring the winnings be forfeited to the State.

27. Section 29 of the principal Act is amended in subsection (1) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both” appearing immediately after the words “settling bets” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than two million shillings or to imprisonment for a term of not less than two years or to both.”

Amendment of section 29 of Cap. 131.

28. Section 29A of the principal Act is amended in subsection (1) by deleting the words “seven point five percent of the gaming revenue” appearing immediately after the words “rate of” and substituting therefor the words “fifteen percent of the gross betting revenue”.

Amendment of section 29A of Cap. 131.

29. Section 35 of the principal Act is amended—

Amendment of section 35 of Cap. 131.

- (a) in subsection (2) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both” appearing immediately after the word “lottery” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than four million shillings or to imprisonment for a term of not less than four years or to both.”
- (b) by deleting subsection (3);
- (c) in subsection (4) by deleting the closing statement and substituting therefor the following new closing statement—

“commits an offence and shall be liable on conviction to a fine of not less than four million shillings or to imprisonment for a term of not less than four years or to both.”

30. The principal Act is amended by repealing section 36.

Repeal of section 36 of Cap. 131.

31. Section 37 of the principal Act is amended in subsection (4) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both” appearing immediately after the words “person also” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than two million shillings or to imprisonment for a term of not less than two years or to both.”

Amendment of section 37 of Cap. 131.

32. Section 40 of the principal Act is amended in subsection (3) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both” appearing immediately after the word “contravention” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than two million shillings or to imprisonment for a term of not less than two years or to both.”

Amendment of section 40 of Cap. 131.

33. The principal Act is amended by repealing section 43.

Repeal of section 43 of Cap. 131.

34. Section 44 of the principal Act is amended by in subsection (2) by deleting the closing statement and substituting therefor the following new closing statement—

Amendment of section 44 of Cap. 131.

“commits an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than one year or to both.”

35. Section 44A of the principal Act is amended in subsection (1) by deleting the word “five” appearing immediately after the words “rate of” and substituting herefor the word “twenty”.

Amendment of section 44A of Cap. 131.

36. Section 45 of the principal Act is amended—

Amendment of section 45 of Cap. 131.

- (a) in subsection (1) by deleting the closing statement and substituting therefor the following new closing statement—

“commits an offence and shall be liable on conviction to a fine of not less than four million shillings or to imprisonment for a term of not less than four years or to both.”

- (b) in subsection (2) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both” appearing immediately after the word “premises” and substituting therefore the words “commits an offence and shall be liable on conviction to a fine of not less than two million shillings or to imprisonment for a term of not less than two years or to both”.

37. Section 47 of the principal Act is amended by deleting subsection (3).

Amendment of section 47 of Cap. 131.

38. Section 50 of the principal Act is amended—

Amendment of section 50 of Cap. 131.

- (a) in subsection (3) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both” appearing in the closing statement and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than two million shillings or to imprisonment for a term of not less than two years or to both.”

- (b) in subsection (4) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both” appearing immediately after the words “part therein” and substituting therefore the words “commits an offence and shall be liable on conviction to a fine of not less than one million shillings or to

imprisonment for a term of not less than one year or to both”.

39. Section 52 of the principal Act is amended—

Amendment of
section 52 of Cap.
131.

- (a) in subsection (5) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both” appearing in the closing statement and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than two million shillings or to imprisonment for a term of not less than two years or to both.”
- (b) in subsection (6) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both” appearing immediately after the words “part therein” and substituting therefore the words “commits an offence and shall be liable on conviction to a fine of not less than two million shillings or to imprisonment for a term of not less than two years or to both”.

40. Section 53 of the principal Act is amended in subsection (1) by deleting the closing statement and substituting therefor the following new closing statement—

Amendment of
section 53 of Cap.
131.

“commits an offence and shall be liable on conviction to a fine of not less than two million shillings or to imprisonment for a term of not less than two years or to both.”

41. Section 54 of the principal Act is amended in subsection (3) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both” appearing immediately after the word “Board” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than one year or to both”.

Amendment of
section 54 of Cap.
131.

42. Section 55 of the principal Act is amended in subsection (1) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both” appearing immediately after the words “have access” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than one year or to both”.

Amendment of section 55 of Cap. 131.

43. Section 55A of the principal Act is amended in subsection (1) by deleting the words “twelve percent of the” appearing immediately after the words “rate of” and substituting therefor the words “twenty percent of the gross gaming revenue”.

Amendment of section 55A of Cap. 131.

44. The principal Act is amended by inserting the following new Part immediately after Part V—

Insertion of a new Part in Cap. 131.

PART VA—ONLINE GAMBLING

Online gambling transactions.

55B. An online gambling transaction commences when a player’s account is debited in the amount of a bet and concludes when the player’s account is credited with the amount of winnings in the case of a winning bet or when a player loses the game.

Payment of prizes and remittances of profits and winnings.

55C. (1) If a player in an online gambling transaction wins a monetary prize, a licensee shall immediately credit the amount to the player’s account.

(2) If a player in an online gambling transaction wins a non-monetary prize, the licensee shall—

- (a) have the prize delivered personally to the player; or
- (b) notify the player in writing of an address within the Republic where the prize may be collected.

(3) If a non-monetary prize has not been collected within a year after the winner has been notified of the place where it may

be collected, a licensee may dispose of the prize by public auction or as may be approved by the Authority and—

(a) pay for the cost of the disposal of the prize from the proceeds of the sale; and

(b) pay the remainder of the proceeds to the player's account.

(4) A claim against a licensee lapses if after five years and after a diligent search and notice, the player has collected the prize of an online gambling activity.

Dispute resolution and complaint procedure.

55D.(1) If there is a dispute arising out of an online gambling activity, either party may, within fourteen days refer the dispute to the Authority for resolution.

(2) The Authority shall resolve the dispute in accordance with the prescribed complaints resolution procedure.

Maximum amounts a person can bet online.

55E. (1) A person engaging in an online gambling activity shall not gamble an amount more than two hundred shillings in a gambling competition.

(2) A licensee engaged in an online gambling activity who sets the maximum amounts a person can gamble higher than the amounts referred to in subsection (1) commits an offence and shall be liable on conviction to a fine of not less than six million shillings or to imprisonment for a term of not less than six years.

Licensees to be companies fully owned by citizens.

55F. (1) A person shall not be licensed to offer online gambling by the Authority unless the person is a body corporate fully owned by Kenyan citizens.

(2) A licensee who offers online gambling activities without being registered as a body corporate commits an offence and shall be liable on conviction to a fine of not

less than ten million shillings or, in default the Chief Executive Officer of the licensee shall be liable to imprisonment for a term of not less than fifteen years.

(3) A licensee who offers online gambling activities while not fully owned by Kenyan citizens commits an offence and shall be liable on conviction to a fine of not less than fifteen million shillings, or in default the Chief Executive Officer of the licensee shall be liable to imprisonment for a term of not less than fifteen years.

Conditions for
engaging in online
gambling activities.

55G. (1) A licensee shall—

- (a) not permit a person to participate in online gambling unless the person is registered as a player and has opened a player's account with an authorized financial institution.
- (b) maintain an account with an authorized financial institution into which it shall pay all monies relating to online gambling activities.

(2) A licensee who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine of not less than three million shillings, or in default the Chief Executive Officer of the licensee shall be liable to imprisonment for a term of not less than three years.

Remittance to foreign
nationals and external
companies.

55H. (1) A licensee shall not permit a person who is not a citizen of Kenya to engage in online gambling activities.

(2) A licensee shall not remit monies collected out of gambling activities including online gambling to a foreign national or to a foreign country.

(3) A person who contravenes the

provisions of this section commits an offence and shall be liable on conviction to a fine of not less than one hundred million shillings, or in default the Chief Executive Officer of the licensee shall be liable to imprisonment for a term of not less than twenty years.

Financial reporting by licensees.

55 I. (1) A licensee shall at the end of each financial year being the period between 1st January and ending 31st December of every year—

(a) submit audited financial reports to the Authority indicating—

- (i) its gross revenue for the financial year;
- (ii) its net revenue for the financial year;
- (iii) the amount remitted to the Kenya Revenue Authority as tax for the financial year;
- (iv) the number of persons who participated in online gambling activities for the financial year;
- (v) the total amount of money collected for each online gambling competition held in the financial year;
- (vi) and the amount paid as prize out of each competition; and

(b) publish the reports in at least two newspapers of national circulation.

(2) A licensee who makes false statement relating to the financial reports

commits an offence and shall be liable on conviction to a fine of not less than ten million shillings or to imprisonment for a term of not less than five years or to both.

(3) A licensee who contravenes the provisions of subsection (2) commits an offence and shall be liable on conviction to a fine of not less than one hundred million shillings, or in default the Chief Executive Officer of the licensee shall be liable to imprisonment for a term of not less than twenty years.

Sharing formula of funds obtained from online gambling activities.

55 J. (1) The net revenue obtained from online gambling activities by a licensee shall be applied as follows—

- (a) thirty percent as prize money;
- (b) sixty-five percent for charitable activities relating to health, education and sports;
- (c) five percent to cover running costs.

Restriction against the use of telecommunication platforms for online gambling.

Cap. 411A.

55 K. (1) The telecommunication operators licensed under the Kenya Information and Communications Act shall not permit licensees under this Act to use their telecommunication platforms including mobile phone-based money transfer, financing and micro financing services as a medium for persons to engage in online gambling activities.

(2) A licensee who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine of not less than one hundred million shillings or to imprisonment for a term of not less than six years, or to both.

Offences relating to online gambling.

55 L. (1) A person who permits a young or excluded person to engage in online-gambling commits an offence and shall be liable on conviction to a fine of

not less than six million shillings or to imprisonment for a term of not less than six years, or to both.

(2) It shall not be a defence in a court of law that a person did not know that the person who engaged in online gambling was a young or excluded person.

45. Section 56 of the principal Act is amended by deleting subsection (2) and substituting therefor the following subsection—

Amendment of section 56 of Cap. 131.

“(2) If any of the conditions specified in subsection (1) is contravened or not complied with, a person concerned in the provision or conduct of that amusement, unless he proves that the contravention occurred without his consent or connivance and that he exercised all due diligence to prevent it, commits an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than one year or to both”.

46. Section 57 of the principal Act is amended in subsection (4) by deleting the words “shall, unless he proves that the contravention occurred without his consent or connivance and that he exercised all due diligence to prevent it, be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.” and substituting therefor the words “, unless he proves that the contravention occurred without his consent or connivance and that he exercised all due diligence to prevent it, commits an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than one year or to both”.

Amendment of section 57 of Cap. 131.

47. Section 58 of the principal Act is amended in subsection (3) by deleting the closing statement and substituting therefor the following new closing statement—

Amendment of section 58 of Cap. 131.

“commits an offence and shall be liable on conviction, in the case of an offence under paragraph (a), to a fine of not less than two million shillings or to

imprisonment for a term of not less than two years or to both and in the case of an offence under paragraph (b), to a fine of not less than one million shillings or to imprisonment for a term of not less than one year or to both”.

48. Section 59 of the principal Act is amended by deleting subsection (2) and substituting therefor the following subsection—

Amendment of section 59 of Cap. 131.

“(2) A person who contravenes this section commits an offence and shall be liable on conviction to a fine of not less than four million shillings or imprisonment for a term of not less than four years or to both, without prejudice to his or her liability, if any, to be proceeded against under any other provision of this Act relating to betting and lotteries.

49. Section 59A of the principal Act is amended in subsection (2) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both” appearing immediately after the word “permit” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than four million shillings or imprisonment for a term of not less than four years or to both”

Amendment of section 59A of Cap. 131.

50. Section 59B of the principal Act is amended in subsection (1) by deleting the word “fifteen” appearing immediately after the words “rate of” and substituting therefor the word “twenty”.

Amendment of section 59B of Cap. 131.

51. The principal Act is amended by inserting the following section immediately after section 59B—

Insertion of new section 59C in Cap. 131.

Winnings tax.

59 C. (1) There shall be a tax to be known as winnings tax chargeable at the rate of twenty percent of a person’s winnings from gaming, betting or participating in a lottery or prize competition authorized under this Act.

(2) The tax shall be paid to the Collector by a person carrying on a gaming business, betting business, or promoting a lottery or prize competition on the 20th day of the

month following the month of collection.

52. Section 60 of the principal Act is amended in subsection (1) by deleting the words “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” appearing immediately after the word “voucher” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than five hundred thousand shillings or imprisonment for a term of not less than six months or to both.”

Amendment of section 60 of Cap. 131.

53. The principal Act is amended by inserting the following new clauses immediately after section 60—

Insertion of new sections 60A, 60B and 60C in Cap. 131.

Gambling in relation to illegal activities unlawful.

60 A. (1) A person shall not engage in, conduct or make available a gambling activity if the outcome of that activity depends directly or indirectly on a contingency related to an event or activity that is itself unlawful under any law.

(2) A person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine of not less than one hundred thousand shillings or imprisonment for a term of not less than one year, or to both.

Limit on winnings.

60 B. (1) A licensee shall limit the winnings for a betting or gaming transaction, lottery or prize competition to an amount not exceeding thirty million shillings.

(2) A person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine of not less than one hundred thousand shillings or imprisonment for a term of not less than one year, or to both

Betting, lottery and gaming hours.

60 C. (1) A licensee under this Act shall only conduct any betting activity, lottery or prize competition during the time between 7.00 p.m. and 7.00 a.m.

(2) A licensee under this Act shall only conduct gaming activity within a licensed

gaming house during the time between 5.00 p.m. and 7.00 a.m.

(3) A licensee who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine of not less than one million five hundred thousand shillings or to imprisonment for a term of not less than six years, or to both.

54. Section 61 of the principal Act is amended by deleting the words “shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both” appearing immediately after the words “valuable thing” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than two million shillings or imprisonment for a term of not less than two years or to both.”

Amendment of section 61 of Cap. 131.

55. Section 63 principal Act is amended—

Amendment of section 63 of Cap. 131.

(a) in subsection (2) by deleting the words “Permanent Secretary” appearing immediately after the words “Board or the” and substituting therefor the words “Cabinet Secretary”;

(b) in subsection (3) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both” appearing immediately after the word “misleading” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than five hundred thousand shillings or imprisonment for a term of not less than six months or to both.”

56. Section 64 principal Act is amended in subsection (3) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding two thousand shillings” appearing immediately after the words “subsection (2)” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine of not less than one million shillings or imprisonment for a term of not less than

Amendment of section 64 of Cap. 131.

one year or to both.”

57. Section 68 principal Act is amended by deleting the words “Permanent Secretary” wherever they appear and substituting therefor the words “Cabinet Secretary”.

Amendment of
section 68 of Cap.
131.

58. The principal Act is amended by repealing section 70 and substituting therefor the following new parts—

repeal and
replacement of
section 70 of
Cap. 131.

PART X—FINANCIAL PROVISIONS

Funds of the
Authority.

70. The funds of the Authority shall consist of—

- (a) such monies as may be appropriated by the National Assembly for the purposes of the Authority;
- (b) such monies as may accrue to the Authority in the performance of its functions under this Act; and
- (c) all monies from any other source provided for or donated or lent authority.

Financial year.

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

Annual estimates.

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

(2) The annual estimates shall make provision for all estimated expenditure of the Authority for the financial year, and, in particular, shall make provision for—

- (a) the payment of salaries, allowances, pension gratuities, and other changes in respect of the staff of the Authority;
- (b) proper maintenance of the

buildings and grounds of the Authority; and

- (c) the maintenance, repair and replacement of the utilities, equipment and other property of the Authority.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate, and shall be submitted to the Cabinet Secretary for approval.

Accounts and Audit.

73. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Authority.

(2) Within a period of three months from the end of each financial year, the Authority shall submit to Auditor General the accounts of the Authority together with—

- (a) a statement of the income and expenditure of the Authority during that year; and
- (b) a statement of the assets and liabilities of the Authority on the last day of that year.

No. 34 of 2015.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act, 2015.

PART XI—PROVISIONS ON DELEGATED POWERS

Regulations.

74. (1) The Cabinet Secretary may make regulations generally for giving effect to this Act, and for prescribing anything required or necessary to be prescribed by or under this Act.

(2) Without prejudice to the generality of subsection (1), regulations made under that subsection may provide for—

- (a) the procedure to be followed by

- the Authority in exercising any powers conferred upon it by this Act;
- (b) the procedure to be followed in the making of an application for the issue, renewal or variation of a licence or permit issued under this Act;
 - (c) the advertisement of an application for a licence or permit under this Act and of proceedings of the Authority to consider and determine any such application;
 - (d) the right of a person interested to object to an application for the issue, renewal or variation of a licence or permit under this Act, and for the form and manner of any such objection;
 - (e) the form and manner in which returns or statements of accounts shall be furnished to the Authority;
 - (f) securing the payment of any fee;
 - (g) prescribe anything required to be prescribed under this Act.
- (3) For the purposes of Article 94(6) of the Constitution—
- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for better carrying into effect the provisions of this Act;
 - (b) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and

fulfilment of the objectives specified under this section;

(c) the principles and standards applicable to the delegated power referred to under this Act are those provided by—

(i) the Statutory Instruments Act, 2013;

(ii) the Interpretation and General Provisions Act;

(iii) the general rules of international law as specified under Article 2(5) of the Constitution; and

(iv) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

No. 23 of 2013.

Cap 2.

59. The principal Act is amended by inserting the following new schedule immediately after the First Schedule—

Insertion of new Schedule in Cap 131.

SECOND SCHEDULE (s. 4C)

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

Meetings.

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

(2) Notwithstanding the provisions of subparagraph (1), the chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total

members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be one half of all the members.

(5) The chairperson shall preside at every meeting of the Board at which he is present but, in his absence, the members present shall elect one of their numbers to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

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

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

Disclosure of
interest by Board
Members.

2. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Provided that, if the majority of the

members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

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

(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

Execution of instruments.

3. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

Minutes.

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

60. (1) All property, assets, rights, liabilities, obligations, agreements, contracts and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Betting Control and Licensing Board existing immediately before the commencement of this Act, shall, upon the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Authority to the same extent as they were enforceable by or against the Betting Control and Licensing Board before the commencement of the Act.

Savings and transition.

(2) Where the transfer of any property transferred to

or vested in the Authority under subsection (1) is required by any written law to be registered, the Authority shall, within three months from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Authority or any person by way of registration fees, stamp or other duties—

- (a) make such entries in the appropriate register as shall give effect to the transfer;
- (b) where appropriate, issue to the Authority a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and
- (c) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.

(3) Any disciplinary proceedings that are pending before the Betting Control and Licensing Board before the commencement of this Act shall be continued as if the Authority was the Betting Control and Licensing Board existing before the commencement of this Act.

(4) The pension scheme, superannuation, provident, medical fund or any other scheme existing immediately before the commencement of this Act shall continue to exist as if the pension scheme, superannuation, provident, medical fund or any other scheme has been established pursuant to this Act.

(5) The staff of the Betting Board existing before the commencement of this Act shall be the staff of the Authority.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to amend the Betting, Lotteries and Gaming Act Cap. 131 to provide for a legal framework for regulating and controlling gambling activities and to establish the Kenya Betting Control and Licensing Authority in place of the current Betting Control and Licensing Board. The Bill also seeks to provide a framework for regulating and controlling gambling activities, promote the development of a responsible gambling industry, protect young and excluded persons from the negative effects of gambling, protect the society against the over-simulation of the demand for gambling in the society and prevent gambling from being a source of crime and from being used in money laundering activities.

Clause 1 of the Bill is the short title.

Clause 2 of the Bill seeks to introduce new definitions into the Bill.

Clause 3 of the Bill spells out the objectives and purpose of the Bill.

Clause 4 of the Bill redrafts the word Permanent Secretary to realign it with Article 155 of the Constitution.

Clause 5 of the Bill seeks to amend the Act to establish the Kenya Betting Control and Licensing Authority.

Clause 6 of the Bill seeks amend the Act to outline the powers of the Authority.

Clause 7 seeks to amend the Act to establish the Board of the Authority and set out provisions on the procedure of dealing with vacancies in the Board, the conduct of business and affairs of the Board, the remuneration of Board Members, delegation by the Authority, and the Chief Executive Officer and staff of the Authority

Clause 8 of the Bill seeks to delete the offence of a person who knowingly makes a false statement in an application for a licence to realign the clause with clause 6.

Clause 9 of the Bill introduces new sections immediately after section 5 which spell out the conditions for granting licences and permits to an applicant, provide for a framework for the Authority to request for additional information when considering an application for a licence or permit and further puts restrictions on number of casino licences that can be issued by the Authority.

Clauses 10 to 18 of the Bill seek to align the penalties prescribed under section 8, 10, 11, 12, 14, 15, 17, 19 and 20 with the nature of the offences.

Clause 19 of the Bill realigns the penalty prescribed under section 21 of the Act with the nature of the offence.

Clauses 20 and 21 of the Bill also seek to align the penalty prescribed by sections 23 and 24 of the Act with the nature of the offences.

Clauses 23 and 24 of the Bill further seek to align the penalties prescribed with the nature of the offences.

Clause 22 of the Bill seeks to provide for the protection of young persons engaging in gambling activities.

Clause 25 of the Bill makes provision for excluded persons, the duty of the Authority to maintain a register for excluded persons, protection of excluded persons, restrictions on granting of credit to gamblers, restriction on advertisements and promotion of gambling activities and gambling discounts and restrictions on payment of winnings on gambling activities.

Clause 26 of the Bill seeks to realign the penalty prescribed with the nature of the offence.

Clause 28 of the Bill seeks to amend section 29A of the Act to enhance the betting tax chargeable to fifteen percent of the gross betting revenue.

Clause 29 of the Bill amends section 35 of the Act to realign the penalty prescribed with the nature of the offence.

Clause 30 of the Bill seeks to amend the Act by repealing section 36 in light of the proposed clause 45 of the Bill which contains provisions on the manner in which funds collected from gambling activities shall be utilized.

Clause 31 of the Bill seeks to realign the penalty prescribed with the nature of the offence.

Clause 32 of the Bill seeks to realign the penalty prescribed with the nature of the offence.

Clause 33 of the Bill repeals section 43 of the Act as the protection of young persons from gambling activities is provided for under clause 22 of the Bill.

Clause 34 of the Bill seeks to realign the penalty prescribed with the nature of the offence.

Clause 35 of the Bill seeks to enhance the rate of lottery tax to twenty percent of the lottery turnover.

Clause 36 of the Bill seeks to realign the penalty prescribed with the nature of the offence.

Clauses 37, 39, 40, 41 and 42 of the Bill seek to align the penalties prescribed with the nature of the offences.

Clause 44 of the Bill seeks to introduce a new Part into the Bill to provide a framework for regulation of online gambling.

Clauses 45, 46, 47, 48 and 49 of the Bill seek to align the penalties prescribed with the nature of the offences.

Clause 50 of the Bill enhances the rate of prize competition tax to twenty percent of total gross turnover.

Clause 51 of the Bill amends the Act to introduce a winnings tax chargeable at the rate of twenty percent of all winnings.

Clause 52 of the Bill seeks to align the penalties prescribed with the nature of the offences.

Clause 53 creates the offence of gambling in relation to illegal activities and limits the total winnings from a gambling activity to thirty million shillings.

Clauses 54, 55 and 56 of the Bill seeks to align the penalties prescribed with the nature of the offences.

Clause 58 of the Bill repeals section 70 of the Act and introduces new parts, which set out financial provisions and provisions on delegated powers.

Clause 60 of the Bill outlines saving and transitional provisions.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill delegates the power to make regulations to the Cabinet Secretary. It does not limit any fundamental rights and freedoms.

Statement of how the Bill concerns county governments

The Bill concerns county governments in terms of Article 110 of the Constitution as it contains provisions that affect the functions and powers of the county governments as set out in Part II of the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

This Bill is a money Bill as it contains provisions dealing with taxes.

Dated the 16th November, 2016.

JAKOYO MIDIWO,
Member of Parliament.

Section 2 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

2. Interpretation

In this Act, unless the context otherwise requires—

“authorized race meeting” means a race meeting in respect of which a permit authorizing bookmaking to take place thereat has been issued under section 23;

“betting premises” means premises to which the public has or may have access and which are kept or used (whether on one occasion or more than one) for the purpose of—

- (a) bets being made therein between persons resorting to the premises and the owner, occupier or keeper thereof, or any person using the premises, or any person procured or employed by or acting for or on behalf of the owner, occupier, keeper or person using the premises, or of any person having the care or management or in any manner conducting the business thereof; or
- (b) any money or valuable thing being received by or on behalf of the owner, occupier, keeper or person aforesaid as or for the consideration for any assurance, undertaking, promise or agreement, express or implied, to pay or give, or for securing the paying or giving by some other person of, any money or valuable thing on any horse race, or other race, fight, game, sport, lottery or exercise, or any other event or contingency;

“betting transaction” includes the collection or payment of winnings on a bet and any transaction in which one or more of the parties is acting as a bookmaker;

“bookmaker” means a person who, whether on his own account or as servant or agent to another person, carries on, whether occasionally or

regularly, the business of receiving or negotiating bets, or who in any manner holds himself out, or permits himself to be held out in any manner, as a person who receives or negotiates bets, so however that a person shall not be deemed to be a bookmaker by reason only of the fact—

- (a) that he carries on, or is employed in operating, a totalisator in respect of which a licence has been issued under section 18; or
- (b) that he carries on, or is employed in a business that is wholly concerned with, a pool betting scheme in respect of which a licence has been issued under section 22;

“collector” Deleted by Act No. 9 of 2000, s. 66;

“coupon”, in relation to a pool betting scheme or proposed pool betting scheme, includes a document connected with, or designed to assist in the making of, a bet by way of pool betting;

“game of chance” includes a game of chance and skill combined and a pretended game of chance or of chance and skill combined, but does not include an athletic game or sport;

“gaming” means the playing of a game of chance for winnings in money or money’s worth;

“gaming machine” means a machine for playing a game of chance, being a game which requires no action by a player other than the actuation or manipulation of the machine;

“gaming premises” means premises which are kept or used (whether on one occasion or more than one) for gaming, and to which the public has or may have access for the playing therein of a game of chance, whether the game of chance be an unlawful game or not;

“horse race” includes a pony race;

“instruments of gaming” means cards, dice, counters, coins, tickets, gaming tables, boards, boxes, or other things devised, or birds and animals used, for the purpose of gaming;

“licensed betting premises” means premises duly licensed in terms of this Act as premises wherein bets may be made and settled;

“licensed gaming premises” means premises licensed under this Act as premises to which the public may resort for the purpose of gaming;

“licensee” means a person issued with a licence under any of sections 16, 18, 22 and 46;

“lottery” includes a sweepstake, a raffle and any scheme or device for the sale, gift, disposal or distribution of any property depending upon or to be determined by lot or chance, whether by the throwing or casting of dice, or by the withdrawing of tickets, cards, lots, numbers or figures, or by means of a wheel, or otherwise howsoever;

“money” includes a cheque, bank note, postal order or money order;

“newspaper” includes a journal, magazine or other periodical publication;

“permit-holder” means the holder of a permit issued under any sections

“pool betting” means the making of bets (other than bets made by means of totalisator), whether the bets are made on the system known as a fixed odds betting or otherwise, by a number of persons on terms that the winnings of such of those persons as are winners shall be, or be a share of, or be determined by reference to, the stake money paid or agreed to be paid by those persons;

“pool betting scheme” means a scheme involving the receiving or negotiating of bets made by way of pool betting;

“premises” includes any place, and in sections 14, 35, 45, 50, 53 and 58 also includes any vessel;

“racecourse” means a place used for the purpose of holding a race meeting;

“race day” means a day on which a race meeting is held;

“race meeting” means a gathering of the public or of the members of an association of persons to watch horse races or other races;

“tax” means any charges, fees, levies or impositions imposed under this Act;

“the Board” means the Betting Control and Licensing Board established by section 3;

“the Permanent Secretary” means the Permanent Secretary of the Ministry for the time being responsible for Betting, Lotteries and Gaming;

“ticket”, in relation to any lottery or proposed lottery, includes any document evidencing the claim of a person to participate in the chances of the lottery;

“to bet” means to wager or stake any money or valuable thing by or on behalf of any person or, expressly or impliedly to undertake, promise or agree to wager or stake by or on behalf of any person, any money or valuable thing on a horse race, or other race, fight, game, sport, lottery or exercise or any other event or contingency;

“totalisator” means the instrument, machine or contrivance commonly known as a totalisator, or any other instrument, machine or contrivance of a similar nature, or a scheme for enabling any number of persons to make bets on any event or contingency whatsoever with one another or principles of a similar nature;

“turf club” means a club or association or other body of persons (whether incorporated or unincorporated) established for the purpose of promoting, conducting and controlling the sport of horse racing;

“unlawful game” means a game of chance the chances of which are not alike favourable to all the players, including the banker or other person or persons by whom the game is managed or against whom the other players stake, play or bet;

“winnings” includes winnings of any kind and a reference to the amount or to the payment of winnings shall be construed accordingly.

Section 3 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

3. Establishment of Board

(1) There is hereby established a board, to be known as the Betting Control and Licensing Board, which shall consist of—

- (a) a chairman, not being a public officer, to be appointed by the Minister by notice in the *Gazette*;
- (b) the Permanent Secretary to the Treasury or a person deputed by him in writing in that behalf;
- (c) the Permanent Secretary of the Ministry for the time being responsible for the Police or a person deputed by him in writing in that behalf;
- (d) the Permanent Secretary of the Ministry for the time being responsible for Betting, Lotteries and Gaming or a person deputed by him in writing in that behalf; and
- (e) such other persons, not exceeding five in number, as the Minister may, by notice in the *Gazette*, appoint.

(2) Before the Minister makes an appointment under this section, he may require the person to be so appointed to declare whether he has any, and if so what, financial interest in any betting undertaking operating in Kenya.

(2A) The members referred to in paragraphs (a) and (e) of subsection (1) shall hold office for a period of three years from the date of their appointment, but shall be eligible for re-appointment.

(3) In the event of the chairman being absent from any meeting of the Board, the members present shall choose one of their number to act as chairman for that meeting.

(4) At all meetings of the Board, the chairman or the person chosen to act as chairman under subsection (3) together with three other members of the Board shall form a quorum.

(5) Meetings of the Board shall be held at least once in every three months and at such other times, on such occasions and at such places as the chairman may determine.

(6) The chairman or the person chosen to act as chairman under subsection (3) shall have a deliberative vote and, in the case of equality of votes, shall also have a casting vote.

(7) The Board may co-opt to serve on it for such length of time as it thinks fit any person or persons whose assistance or advice it may require, but a person so co-opted 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.

(8) The chairman of the Board may, with the approval of the Minister, appoint such persons to act as officers and servants of the Board as he considers requisite to enable it to discharge its duties under this Act.

(9) The chairman, members, officers and servants appointed under this section shall be paid out of moneys provided for that purpose by Parliament such salaries, remuneration and allowances, if any, as the Minister may determine.

(10) All permits and licences issued under this Act and all communications from the Board shall be under the hand of the chairman or of some person duly authorized by the chairman, notification of that authorization being published in the *Gazette* under the hand of the chairman.

(11) The chairman shall submit to the Minister for publication an annual report of the proceedings of the Board containing particulars with respect to such matters as the Minister may direct.

(12) No member of the Board, nor any officer or servant thereof, shall be personally liable for any act or default done or omitted to be done in good faith in the course of his duties under this Act.

Section 5 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

Powers of the Board

4. (1) The Board shall have power—

- (a) to issue licences and permits in accordance with this Act and any regulations made thereunder;
- (b) during the subsistence of a licence or permit, to vary, or for good cause to suspend or cancel it; but the Board shall not suspend a licence or permit for more than fourteen days and shall not vary or cancel a licence or permit without giving the licensee or

permit-holder opportunity to show cause against the variation or cancellation; and

(c) to inquire into complaints against licensees or permit-holders.

(2) Subject to this Act and to any general or special direction by the Minister, the Board shall regulate its own procedure.

(3) The Board may authorize the chairman to exercise on its behalf, at any time when it is not meeting, such of its powers as it may from time to time specify; but the exercise of those powers shall, to the extent required by the Board, be reported by the chairman without unreasonable delay to a meeting of the Board.

Section 5 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

5. Application for licences and permits

(1) A person who desires to obtain, renew or vary a licence or permit under this Act shall make application to the Board in the form and manner prescribed.

(2) On receipt of an application under subsection (1), the Board may make such investigations or require the submission of such declaration or further information as it may deem necessary in order to enable it to examine the application.

(3) After making investigations and considering any information or declaration as may have been required in terms of subsection (2), the Board may either grant, renew or vary a licence or permit or refuse a licence or permit or renewal or variation hereof without reason given:

Provided that—

(i) no licence or permit shall be issued under this Act unless and until the Board has satisfied itself that the applicant is a fit and proper person to hold the licence or permit and that the premises, if any, in respect of which the application is made are suitable for the purpose;

(ii) no licence shall be issued under this Act unless the Board has sent a copy of the application for the licence to the local authority within whose area of jurisdiction the applicant proposes to conduct his business and has given the local authority reasonable opportunity to object to, or make recommendations with respect to, the application.

(4) A person who knowingly makes a false statement or declaration in an application for, or a renewal or variation of, a licence or permit shall

be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both.

Section 8 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

8. Display of licence and permit and surrender of same on suspension of cancellation

(1) Every licence or permit issued by the Board under this Act shall, during the period of its validity, be prominently displayed by the licensee or permit-holder at his principal place of business, if any, in a part thereof to which the public have access, and a copy thereof shall be similarly displayed at each of the branches of the licensee or permit-holder.

(2) On notification to a person that his licence or permit has been cancelled or suspended, that person shall forthwith surrender his licence or permit, as the case may be, to the Board.

(3) A person who without reasonable cause or excuse fails to comply with this section, or who displays a licence or permit which is not currently valid, shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

Section 10 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

10. Books to be kept by licensee

(1) A licensee shall enter or cause to be entered regularly in a book kept for the purpose all such particulars as may be prescribed.

(2) A licensee who contravenes subsection (1), or who knowingly or recklessly keeps any book, record or account required to be kept under this section which is false in any material particular, or who makes or causes to be made in any such book an entry which is false in a material particular, shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both.

Section 11 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

11. Submission of accounts by licensees and permit-holders

(1) The Board may at any time, and shall, at least once in every twelve months, require a licensee to submit to the Board a properly audited statement of accounts.

(2) The Board may require a permit-holder, other than a holder of a permit issued under section 23, section 54 or section 58, to render accounts to the Board in such form and within such period as it may specify.

(3) The Board may require accounts submitted to it under this section to be the subject of audit by an accountant, whose appointment as auditor shall be notified by the licensee or permit-holder, as the case may be, to the Board and approved by it.

(4) A person who refuses or fails to submit a statement of accounts as and when required by the Board or who knowingly submits a false or misleading statement shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both.

Section 12 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

12. Licences and permits not to be transferred

No licence or permit issued under this Act shall be transferable to any person, and a person who transfers or purports to transfer a licence or permit shall be guilty of an offence and liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding two months, or to both.

Section 14 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

14. Offences relating to unlicensed betting premises

(1) Subject to this Act, a person who—

- (a) being the owner or occupier or having the use temporarily or otherwise thereof, keeps or uses unlicensed betting premises; or
- (b) permits premises of which he is the owner or occupier, or of which he has the use temporarily or otherwise, to be used as unlicensed betting premises; or
- (c) has the care or management of, or in any manner assists or is engaged in the management of, premises kept or used as unlicensed betting premises; or
- (d) announces or publishes or causes to be announced or published, either orally or by means of any print, writing, design, sign or otherwise, that premises are opened, kept or used as unlicensed betting premises, or in any manner invites or solicits any person to bet in unlicensed betting premises; or

- (e) advances, furnishes or receives money for the purpose of establishing or conducting the business of unlicensed betting premises, shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both.

(2) A person who bets in unlicensed betting premises shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to a term of imprisonment for a term not exceeding six months, or to both; and a person found in unlicensed betting premises or found escaping therefrom on the occasion of their being entered under this Act shall be presumed, until the contrary is proved, to be or to have been betting therein.

(3) A person who occupies or has the use temporarily of premises which are kept or used by another person as unlicensed betting premises shall be presumed, until the contrary is proved, to have permitted that place to be so kept or used.

(4) In this section, "unlicensed betting premises" means betting premises in respect of which no licence is issued under this Part.

Section 15 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

15. Prohibition against unlicensed bookmaking

(1) A person who acts or carries on business as a bookmaker otherwise than under and in accordance with the terms of a licence issued under this Act shall, without prejudice to his liability (if any), to be proceeded against under section 14,

be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year, or to both; but nothing in this section shall apply to an employee of a person issued with a licence under section 16 acting in the course of his employment at the licensed betting premises of that person or at an authorized race meeting.

(2) A person who accepts or receives bets or settles or pays money or money's worth in respect of bets, or is found in possession of any books, accounts, documents or other articles which are used or appear to have been used or intended to be used in connection with or which relate or appear to relate to the business of a bookmaker, shall be presumed, until the contrary is proved, to be acting as a bookmaker.

(3) A person who settles or pays money or money's worth in respect of any betting shall also be presumed, until the contrary is proved, to be acting as a bookmaker.

Section 17 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

17. Betting by means of unlicensed totalisator an offence

A person who—

- (a) effects a betting transaction by means of a totalisator other than by means of a totalisator in respect of which a licence has been issued under this Part; or
- (b) uses or permits the use of a totalisator otherwise than under and in accordance with the terms of a licence issued to him under section 18, shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both.

Section 19 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

19. Laying of totalisator adds, etc., prohibited

(1) A person who, in connexion with a totalisator in respect of which a licence has been issued under section 18—

- (a) makes or enters into a bet upon the result of a horse race or other race, whereby he agrees to pay to the other party to the bet, if the latter should win the bet, a sum of money the amount of which is dependent upon the result of the working of that totalisator on the race; or
- (b) paragraph (a) a ticket, card or other thing entitling or purporting to entitle the purchaser or holder thereof to an interest in the result of the working of that totalisator on a horse race or other race; or
- (c) makes a contract or bargain of any kind 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, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both.

(2) The provisions of paragraphs (a) and (b) of subsection (1) shall not apply to an agent or employee of a person issued with a licence under section 18 who is engaged in the lawful conduct of a totalisator in a manner approved by the Board.

Section 20 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

20. Betting transaction on totalisator after time of race prohibited

Subject to any manner approved by the Board and to any regulations made by the Minister, a person who, in connection with a totalisator in respect of which a licence has been issued under section 18—

- (a) receives or permits to be received a betting transaction on that totalisator in respect of a horse race or other race after the start of that race; or
- (b) registers on that totalisator after the start of a horse race or other race any moneys received in respect of that race; or
- (c) takes into account in the calculation or payment of a betting transaction which has not been registered on that totalisator; or
- (d) makes, authorizes or permits the payment to any person any money which is not calculated in accordance with section 31, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both.

Section 21 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

21. Offences relating to pool betting schemes

- (1) A person who—
 - (a) promotes a pool betting scheme within Kenya otherwise than under and in accordance with the terms of a licence issued under section 22; or
 - (b) in furtherance of a pool betting scheme or on behalf of a promoter of such a scheme or his agent, receives or negotiates bets or otherwise acts as an agent of a promoter otherwise than under and in accordance with the terms of a principal agent's or agent's licence issued under section 22, shall, without prejudice to his liability, if any, to be proceeded against under section 14, be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year, or to both; but notwithstanding the provisions of any other written law, where a person is charged with an offence under this subsection, and the Court is of opinion that he is not guilty of that offence but that he is guilty of another offence under this subsection, he may be convicted of that other offence although he was not charged with it.

(2) A person who, in connection with an unauthorized pool betting scheme—

- (a) prints a coupon for use in such a scheme; or
- (b) sells or distributes or offers or advertises for sale or distribution, or has in his possession for the purpose of sale or distribution, a coupon relating to such a scheme; or
- (c) distributes, or has in his possession for the purpose of distribution—
 - (i) an advertisement of the scheme; or
 - (ii) a list (whether complete or not) of prize winners or winning coupons in the scheme; or
 - (iii) any such matter descriptive of the determination or intended determination of prize winners, or otherwise relating to the scheme, as is calculated to act as an inducement to persons to participate in that scheme; or
- (d) brings, or invites any person to send, into Kenya for the purpose of sale or distribution a coupon relating to, or advertisement of, the scheme; or
- (e) sends or attempts to send out of Kenya any money or valuable thing received in respect of the sale or distribution, or any document recording the sale or distribution, or the identity of the holder of a coupon in the scheme; or
- (f) prints or publishes, or causes to be printed or published, an advertisement or other notice of or relating to the scheme or of relating to the issue of a coupon or of a dividend connected with the scheme, shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both.

(2A) Any person, other than the holder of valid principal agent's licence, who takes or sends out of Kenya (whether by post or otherwise) money or money's worth or any coupon, in connection with any pool betting scheme authorized under section 22 shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

(3) For the purposes of subsection (2)(f), the 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.

(4) A person, other than the holder of valid principal agent's licence, who takes or sends out of Kenya (whether by post or otherwise) money or money's worth or a coupon, in connection with a pool betting scheme authorized under section 22 shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

(5) In this section—

- (a) **“agent”** means a person who acts in furtherance of the promotion of a pool betting scheme;
- (b) **“unauthorized pool betting scheme”** means—
 - (i) where a pool betting scheme is promoted or proposed to be promoted in Kenya, a scheme promoted by a person who is not the holder of a promoter's licence issued under section 22;
 - (ii) where a pool betting scheme is promoted or proposed to be promoted outside Kenya, a scheme promoted by a person who has not within Kenya an agent or representative holding a principal agent's licence issued under section 22;
- (c) reference to printing shall be construed as including references to writing and other modes of representing or reproducing words in a visible form.

Section 23 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

23. Authorization of bookmaking at race meetings

(1) The promoters of a race meeting shall, if they desire bookmakers to be permitted to carry on business at that race meeting, apply to the Board for a permit for that purpose.

(2) An application shall be in writing in the prescribed form.

(3) Upon receipt of an application under subsection (1), the Board may, after making such inquiries as it thinks fit, issue a permit authorizing bookmaking to take place at the race meeting held on the race course and on the day or days specified in the permit.

(4) A person who permits a bookmaker to carry on business at a race meeting otherwise than under the authority of a permit issued under subsection (3) shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

Section 24 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

24. Prohibition against touting

A person who, except within licensed betting premises or at an authorized race meeting, touts or otherwise personally solicits the patronage of members of the public with a bookmaker shall be guilty of an offence and liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding two months or to both.

Section 25 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

25. Prohibition against advertising of betting

A person who, in connection with any licensed betting premises, licensed bookmaking or licensed pool betting scheme, without the approval of the Board—

- (a) holds himself out by advertisement or notice or public placard as willing to bet with members of the public; or
- (b) displays any written or printed placard or notice relating to betting in any shape or form, so as to be visible in a public street or place; or
- (c) prints or publishes, or causes to be printed or published, any advertisement or other notice, shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both; but nothing in this section shall prohibit the printing, reproduction and publication of circulars giving information relating to betting on an intended horse race or other race in Kenya or elsewhere, if the circulars are issued by a person granted a licence under this Part.

Section 26 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

26. Prohibition against liquor on licensed premises

A person who, upon licensed betting premises other than at an authorized race meeting, sells or supplies or consumes or permits the sale or supply or consumption of alcoholic liquor shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

Section 27 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

27. Prohibition against playing games of chance on licensed premises

A person who upon licensed betting premises plays or permits the playing of a game of chance shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or imprisonment for a term not exceeding six months or to both.

Section 29A of the the Betting, Lotteries and Gaming Act which it is proposed to amend—

29A. Betting tax

(1) There shall be a tax to be known as betting tax chargeable at the rate of seven point five per cent of the gaming revenue.

(2) The tax shall be paid to the Collector by the licensed bookmaker on the 20th day of the month following the month of collection.

Section 35 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

35. Unauthorized lotteries and offences relating to same

(1) A lottery promoted or conducted otherwise than in accordance with this Part shall be deemed to be an unauthorized lottery and unlawful.

(2) A person who opens, keeps or uses, or causes or knowingly permits the use of, premises for carrying on an unauthorized lottery shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both.

(3) A person who prints or publishes or causes to be printed or published an advertisement or other notice of or relating to an unauthorized lottery or of or relating to the sale of a ticket or chance in any such lottery shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both:

Provided that the 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.

(4) A person who, in connection with an unauthorized lottery promoted or proposed to be promoted either in Kenya or elsewhere—

(a) prints a ticket for use in the lottery; or

- (b) sells or distributes, or offers or advertises for sale or distribution, or has in his possession for the purpose of sale or distribution, tickets or chances in the lottery; or
- (c) distributes, or has in his possession for the purpose of distribution—
 - (i) an advertisement of the lottery; or
 - (ii) a list (whether complete or not) of prize winners or winning tickets in the lottery; or
 - (iii) any matter descriptive of the drawing or intended drawing of the lottery, or otherwise relating to the lottery, which is calculated to act as an inducement to persons to participate in that lottery or in other lotteries; or
- (d) brings, or invites any person to send, into Kenya for the purpose of sale or distribution a ticket in, or advertisement of, the lottery; or
- (e) sends or attempts to send out of Kenya any money or valuable thing received in respect of the sale or distribution, or a document recording the sale or distribution, or the identity of the holder, of a ticket or chance in the lottery; or
- (f) causes or procures any person to do any of the abovementioned acts, shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both.

(5) In this section, references to printing include references to writing and other modes of representing or reproducing words in a visible form.

Section 36 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

36. Authorization of public lotteries for charitable purposes

(1) The Board may issue a permit authorizing the promotion and conduct of a lottery (not being a lottery promoted and conducted under section 40, section 41 or section 42)—

- (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; and
- (b) at least twenty-five per centum of the gross proceeds of which is to be devoted to the object for which the lottery is promoted:

Provided that the Board may require as a condition that a specified proportion of greater than twenty-five per centum of the proceeds be devoted to the object for which the lottery is promoted, but in no case shall the Board require a proportion greater than forty-five per centum of the gross proceeds.

(2) Where in the case of a lottery authorized under this section less than twenty five per centum, or less than the proportion provided by the Board under the proviso to subsection (1), of the gross proceeds of the lottery is devoted to the object for which the lottery is promoted or any of the proceeds are devoted to a purpose, other than expenses and prizes, which is not such an object, each promoter of the lottery shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both.

Section 37 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

37. Powers of Board with respect to public lotteries

(1) The Board may in respect of any authorization granted under section 36—

- (a) impose 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 interests of the purpose for which it is being promoted and of the public in general;
- (b) take such steps as it may deem necessary in order to ensure that any conditions imposed under paragraph (a) have been or are being complied with; and
- (c) guide and co-ordinate the proper and equitable distribution of the charitable funds of a lottery authorized by it.

(2) Without prejudice to the generality of subsection (1)(a), the Board may, in respect of a lottery authorized by it, impose conditions under that paragraph—

- (a) providing for the amount, not exceeding twenty per centum of the gross proceeds of the lottery, which the promoters thereof may deduct from the proceeds in respect of operating expenses;
- (b) providing for the protection of purchasers of tickets or chances in the lottery against fraud;
- (c) restricting the amount of the proceeds of the lottery which may be used for the purposes of the lottery outside Kenya, which amount shall not exceed twenty per centum of the total amount devoted to the object for which the lottery is promoted;

- (d) relating to the provision by the promoters of the lottery of guarantors to cover the expected proceeds, or any part thereof, of the lottery.

(3) For the purposes of subsection (2)(a), a fee paid in respect of the authorization of a lottery shall be deemed to be part of the operating expenses.

(4) If any condition imposed under this section is contravened, 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, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both; but it shall be a defence for a person charged with an offence under this section only by reason of his being a promoter of the lottery to prove that the offence occurred without his consent or connivance and that he exercised all due diligence to prevent it.

Section 40 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

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

(1) A lottery may be promoted and conducted on behalf of a society, being a society established and conducted wholly or mainly for one or more of the following purposes—

- (a) charitable purposes;
- (b) participation in or support of athletic sports or games or cultural activities;
- (c) purposes which, not being described in paragraph (a) or paragraph (b), are neither purposes of private gain nor purposes of a commercial undertaking, and is so promoted for raising money to be applied for purposes of the society.

(2) The following conditions shall be observed in connection with the promotion and conduct of the lottery—

- (a) the promoter of the lottery shall be a member of the society authorized in writing by the governing body of the society to act as the promoter;
- (b) no remuneration shall be paid in respect of the lottery to the promoter or to any person employed by the promoter in connection with the lottery who carries on a betting business or

is otherwise engaged by way of business in the organization of betting;

- (c) no prize shall exceed five thousand shillings in amount or value, and no ticket or chance shall be sold at a price exceeding five shillings;
- (d) the whole proceeds, after deducting sums lawfully appropriated on account of expenses or for the provision of prizes, shall be applied to purposes of the society, being purposes described in paragraphs (a),
- (b) and (c) of subsection (1);
- (e) the amount of the proceeds appropriated on account of expenses shall not exceed the expenses actually incurred, or fifteen per centum of the whole proceeds, whichever is the less, and the amount of the proceeds appropriated for the provision of prizes shall not exceed one-half of the whole proceeds;
- (f) the price of each ticket or chance shall be the same, and the price of a ticket shall be stated on the ticket;
- (g) the total value of the tickets or chances sold shall not exceed fifty thousand shillings; and if, on any day on which tickets or chances in the lottery are on sale, tickets or chances are on sale in another
- (h) no written notice or advertisement of the lottery shall be exhibited, published or distributed except—
 - (i) a notice or advertisement exhibited on the premises of the society, or published or distributed exclusively to members of the society;
 - (ii) such notice or advertisement as may be contained in the tickets, if any;
- (i) every ticket and every notice or advertisement of the lottery lawfully exhibited, distributed or published shall specify the name of the society, the name and address of the promoter and the date on which the draw, determination or event by or by reference to which the prize winners are ascertained will take place;
- (j) no ticket shall be sent through the post to a person not being a member of the society;
- (k) no person shall be admitted to participate in the lottery in respect of a ticket or chance except after payment to the promoter of the

whole price of the ticket or chance, and no money received by the promoter for or on account of a ticket or chance shall in any circumstances be returned; and

- (1) no payment on account of expenses or prizes shall be made out of moneys of the society other than proceeds of the lottery.

(3) If any condition required by subsection (2) is contravened, the promoter of the lottery and any other person who is party to the contravention shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or imprisonment for a term not exceeding six months or to both:

Provided that—

- (i) it shall be a defence for a person charged with an offence under this section only by reason of his being the promoter to prove that the contravention occurred without his consent or connivance and that he exercised all due diligence to prevent it;
- (ii) it shall be a defence for a person charged with an offence in respect of an appropriation or payment made in contravention of paragraph (e) or paragraph (1) of subsection (2) to prove that—
 - (a) the proceeds of the lottery fell short of the sum reasonably estimated; and
 - (b) the appropriation or payment was made in respect of expenses actually incurred, or in order to fulfil an unconditional undertaking as to prizes given in connection with the sale of the relevant tickets or chances; and
 - (c) the total amount appropriated or paid in respect of expenses and prizes did not exceed the amounts which could lawfully be appropriated out of the proceeds of the lottery under subsection (2)(e) if the proceeds had amounted to the sum reasonably estimated.

(4) In this section—

- (a) in construing subsection (1)(c), a purpose for which a society is established or conducted which is calculated to benefit the society as a whole shall not be held to be a purpose of private gain by reason only that action in its fulfilment would result in benefit to any person as an individual; and
- (b) in construing subsection (2)(d), where a payment falls to be made by way of hiring, maintenance or other charge in respect of equipment for holding the lottery and the amount of that charge falls to be determined wholly or partly by reference to

the extent to which that or some other equipment is used for the purpose of that lottery, then that payment shall be held to be an application of the proceeds for purposes of private gain; and accordingly the reference to any such charge falling to be so determined; and

- (c) “**society**” includes a club, institution, organization or association of persons, by whatever name called, and any separate branch or section of that club, institution, organization or association.

Section 43 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

43. Sale of ticket by or to a person under sixteen an offence

(1) No ticket or chance in a lottery promoted and conducted under this Part shall be sold by or to a person under the age of sixteen years.

(2) In the case of a contravention of this section, each of the promoters of the lottery concerned, and where the person by whom this section is contravened is not a promoter that person also, shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both:

Provided that—

- (i) it shall be a defence for a person charged with an offence under this section only by reason his being a promoter of the lottery to prove that the contravention occurred without his consent or connivance and that he exercised all due diligence to prevent it;
- (ii) it shall be a defence to prove that the person charged neither knew nor had reasonable cause to suspect that the person was under the age of sixteen years.

Section 44 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

44. Submission of accounts and returns in respect of lotteries

(1) The Board may require the promoters of a lottery which is promoted or conducted under sections 40, 41 and 42 to submit accounts and make returns in such form and within such period as it may specify.

(2) A person who—

- (a) makes default in submitting accounts or making returns required to be submitted or made under this section within the time specified; or

- (b) submits accounts or makes a return which he knows or may be reasonably considered to know to be false in a material particular, shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

Section 44A of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

44. Lottery tax

(1) There shall be a tax to be known as lottery tax chargeable at the rate of five percent of the lottery turnover.

(2) The tax shall be paid to the Collector by a person authorized to promote the lottery on the 20th day of the month following the month of collection.

Section 45 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

45. Offences relating to unlicensed gaming premises

(1) Subject to this Act, a person who—

- (a) being the owner or occupier or having the use temporarily or otherwise thereof, keeps or uses unlicensed gaming premises; or
- (b) permits premises of which he is the owner or occupier, or of which he has the use temporarily or otherwise, to be used as unlicensed gaming premises; or
- (c) has the care or management of, or in any manner assists or is engaged in the management of, premises kept or used as unlicensed gaming premises; or
- (d) announces or publishes or causes to be announced or published, either orally or by means of any print, writing, design, sign or otherwise, that any premises are opened, kept or used as unlicensed gaming premises, or in any manner invites or solicits any person to play in unlicensed gaming premises; or
- (e) advances, furnishes or receives money for the purpose of establishing or conducting the business of unlicensed gaming premises, shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both.

(2) A person who games in unlicensed gaming premises shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to

both; and a person found in unlicensed gaming premises, or found escaping therefrom on the occasion of its being entered under this Act, shall be presumed until the contrary is proved to be or to have been gaming therein.

(3) A person who occupies or has the use temporarily of premises which are kept or used by another person as unlicensed gaming premises shall be presumed until the contrary is proved to have permitted that place to be so kept or used.

(4) In this section, "unlicensed gaming premises" means gaming premises in respect of which no licence is issued under this Part.

Section 47 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

47. Offences relating to licensed gaming premises

(1) If a person issued with a licence under section 46 uses or permits the use of licensed gaming premises for the playing of games not authorized by the Board or a variant of or of a similar nature to a game sanctioned by the Board which is played in a manner that the chances therein are not equally favourable to all the players, or contravenes or fails to comply with any condition imposed by the Board or by any regulations made under this Act, then it shall be held that the gaming was unlawful gaming and the person shall be guilty of an offence under section 45(1):

Provided that it shall be a defence for a person charged with an offence under this section only by reason of his being concerned with the conduct of the gaming to prove that the contravention of a condition imposed under section 46(3) occurred without his consent or connivance and that he exercised all due diligence to prevent it.

(2) A person who is present at gaming mentioned in subsection (1) for the purpose of taking part therein shall be guilty of an offence under section 45(2), and for the purpose of this subsection proof that a person was present at the gaming shall be evidence that he was present for the purpose of taking part therein unless he proves to the contrary.

(3) A person who, in connection with licensed gaming premises, without the approval of the Board—

- (a) holds himself out by advertisement or notice or public placard as willing to provide members of the public with premises for the playing of a game of chance; or
- (b) displays a written or printed placard or notice relating to gaming so as to be seen in a public street or place; or

- (c) prints or publishes, or causes to be printed or published, an advertisement or other notice, shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

Section 50 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

50. Small gaming parties

(1) Subject to this Act, gaming on premises (not being gaming premises) shall be lawful only if it is conducted in accordance with the following conditions—

(a) either—

- (i) the chances in the game are equally favourable to all the players; or
- (ii) the gaming is so conducted that the chances therein are equally favourable to all the players; and

(b) no money or money's worth which any of the players puts down as stakes, or pays by way of losses, or exchanges for tokens used in playing the game, is disposed of otherwise than by payment to a player as winnings; and

(c) no other payment in money or money's worth is required for a person to take part in the gaming; and

(d) no person under the age of eighteen years is included among the players unless—

- (i) the gaming takes place in a private dwelling-house or in the presence of a parent or guardian of that person; and
- (ii) any such person taking part in the gaming does so with the permission, whether general or special, of a parent or guardian of that person.

(2) If in proceedings under this section evidence is adduced that gaming took place on premises and—

(a) that the game was, or was a variant of or of a similar nature to, a game which is capable of being played in accordance with the ordinary rules thereof in a manner that the chances therein are not equally favourable to all the players, and that ten or more persons were present at the gaming; or

(b) that a payment of money or money's worth was required in order to obtain access to the premises; or

- (c) that subsection (1)(d) was contravened, then, subject to section 51, it shall be held that the gaming was unlawful gaming unless it is proved that the gaming was conducted in accordance with the conditions set out in paragraphs (a), (b) and (c) of subsection (1) and, in respect of a contravention of subsection (1)(d), that the person charged neither knew nor had reasonable cause to suspect that any of the players was under the age of eighteen years.

(3) If on any premises gaming takes place which is by virtue of subsection (1), or is held by virtue of subsection (2) to have been, unlawful gaming, any person concerned in the organization or management of the gaming, and any other person who, knowing or having reasonable cause to suspect that unlawful gaming would take place on those premises—

- (a) allowed the premises to be used for the purposes of gaming; or
- (b) let the premises, or otherwise made the premises available, to any person by whom an offence in connection with the gaming has been committed, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both; and for the purposes of this subsection a person who took part in procuring the assembly of the players shall be deemed to have been concerned in the organization of the gaming.

(4) A person who is present at any gaming such as is mentioned in subsection (3) for the purpose of taking part therein shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both; and for the purposes of this subsection proof that a person was present at gaming shall be evidence that he was present for the purpose of taking part therein unless he proves that he was present neither for that purpose nor for purposes of taking part in the management of the gaming, operating any instrument or other thing whatsoever used in connection with the gaming, or making bets with respect to the gaming:

Provided that, for the purposes of proceedings under this subsection, paragraph (c) of subsection (1) shall be deemed to be omitted if the person charged proves that he was not required to make, or to undertake to make, a payment such as is mentioned in that paragraph and that he neither knew nor had reasonable cause to suspect any other person was so required.

Section 52 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

52. Gaming at entertainments not held for private gain

(1) Games of chance or of chance and skill combined promoted and conducted as an incident to an entertainment to which this section applies shall be lawful provided all the following conditions are observed—

(a) either—

(i) the chances in the game are equally favourable to all players; or

(ii) the gaming is so conducted that the chances therein are equally favourable to all the players; and

(b) not more than one payment (whether by way of entrance fee or stake or otherwise) is made by each player in respect of all games played at the entertainment, and no such payment exceeds five shillings; and

(c) not more than one distribution of prizes or awards is made in respect of all games played at the entertainment, and, subject to subsection (2), the total value of all prizes and awards distributed in respect of the games does not exceed four hundred shillings; and (d) the whole of the proceeds of the payments mentioned in paragraph (b), after deducting sums lawfully appropriated on account of expenses or for the provision of prizes or awards in respect of the games, are applied for purposes other than private gain; and

(d) the amount of the proceeds appropriated in respect of expenses does not exceed the reasonable cost of the facilities provided for the purposes of the games; and

(e) no person under the age of eighteen years is included among the players unless—

(i) the gaming takes place in the presence of a parent or guardian of that person; and

(ii) any such person taking part in the gaming does so with the permission, whether general or special, of a parent or guardian of that person.

(2) Where two or more entertainments are promoted on the same premises by the same persons on any day, the conditions specified in subsection (1) shall apply in relation to those entertainments as if they were a single entertainment.

(3) Except as provided by subsection (2), where a series of entertainments is held the conditions specified in subsection (1) shall apply separately to each entertainment in the series, whether or not some or all of the persons taking part in any one of those entertainments are thereby qualified to take part in any other of them; and where each of the persons taking part in the games played at the final entertainment of the series is qualified to do so by reason of having taken part in the games played at another entertainment of that series held on a previous day (being an entertainment to which this section applies) subsection (1)(c) shall apply in relation to that final entertainment as if for the words "four hundred shillings" there were substituted the words "two thousand shillings".

(4) If in proceedings under this section evidence is adduced that gaming took place at an entertainment and—

- (a) that a game was, or was a variant of or of a similar nature to, a game which is capable of being played in accordance with the ordinary rules thereof in a manner that the chances therein are not equally favourable to all the players; or
- (b) that more than one payment was made by any player in respect of the games played at the entertainment or that any payment made by a player exceeded five shillings; or
- (c) that subsection (1)(f) was contravened, it shall be held that the gaming was unlawful gaming unless it is proved that the gaming was conducted in accordance with the conditions set out in paragraphs (a), (b), (c), (d) and (e) of subsection (1) and, in respect of a contravention of subsection (1)(f), that the person charged neither knew nor had reasonable cause to suspect that any of the players was under the age of eighteen years.

(5) If gaming takes place at an entertainment which is by virtue of subsection (1), or is held by virtue of subsection (4) to have been, unlawful gaming, any person concerned in the organization or management of the gaming, and any other person who, knowing or having reasonable cause to suspect that unlawful gaming would take place at the entertainment—

- (a) allowed premises to be used for the purpose of that gaming; or
- (b) let premises, or otherwise made the premises available to a person by whom an offence in connection with the gaming has been committed, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both; and for the purposes of this subsection, a person who took part in procuring the

assembly of players shall be deemed to have been concerned in the organization of gaming.

(6) A person who is present at gaming such as is mentioned in subsection (5) for the purpose of taking part therein shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both; and proof that a person was present at gaming shall be evidence that he was present for the purpose of taking part therein unless he proves that he was present neither for that purpose nor for the purpose of taking part in the management of the gaming, operating any instrument or other thing whatsoever used in connection with the gaming, or making bets with respect to the gaming:

Provided that, for the purpose of proceedings under this subsection, paragraph (b) of subsection (1) shall be deemed to be omitted if the person charged proves that he was not required to make, or to undertake to make, more than one payment or any payment exceeding five shillings and that he neither knew nor had reasonable cause to suspect that any other person was so required.

(7) In this section—

- (a) “**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; and
- (b) in construing paragraph (d) of subsection (1), the proceeds of the payments mentioned in that paragraph shall not be held to be applied for purposes of private gain by reason only that their application for purposes other than private gain resulted in benefit to any person as an individual:

Provided that, where a payment falls to be made by way of hiring, maintenance or other charge in respect of equipment for gaming at the entertainment and the amount of that charge falls to be determined wholly or partly by reference to the extent to which that or some other equipment is used for the purpose of the gaming, then that payment shall be held to be an application of the proceeds for purposes of private gain; and accordingly the reference to expenses shall not include a reference to any such charge falling to be so determined.

(8) So much of section 55 as relates to gaming in a place other than a street shall not apply to this section.

Section 53 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

53. Gaming machines

(1) A person who—

- (a) uses or permits the use of an unauthorized gaming machine; or
- (b) knowingly allows premises to be used for the purpose of gaming by means of an unauthorized gaming machine; or
- (c) knowing or having reasonable cause to suspect that premises would be used for gaming by means of an unauthorized gaming machine—
 - (i) caused or allowed the machine to be placed on the premises; or
 - (ii) let the premises, or otherwise made the premises available, to a person by whom an offence in connection with the machine was committed, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both.

(2) In this section, “unauthorized gaming machine” means a gaming machine in respect of which a permit has not been issued under section 54.

Section 54 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

54. Board may authorize use of gaming machine

(1) The Board may, subject to any regulations made under this Act, issue a permit authorizing the use of a gaming machine on premises approved by it.

(2) A permit issued under this section shall be subject to such conditions as the Board may impose and to the following conditions—

- (a) not more than two gaming machines are made available for play in any one building or, where different parts of a building are occupied by two or more different persons, in the part or parts of the building occupied by any one of those persons; and
- (b) the stake hazarded in order to play the game once does not exceed one shilling; and
- (c) all stakes hazarded are applied either in the payment of winnings to a player of the game or for purposes other than private gain; and

(d) the premises on which the gaming machine is used are not wholly or mainly used by persons under the age of eighteen years.

(3) A person who contravenes any conditions provided for in subsection (2) or imposed by the Board shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

(4) In this section—

(a) in construing subsection (2)(c), stakes hazarded shall not be held to be applied for purposes of private gain by reason only that their application for purposes other than private gain resulted in benefit to any person as an individual:

Provided that, where a payment falls to be made by way of hiring, maintenance or other charge in respect of a gaming machine and the amount of that charge falls to be determined wholly or partly by reference to the extent to which that gaming machine is used for the purposes of gaming, then that payment shall be held to be an application of the stakes hazarded for purposes of private gain;

(b) “**building**” includes the curtilage of the building.

Section 55 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

55. Gaming in public place an offence

(1) Subject to this Act, a person who takes part in gaming in a street or other place to which, whether on payment or otherwise, the public have or may have access, shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

(2) A police officer may arrest without warrant anyone whom he finds in a street or other place referred to in subsection (1) and whom he suspects, with reasonable cause, to be committing an offence under this section.

(3) In this section, “**street**” has the meaning assigned to it in section 29(3).

Section 55A of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

55A. Gaming Tax

(1) There shall be a tax to be known as gaming tax chargeable at the rate of five percent of the gaming revenue.

(2) The tax shall be paid to the Collector by a person carrying on a gaming business on the 20th day of the month following the month of collection.

Section 56 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

56. Provision of amusements with prizes at certain non-commercial entertainments

(1) A person may provide amusements with prizes at non-commercial entertainments provided that all the following conditions are observed—

- (a) the whole proceeds of the entertainment (including the proceeds of any amusements to which this section applies) after deducting—
 - (i) the expenses of the entertainment, including expense incurred in connection with any such amusements;
 - (ii) such sum, if any, not exceeding one thousand shillings as the persons providing the amusements think fit to appropriate on account of expenses incurred by them in purchasing prizes in connection with any such amusements, are devoted to purposes other than private gain;
- (b) the opportunity to win prizes at amusements to which this section applies, or that opportunity together with facilities offered by virtue of section 41 of the manner for participation in a lottery or by virtue of section 52 for taking part in gaming, is not the only, or the only substantial, inducement to persons to attend the entertainment.

(2) If any of the conditions specified in subsection (1) is contravened or not complied with, every person concerned in the provision or conduct of that amusement shall, unless he proves that the contravention occurred without his consent or connivance and that he exercised all due diligence to prevent it, be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

(3) In this section—

- (a) in construing subsection (1)(a), the proceeds of the entertainment shall not be held to be applied for purposes of private gain by reason only that their application for purposes other than private gain resulted in benefit to any person as an individual:

Provided that, where a payment falls to be made by way of hiring, maintenance or other charge in respect of any equipment for providing the amusements and the amount of that charge falls to be determined wholly or partly by reference to the extent to which that or some, other equipment is used for the purpose of the amusements, then the payment shall be held to be an application of the proceeds for purposes of private gain, and accordingly the reference to expenses shall not include a reference to any such charge falling to be so determined;

- (b) “**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.

Section 58 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

58. Amusement machines

(1) The Board may, subject to any regulations made under this Act, issue a permit authorizing the use of an amusement machine or amusement machines on premises approved by it.

(2) A permit issued under this section shall be subject to such conditions as the Board may impose and in every case to the condition that no person under the age of eighteen years shall play an amusement machine unless in the presence of, and with the permission of, his parent or guardian.

(3) Any person who—

- (a) uses or permits the use of an amusement machine in respect of which a permit has not been issued under subsection (1); or
- (b) contravenes or allows the contravention of any condition provided for or imposed by the Board under subsection (2), shall be guilty of an offence and liable, in the case of an offence under paragraph (a), to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both and, in the case of an offence under paragraph (b), to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding two months or to both.

- (4) In this section,
- (a) which is operated by the insertion of a coin or coins into the machine; and
 - (b) whereby a successful player neither receives not is offered any benefit other than—
 - (i) the opportunity afforded by the automatic action of the machine to play the game again without insertion of a coin; or
 - (ii) the delivery by the machine of a coin or coins of a value not exceeding that required in order to play the game once.

Section 59 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

59. Prohibition against competitions or prizes involving no skill

(1) No person shall conduct in Kenya, in or through any newspaper or broadcasting, or in connection with a trade or business or the sale of any article to the public—

- (a) a competition in which prizes are offered for forecasts of the result either of a future event, or of a past event the result of which is not yet ascertained or not yet generally known;
- (b) any other competition success in which does not depend to a substantial degree upon the exercise of skill:

Provided that nothing in this subsection with respect to the conducting of competitions in connection with a trade or business shall apply in relation to a pool betting scheme licensed under section 22.

(2) A person who contravenes this section shall, without prejudice to his liability, if any, to be proceeded against under any other provision of this Act relating to betting and lotteries, be guilty of an offence and liable to fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

(3) In this section, “broadcasting” means radio communication, within the meaning of section 2 of the Kenya Posts and Telecommunications Corporation Act (Cap. 411), for reception by members of the public.

Section 59A of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

59A. Prize competitions

(1) The Board may, subject to any regulations made under this Act, 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.

(2) Any person who promotes or advertises any competition in connection with any trade or business or the sale of any article to the public without a permit shall be guilty of an offence and be liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or both.

(3) Nothing in this section shall apply to any competition prohibited under section 59.

Section 59B of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

59B. Prize competition tax

(1) There shall be a tax to be known as prize competition tax chargeable on the cost of entry to a competition which is premium rated at the rate of fifteen percent of the total gross turnover.

(2) The tax shall be paid to the Collector by the licensed person on the 20th day of the month following the month of collection.

Section 60 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

61. Obtaining of money by cheating at lawful gaming, or by wagering on any event, an offence

A person who, by any fraud or unlawful device or ill-practice in playing at or with an instrument of gaming, or in taking a part in the stakes or wagers, or in betting on the sides or hands of those that are playing, or in wagering on the event of a game, sport, pastime or exercise, wins from another person for himself, or for or on behalf of another person, a sum of money or valuable thing shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both.

Section 63 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

63. Power to enter and inspect land or premises

(1) It shall be lawful—

(a) for a person authorized in writing in that behalf by the Board, on production of his authority if demanded;

- (b) for a police officer of or above the rank of Assistant Inspector, to enter without warrant and inspect premises (including a racecourse) in which he has reason to believe that an offence under this Act, or under any regulations made thereunder, has been or is about to be committed, and therein to—
- (i) examine and take copies of books, accounts and documents relating or appearing to relate to any betting transaction, lottery or gaming;
 - (ii) seize, remove or detain a book, account or document which he has reasonable cause to suppose will afford evidence of an offence under this Act or any regulations made thereunder;
 - (iii) require the owner or occupier of the premises to render such explanation and give such information relating to any betting transaction, lottery or gaming as may be reasonably required by him in the performance of his duties.

(2) The power to act under subsection (1) shall only be exercised without warrant if the person so acting has reasonable cause to believe that the delay occasioned in obtaining a search warrant would seriously hinder him in the performance of his duties, and the power shall be exercised only by or under the directions of a police officer of or above the rank of Inspector unless the person authorized in writing by the Board or the Permanent Secretary has reasonable cause to believe that the delay occasioned in summoning a police officer would, or would tend to, defeat the purposes of this section.

(3) A person who resists, hinders or obstructs a person acting in pursuance of any of the provisions of this section, or who on a requisition under subsection (1) wilfully withholds information, or gives information knowing or having reason to believe it to be false or misleading, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both:

Provided that no person may be required to answer any question the answer to which may tend to expose him to any criminal charge, penalty or forfeiture.

(4) Before removing anything under subsection (1), the person removing it shall furnish the person in whose custody or possession the article is at the time of removal with a written receipt therefore.

(5) Every seizure under this section shall be reported without unnecessary delay to a magistrate.

Section 64 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

64. Forfeiture of licence and security on conviction and disqualification of licensee

(1) If a person issued with a licence under this Act is convicted of an offence under this Act or of an offence involving fraud or dishonesty, the Court by or before which he is convicted may order that his licence shall be forfeited and cancelled; and if that person is convicted of an offence under Part III or Part V the Court may make such further order as to the forfeiture of his security or part thereof furnished to the Board under section 6 as it deems fit, and the provisions of Part IV of the Criminal Procedure Code (Cap. 75), in so far as they relate to forfeiture of recognizances, shall apply *mutatis mutandis*:

Provided that no security or part thereof shall be applied in settlement of any betting or gaming entered into by that person.

(2) A person whose licence is forfeited and cancelled in pursuance of an order under subsection (1) shall, by virtue of that order, be disqualified from holding or obtaining a licence or a further licence for a period of five years beginning with the date of the conviction which gave rise to the order:

Provided that, in a case where it appears to the Court making the order to be just in all the circumstances, the Court may include in the order a direction that the period of disqualification shall be such period shorter than five years as the Court may specify.

(3) A bookmaker, promoter of a pool betting scheme or organizer or manager of licensed gaming premises, or a servant or agent of his, who employs in his business any person known to him to be disqualified by subsection (2) shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

Section 68 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

68. Power of Board and Permanent Secretary to sue for recovery of any moneys due

Any fee due to the Board, and any penalty in respect thereof, due to the Permanent Secretary shall be deemed to be a civil debt due to the Government, and may be sued for and recovered with costs by and in the name of the Board or the Permanent Secretary, as the case may be.

Section 70 of the of the Betting, Lotteries and Gaming Act which it is proposed to amend—

70. Regulations

The Minister may, after consultation with the Board, make regulations generally for the better carrying out of the purposes and provisions of this Act, and, without prejudice to the foregoing generality, any such regulations may provide for—

- (a) the procedure to be followed by the Board in exercising any powers conferred upon it by this Act;
- (b) the procedure to be followed in the making of an application for the issue, renewal or variation of a licence or permit issued under this Act;
- (c) the advertisement of an application for a licence or permit under this Act and of proceedings of the Board to consider and determine any such application;
- (d) the right of a person interested to object to an application for the issue, renewal or variation of a licence or permit under this Act, and for the form and manner of any such objection;
- (e) the form and manner in which returns or statements of accounts shall be furnished to the Board;
- (f) securing the payment of any fee.