



COMPARATIVE ANALYSIS OF GAMBLING LEGISLATION IN AFRICA

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The determination of a legislative frame-work of any country is fundamentally informed by the political considerations and policies of the government of the day.

It is common cause that there is a need for more formidable policies on gambling in the African continent and therefore, regulators and the industry must take charge of the situation.

The gambling industry is constantly growing and changing form and shape influenced mainly by technological developments and introduction of commensurate business practices and ideologies.

International norms and standards and adoption of the latest technologies are the only sound options available to designing best regulatory tools.

Effective and efficient regulation of any industry requires a set of rules and a well defined and relevant legislation.

- General nodes of international regulatory standards.
 - **Outlook of regulatory authorities**
 - **Community Social Development**
 - **Implementation of regulatory measures and controls**
- Assessment of the legislative framework of South Africa, Botswana, Kenya, Malawi, Mozambique, Swaziland, Tanzania and Zimbabwe.
- Conclusion:
 - **Licensing of gambling and premises**
 - **Gambling game and gambling activities**
 - **Technical standards**
 - **Punitive sanctions**

- A gambling regulator has to be independent, autonomous and apolitical. The authority should be a creature of statute and bears its own *locus standi in judicio* mainly because of its *quasi judicial* nature.
- Gambling regulation should not in any way be confused with liquor regulation as the two bear two distinct mandates, unless convenience is the becomes the main consideration. Cost containment or financial efficiency would not be the answer.
- A well defined policy frame-work supported by clear and effective legislation, regulations, rules, systems of internal control, standard operating procedures and frequent information sharing exercises.
- A gambling authority must be properly structured, requires adequate capacity, human resources, a vast range of skills, and relevant tools of trade to match the ever-changing technological advancements and new ways of doing business.
- Balanced regulatory oversight interventions: striking a fair balance between opportunities for self-regulation and effective regulation.

- Understanding of the environment within which our licensees operate and ensuring that such information is shared with them and thereby communicating consistent or common messages.
- Appreciation of the value of business sustainability and corporate social commitments of gambling establishments, as a relevant and expected good corporate governance deliverable.
- Excessive advertising and over-stimulation of the latent demand for gambling: Failing to strike the balance between the value of gambling as a leisure activity that promotes tourism, investment, job creation, revenue for the fiscus and its negative social impact.

- Understanding the objectives of the legislative prescripts and ensuring compliance with same.
- Establishing and developing mechanisms through which enforceability of such laws will be consistent in delivering the desired results
- Evaluation of the impact of the regulatory measures and control for future review against the changes in doing business
- Promote proactivity, use research and allow policy and legislation to drive the direction, size and patterns of growth of the industry.
- Benchmarking with other jurisdictions of the world and making proportional and accurate adjustments of own regulatory regime appreciating diversity and uniqueness of different locations and cultures.

- Gambling activities are governed by the Betting, Lotteries and Gaming Act, Chapter 131. In terms of Kenya Betting, Lotteries and Gambling Act, Chapter 131, section 14, 15, 35, 46 and 47, any person who contravenes all these sections will 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.
- However, this legislation has been under review from 1991 and could not be activated.
- Generally, legislation covers salient features of regulation of gambling in Kenya, but the challenge remains with establishing requisite structures to give the Act its full effect, *albeit* it being a bit outdated.

- Botswana Casino Act of 1971 and the Lotteries and Betting Act of 1962 were repealed to introduce the Gambling Act 7 of 2012.
- These Acts have been merged and reviewed and as a result the Gambling Act was passed by Parliament in July 2012.
- The new Act provides for among others the establishment of an autonomous Gambling Authority which was established effective 1st June 2013.
- The new legislation has taken into account the technological developments of the gambling industry.
- Provisions that outlaw unlicensed gambling and penalties thereof.

- In terms of Botswana Gambling Act 7 of 2012, section 32 (1), “A person shall not operate a gambling establishment unless he or she has a valid license issued by the authority”. Section 32(2) provides that A person who contravenes the provisions of subsection (1) commits an offence and is liable, to a fine not exceeding P180 000.00, or to imprisonment for a term not exceeding 15 years, or to both such fine or imprisonment for a second or subsequent offence, to a fine not exceeding P240 000.00, or to imprisonment for a term not exceeding 20 years or to both.
- This is against the backdrop of extensive and appropriate requirements for licensing being observed.

- Provides for licensing and registration of gambling machines and devices;
- Gambling machines shall not be registered unless they have been certified in accordance with the provisions of the Botswana Standards Act;
- Regulation of manufacturers/suppliers, repairers and testing agents;
- Electronic monitoring system for gambling machines and devices;
- Surveillance on gambling establishments by Botswana Police, including through the use of closed circuit camera or video cameras; and
- It is also a requirement for licensees to install surveillance equipment.
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- A vast number of issues on technology and illegal gambling have been adequately provided for in the new Act.

- Legislation was enacted in 2003 and it adequately addresses issues of technological advancement.
- Legislation can be reviewed quickly to be updated.
- Tanzania is currently licensing internet gambling.
- Licensing of machines and monitoring their distribution and installation is adequately provided for in legislation.
- The legislation is currently being reviewed and 70% of the provisions therein need to be revised to ensure that they are in line with current trends or technological advancements of the gambling industry.
- The redrafting of the legislation began in July 2013.

- Although legislation appears to be adequate to regulate gambling, it cannot sufficiently address illegal internet gambling in the country.
- Legislation will be reviewed to legalised this type or form of gambling.
- There is a lot illegal gambling through the internet and this leads to loss of revenue, inadequate punter protection and uncontrolled gambling in the country.
- A Bill on internet gambling has been drafted and in it, a distinction between on-line gambling and internet gambling is bound to be introduced as this is another area of confusion in regulation of gambling in the country.
- Law enforcement on illegal gambling is a country-wide problem and an internet café is used for online gambling.

- Gambling activities in Malawi are governed by the Gambling Act 26 of 1996.
- Regulation of Lotteries and Casinos is still under a government Department and processes of amending the legislation are under way, although this does not receive much attention at this stage.
- Section 13 specifically lists all the activities which are punishable in law and provides penalties for such.
- Malawi is involved in an exercise of rationalising the functions and responsibilities of its State Owned Enterprises and as a result, the Gaming Board and Lotteries Board have been merged.
- The Act which is currently used to regulate gambling commenced in 1996 and was reviewed in 1998 and now is up for repeal to merge and review the relevant legislation, but this is taking a long time.
- There are suspicions that the new legislation may amongst others, outlaw internet gambling.

- Malawi cannot licence Manufacturers and Suppliers of gambling machines and equipment.
- Malawi Technical Standards of 1998 were adopted from South Africa, however, gambling establishments still use old machines (that use notes and coins)
- No testing of gambling machines and equipment can be done by the Malawian Bureau of Standards.
- Gambling machines are not tested and reliance is placed on test reports from the suppliers.
- Although legislation adequately provides for systems and processes to address technological issues, practical implementation of same remains a challenge.
- Legislation does not provide for internet gambling and SMS lotteries.

- Illegal gambling or use of unlicensed gaming premises is punishable by a fine of or imprisonment (a fine not exceeding twenty-thousand Kwacha or to imprisonment for a term not exceeding five years or to both).
- Minors or underage persons participating in gambling are guilty of the offence in terms of section 16 and liable for a fine not exceeding ten Kwacha and imprisonment not exceeding two years or both.

- This country has Law No. 1 of 2010 which governs games of fortune and it is silent on the issue of offences and relevant penalties.
- The Board, in terms of the Lotteries and Gaming Act [*Chapter 10:26*] approves gaming devices and it is illegal to organise, manage or conduct any game; install or operate a gaming device; play any game; permit any game to be played at or in any place under a person's control or permit a gaming device to be installed at or in any place under a person's control except in accordance with the terms and conditions of a licence and of course approval of the device.
- There are no specific technical standards for gaming devices, hence reliance is placed on the integrity of certificates issued in jurisdictions with sound technical credentials which apply international standards.

- Gambling activities are governed by the Lotteries Act of 1963 and Part II thereof deals with the unlawful lotteries and penalties thereof.
- It provides restrictions on lotteries and that any person who does not comply will be liable for a fine not exceeding one thousand emalangeni or imprisonment not exceeding one year or both for the first offence.
- Gaming in the country is regulated through the Lotteries Act of 1963 and the Casino Act of 1963 and the legislation did not adequately provide for issues of technology and illegal gambling.
- However, the Gaming Control Bill which has consolidated the two Acts has been drafted and it is currently being debated in the House of Assembly.
- Legislation does not provide for testing of machines, hence this poses a regulatory challenge, however, if the Gaming Control Bill is passed by Parliament and becomes law, all the current challenges will be addressed. Internet gambling was not provided for in the Bill and could not be accommodated because of the lengthy review process and as a result some provisions in the Bill have become obsolete.

- The regulation of gambling resides within the Ministry of Finance and the Board is not independent and autonomous.
- Although their legislation does not adequately address issues of technology and illegal gambling, it is an offence to operate or possess gaming equipment without a licence.
- The main suppliers of gaming equipment have adopted the South African Technical Standards as they have no capacity in that area.
- There is no system for registration of gambling machines in the country.
- The legislation provides for internet gambling, however, the software must be housed in the country, the transactions for this type of activity are to be processed through the Mozambican Banks and all levies should be paid within the country.
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- Cellular-phone (SMS) betting is allowed in Mozambique, but they do not yet have a system for verification of levies.

Licensing of gambling and premises

- Precision on what the requirements
- Complete assessment and evaluation of the form and equipment to be used
- Continued suitability

Gambling game and gambling activities

- Adequate provision for the gambling game
- Clear and technical description of activities and definition of same to be a gambling game or activity
- Control measures on how it should be conducted

Technical standards

- Which standards to apply
- Promotion of uniformity
- Testing and certification

Punitive sanctions

- Understanding of the quantum of the infringement
- Institution of fair and equitable disciplinary processes

THANK YOU

Questions?