

LOTTERIES AMENDMENT ACT, 2013



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Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

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OVERVIEW

To amend the Lotteries Act, 1997, so as to amend certain definitions and provide for the establishment of the National Lotteries Commission, the extension of powers of the Board, the licensing of an organ of state to conduct the National Lottery, a clear accountability process for the distributing agency, the professionalisation of the distributing agency, elimination of the overlap between the Minister and the Board, the removal of the construction and development programme as a category entitled to be allocated money of the fund, and matters connected therewith.

DEFINITIONS

Board – the Board of the National Lotteries established by section 2.

Commission – the National Lotteries Commission established by section 2.

Charitable expenditure – expenditure by any organisation or institution established for charitable, benevolent or philanthropic purposes, including friendly societies, welfare organisations and conduit organisations or trusts established in respect of any such organisation or institution.

Distributing Agency – an agency appointed by the Minister to distribute money, in terms of section 26A read together with section 26B (3) of this Act, but not any department in the national or provincial sphere of government.

Financial year –

- a. the period from the date on which the Board is appointed for the first time to the last day of March in the following year; and
- b. each period of 12 months thereafter, ending on the last day of March.

Fund – the National Distribution Trust Fund established by section 21.

Licensee – the person to whom the organ of state issued a licence for the National Lottery in terms of section 13 (1).

Lottery – includes a game, scheme, arrangement, system, plan, promotional competition or device for the distribution of prizes by lot or chance and any game, scheme, arrangement, system, plan, competition or device that the Minister may, by notice in the Gazette, declare to be a lottery.

Lottery manager – any person authorised by a society to conduct a lottery on its behalf for payment of any nature whatsoever.

National Lottery – the lottery contemplated in part 1 of this Act and includes all the lotteries conducted under the licence for the National Lottery, taken as a whole.

Net proceeds of the National Lottery – the sums payable to the fund or the Board in terms of section 14 (2) (e), but not the sums that are paid out as prizes of the National Lottery.



Private Lottery – a lottery in the Republic that is conducted in accordance with section 37 -

- a. for and by members of a social or sporting club that is not connected with any form of gambling;
- b. for and by persons, all of whom work on the same premises;
- c. for and by persons, all of whom reside on the same premises;
- d. by persons, each of whom –
 - i. is one of the persons for whom the lottery is conducted; and
 - ii. in the case of a lottery conducted for the members of a social or sporting club, has been authorised in writing by the governing body of the social or sporting club to conduct the lottery.

Prize – the prize awarded to the winner of a lottery.

Society lottery – a lottery conducted by a society in accordance with Chapter 2 of Part II.

Sporting event – any football, rugby, cricket, golf or tennis match, any boxing, wrestling, shooting or swimming contest, any foot, cycle, motor, boat or horse race, and any other lawful sporting contest, competition, tournament or game usually attended by the public.

Sports pool – any scheme, excluding any scheme or competition in respect of horse racing, that is authorised by the Board, or that is conducted in the same format and manner and under the same circumstances as a scheme or competition in respect of horse racing that existed prior to 18 June 1997, under which –

- a. any person is invited or undertakes to forecast the result of any series or combination of sporting events in competition with other participants; and
- b. a prize is to be awarded to the competitor who forecasts the said result correctly or whose forecast is more nearly correct than the forecasts of other competitors, or a number of prizes are to be awarded on the basis aforesaid, and for the purpose of this definition the forecast of a result includes not only the forecast of the person, animal, thing or team that will be victorious or otherwise, but also any forecast relating to the system of scoring employed in the sporting event in question, or to the person who will be responsible for the score.


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

QUESTIONS AND ANSWERS

What are the functions of the National Lotteries Commission Board?

- a. The Board must meet regularly to perform its functions in terms of the Act.
- b. The Board shall annually table financial reports in accordance with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), in Parliament in respect of the distributed funds, which financial report must form part of the report contemplated in section 12 (1) (b).
- c. The Board may appoint committees to assist it in efficiently and effectively performing its functions and exercising its powers.
- d. The Board shall designate the chairperson of every committee.
- e. The Board appoints a person with suitable qualifications and experience as Commissioner of the Commission.
- f. The Board shall, in applying the principles of openness and transparency and in addition to its other functions in terms of this Act, manage and administer the fund and hold it in trust.
- g. The Board shall ensure that the Commission performs its functions efficiently and effectively in compliance with this Act and any other applicable law.
- h. The Board shall institute disciplinary proceedings against the Commissioner who fails or refuses to comply with or contravenes this Act.

- i. The Board shall approve, determine, oversee or revise the Commission's operational strategic framework or policies, corporate governance framework policies, human resource policies and approve the appointment of senior executive employees of the Commission.
- j. The Board shall approve, determine, oversee and revise the broad policy framework within which the Commission must perform its functions.
- k. The Board shall ensure that the Commission exercises its powers in accordance with the principles of transparency and accountability.
- l. The Board shall institute disciplinary proceedings against any employee who fails or refuses to comply with or contravenes this Act.
- m. The Board shall serve as review authority against decisions of the distributing agency regarding applications for grants.
- n. The board shall, in consultation with the Minister, determine the category of applications for grants that are excluded from funding.
- o. The Board shall take all reasonable steps to recover any amount in relation to a grant that has been withdrawn, prohibited or reduced in terms of section 33 of this Act.
- p. The Board shall have the power to institute legal proceedings in order to properly discharge its functions and responsibilities in terms of this Act.
- q. The Board may approach any court for any order the Board deems appropriate for effective regulation and enforcement of the Act.

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- r. The Board may request the Commission to conduct research on appropriately deserving worthy causes that may be funded or recipients that may be funded without lodging an application.
 - s. The Board may recommend to the Minister to prohibit, withdraw or reduce any grant made by the distributing agency if the Board receives information that such grant is utilised or is likely to be utilised in an unauthorised manner that does not comply with the purpose or conditions stipulated in the grant or is utilised or is likely to be utilised for an unlawful purpose.

What are the disqualifications of members of Board?

1. The Minister may not appoint a person to the Board who:
 - a. is not a South African citizen;
 - b. is a political office bearer;
 - c. is disqualified to act as a director of a company incorporated in terms of the Companies Act, 2008 (Act No 71 of 2008);
 - d. has been found in any civil or criminal proceedings by a court of law, whether in the Republic or elsewhere, to have acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty, or of any other offence for which such person has been sentenced to direct imprisonment without the option of a fine;
 - e. has been removed from a position of trust;

- f. has been subjected to a disciplinary hearing resulting in his or her membership of a Board or any other account authority of a public entity being prematurely terminated in the past five years;
- g. was at any time found to be in contravention of this Act or any other Act applicable to the public service in the past five years;
- h. has been declared by a court of law to be of an unsound mind; or
- i. is an unrehabilitated insolvent.

What are the functions of the National Lotteries Commission?

1. The Commission shall, applying the principles of openness and transparency, exercise the functions assigned to it in terms of this Act by the Minister, Board or any other law.
2. The Commission must ensure that:
 - a. the National Lottery and sports pools are conducted with all due propriety and strictly in accordance with the Constitution, this Act, all other applicable law and the licence for the National Lottery, together with any agreement pertaining to that licence;
 - b. the interest of every participant in the National Lottery is adequately protected.

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3. The Commission may, upon request by the Minister, Board or on its own initiative in consultation with the Board, conduct research on worthy good causes that may be funded without lodging an application prescribed in terms of this Act.
 4. The Commission may, upon request by the Minister, Board or on its own initiative in consultation with the Board, invite applications for grants from worthy good causes in the prescribed manner.
 5. The Commission shall:
 - a. promote public knowledge and awareness by:
 - i. developing and implementing educational and informational measures to educate the public about the lotteries and provisions of this Act; and
 - ii. educating the public by explaining the process, requirements and qualifications relating to application for grants in terms of this Act.
 - b. manage the staff and its financial, administrative and clerical functions; and
 - c. exercise any other function as delegated or directed by the Minister or the Board.

Who governs the National Lotteries Commission?


The Commission is governed by the Board appointed in accordance with this Act.

How long is the appointment period of members of the Board?

A member of the Board shall hold office for such period, not exceeding five years, as the Minister may determine at the time of his/her appointment, and shall be eligible for reappointment at the end of his/her term of office for a further period not exceeding five years.

Who appoints an organ of state to conduct the National Lottery?

- a. In the event that the Minister decides on justifiable grounds not to issue a licence as contemplated in section 13, the Minister may, after consultation with the Board, licence or authorise an organ of state to conduct the National Lottery for a period not exceeding eight years, on such terms and conditions as the Minister deems appropriate, including such conditions as stipulated in section 14 (1) and (2).
- b. The licence issued to an organ of state may allow such an organ of state to appoint any other person to conduct certain lotteries of the National Lottery on behalf of such organ of state, subject to the written approval of the Minister: provided that the Board has made a recommendation to the Minister to allow such appointment if the person to be appointed has satisfied the provisions of section 13 (2) (b) and any other requirements or conditions as directed by the Minister.

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- c. The Minister shall publish in the Gazette the appointment of an organ of state to conduct the National Lottery in terms of this Act.

How long is the appointment period of members of the distributing agency?

1. Members of the distributing agency shall be appointed for a period of five years, which may be renewed only once, to serve on a full-time basis as members of the distributing agency and staff members of the Commission responsible for adjudication of applications for grants or recommendations of funding of worthy good causes received from the Commission.
2. The Chairperson of the distribution agency is an ex-officio member with no voting rights who may only attend meetings of the Board per invitation or if matters relating to the adjudication of applications for grants or distribution of grants are to be discussed.
3. A member designated as a full time chairperson shall upon the expiry of such a period become an ordinary member entitled only to ordinary full-time member's conditions of appointment and remuneration, unless his/her appointment as a member of the distributing agency has expired.

Who determines the numbers of distributing agency members in each category?

1. The number of distributing agency members in each category is determined by the Minister after consultation with the Board in line with the size of the funds in such category. In addition, provided that such number shall not exceed nine in each category.

What process must be followed to appoint the Commissioner?

1. The Board, shall, in consultation with the Minister, appoint a person with suitable qualifications and experience as Commissioner of the Commission who:
 - a. is accountable to the Board for the performance of all financial, administrative and clerical functions, as well as any duties that may be delegated to him/her by the Board under this Act; and
 - b. holds office for an agreed term of five years, which may be renewed only once for a further period of five years.

Who appoints the distributing agency?

The distributing agency contemplated in section 22 (3) shall be appointed by the Minister in terms of the Lotteries Amendment Act, No. 32 of 2013, and is accountable to the Board.

What are the conditions of service of distributing agency?

The distributing agency shall be responsible for the following:

- a. Considering, evaluating and adjudicating applicants for grants or recommendations of funding of worthy good causes received from the Commission after research conducted in terms of this Act.
- b. A decision of the distributing agency concerning an application for a grant is subject to review by the Board only on application by an aggrieved applicant in the manner prescribed and provided that such review shall be adjudicated by a Board committee set up for such purpose without delay.
- c. If the Board overrules the decision of the distributing agency, the Board may either:
 - i. order the distributing agency to re-evaluate the application taking into consideration matters raised by the Board; or
 - ii. set aside the decision of the distributing agency and substitute it with an order that the Board deems appropriate.
- d. The Minister may, after consultation with the Board, make regulations regarding:
 - i. the procedures for review against the decisions of the distributing agency as contemplated in section 10 (1) (p);
 - ii. the limits on the amounts of the grant to be awarded to an applicant in a


- 12-month period;
- iii. the period within which an application for a grant or recommendation of funding shall be finalised; and
 - iv. any other process that facilitates the efficient and effective application for grants and the distribution thereof.
- e. Preparing reports on grants already awarded and on the performance of its functions to the Board on a quarterly basis or as and when requested by the Board.

What is restraint of trade?

A member of the distributing agency or his or her spouse or life partner, immediate family member or business partner or associate, may not during the time of his or her membership or for a period of 24 months after the termination or expiry of such membership, take up employment or in any way receive any benefit from any person who received a grant or intends to apply or has applied for a grant in terms of this Act.

The following are reasons for disqualification of members of the Board:

The Minister may not appoint a person as a member of the distributing agency if such a person –

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- a. is a political office bearer;
 - b. is or becomes an unrehabilitated insolvent or commits an act of insolvency;
 - c. is disqualified to act as a director of a company incorporated in terms of the Companies Act, 2008 (Act No. 71 of 2008); and/or
 - d. has been found in any civil or criminal proceedings by a court of law whether in the Republic or elsewhere, to have acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty, or of any other offence for which such a person has been sentenced to direct imprisonment without the option of a fine in the past five years.

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