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Gaming Law

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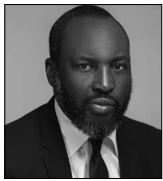
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Law Allianz is one of Africa's premier specialist law firms specialised in providing gaming services. The firm has a broad range of gaming clientele, from gaming companies to regulatory agencies. It has offices in Lagos and Abuja in Nigeria, as well as Johannesburg. It has played a pivotal role in Africa's growing gambling industry, making it a trusted adviser to several blue-chip and private equity companies seeking opportunities in Africa's growing market. The gaming services provided at Law Allianz range from land-based

gaming to online gaming. It offers advisory services on licensing, online gaming, payments, white labelling, software contracts, mergers and acquisitions, due diligence, intellectual property and domain name disputes, etc. The individual and collective experience of the firm's lawyers and consultants produces the highest-quality service delivery, which clients can attest to. Law Allianz's desire for excellence has distinguished it from other firms as it has interactive and proactive methods of dealing with clients.

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1. Introduction

1.1 Current Outlook

The gambling industry in Nigeria has seen tremendous growth in recent years. This exceptional growth is evidenced in the online gambling sector by the sheer size of transactions processed by the banks and fintech. The growth can be credited to the large youthful population, affordable internet mostly accessed through mobile phones and the love for sports, particularly football. Prior to now, the focus has mainly been on sports betting, virtuals and lottery; however, the country has started to witness the growth of mini casinos and slot machines, which are usually situated in bars and lounges in key commercial cities.

The payment landscape that previously posed a challenge to operators is changing with the influx of many payment service providers (PSPs) and the approval of the central bank to allow telecoms companies to introduce mobile money as part of its financial inclusion strategy. It is expected that the industry will witness exponential growth in the coming years.

1.2 Recent Changes

There have been few changes that are bound to have far-reaching effects on the sector. The Federal Inland Revenue Service (FIRS) recently announced its plan to implement an automated 5% VAT on all online betting transactions, although this tax regime has been temporarily suspended after operators kicked against it; no one is sure what the final position of the FIRS is and what the proposed automation will look like. It is feared that the implementation of this tax or any other additional taxes is bound to discourage players from patronising licensed operators and will probably drive the industry underground.

Last year, Lagos State also tried to implement a withholding tax of 10% on winnings but found it impractical as the local tax law insufficiently provided for such taxes.

Several of the sub-nationals, in a bid to increase their internally generated revenue, are reviewing their laws for the purpose of setting up their own regulatory bodies or for the purpose of empowering the tax offices to perform such functions. The effect of the flurry of regulatory activities by the sub-nationals is that most of the country will eventually be regulated.

2. Jurisdictional Overview

2.1 Online

Betting, bingo, online casino, lotteries, fantasy sports, social gaming and online poker are permitted in the country, although the National Lottery Regulation, 2007 prohibits any games based on the outcome of any sporting event; notwithstanding that the National Lottery has come up with a new licence category called sports lottery.

The various gaming regulatory bodies have been entrusted with the power to create additional licences for gambling services that cannot be regulated under the existing gambling categories.

2.2 Land-Based

Land casinos, sports betting (bookmakers), slot machine operators, raffles and Lotto shops are the types of land-based gambling permitted in Nigeria. There are no prohibited games to the best of this firm's knowledge. However, it should be noted that the regulatory authorities have the power to create new licences to accommodate the ever-growing gambling industry.

3. Legislative Framework

3.1 Key Legislation

At the national level, the key pieces of legislation on gambling are the National Lottery Act, 2005 and the National Lottery Regulation, 2007. At state level, the gaming or tax laws of the various sub-nationals regulate the affairs of gaming in the state; for instance, in Lagos it is the Casino and Gaming Regulatory Authority Law and the Lagos State Lottery Law as amended 2008, while in Anambra state it is the Anambra State Gaming Law of 2005.

What is, however, noticeable is that almost all the sub-nationals at one time or the other passed gambling laws to regulate pools betting and lottery in the 1970s and 1980s but, being obsolete, most have to be repealed or amended to bring them into conformity with the current industry trends.

About two years ago an amendment to the National Lottery Act, 2005 was passed at both the House of Representatives and the Senate but was rejected by the Vice-President, the acting President at the time, who refused to sign off the bill, which eventually lapsed with the expiry of the Fourth Assembly.

3.2 Definition of Gambling

The definition of gambling in Nigeria can be determined at two levels: nationally and individually among the 36 sub-nationals that make up the Nigerian Federation.

Consequently, gambling is defined to include different elements of gaming in each legislation. At the national level,

the National Lottery Act, 2005 defines gambling to include "any game, scheme, arrangement, system, plan, promotional competition or device for the distribution of prizes by lot or chance, or as a result of the exercise of skill and chance or based on the outcome of sporting events or any other device which shall be operated according to a licence".

As an example at state level, the Lagos State Lotteries (Amendment) Law 2008 defines a lottery as "any game, scheme, arrangement, system, plan, or device for distributing prizes by lot or chance and any game, scheme, arrangement, system, plan or device, which the Commissioner may by notice in the *Gazette* declare to be a lottery"; while the Casino and Gaming Regulatory Authority Law of Lagos State 2007 defines gambling as "the wagering of a stake of money or anything of value on the unknown result of a future event at the risk of losing all or a portion for the sake of a return, irrespective of whether any measure of skill involved or not and encompasses all forms of gaming and betting".

Therefore, the definition of gambling is specified by the applicable laws of the different jurisdictions.

3.3 Definition of Land-Based Gambling

Land-based gambling in Nigeria is known to mean any gaming premises/operations located in the real world with physical outlets as opposed to solely online presence. This ranges from casino outlets to betting stores/bookmakers. In reality, however, most transactions are web-based, even in the land-based facilities.

3.4 Definition of Online Gambling

Although online gambling is not yet clearly defined in Nigerian legislation, in practice it involves any electronic form of gambling, whether through the internet, telephone, television or radio communication, or any other kind of technology for facilitating communication.

The most common form of remote gambling offered in Nigeria is sports betting, which is also conducted through mobile gaming (via telecommunications networks) and the internet using smartphones.

3.5 Key Offences

The National Lottery Act, 2005 states that an offence is committed when any person forges any lottery ticket or causes any ticket to be forged; knowingly attempts to sell any forged or stolen ticket; alters any number or figure or falsifies or otherwise disfigures any ticket with the intent to defraud; with the intent to defraud takes, or converts to his own use any proceed from a lottery operated by the licensee; or knowingly sells to any person under the age of 18 years any ticket in a lottery operated by a licensee.

Whoever is found guilty of an offence shall be liable on conviction to a fine or imprisonment, or both. All the remaining

states have similar provisions for offences, which include jail terms.

3.6 Penalties for Unlawful Gambling

The penalty for offering unlawful gambling under the National Lottery Act, 2005 (national law) is imprisonment for up to three years or a fine of at least NGN20,000, or both. At state level the penalties vary from state to state. For instance, in Lagos State, the penalty according to the Casino and Gaming Regulatory Authority Law is imprisonment for up to five years or a fine of NGN20 million, or both.

All the other states have similar provisions.

3.7 Pending Legislation

A bill to amend the current legislation on gaming in Lagos State is before the State House of Assembly waiting to be passed. In 2017 the President refused to sign off the National Lottery Act (Amendment) Bill into law and the bill lapsed.

Anambra State has recently passed Anambra State Gaming Law 2019, which repeals the 2005 law and makes adequate provisions for remote gaming.

At the national level there are several regulations that are due within the next two years, including responsible gambling, software licensing, employee licensing, data protection, whistle-blowing and other sundry policy guidelines.

4. Licensing and Regulatory Framework

4.1 Regulatory Authority

Gambling in Nigeria is regulated at both the national and state levels. The National Lottery Regulatory Commission (NLRC) regulates gambling at the national level, while at the state level, some states are regulated by a specific gaming board, authority or commission (for example, in Lagos it is the Lagos State Lotteries Board; in Anambra it is the Anambra State Gaming Board), and in less regulated states, gambling is overseen by the state's internal revenue board.

Where someone intends to provide mobile betting, he is required to secure a value added service licence from the Nigeria Communications Commission before applying for short codes.

4.2 Regulatory Approach

There is a prescriptive approach to regulation in Nigeria across the national and state levels. The regulator grants a gambling licence upon fulfilment of the conditions for application. It also has the power to revoke or suspend a licence when an operator defaults or does not comply with the law. It also ensures enforcement and imposes administrative sanctions on non-compliant operators. Overall, its functions revolve around ensuring gambling activities are conducted

in accordance with the law to create a sanitised gambling society and protect the diverse sectors of society.

4.3 Types of Licences

The gambling licences granted by the National Lottery Regulatory Commission include the following: charitable lottery, online lotteries, promotional lottery and sports lottery. The National Lottery does not, however, grant casino licences, whether online or land-based, while the different state gaming regulators offer a variety of licences, including casinos. In Lagos State, the licences applicable to gambling are online sports betting, casino, other lotteries (promo), scratch card and interactive games, gaming machine, pool betting and other games.

4.4 Availability of Licences

Licences are available upon application and fulfilment of all conditions required by the regulatory agency. The length of the application process from inception to completion varies from the national level to the states. It could take a minimum of two weeks to three months depending on the state from which an operator wishes to obtain a licence.

There are no limits on the number of available licences in the country. However, the regulatory authorities may place a temporary restriction on the number of licences issued subject to certain conditions prevailing at such times.

At the moment the National Lottery is vetting all the licensees in order to weed out the dormant licensees.

4.5 Duration of Licences

A lottery licence granted at the national level (under the National Lottery Act, 2005) shall be valid for a minimum period of ten years and a maximum of fifteen years. The licence may be extended for a further period, not being in excess of ten years. Sports lottery licences are valid for five years, while promotional licences are issued or renewed on a yearly basis.

In most states, gaming licences range from one year to five years and are renewable for a term determined by the respective state gambling regulator.

4.6 Application Requirements

An application must be made to the gambling regulatory authority in the jurisdiction or state in which the applicant/operator wishes to conduct its operations. The application shall consist of an application letter, a non-refundable application fee (prescribed by the regulatory authority), documentary evidence of business incorporation, a detailed business plan or proposal of the proposed gambling operations, its financial capability, certified software, a trade mark and a drawing of its software architecture along with a service level agreement between the operator and software operator. The applicant is also expected to provide a bank guarantee

from a reputable institution. Upon the submission of the application, the regulatory authority may decide to undertake a due diligence visit to the applicant's principal place of business before it decides on whether to grant a licence to the operator.

There is no difference between application requirements for land-based and online operators. They both take the same format and require similar conditions to be fulfilled by the applicant/operator.

Furthermore, there are no application requirements for directors, owners, shareholders or senior management, although they are all required to show evidence of the payment of up to three years' annual taxes from their places of residence. All that is required during the application stage is the curriculum vitae (CV) of the directors to show adequate experience in the gaming industry if they intend to take up any top management position.

In Lagos State it is expected that foreign operators will secure local partners who must hold a minimum of 15% of the issued shares at any point in time. Other states are liberal about shareholding.

4.7 Application Timing

Licence applications in the country range from two weeks to three months depending on the jurisdiction (national or state) the applicant desires to be licensed under. In some states, such as Anambra, it takes a period of two weeks. In Lagos State, it takes a period of six weeks to twelve weeks depending on total fulfilment of the conditions stipulated by the Lagos State Lotteries Board (LSLB).

At the national level it is required that the applicant makes a formal presentation of his application before the National Lottery Regulatory Commission along with the due diligence visit to its principal place of business.

4.8 Application Fees

There is no fixed amount across the different jurisdictions in the country. The different gambling regulatory agencies in their respective jurisdictions have the power to determine the licence application fees. Consequently, licence application fees range from NGN50,000 to NGN2.5 million depending on the commercial nature of the state in question and the level of knowledge about the industry.

4.9 Ongoing Annual Fees

The annual/renewal fees for licences also vary. They depend on the nature/category of the licence and the jurisdiction in which the licence was acquired. A national licence for sports betting is five years, while in most sub-nationals, licences are renewable annually.

5. Land-Based Gambling

5.1 Premises Licensing

In Nigeria, sports betting shops are indiscriminately situated, although it is frowned upon when such facilities are sited near residences, churches and schools. In Lagos, though, there are no parameters for locating casinos, but they are not allowed to over-saturate any area code.

In Anambra State there is a provision for the licensing of premises and advertisements on such premises, although it has not started implementation of same. Generally speaking, such licensing has caught on and enforcement of such will be quite difficult in the short term.

5.2 Recent or Forthcoming Changes

There are no recent or forthcoming changes to the land-based gambling sector in Nigeria. There has for a long time been a rift between the sub-nationals and the national on the overlapping jurisdiction on issues concerning licensing and gaming taxes.

To address that, the National Lottery Regulatory Commission has formed a committee comprising the CEOs of the various regulatory bodies, who are expected to negotiate and work out the modalities for bringing harmony to the conflicts between the various levels of regulating gaming nationally.

For now, some operators, due to the nature of their operations, have been subjected to double licensing and taxes.

6. Online Gambling

6.1 B2C Licences

It is expected that the licensee provides omni-channels for customer support, dispute resolution and privacy. Also, it is expected that software licences are registered with the National Office of Technology Acquisition and Protection (NOTAP).

6.2 B2B Licences (Suppliers, Software, etc)

The law currently does not require suppliers of gambling services or goods to apply for a licence. At the national level, and even in some of the states, the supplier is required to have a certification from a reputable institution.

6.3 Affiliates

Operators are generally responsible for the activities of their affiliates' conduct and how they interface with players. Some of the operators already have in place a code of conduct for their affiliates but besides that, there is rarely any kind of government regulation on affiliates, who are treated as mere agents.

6.4 White Labels

There are no specific licensing and regulatory requirements that apply to the use of white-label providers. With respect to gambling, all licensing and regulatory requirements take the same route throughout the federation.

6.5 Recent or Forthcoming Changes

It is expected that several regulations will be passed soon, especially a remote gaming regulation and guidelines on software licensing. Also of paramount importance is how to implement an effective responsible gambling regime across the country through education and sensitisation.

The Special Control Unit against Money Laundering (SCHUML) has also directed that operators and their employees must attend refresher courses on money laundering on a yearly basis. Operators are expected to report single transactions that are more than one \$1,000 per month electronically to its office.

6.6 Technical Measures

There are currently no technical measures in place to protect consumers from unlicensed operators. Local operators are demanding a legislation that prohibits unlicensed operators from consumers in Nigeria. In practice, the regulators issue a cease and desist letter/notice before taking extreme measures against the unlicensed operators in the country.

Also, in furtherance of the above, the National Lottery Regulatory Commission has entered into a memorandum of understanding with the National Communications Commission (NCC) for the purpose of working together to block illegal operators.

7. Responsible Gambling

7.1 RG Requirements

Currently, there are no responsible gambling obligations applicable to licensees in the country. In practice, operators are required to ensure they conduct their gaming operations in a responsible and fair manner, and that all players are not below the age of 18. However, with the recent changes and developments in the gambling industry in Nigeria, regulations on responsible gambling are currently pending for passage both at the national level and in some of the states.

7.2 Gambling Management Tools

There are no specific gambling management tools in Nigeria.

8. Anti-money Laundering

8.1 AML Legislation

Licensees are considered “designated non-financial institutions” for purposes of anti-money laundering regulatory requirements. They are subject to regulatory requirements

such as the Central Bank of Nigeria Guidelines, the Money Laundering (Prohibition) Act (As Amended) 2012, the Special Control Unit against Money Laundering and the Terrorism (Prevention) Act 2011.

Every licensee is expected to register with SCHUML as well as appoint a compliance officer, who is expected to send monthly reports to it. Directors of the companies are also expected to attend short training sessions as part of the registration process.

8.2 AML Requirements

The anti-money laundering laws and policies require designated non-financial businesses and professions to integrate their customers/clients into their frameworks in order to ensure and monitor compliance with their programmes. Businesses and professions that fall under this category are required to adopt a risk-based approach in the identification and management of their anti-money laundering risk in line with the requirements of this regulation. They are required to render statutory reports to appropriate authorities as required by law. In addition, they are required to identify, review and record other areas of potential money laundering and terrorist financing risks not covered by these regulations and report same to the appropriate authorities.

These are the basic minimum anti-money laundering requirements that exist in Nigeria.

9. Advertising

9.1 Regulatory/Supervisory Agency

Advertising in Nigeria is regulated by a combination of national and state gaming laws and regulations, the Consumer Protection Council (CPC), the Advertising Practitioners Council of Nigeria (APCON), and Nigeria Broadcasting Commission (NBC) and Nigerian Communications Commission guidelines.

The National Lottery Act, 2005 stipulates that each licensee must submit a draft code of practice for its approval. The code should cover advertising and public relations, and it is expected to conform to the socially responsible programme drafted by the National Lottery Regulatory Commission.

9.2 Definition of Advertising

Advertising in Nigeria means the manner in which any message, the content of which is controlled directly or indirectly by the advertiser, is expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of the target audience.

9.3 Key Legal, Regulatory and Licensing Provisions

The key regulatory provision on advertising is the Advertising Practitioners Council of Nigeria code.

9.4 Restrictions on Advertising

Gambling operators must take into cognizance the time of day an advert is placed, location and medium. Essentially, a gambling advert must not be placed next to a school or during the time of day children are tuned in to a television station or radio channel.

Furthermore, the National Lottery Regulation, 2007 specifies that all licensees must prepare a code of practice for advertising that restricts the participation of children, and young and vulnerable persons in gambling. There are no specific regulations that restrict advertising of gambling games in Nigeria.

Currently there is a draft law specifically setting standards for gambling advertisements pending before the National Lottery Regulatory Commission.

9.5 Sanctions/Penalties

The penalties likely to be faced for infringing advertising regulations include a ban on that particular advert, a large fine and suspension of licence or total revocation of licence depending on the extent of the infringement.

10. Acquisitions and Changes of Control

10.1 Disclosure Requirements

Licensee changes of control and substantial changes in shareholdings of licensees must be reported to the gambling regulatory authorities. There are certain limitations on the persons who can have financial interest in a licence. Section 22 of the National Lottery Act states that “no person holding a political office or in the public service of the Federation shall have any financial interest in a national licensee or licence.” Therefore, civil servants, political or public office-holders, or people who are related to the above persons are not allowed to hold any substantial or financial interest in a licence.

10.2 Change of Corporate Control Triggers

There are certain transactions that can inevitably trigger a change of corporate control, including the following:

- sale of the majority of, or all of, the company’s assets;
- sale/transfer of shares (above 50%) to the acquirer/acquiring company;
- mergers – this is a major trigger as it usually has an effect on the corporate control of a company; and/or
- a substantial change in the shareholding structure/shareholders.

Before any change of the above nature can take place, it is expected that an application is made to the regulators for their approval.

10.3 Passive Investors Requirements

There are no specific requirements for passive investors in acquisitions or changes of control but if there are changes in directorship – ie, where new directors are added to the board – the regulator expects notification so that it can conduct a fit and proper persons test on such new directors. The National Lottery Regulatory Commission requires an approval to be acquired from the Commission when a significant change is expected in the control of a gaming company.

11. Enforcement

11.1 Powers

The gambling regulatory bodies have prosecutorial powers in court. They have also been conferred the following powers: suspension of licence, revocation of licence and the power to impose fines summarily for infringement of the relevant sections of the law under which the operator is licensed.

11.2 Sanctions

The issue of enforcement in the gambling industry in Nigeria has not been adequately addressed. However, with the recent developments, changes in the gambling industry and interest from the government, this matter will be sufficiently addressed. Nevertheless, local gambling laws are enforced in the jurisdiction where applicable.

It is advisable for gambling operators with or without a local presence in Nigeria to be compliant with the laws regulating gambling in the country.

Sanctions are imposed on non-compliant operators. The sanctions imposed on non-compliant operators range from administrative sanctions to criminal imprisonment. Administrative sanctions include closure of physical stores/offices of non-compliant operators and/or revocation or suspension of licence by the entity regulating gambling in the jurisdiction where the licensee operates.

In practice, a warning letter is sent first in most cases, giving the non-compliant operator time and notice to desist from conducting unlawful gambling operations. Criminal sanctions include imprisonment up to a specific term and/or a fine of a specific amount stipulated by the law under which the operator is licensed.

11.3 Financial Penalties

Financial penalties when imposed summarily are enforced by suspension or revocation of licence where the operator fails to pay within the stipulated time. In the event that a financial penalty is imposed on a licensee, enforcement is carried out by the courts directly.

12. Recent Trends

12.1 Social Gaming

There are no recent trends that have impacted the market.

12.2 eSports

There are pockets of initiatives to jump-start the eSports industry in Nigeria. However, it does not have the momentum that deserves a regulatory response.

12.3 Fantasy Sports

There are no recent trends that have impacted the market.

12.4 Skill Gaming

The Lagos State Lottery Board has licensed a company to host the first Lagos International Poker Tournament, which is scheduled for some time in 2020. Poker is growing, especially amongst the expatriate communities.

12.5 Blockchain

The National Lottery Regulatory Commission has started considering the regulation of blockchain technology with particular reference to cryptocurrencies, which has wide usage in Nigeria. It has, however, adopted a wait and see attitude because of the Central Bank of Nigeria's (CBN's) cautious directive to financial institutions.

12.6 Reform

There are no reforms or developments in social gaming, eSports, fantasy sports, skill gaming or blockchain.

13. Tax

13.1 Tax Rate by Sector

Gambling tax rates are determined from time to time, according to the concerned regulatory authority. These rates apply uniformly to both land-based and remote gambling. At the national level it is 20% of gross revenue for lottery, while in states like Lagos State, it is 2.5% of the gross revenue.

The National Lottery Regulatory Commission has recently given a mandate to its licensed sportsbook operators to pay 1% and 2% gross on monthly sales turnover to the National Lottery Regulatory Commission and National Lottery Trust Fund respectively as and when due.

In instances where short code services (SMS/USSD) are used by operators to provide betting services, the following tax rates will be applicable: 2% and 3% on gross monthly sales turnover to the National Lottery Regulatory Commission and National Lottery Trust Fund respectively as and when due. Furthermore, the Federal Inland Revenue Service has mandated a 5% VAT on a number of taxable consumer goods/services, although the implementation has been stalled. Lottery and gambling activities have been included in this new development. It is worth noting that the collection of VAT will be an automated process to ensure efficiency and transparency. The reality of this new development awaits to be seen.

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