



**Tuvalu**

# **GAMING AND LOTTERIES ACT**

**2008 Revised Edition**

**CAP. 54.10**





Tuvalu

## GAMING AND LOTTERIES ACT

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Tuvalu

## GAMING AND LOTTERIES ACT

### AN ACT TO PROVIDE FOR THE CONTROL OF GAMING AND LOTTERIES AND FOR MATTERS RELATED THERETO<sup>1</sup>

Commencement [31st January 1964]

#### 1 Short title

This Act may be cited as the Gaming and Lotteries Act.

#### 2 Interpretation

(1) In this Act, unless the context otherwise requires —

“**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 any 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 any player other than the actuation or manipulation of the machine;

“**player**”, in relation to a game of chance, includes any person taking part in the game against whom other persons taking part in the game stake, play, or bet;

“**premises**” includes any place or vessel;

“**society**” includes a club, institution, organisation or association of persons, by whatever name called, and any separate branch or section of such a club, institution, organisation or association and each local or affiliated branch or section of a society shall be regarded as a separate and distinct society.

(2)

- (a) In construing any provisions of this Act relating to the application of the proceeds of any entertainment, lottery, gaming or amusement to purposes other than purposes of private gain, proceeds of any entertainment, lottery, gaming or amusement promoted on behalf of any society to which this paragraph extends which are applied for any purpose calculated to benefit the society as a whole shall not be held to be applied for purposes of private gain by reason only that their application for that purpose results in benefit to any person as an individual.
- (b) In construing section 9 (1) (c), any purpose for which any 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 taken in its fulfilment would result in benefit to any person as an individual.
- (c) Paragraph (a) extends to any society which is established and conducted either —
  - (i) wholly for purposes other than purposes of any commercial undertaking; or
  - (ii) wholly or mainly for purposes of participation in or support of athletic sports or athletic games.

### **3 General provisions as to gaming**

- (1) Subject to the provisions of this Act, any gaming shall be lawful if, but only if, it is conducted in accordance with the following conditions, that is to say —
  - (a) that 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) that 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) that no other payment in money or money's worth is required for a person to take part in the gaming.
- (2) If in any proceedings under this section evidence is adduced that gaming took place on any premises and either —
  - (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 such a manner that the chances therein are not equally favourable to all the players, and that 10 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,

then, subject to subsection (7), 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 subsection (1).

- (3) Subject to the provisions of this Act, no gaming shall take place at which any person under the age of 18 years is included among the players, except where both the following conditions are satisfied, that is to say —
  - (a) that the gaming takes place in a private dwelling-house or in the presence of a parent or guardian of that person; and
  - (b) that 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.
- (4) If any gaming takes place on any premises —
  - (a) which is by virtue of subsection (1), or is held in pursuance of subsection (2) to have been, unlawful gaming; or
  - (b) which contravenes subsection (3),

any person concerned in the organisation or management of the gaming and any other person who, knowing or having reasonable cause to suspect that unlawful gaming or gaming in contravention of the said subsection (3) would take place on those premises —

- (i) allowed the premises to be used for the purposes of gaming; and
- (ii) 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 for the purposes of this subsection any person who took part in procuring the assembly of the players shall be deemed to have been concerned in the organisation of the gaming.

- (5) Any person who is present at any gaming such as is mentioned in paragraph (a) or (b) of subsection (4) for the purposes of taking part therein shall be guilty of an offence and shall be liable on summary conviction to a fine of \$100:

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

- (6) For the purposes of the last foregoing subsection, proof that any person was present at any 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 any of the following purposes, that is to say, 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.
- (7) In any proceedings under this section, gaming shall be held to have been conducted in accordance with the condition set out in subsection (1) (c) if it is proved —
- (a) that the gaming was carried on as an activity of a club; and
  - (b) that, apart from any annual subscription for membership of the club, the only other payment required for a person to take part in the gaming was a fixed sum of money determined before the gaming began; and
  - (c) that no person took part in the gaming who was not either —
    - (i) a member of the club in pursuance of an application or nomination for membership made more than 24 hours before the gaming began; or
    - (ii) a bona fide guest of such a member; and
  - (d) that the club is so constituted and conducted, both as regards membership and otherwise, as not to be of a merely temporary character.
- (8) In any proceedings in respect of a contravention of subsection (3) in the case of any gaming, it shall be a defence to prove that the person charged neither knew nor had reasonable cause to suspect that any of the players was under the age of 18 years.

#### **4 Gaming in public places**

- (1) Subject to the provisions of sections 5 and 10, if any person takes part in gaming in any street or in any other place to which, whether on payment or otherwise, the public have access, he shall be guilty of an offence and shall be liable on summary conviction to a fine of \$100.
- (2) Any police officer may arrest without warrant anyone whom he finds in any street or in any such place as aforesaid and whom he suspects, with reasonable cause, to be committing an offence under this section.
- (3) In this section —
- (a) the expression “street” includes any bridge, road, lane, footway, subway, square, court, alley or passage, whether a thoroughfare or not, which is for the time being open to the public; and

- (b) the doorway and entrances of premises abutting upon, and any ground adjoining, and open to, a street shall be treated as forming part of the street.

## **5 Saving for entertainments not held for private gain**

Where gaming, other than gaming which is incidental to an amusement to which section 10 applies, is carried on at any entertainment promoted for raising money to be applied for purposes other than private gain, then, in relation to that gaming —

- (a) so much of section 4 as relates to gaming in a public place other than a street shall not apply; and
- (b) section 3 shall have effect as if for the condition set out in subsection (1) (c) thereof there were substituted the following conditions —
  - (i) not more than 1 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, or at any entertainments promoted by the same person on the same premises on any day, and no such payment exceeds \$1;
  - (ii) not more than 1 distribution of prizes or awards is made in respect of all games played at the entertainment, and the total value of all prizes and awards distributed in respect of such games does not exceed \$40;
  - (iii) the whole of the proceeds of such payments as are mentioned in sub-paragraph (i), after deducting sums lawfully appropriated on account of expenses or for the provision of prizes or awards in respect of games, are applied for purposes other than purposes of private gain;
  - (iv) the amount of the said proceeds appropriated in respect of expenses does not exceed the reasonable cost of the facilities provided for the purposes of the games.

## **6 Prohibition of gaming with gaming machines**

- (1) Section 3 shall not apply to gaming by means of a gaming machine and any gaming with a gaming machine is unlawful.
- (2) Any person who —
  - (a) knowingly permits or causes any premises to be used for gaming with any gaming machine contrary to subsection (1) shall be guilty of an offence and shall be liable to a fine of \$1000 and to imprisonment for 6 months;
  - (b) takes part in unlawful gaming with any gaming machine shall be guilty of an offence and shall be liable on summary conviction to a fine of \$100 and to imprisonment for 2 months.

## 7 Illegality of lotteries

- (1) Subject to subsection (5) and the next succeeding sections all lotteries are unlawful unless the Minister has by notice published in the Gazette, exempted a specified lottery from the provisions of this Act.
- (2) Every person who in Tuvalu in connection with any lottery promoted or proposed to be promoted within Tuvalu or elsewhere unless that lottery has been exempted by subsection (t) from the provisions of this Act —
  - (a) prints any tickets 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, any tickets or chances in the lottery; or
  - (c) prints, publishes or distributes, or has in his possession for the purpose of publication or distribution —
    - (i) any advertisement of the lottery; or
    - (ii) any list (whether complete or not) of the prize winners or winning tickets in the lottery; or
    - (iii) any such matter descriptive of the drawing or intended drawing of the lottery, or otherwise relating to the lottery, as 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 Tuvalu for the purpose of sale or distribution any ticket in, or advertisement of, the lottery; or
  - (e) sends or attempts to send out of Tuvalu 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 any ticket or chance in the lottery; or
  - (f) uses any premises, or causes or knowingly permits any premises to be used, for the purposes connected with the promotion or conduct of the lottery; or
  - (g) causes, procures or attempts to procure any person to do any of the above-mentioned acts,shall be guilty of an offence.
- (3) In any proceedings instituted under subsection (2) it shall be a defence to prove that the lottery to which the proceedings relate was such a lottery as is declared either by section 8 or by section 9 not to be an unlawful lottery, and that at the date of the alleged offence the defendant believed, and had reasonable grounds for believing, that none of the conditions required by that section to be observed in connection with the promotion and conduct of the lottery had been broken.

- (4) Proceedings under subsection (2) (c) (iii) in respect of any matter published in a newspaper shall not be instituted except with the consent of the Attorney-General.
- (5) Nothing in this section shall make unlawful any gaming conducted in such circumstances that no offence under sections 3, 4, 5 or 10 is committed and in any proceedings instituted under subsection (2) it shall be a defence to prove that the lottery to which the proceedings relate was also a game of chance and that at the time of the alleged offence the person charged believed, and had reasonable grounds for believing, that it was being conducted as aforesaid.

## **8 Exemption of small lotteries incidental to certain entertainment**

- (1) A lottery promoted, with the prior consent in writing of the Minister and upon payment of a fee, as an incident to an entertainment to which this section applies, shall be deemed not to be an unlawful lottery, but the conditions specified in the next succeeding subsection shall be observed in connection with the promotion and conduct of the lottery, and if any of these conditions is broken, every person concerned in the promotion or conduct of the lottery shall be guilty of an offence unless he proves that the offence was committed without his knowledge.<sup>2</sup>
- (2) The conditions referred to in the preceding subsection are that —
  - (a) the whole proceeds of the entertainment (including the proceeds of the lottery) after deducting —
    - (i) the expenses of the entertainment, excluding expenses incurred in connection with the lottery; and
    - (ii) the expenses incurred in printing tickets in the lottery; and
    - (iii) such sum (if any) not exceeding \$20 as promoters of the lottery think fit to appropriate on account of any expenses incurred by them in purchasing prizes in the lottery,shall be devoted to purposes other than private gain;
  - (b) none of the prizes in the lottery shall be money prizes;
  - (c) tickets or chances in the lottery shall not be sold or issued nor shall the result of the lottery be declared, except on the premises on which the entertainment takes place and during the progress of the entertainment; and
  - (d) the facilities afforded for participating in lotteries shall not be the only, or the only substantial, inducement to persons to attend the entertainment.
- (3) The entertainments to which this section applies are bazaars, sales of work, fetes, dinners, dances, sporting or athletic events and other entertainments of a similar character, whether limited to 1 day or extending over 2 or more days.

## 9 Exemption of small lotteries organised by certain societies

- (1) This section applies to any lottery which is promoted in Tuvalu, with the prior consent in writing of the Minister and upon payment of a fee, by 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 not described in the foregoing sub-paragraphs and not being purposes of private gain or purposes of any commercial undertaking,
- and is so promoted for raising money to be applied for purposes of the society.<sup>3</sup>
- (2) A lottery to which this section applies shall be deemed not to be an unlawful lottery, but 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 and shall be authorised in writing by the governing body of the society to act as such promoter;
  - (b) no remuneration shall be paid in respect of the lottery to the promoter or any person employed by him in connection therewith who carries on or is in any way engaged in any betting business;
  - (c) no prize shall exceed \$1000 in amount or value and no ticket or chance shall be sold at a price exceeding \$2;
  - (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 paragraph (a), (b) or (c) of subsection (1);
  - (e) the amount of the proceeds appropriated on account of expenses shall not exceed the expenses actually incurred, or 10 per cent 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 every ticket or chance shall be the same, and the price of any ticket shall be stated on the ticket;
  - (g) the total value of the tickets or chances sold shall not exceed \$4000, and if on any day on which tickets or chances in the lottery are on sale tickets or chances are on sale in another lottery to which this section applies promoted on behalf of the same society, the total value of the tickets or chances sold in those lotteries taken together shall not exceed \$4000;

- (h) no written notice or advertisement of the lottery shall be exhibited, published or distributed except as follows —
    - (i) a notice of 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 the 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;
  - (l) no payment on account of expenses or prizes shall be made out of moneys of the society not being proceeds of the lottery; and
  - (m) no ticket or chance shall be sold by or to a person under 16 years of age.
- (3) If any condition required by subsection (2) to be observed in respect of a lottery is contravened, the promoter of the lottery and any other person who is a party to the contravention shall be guilty of an offence:

Provided that —

- (a) it shall be a defence for a person charged with any offence only by reason of his being the promoter to prove that the contravention took place without his knowledge;
- (b) it shall be a defence for any 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 the proceeds of the lottery fell short of the sum reasonably estimated, 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 that the total amounts appropriated or paid in respect of expenses and prizes did not exceed the amounts which could have been lawfully appropriated out of the proceeds of the lottery under the said paragraph (e) if the said proceeds had amounted to the sum reasonably estimated.

- (4) For the purposes of this section tickets or chances in a lottery shall be deemed to be on sale on each day between the dates on which such tickets or chances are first and last offered for sale, whether or not any such ticket or chance is sold on that day.

## **10 Provision of amusements with prizes at certain entertainments**

- (1) The provisions of this section shall have effect for the purpose of permitting the provision of any entertainment to which section 8 applies of amusements with prizes but in relation to any such amusements the conditions set out in the next following subsection shall be observed, and if either of those conditions is contravened every person concerned in the provision or conduct of that amusement shall be guilty of an offence unless he proves that the contravention occurred without his consent or connivance and that he exercised all due diligence to prevent it.
- (2) The conditions referred to in the foregoing subsection are —
  - (a) that 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 any expenses incurred in connection with any such amusements and the provision of prizes thereat; and
    - (ii) any other amounts authorised to be deducted by section 8 (2) (a), shall be devoted to purposes other than private gain; and
  - (b) that the opportunity to win prizes at amusements to which this section applies, or that opportunity together with the facilities offered by virtue of section 8 for participating in a lottery, is not the only, or the only substantial, inducement to persons to attend the entertainment.
- (3) In so far as gaming is incidental to any amusement at any entertainment to which this section applies, so much of section 4 as relates to gaming in a public place other than a street shall not apply to such gaming.

## **11 Enforcement and penalties**

- (1) If a magistrate is satisfied on information on oath that there is reasonable ground for suspecting that an offence under this Act is being, or has been or is about to be committed on any premises, he may issue a warrant in writing authorising any police officer to enter those premises, if necessary by force, at any time within 14 days from the time of the issue of the warrant and search them; and any police officer who enters the premises may —
  - (a) seize and remove any document, money or valuable thing, instrument or other thing whatsoever found on the premises which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of any such offence, and

- (b) arrest and search any person found on the premises whom he has reasonable cause to believe to be committing or to have committed any such offence.
- (2) A person guilty of an offence under section 3 (4) shall be liable —
- (a) on summary conviction, to a fine of \$200 or, in the case of a second or any subsequent conviction for an offence under the same provision, to imprisonment for 3 months and to a fine of \$400;
- (b) on conviction upon trial before a judge, to a fine of \$1000 or, in the case of a second or any subsequent conviction for an offence under the same provision, to imprisonment for 1 year and to a fine of \$1500.
- (3) A person guilty of an offence under any provision of this Act not mentioned in the foregoing subsection, being a provision which does not provide a special penalty, shall be liable —
- (a) on summary conviction, to a fine of \$100 or, in the case of a second or subsequent conviction for an offence under the same provision, to imprisonment for 2 months and to a fine of \$200; or
- (b) on conviction upon trial before a judge, to a fine of \$600 or, in the case of a second or any subsequent conviction for an offence under the same provision, to imprisonment for 6 months and to a fine of \$1000.
- (4) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly.
- In this subsection, the expression “**director**” in relation to a body corporate established by or under any enactment, being a body corporate whose affairs are managed by its members, means a member of that body corporate.
- (5) The court by or before which any person is convicted of any offence under this Act may order anything produced to the court and shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in such manner as the court may order.

## 12. Fees<sup>4</sup>

The Minister may by regulation prescribe fees for matters authorised by this Act.

**ENDNOTES**

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<sup>1</sup> 1990 Revised Edition, Cap. 10 – Acts 4 of 1964, 3 of 1968, LN 33/1974, Act 1 of 1984

Amended by Act 18 of 1991 commencement 1st January 1992

<sup>2</sup> Amended by Act 18 of 1991

<sup>3</sup> Amended by Act 18 of 1991

<sup>4</sup> Inserted by Act 18 of 1991

By regulations made by the Minister under section 12 on 9<sup>th</sup> January 1992 as LN 1/1992, the following fees were set —

|    |  |        |
|----|--|--------|
| 1. | Exemption of small lotteries incidental to certain entertainment under section 8 | \$5.00 |
| 2. | Exemption of small lotteries organised by certain societies under section 9      | \$5.00 |