

LEGAL AND INSTITUTIONAL FRAME WORK FOR GAMBLING/ONLINE GAMBLING IN NIGERIA

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Abstract

Gambling activities in our society can be said to be as old as man itself. Evolving from being a recreational activity to a means for generation of income with the skills of players becoming of almost importance. While Gambling has an age long history, the means through which gambling is taking place has also witness a great deal of changes. The emanation of Information Communications Technology and the Internet, came a change of medium, therefore legislation must keep up with the paste. This article assesses the Legal and Institutional Framework for Gambling/Online Gambling in Nigeria, it exposes the nature of Gambling/Online Gambling, historical regulations in Nigeria, legal forms in which gambling exist in Nigeria, current legislation, making recommendation for possible reforms. It also enlightens the Gambling/Gaming Sector, Stakers/Bettors, the government and all stakeholders of the Gambling industry in Nigeria and the laws regulating the industry. And it is limited to the Lagos State Lottery Board Law 2008, in its examinations of states regulations relating to gambling.

Keywords: Gambling, Online, Internet, E-Commerce, Information, Communications

I. Introduction

Gambling has over the years been part and parcel of the society, it can be traced from the ancient and primitive time to modern day society. Gambling as an activity, is as old as the human society itself as people from time immemorial have often place wages on certain out comes of future events of life. For the vast majority of players, Gambling is an enjoyable form of leisure, pursued for a range of reasons – to relax, to socialize, to experience some excitement, and perhaps to win money. To these categories of individuals, losses incurred on Gambling are simply the price one has to pay for the entertainment, in much the same way as cinema or football tickets are the cost of a good time.¹

Gambling activities has over the years evolve into various forms and kinds. And is currently referred to as Betting and Lottery by a wide range of the population.

However, there are arguments that Betting is not the same as Gambling.² In that, in Gambling, there is an inherent feeling of excitement from the participant, in

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¹ Agbala E.S., 'Mapping the Nigeria Gaming Industry: Legal & Socio-Cultural Factors.' (2016) *American Gaming Lawyer*. Autumn < <https://www.imgl.org/sites/> > Accessed 19 August 2018

² Fatimah Waziri –Azi "Regulatory & Legal Framework for Online Sports Betting in Nigeria: A Viable Alternative for Money Laundering" *International Journal of Law and Legal Jurisprudence Studies*: Volume 2 Issue

anticipation of preferred outcome turning up in their favour.³ And most importantly, in Gambling, the historical performance and antecedence of the object of the said gamble does not affect the outcome even though people try to use statistics to predict the outcome. Therefore, it is said that Gambling, typically involved game of chance that is based upon probability or luck and has nothing to do with the skills of a person.⁴

Betting on the other hand is an agreement between two persons, usually the Bettor and the Betting Company. Where the Betting Company provides the bookies and the other person makes prediction on the outcome of an event using the bookies. The individual either forfeits the amount waged in case of incorrect prediction or the Betting Company pays a higher amount as per the agreed terms if the prediction turns out to be correct. Here, historical performance and statistics are factors used to predict results.⁵

However, the word “Betting” and “Gambling” in this research will be used interchangeably, being that in the clear sense of the concept of these words, they stand to mean one and the same. Even though a distinction is made, this article views the distinction as being capable to be made as a result of the modern realities which brought about the use of antecedence for predictions.

With the advent of modern Information and Communications Technological (ICT) and the Internet, Gambling activities transcended from the old trend of Physical/Landed Gambling to Cyberspace, with Internet creating a new trend of Gambling commonly referred to as Online Gambling. Online Gambling has now form part and parcel of Electronic Commerce (E-Commerce) falling under the subject area of Information Communications Technology Law dealing with Finance such as E-Money, E-payment and M- Payment. Therefore, ascertaining the Legal and Institutional framework regulating Gambling/Online Gambling is very vital.

II. Gambling

According to the *Britannica Online Encyclopedia*, Gambling is defined as the betting or staking of something of value, with consciousness of risk and hope of gain,

³ Ibid

⁴ Ibid

⁵ Ibid

on the outcome of a game, a contest, or an uncertain event whose result may be determined by chance or accident, or it may have an unexpected result by reason of the bettor's miscalculation.⁶ The term 'Gambling' involves a wide-ranged concept that includes a different variety of activities, such as Gambling in Bingo halls, Gambling through the use of machines, betting on races, Casinos and amusement arcades, as well as playing the Lottery either on Land base or through the Internet Cyberspace.⁷

a. Online Gambling

According to *Casinopedia Online*, Online Gambling is any form of gambling game which is played using a computer or mobile device and the internet connection, this can be referred to as Online Gambling.⁸ In the same vein, the European Union (EU) defines Online Gambling services as any service that involves wagering a stake with monetary value in games of chance, including lotteries and betting transactions that are provided at a distance, by electronic means and at the individual request of a recipient service.⁹ Online gambling employs the borderless medium of the internet to deliver its services¹⁰

b. E-Commerce

Electronic Commerce, consists of the buying and selling of products or services over electronic systems such as the Internet and other Computer Networks.¹¹ It has also been defined as the exchange of information across electronic networks at any stage in the supply chain, which could be either within an organization, businesses, businesses and consumers or between the public and private sectors

⁶Britannica Online Encyclopaedia "Gambling" <<http://www.britannica.com.oasis.unisa.ac.za/EBchecked/topic/2248636/gambling>>. Accessed 19/09/2018.

⁷ Omachi, S.A, Okpamen K. O "The changing patterns of Gambling in Benue State the case of emerging roles of ICT(Information and Communication Technology) in Contemporary Markurdi Metropolis." 27th April, 2018 *American Association for Science and Technology AASCIT* Vol 5, Issue 2

⁸ Online Casinopedia <<https://www.casinopedia.org/terms/online-gambling>> Accessed 20/09/2018.

⁹ Salvatore Casabona" *The EU's Online gaming regulatory approach and crises of legal modernity*. Working Paper No.17 January, 2014.

¹⁰ John Mikler 'Sharing Sovereignty for Global Regulation: The Cases of Fuel Economy and Online Regulation & Governance' 2008 Volume 2, Journal Compilation (Blackwell Publishing Asia Pty Ltd: 2008) 383–404

<[doi:10.1111/j.1748-5991.2008.00048.x](https://doi.org/10.1111/j.1748-5991.2008.00048.x)> Accessed 1st September, 2019

¹¹ Akintola K.G, Akinyede R.O.& Agbonifo C.O, 'Appraising Nigeria Readiness For Ecommerce Towards: Achieving Vision 2020' November 2011, Vol 9 Issue 2, IJRRAS

<www.arpapress.com/Volumes/Vol9Issue2/IJRRAS_9_2_18.pdf> Accessed 30th August 2019

whether paid or unpaid.¹² E-Commerce involves wide range of transactions such as, Electronic Data Interchange (EDI), Supply Chain Management, Automated Data Collection systems, Internet Marketing, Electronic Funds Transfer (EFT), Online Transaction processing and Inventory Management Systems¹³

Some States of the Federation have Laws on Gambling or Lotteries, However, focus will be streamline to Lagos State Lottery Board Law 2008 while discussing regulations pertaining the States of the Federation primarily because under the said Law, Eighteen(18) Online Betting operators have been Licensed, while 12 have Temporary Licence and 14 have got their licence suspended,¹⁴and these Companies carryout Online Gambling/Betting activities all over the federation. The National Lotteries Commissions together with the Lagos State Lotteries Board have issued a combine total of more than Eighty (80) Licences prompting need to access its Legal framework and its institutional regulations.

III. Historical Regulations of Gambling in Nigeria

As a result of the receptive provisions of Nigeria Legislation, which received and made English Legislation applicable to our jurisdiction,¹⁵ the first Gambling Legislation applicable to Nigeria, was the Unlawful Games Act of 1541.¹⁶ The Act was enacted by the Parliament of England to prohibit several other games that have cause the decay of the sport of Archery.¹⁷ As a build up to the said Act, the House of Lords Select Committee made recommendations in 1844 which resulted in the enactment of the Gaming Act of 1845 in England.¹⁸ The said Act did not try to make Gambling illegal, however, it was aimed at discouraging Gambling by making contracts emanating from every Gambling activities unenforceable as a Legal Contract.

¹² Anthony Idigbe Nnamdi Oragwu & Okorie Kalu 'Legal And Institutional Framework For E-Commerce In Nigeria, Being A Paper Delivered At Bankers House Seminal Held 9th June 2010 Lagos, Nigeria

¹³ Ibid

¹⁴ Online sport betting, Lagos State Lottery Board. <<https://lslb.ig.gov.ng/osb/>>. Accessed on 29th April 29, 2018

¹⁵ **Section 45 of the Interpretations Act No.1 January 1964, Section 14 of the Supreme Court Ordinance of 1914.**

¹⁶ The Unlawful Games Act of 1541 (33 Henry 8 Chapter 9).

¹⁷ Archery is the art, sport, practice, or skill of using a bow to shoot arrows. Historically, archery has been used for hunting and combat. In modern times, it is mainly a competitive sport and recreational activity.

¹⁸ The Gaming Act 1845, (8 & 9 Victorian Chapter 109) was assented on the 8th of August 1845. The said Act was repealed In England on 1st September 2007.

In 1853, the Betting Act of 1853 was enacted making it illegal to use or keep any private property for the purpose of Gambling thereby outlawing any off-track Gambling. The Act help to restrict betting to only Horse Racing and Track Race event at the time. Over the past 40 years, Gambling laws have been enacted in Nigeria to protect its citizens and to define punishments for illegal gambling activities. These laws, provides penalties and punishments for playing illegal games, operating illegal gaming houses, operating an illegal gaming machine and more.

The Laws regulating Gambling in Nigeria at present are numerous and cutting across several legislations, which can be out-lined as follows:

1. The National Lottery Regulatory Commissions Act 2007.¹⁹
2. The Lagos State Lottery Board Law 2008²⁰
3. The Casino Taxation Act 1965.²¹
4. The Gaming Machines Prohibitions Act 1977²²
5. Criminal Code Act (1990)²³
6. The Penal Code Act.
7. The Economic and Financial Crimes Commissions Act 2004.
8. Money Laundering Act 2004.²⁴
9. The Advance Fee Fraud Act.²⁵
10. The Cybercrimes Act 2015.
11. The Constitution of the Federal Republic of Nigeria 1999.

¹⁹ No. 7.2005

²⁰ Lagos State Lotteries Board Laws Cap. L89 2004 (Now Lagos State Lotteries Board (Amendment) Law 2008.

²¹ Cap. C3 LFN 2004

²² Cap. G1 LFN 2004

²³ Cap. C38 LFN 2004

²⁴ Cap.M18 LFN 2004

²⁵ Cap. A6 LFN 2004

12. Companies and Allied Matters Act.²⁶

IV. **Legislative Jurisdiction on Gambling/Online Gambling in Nigeria**

In Nigeria, it is doubtful to assert that an activity not expressly prohibited or legislate upon is illegal.²⁷ The provisions of Section 36(8) and also Section 36(12) of the Constitution of the Federal Republic of Nigeria, 1999, supports this position of the Law. Therefore, all forms of gambling not expressly prohibited or legislated upon is a legal form of gambling, inclusive of Online Gambling under the National Lottery Commissions Act. However, there has been a lot of legislative dichotomy and the issue of dispute on who can legislate on issues relating to Gambling/Gaming. This is a subject of controversy in the case of *Attorney General of Lagos State v. Attorney General of Federation*²⁸ pending before the Supreme Court.

Judicial decisions before now has not help to resolve these controversies as seen in the case of *National Lottery Regulatory Commission v. Attorney General Lagos*²⁹ where the Federal High Court held that Lottery and Gaming falls within the meaning of an Inter State Commerce and it is the exclusive competence of the National Assembly to legislate on interstate Trade and Commerce.³⁰ Therefore, a holder of a licence can carry on business without any interference from the State as held in the case of *National Sports Lotteries Limited v. Attorney-General of Lagos State*.³¹

In the recent decision in the case of *Edet v. Chagoon*,³² the Court of Appeal held that Pools Betting and Casino Gaming (Prohibition) Act is not within the legislative competence of the National Assembly as same is not listed on the Exclusive and Concurrent list and therefore falls within the residual competence of

²⁶ Cap. C20, LFN, 2004

²⁷ Araromi, Marcus, 'Regulation of Gambling in Nigeria: A Need to Review the Status Quo' (March 18, 2018 Accessed from < <https://ssrn.com/abstract=3286593> > Accessed 10th September 2019

²⁸ Suit No. 01/2008

²⁹ Suit No. FHC/L/CS/1258/2012

³⁰ Paragraph 62(a) Second Scheduled of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

³¹ (2009) All FWLR PT 474

³² (2008) 2 NWLR (PT.1070)85

states. The Constitution of the Federal Republic of Nigeria 1999 provides in Section 4(7) that the state shall have Residual Powers to legislate on items not contained in the Exclusive List and the Concurrent List.³³ Gambling not been provided for falls under the residual list for the state to exercise legislative jurisdiction on. Therefore, the provisions of Section 34(3) of the National Lottery Act 2007, in line with its inconsistency with provisions of the Constitution is seen to be null and void and of no effect as such provision cannot amend the clear provisions of the Constitution.

V. Legislative Framework

Gambling, regardless of its long existence and increasing familiarity, has never been regarded as merely another business, free to off its wares or services to the public.³⁴ Instead it has always been a target of special scrutiny by governments in every jurisdiction where it exists, even among gambling friendly states.³⁵ The primary assumptions, whether empirically based or not is that, Gambling Industry, when left unregulated and subject only to market forces, would produce a number of adverse impacts on society and the government is the most appropriate remedy to turn to for Legislation regulating this Industry.³⁶ Thus, the objective of regulation is to ensure the integrity of the games offered. This function is often valued most by the proprietors of gambling establishments, being that regulations is the most effective means of ensuring that Legal Gambling exist and is operated in a fair and honest manner.³⁷

Secondly, government concern in regulations is aimed at prevention of crime such as an Organized Crime, and the volume of cash in the gambling sector could easily bring about a situation of Money Laundering when not adequately monitored.³⁸ Thus, the rationale behind statutory regulation is its command status. There is usually a higher level of compliance with statutory regulations of the State than Non-Statutory regulations produce by the Industry itself. Therefore, the Legislative and Institutional framework for the regulation of Gambling and Online Gambling Industry in Nigerian Gambling industry can be examine as follows: -

³³ Section 4 of the CFRN 1999, Second Schedule Part 1 and 2 of the Constitution.

³⁴ Micheal Belletire, 'Regulating Casinos Gaming: A view from State Regulators, Administrators Board of Illinois Board, Report Written for the NGISC at the request of the subcommittee on Regulation, Enforcement, and the Internet.' A Report to the National Gambling Impact Study Commission (January 1998)

³⁵ Ibid

³⁶ Ibid

³⁷ Ibid

³⁸ Ibid

1. The National Lottery Commissions Act 2005

The National Lottery Regulatory Commission Act was passed by the senate on 22nd March 2005 and also the House of Representative on same date. The Act was signed into Law by President Olusegun Obasanjo on the 30th March 2005.³⁹ Gambling sector in Nigeria, was grossly unregulated before the enactment of the Act and the Act still represent the legislative measures for regulating the Gambling Industry nationally. The Act is applicable to all Licenses operating immediately before the commencement of the Act and such a License is deem to have been granted under the Act.⁴⁰

The Act is divided into 58 Sections, and it establishes the National Lotteries Regulatory Commissions,⁴¹ which is a body a corporate with a perpetual succession and a common seal.⁴² The Act established the National Lottery Regulatory Commission Governing Board⁴³ which consist of a Chairman and Ten (10) other members, of which 6 must come from each of the six geopolitical zones⁴⁴ and the Federal Ministry of Commerce, the Federal Ministry of Finance, the Federal Ministry of Sports⁴⁵ and also the Director-General of the Commission⁴⁶ the chairman and the members of the Board shall be appointed by the president on a part time basis.⁴⁷

The rationale for the spread of membership across the six geo political zones, is in line with the Federal Character Principle under the Nigerian Constitution.⁴⁸ However, this provision of our Legislation has been criticised for its tendency to replace loyalty with national tribal loyalty⁴⁹and incompetency where such qualified persons are not within a particular geo political zones. Section 4 of the Act provides that notwithstanding the provisions of section 3, a member shall cease to be a member where he resigns, becomes of unsound mind, bankrupt, convicted of a felony or offence related to dishonesty or corruption, incapacitation of the body or mind, or upon satisfaction by the President that it is not in the interest of the Public or the commission for such a person to hold such office.

³⁹ The National Lotteries Commissions Act 2005 NO. 7 2005, became effective on that day.

⁴⁰ Section 32 of the NLC Act 2005

⁴¹ Section 1(1) NLC Act 2005

⁴² Section 1(2) NLC Act 2005

⁴³ Section 2(1) NLC Act 2005

⁴⁴ Section 2(2) (c) NLC Act 2005

⁴⁵ Section 2(2) (a) NLC Act 2005

⁴⁶ Section 2(2) (d) NLC Act 2005

⁴⁷ Section 2(3) NLC Act 2005

⁴⁸ Section 14(3) of the Constitution of the Federal Republic of Nigeria 1999.

⁴⁹ Akande J.O., Introduction to the 1999 Nigerian Constitution. (Lagos: MIJ Publishers), P. 55

a. Powers of The Board

Section 6 of the Act, vest the power on the Board to make general policy guideline, manage and superintend the policies of the Commission, determine the terms and conditions of service of the employees of the Commission, fix remunerations and benefit for staff and employee of the Commission in consultations with the National Salaries, Income and Wages Commission and to do all that is necessary within its opinion to ensure the efficient performance of the functions of the Commissions.⁵⁰

b. Functions of The Commission

Section 7 of the Act places an enormous duty on the Commission boarding on monitoring and regulating, administrative, Evaluative, and a duty of Trust to the Players, Stakeholders and the Public.

Theses duties includes:

- A. To regulate the operation and business of the National Lottery in Nigeria;⁵¹
- B. To collaborate with Licensee of the Gambling Industry, to set standards, guidelines and rules for the operation of National Lottery in Nigeria;⁵²
- C. To promote transparency, propriety and integrity in the operation of National Lottery in Nigeria;⁵³
- D. To ensure the protection of the interests of Players, Stakeholders and the Public in the National Lottery;⁵⁴
- E. To carryout periodic assessment of the operation of National Lottery in Nigeria and submit Report to the President and the National Assembly;⁵⁵ and
- F. To perform such other duties as may be directed by the President, from time to time, and as are necessary or expedient to ensure the efficient performance of the functions of the Commission under this Act.⁵⁶

c. Lottery Licence

Sections 17 of the Act provides:

⁵⁰ Section 6 of the Act.

⁵¹ Section 7(a) of the Act.

⁵² Section 7 (b) of the Act.

⁵³ Section 7 (c) of the Act.

⁵⁴ Section 7 (d) of the Act.

⁵⁵ Section 7 (e) of the Act.

⁵⁶ Section 7 (f) of the Act.

As from the commencement of this Act, the operation of the business of a National Lottery or any lottery, by whatever name called, shall be subject to a licence granted by the President upon recommendation by the Commission and compliance with the provisions of this Act or any regulations made pursuant thereto.⁵⁷

Section 17 of the Act clearly places all issues concerning the grant of permit and or licence to operate a National Lottery within the jurisdiction of the Act. The Act provides that licence may be granted to an individual or a Corporate Personality upon application to the President through the Commission⁵⁸ and such grant or licence issued upon the fulfilment of all the conditions as prescribe by the Act.⁵⁹ Licensee with approval of the Commission may contract, appoint and or engage any person or corporate body as an operator or agent to manage, promote, contract or operate, on behalf of the licensee.⁶⁰

d. Duration and Revocation of License

Licences issued under the Act is valid for a period of 10 years minimum and 15 years maximum, renewable upon application, by the President for a period not exceeding 10years.⁶¹ Such a License may be revoke in line with Section 21 of the Act, where the licences is no longer fit and proper to carry on the business of a National Lottery whether arising from Insolvency, Liquidation or any other valid reason, breach of any stated conditions of the licence, where such Licensee is not fit to benefit from such licence as a result of Insolvency, Liquidation, confinement in Correctional Services⁶² or any other institution or where he fails to take adequate steps to prevent the commission of fraud by his employees after being alerted or becoming aware of such act of fraud or dishonesty, unlawful prevention by the licensee or employee of the President or the Commissions from carrying on its duties under the Act, where

⁵⁷ Section 17 of the Act.

⁵⁸ Section 18 of the Act.

⁵⁹ Section 19 of the Act Prescribed conditions to be fulfilled before the grant of the licence and that also to be fulfil after the said grant has been issued in other to maintain the said licence Section 22 of the Act dealing with miscellaneous provisions relating to a licensee, prohibits any political office holder with the meaning of the Constitution of the Federal Republic of Nigeria, from having any financial interest in a National Licence or licence

⁶⁰ Section 23 of the Act.

⁶¹ Section 20 (1) (2) of the Act.

⁶² The Nigeria Correctional Services Act 2019, Repeal The Nigeria Prisons Act Cap. P. 29 Laws of the Federation of Nigeria and same provides for the change of name from the Nigeria Prisons to Nigerian Correctional Services.

licensee fails to abate or prevent the violations of the provisions of the Act, where the licensee or any of its employees repeatedly and knowingly sell tickets or awards or pays prizes to any person contrary to the provisions of the Act.⁶³ Compensation may be paid to the licensee after due valuation of all physical assets of the licensee that are related or use in the conducting of the business of the National Lottery.⁶⁴

e. Offences and Penalties Under the Act

Sections 30 and 34 of the Act contain a wide range of offences and their penalties. These includes the offences of obtaining or attempt to obtain by forming or conducting a syndicate for the purchase of a ticket or electronic entry,⁶⁵ any form of promotion of a syndicate for the purchase of an electronic ticket,⁶⁶ Forgery of Lottery ticket,⁶⁷ sales or attempt to sell a forged ticket,⁶⁸ Alteration of Lottery ticket with intent to defraud,⁶⁹ taking or conversions of proceed of a Lottery operated by a Licensee,⁷⁰ Sells of ticket to persons under Eighteen years,⁷¹ Fraudulent Representation as agent or licensee,⁷² giving of guarantee as incentive inducing a player as to winning a prize or share from a prize in a Lottery,⁷³ conducts or promotes a scheme which gives guarantee that a player or bettor will win a prize or share out of a prize in a lottery.⁷⁴

The National Lottery Commissions Act also prescribes various penalties for different offences. These are usually in form of terms of imprisonment or options of fine, or both imprisonment and fine.⁷⁵ The Act is of the effect that where no specific penalty is prescribe for a specific offence, such offender upon conviction will be liable to fine not less than Twenty Thousand Naira or imprisonment for a term no less than one year or both such fine and imprisonment.⁷⁶ Where such offence is committed by a Corporate body, such corporate body shall be liable to fine of not less than One Hundred Thousand Naira in addition to a fine of Twenty Thousand Naira for each of

⁶³ Section 21 (A-G)

⁶⁴ Section 21 (4)

⁶⁵ Section 30 (1)

⁶⁶ Section 30 (2)

⁶⁷ Section 34 (1) (A)

⁶⁸ Section 34 (1)(B)

⁶⁹ Section 34(1) (C)

⁷⁰ Section 34(1) (D)

⁷¹ Section 34 (1) (E)

⁷² Section 34 (1) (F)

⁷³ Section 34 (1) (G)

⁷⁴ Section 34 (1) (H)

⁷⁵ Section 30 (3)

⁷⁶ Section 34 (1) (I)

the Director, Managers and Officers of the Company or an imprisonment for a term of not less than one year or both.⁷⁷

The Act empowers the National Lotteries Commission to properly carry out its objectives as stated in the Act and to change the negative perception on lottery as revenue generated therefrom is applied to good cause under the management of the National Lotteries Trust Fund established under the Act to manage income generated from Lotteries.⁷⁸

2 The Lagos State Lottery Boards Law 2008

The LSLB Law was passed into Law on the 21st July, 2008.⁷⁹ The Law is the most comprehensively drafted legislation currently to provide for Gambling in Lagos State. Before the enactment of the Law, the Lagos State Lotteries Board adopted a single operator model, where a single licensee has the sole right to conduct lotteries within the state. And this approach brought about illegal operation of Lottery Houses therefore leading to the enactment of the Lagos States Lotteries (Amendment) Law 2008.⁸⁰ The amendment of the Law in 2008 brought about multi-operators 'model in the Gambling Industry in Lagos State. The amended Law brought about a removal in the exclusivity clause on the operation of Lottery within the State, Introduction of Public Online Lottery Licence to Licence multiple Licensee, the Act also reduced the duration of Lottery License, outlawing or prohibiting of Coupon /Paper Lottery, Introduction of Online Lottery operation and also the enlargement of the jurisdiction of the Board to regulate all aspects and types of Lotteries and Gaming.⁸¹

The Law is divided into 63 Sections, the Lagos State Lotteries Board (amendment) Law, establishes the Lagos State Lottery Board,⁸² Which is a body corporate with perpetual succession and a common seal.⁸³ The membership of the Board cut across the various Stake holders of the industry, it includes a Chairman with a knowledge and experience in the functions of the Board,⁸⁴ a Permanent

⁷⁷ Section 34 (2)

⁷⁸ Section 35 National Lotteries Commissions Act 2005

⁷⁹ Section 63 Lagos state Lotteries (amendment) Law 2008

⁸⁰ Online sport betting, Lagos State Lottery Board. <<https://lslb.ig.gov.ng/osb/>>. Accessed on 29th April 29, 2018

⁸¹ Ibid

⁸² Section 1 (1) Lagos State Lotteries Board Law 2008

⁸³ Section 1 (2) LSLB Laws

⁸⁴ Section 2(1)(A)

Secretary from the Ministry of Finance or his representatives,⁸⁵ Permanent Secretary from the Ministry of Homes Affairs and Culture or his representative,⁸⁶ a Legal Practitioner of not less than 10 Years post-call experience,⁸⁷ an Accountant of not less than 10 years post registration experience,⁸⁸ and four members of the public with proven business experience in the functions of the Board.⁸⁹

Members of the Board are appointed by the Governor on the recommendations of the Commissioner,⁹⁰ while the Legal Practitioner shall be appointed by the governor on the recommendation of the Attorney-General for the State,⁹¹ the members of the Board shall hold office for a duration of 5 years subject to a reappointment by the Governor for another term.⁹²

Section 2(5) of the Law states the conditions for the removal and or suspension of members of the Board on the ground of misconduct or prolonged inability to perform the functions as members of the board,⁹³ shall suspend where a member of the board is facing a criminal proceeding on ground of fraud, forgery, uttering a document, perjury or any offence involving dishonesty and shall be terminated where found guilty on these.⁹⁴

The Law provides that where a person or his immediate family or business associates has any financial interest directly or indirectly, he shall not be appointed as a member and no business of his shall be in conflict with his duties as member of the Board.⁹⁵ Political Office Holder, Insolvent Persons, person removed from any office on account of misconduct or persons who has been convicted for fraud, forgery, or uttering of a document, perjury, or any offence involving dishonesty shall not be appointed to the Board.⁹⁶

⁸⁵ Section 2(1)(B)

⁸⁶ Section 2 (1) (a)

⁸⁷ Section 2 (1)(d)

⁸⁸ Section 2 (1)(e)

⁸⁹ Section 2(1) (f)

⁹⁰ Section 2 (2)

⁹¹ Section 2(3)

⁹² Section 2 (4)

⁹³ Section 2 (5)(a)

⁹⁴ Section 2 (5) (b) (c)

⁹⁵ Section 7 (a) (b)

⁹⁶ Section 7 (c)

i. Duties of the Board

Section 9 of the Law the Lagos States Lottery Board is charged with enormous functions of;

- a. Advising the Governor on the issuing of License to conduct to conduct Lottery in Lagos State.⁹⁷
- b. Ensure that Lottery within the State is conducted with all due propriety and strictly in accordance with the Constitution, this Law, all other laws that are applicable and the License for the Lottery and with any agreement pertaining to the License.⁹⁸
- c. Ensure that the interest of every participant in the Lagos State Lottery is adequately protected and the net proceeds are as large as possible.⁹⁹
- d. The board administers the fund and holds in trust and administer same in accordance with the Law.¹⁰⁰
- e. Advice the Commissioner on the efficacy of a legislation as it relates to Lottery.¹⁰¹
- f. Make such arrangement within the Law to protect prize monies and the distributions of the monies.¹⁰²
- g. Advice the Commissioner on all aspect relating to Lagos State Lottery and on other matters as the Commissioner may requires.¹⁰³
- h. Ensuring that the promotion of Good Cause as envisage in the Law is promoted with the incomes generated from Lottery.¹⁰⁴
- i. Inspect and audit the Licensee's records of account whenever it appears necessary in the opinion of the Board.¹⁰⁵

⁹⁷ Section 9 (a)

⁹⁸ Section 9 (b)

⁹⁹ Section 9 (B)(ii)(iii)

¹⁰⁰ Section 9(c)(e)

¹⁰¹ Section 9 (d)

¹⁰² Section 9 (g)

¹⁰³ Section 9(h)

¹⁰⁴ Section 9 (i)

¹⁰⁵ Section 9 (j)

- j. Grant License for Public On-line Lotteries and other Lotteries within the States.¹⁰⁶
- k. Regulates and control every aspect of Lotteries operation in the State.¹⁰⁷
- l. Monitor retail ticket sale by using information technology, standard based solutions, comprehensive and automated processing.¹⁰⁸
- m. Impose fee on all Lottery's operations within the State.¹⁰⁹
- n. To enter into contract with any agent, supplier or platform operator for the exercise of its monitoring, retail management and regulatory functions of the Board.¹¹⁰

ii. Lottery Licence

The Governor issues License to conduct Lottery's within the State after consultations with the Commissioner or the Board.¹¹¹ Such applications must be in writing and must meet all conditions stipulated by the Law before such applications can be considered.¹¹² Such as sufficient and appropriate knowledge or experience to conduct such Lottery,¹¹³ possession of the necessary financial resources.¹¹⁴ Absence of any political connections of such applicant,¹¹⁵ such applicant must show a clear and continuous commitment to Lottery operations within the State.¹¹⁶ The Law abolished the use of Coupon or any means of Lottery unless such means is conducted online by a Licensed Operator or their retailers.¹¹⁷

Under the Lagos State Lotteries Law, the Board regulates the following categories of Lotteries within the State. These Lotteries License are namely:

1. Public Online Lottery,
2. Online Sport Betting,
3. Promotional Competitions,

¹⁰⁶ section 9(k)

¹⁰⁷ Sections 9 (L)

¹⁰⁸ Section 9 (m)

¹⁰⁹ Section 9 (n)

¹¹⁰ Section 9 (o)

¹¹¹ Section 12 (1)

¹¹² Section 12 (2)

¹¹³ Section 14(1)(i)

¹¹⁴ Section 14 (1) (ii)

¹¹⁵ Section 14 (1)(iii)

¹¹⁶ Section 14 (1)(iv)

¹¹⁷ Section 13 of the Law

4. Private Lotteries,
5. Charitable Lotteries,
6. Society Competition,
7. Scratch Cards, and
8. Interactive Game.
9. Emerging Online Games (Web-Based, SMS-Based)

The Lagos State Lotteries Board Law prohibits all forms of conduct of Lotteries unless through Online Channels, therefore online distributions channels such as Internet, POS terminals and mobile technology are adopted. The use of these Online Channels is aimed at achieving accountability in the Gaming industry, promoting transparency as information is made accessible and verifiable at all time and also for the purposes of assurance of Revenue for both the Players/Bettors and also for the government to perform ‘Good Cause’¹¹⁸ within the State. Licence to conduct Public Online Lottery in Lagos State, is obtained from the Lagos State Lotteries Board as stipulated by the Law.

3 Money Laundering (Prohibition) Act 2011

The Money Laundering (Prohibition) Act 2011¹¹⁹ was passed in a bid to prevent or stall money laundering in all sectors of the economy. The Gambling Sector is not exempted as this sector could be a veritable means to Launder and legitimize money back to the economy.

Money Laundering is a term used to describe the various methods or processes by which funds derived from illegal or illegitimate sources, are brought into formal economy through lawful financial channels with a view to legitimizing and

¹¹⁸ Section 48 of the Law defines ‘Good Cause’ to mean any cause as provided by the law, to which the net proceeds generated are payable. These good causes are to meet the need of infrastructural Objectives, Educational Objectives, Environmental Objectives, and all social and health related objectives and other expenditure as may be approved by the Governor of the state. See section 33, 34, 35, 36, 37, 38 and 48 of the Lagos State Lotteries (Amendment) Law 2008.

These objectives are as contained in chapter 2 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) dealing with fundamental objectives and directives principles of State Policy. Section 16 deals with Economic Objectives, Section 17 Social Objectives, Section 18 deals with Educational Objectives, while section 20 deals with Environmental Objectives.

¹¹⁹ The Money Laundering Act 2011 repeal the Money Laundering Act, Cap M18 Laws of the Federation 2004

concealing or disguising the sources of such fund.¹²⁰ The Money Laundering (Prohibition) Act 2004 brings Casinos within the meaning of a Financial Institution,¹²¹ whereas the Money Laundering Act 2011, defines a Casino as Designated Non-Financial Institution.¹²²

Section 4 of the Act,¹²³ places a duty to verify the identity of any Gambler who buys, brings into exchanges chips or tokens, by requiring the gambler to present an authentic document bearing his name and address.¹²⁴ A record of the chronological order of all transactions shall be kept stating the nature of the transaction, amount involved together with the gamblers' identity stating the surname, forenames and address in a register to be issued by the Ministry of Commerce.¹²⁵ Such a record shall be kept at least Five (5) after the record of the Last transaction recorded.¹²⁶ The Act provides that compliance officer must be provided for at the management level of such financial institution, regular training programmes for personnel and employees, centralisation of information collected and establishment of an internal Audit unit to ensure compliance with the provisions of the Act.¹²⁷

The Act also provides for a written disclosure to the Commission that is Economic and Financial Crimes Commissions by a financial institution or designated Non-Financial institution of any single transaction, lodgment or transfer of fund in excess of Five million Naira for and individual and Ten Million Naira for a body corporate.¹²⁸ Failure to comply with these provisions is an offence and upon conviction is liable to a fine of not less than Two Hundred and Fifty Thousand Naira and not less than One Million Naira for each day of continuous contravention of the Act.¹²⁹

¹²⁰ M.L. Yusufari, Mohammed Isah, A.M. Bello, 'Money Laundering in Nigeria: Implications on National Development' Being a conference paper presented at the 46th Annual Conference of the Nigeria Law Teachers Association, held at University of Ilorin, 22nd -26th April,2013. P. 73 -105See also Section 14 Money Laundering (Prohibition) Act, 2011.

¹²¹ Section 25 of the Money Laundering(prohibition) 2004

¹²² Section 25 of the Money Laundering(prohibition) 2011

¹²³ Section 4 MLA 2011

¹²⁴ Section 4 (1) (a)

¹²⁵ Section 4(1)(B) MLA 2011

¹²⁶ Section 4 (2) MLA 2011

¹²⁷ Section 9 MLA 2011

¹²⁸ Section 10 (1) MLA 2011

¹²⁹ Section 10 (3) MLA 2011

4 Advance Fee Fraud and Other Fraud Related Offences Act 2006

The Act was passed into Law on the 5th June, 2006 to provide for fraud related offences. The Act also regulates the Gambling Industry as its frame work to check mate fraud related offences within the Industry. The Act in a bid to check these kinds of fraud provides for the registration of all Internet Service Providers and Internet Cafe with the Commission (Economic and Financial Crimes Commissions).¹³⁰ A register of all fixed and non-fixed line customers such as Global system of Mobile Communication (GSM).¹³¹

The Act places a duty of care on the owners of the premises to ensure that her premises are not use for the commission of any illegal purposes¹³²any person who ought to be registered, or furnish the Commission on demand on the use of his services and facilities or facilitate access to data and information by employee or staff of the Commission and fails do so with the intent to conceal or disguise the nature of his activities or the use of his service or facilities commits an offence and upon conviction to a term of imprisonment of three years without an option of fine and in the case of a continuing offence, a fine of 50,000,00 each day such offence persist, and where a person or entity is convicted under this act more than once shall have his operational licence revoke or cancelled.¹³³

With the advent of the Internet and subsequent emanation of online Gambling/Lotteries, the importance of the Advance Fee Fraud Act cannot be over emphasized to the Gambling industry.

5 Cybercrimes (Prohibition, Prevention Etc.) Act 2015

The Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 is a very important enactment regulating the Online Gaming, in Nigeria. The Act is enacted in Nigeria to regulate the conduct of persons and activities in the Cyberspace in Nigeria. The Act was passed into Law by the Nigerian National Assembly on the 5th of May, 2015. The Act contains 59 sections, 8 Parts and Two Schedules. The Act criminalizes Unlawful Access to a Computer,¹³⁴and this protection relates to both private and

¹³⁰ Section 13 Advance Fee Fraud Act 2006

¹³¹ Section 13 (2) Advance Fee Fraud Act 2006

¹³² Section 13 (3) Advance Fee Fraud Act 2006

¹³³ Section 13(5)(6) Advance Fee Fraud Act 2006

¹³⁴ Section 6

individual interest within and outside Nigeria,¹³⁵ the Act provides for registration of cybercafé. And also, directed under Section 7(1) to maintain a register of users through a sign-in register. The Register shall be available to Law Enforcement Personnel whenever needed.¹³⁶

Section 7(2) provides that any person who perpetuates Electronic Fraud or Online Fraud using a cybercafé shall be guilty of an offence and shall be sentenced to three years imprisonment or a fine of One Million Naira or both. Subsection 3 provides that if such person connives with the owners of the cybercafé, the owners would be guilty of an offence and sentenced to three years imprisonment or fine of One Million Naira. Section 8 criminalizes the use of any Computer System by any person without lawful authority. Section 9 criminalizes the Act of destroying or aborting electronic mails or processes which money or valuable information is being conveyed. Section 12(1) criminalizes the Act of unlawful interception of non-public transmissions of data.

Section 13 criminalizes the Act of computer related forgery which includes knowingly accessing any computer or network with the intention that such inauthentic data would be considered. The Act provides for computer related fraud. Section 14(4) (a) of the Act provides that any person employed by or under the authority of any bank or other financial institutions who with intent to defraud, directly or indirectly, diverts electronic mails commits an offence and shall be liable on conviction to imprisonment. Where such occurs, the Act provides for forfeiture of whatever benefit derives from such act.

Section 16 of the Act criminalizes the act of unauthorized modification of Computer Systems, network data and system interference. Section 21 imposes a duty on any one operating a computer system to notify the National Computer Emergency Response Team (CERT) of any attacks on intrusion on its computer. This is one of the enforcement bodies created by the Act to enforce its provisions. Any person who fails to report such incident shall be liable to pay a mandatory fine of N2, 000,000 (Two Million Naira) to the National Cyber Security Fund.

Section 22 of the Act criminalizes identity theft and impersonation of any person who is engaged in the services of any financial institution.

Section 28 of the Act criminalizes importation and fabrication of E-Tools such tools include any device, including computer program or component designed or

¹³⁵ Section 6(4)

¹³⁶ Section 7

adapted for the purpose of committing an offence under the Act. Section 29 criminalizes the Act of breach of confidence by service providers, where the computer-based service provider with intent to defraud, illegally uses its customers security code with the intent to gain any financial or material gain. Section 32 of the Act criminalizes the offence of Phishing and spamming and also spread of computer virus. Phishing is defined under the Act as the criminal and fraudulent process of attempting to acquire sensitive information such as usernames and password.

VI. Other Legislations Dealing With Gambling/Online Gambling in Nigeria

The Criminal Code and Penal Codes are both Legislations that criminalises Gambling when done outside the ambit of the Law.¹³⁷ Such a Lottery must be conducted by a Race Club in Nigeria and licence must be given by the Minister.¹³⁸ Where Betting or Lottery is done to raise funds in aid of any Institution of a public character after obtaining permission in writing from the Minister such exercise will not be regarded as illegal.¹³⁹ The Casino Taxation Act 1965¹⁴⁰ the Act provides for the payment of all net gaming revenue to the Federal Board of Inland Revenue. The Act also empowers the Board to enter in the premises of such Gambling Company to review the Statement of Account and also the income.

The Gaming Machines Act 1977, declares the owning and operating of any Gaming Machines outside the provisions of the Law and without the necessary permit as being illegal. The Act punish the act with a term of one (1) year of imprisonment and the forfeiture of such machines to the Federal Government.

To obtain a Gambling Licence in Nigeria, the prospective gambling operator must first incorporate a Company in Nigeria for that purpose, and such purpose of the business must be approved by the Nigeria Investment Promotion Commission (NIPC), Special Control Unit Against Money Laundering (SCUML), and the National Office for Technological Acquisition and Promotion (NOTAP), a Capital Importation licence where a foreign company, registration for a Valued Added Tax (VAT), and a

¹³⁷ Section 239, Criminal Code Act Cap.C38, Laws of the federation of Nigeria 2004

¹³⁸ Section 240, Criminal Code Act

¹³⁹ Section 240D (2) Criminal Code Act

¹⁴⁰ The Casino taxation Act 1965

Tax Identification number as some of the requirements.¹⁴¹

VII. Observation and Findings

1. That the National Lottery Commissions Act did not make mention of Online Gambling, the only mentioned was for the sales of ticket through Electronic Channels which is permissible by the Act. The only comprehensive laws that specifically made all provisions for Online Gambling is the Lagos State Lotteries Board Law.
2. The various Laws, in its enactment uses and defined the word Lottery to mean Gambling, however, the definitions provided by these Legislation covers all aspect of Gambling and Lottery is a form of Gambling.
3. There is no Legislation prohibiting the operation of Gambling through the use of the Internet and or Electronic Channels of both Local and Foreign based sites and there are several Legislations protecting Online Transactions and E-Commerce in Nigeria which encompasses all Gambling Transactions.
4. Nigeria is a permissible territory where Licensee who are carrying on a Land-Based Gaming such as Casinos and other forms of Betting can expand its operations Online, for the purposes of convenience, the only conditions precedent is compliances with the provisions of the relevant Law and guidelines regulating Gambling and other Online transactions in Nigeria.

VIII. Recommendations

Therefore, this work recommends the following:

1. The Legislatures must take on a holistic approach to the enactment or amendment of the current legislative framework on Gambling to include Online Gambling and all other forms in which gambling may occur in the society.
2. The Acts provides for prohibitions for person under the age of 18 years from gambling, but fails to exclude some certain person from Gambling, in South Africa the law provides for application by an individual for exclusion from gambling and this is referred to as self-exclusion such as over aged, mentally

¹⁴¹ ‘Nigerian Gambling’ Gambling Africa. Accessed ,, from <http://www.gamblingafrica.com/Nigeria/>

derail, and bankrupt individuals from gambling. Also, any person may apply to the court requesting for the registration of a dependent, mentally ill person, family members or any person under the care of the applicant whose behavior manifest addictive or compulsive gambling and the court may grant such order and the excluded person can also apply to the court to vacate such order where it is no longer reasonable for such order to subsist. This approach is highly recommended.

3. A trust fund or the scope of the current trust fund be expanded to administer unlawful winning from illegal operators, prohibited persons or excluded persons or proceeds of crime emanating from the sector be paid into, to promote the pursuit of Good Cause.
4. The Issues of compliance and enforcement of the provisions of the law requiring registration by cybercafé owner has proved difficult to actualized as the Act need to provide for a specified enforcement authority.
5. A gambling specific Act such as the Unlawful Internet Gambling Enforcement Act in the United States of America which places a duty on Internet Services Provider to identify and prohibits restricted transactions pertaining to Online Gambling, should be enacted separate from the Cybercrimes Act of 2015.
6. The various Legislations on Gambling should be amended to include problems associated with gambling such as domestic violence, drugs abuse, unmanageable debt or bankruptcy and other crimes should be incorporated in the legal framework of Gambling in Nigeria to reduce the negative impact of Gambling on the society.
7. The Licenses issued under the various legislation should be polarize to several categories of licenses such as management and control of Gambling/Online Gambling License, Gambling Equipment and Supply License, Internet, Server or software License etc. this is to enable proper management and supervision, ensure a level of standard and competence.
8. To prevent underage Gambling, the Licensee must ensure that gambles furnish all necessary document such as identity document and the Licensee has a sole responsibility to confirm same document and verify the age. This could be achieved with collaborative efforts from the National Identity Card Management or any other authority where such information could be accessed.

IX. Conclusions

The rapid growth of the gaming industry is as a result of the influence and or impact of technological advancement and such growth is difficult to halt, therefore, regulations must be up to date at all times since prohibition will not guarantee the cessation of Gambling/Online Gambling but rather promoting illegal operators. Therefore, regulations provide an opportunity to manage the societal differences on the right and wrong as it relates to this industry, bringing this industry and all its competition and persons affected under the confines of the Law with the state deriving socio-economic benefits. To achieve these, the current Legal frame work must be critically looked into as they are grossly inadequate and in need of an overhaul in other to properly position the Gambling sector in Nigeria.