

**LAWS OF THE REPUBLIC OF VANUATU
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**CHAPTER 205
LOTTERIES**

*Act 9 of 1989
Act 12 of 1990
Act 7 of 1994*



Act 6 of 1996

ARRANGEMENT OF SECTIONS

1. Interpretation

PART 1 – PROHIBITION OF CONDUCT OR PROMOTION OF LOTTERIES

2. Prohibition of conducting or promoting lotteries
3. Offences in connection with lotteries

PART 2 – LOTTERIES INCIDENTAL TO ENTERTAINMENT

4. Lotteries incidental to entertainment

PART 3 – SOCIETIES LOTTERIES

5. Societies lotteries
6. Permission to hold lotteries
7. Returns
8. Unclaimed prizes
9. Persons who are deemed to promote society's lottery
10. Offences relating to societies lotteries

PART 4 – LOTTERIES TO PROMOTE TRADE

11. Lottery for the promotion of trade
12. Application for grant of permit
13. Issue of permit
14. Lotteries conducted during a specified period
15. Penalty for non-compliance

PART 4A – INSTANT LOTTERIES AND POOL BETTING SCHEMES

- 15A. Conduct or promote instant lotteries and pool betting schemes
- 15B. Minister to enter into agreements
- 15C. Application for grant or renewal of licence
- 15D. Duration of licence
- 15E. Lottery tax

PART 5 – OVERSEAS LOTTERIES

16. Conduct or promote overseas lotteries
17. Minister to issue overseas lottery licence
18. Application for grant or renewal of overseas lottery licence
19. Duration of licence
20. Conditions of licence
- 20A. Prize fund
- 20B. Trust
- 20C. Draws
21. Lottery tax
22. Prohibition of publication etc.
23. Penalty for non-compliance
24. Production of accounts and records
25. Audit
26. Penalties for non-compliance
27. Falsification of books etc

PART 6 – GENERAL

28. Search warrants
29. Offences by bodies corporate
30. No prosecution but by authority of Attorney General
31. Delegation of powers of the Minister
32. Regulations

SCHEDULE

LOTTERIES

An Act to make provisions with regard to lotteries promoted and conducted as incidents of entertainments, on behalf of societies, for the promotion of trade, and to authorize persons to promote and conduct overseas lotteries and for matters connected therewith.

1. Interpretation

(1) In this Act, except where the context otherwise requires –

"date" in relation to a lottery, means the date on which the winners in that lottery are ascertained;

"entertainment" has the meaning assigned to it by section 4 of this Act;

"governing body", in relation to any society, means the person or body of persons for the time being charged with the management or administration of the affairs of that society;

"head", in relation to any society, means the president for the time being of that society, or in the absence of the president, the person who for the time being occupies the position of head, by whatever name called, of the management or administration of the affairs of that society;

"lottery" includes any game, method or device whereby money or moneys worth is distributed or allotted in any manner depending upon or to be determined by chance or lot;

"Minister" means the Minister for the time being responsible for lotteries;

"money" includes a cheque, banking note, postal order or money order;

"newspaper" includes any journal, magazine or other periodical publications;

"overseas lottery" has the meaning assigned to it by section 16 of this Act;

"premises" includes any place;

'printing' includes writing and other modes of reproducing words a visible form;

"society" includes any club, institution, organization of persons, by whatever named called, and any separate branch or section of such a club, institution, organization or association;

"society lottery" has the meaning assigned to it by section 5 of this Act;

"ticket", in relation to any lottery, includes any document or token or other article whatsoever evidencing the claim of a person to participate in the chances or the lottery.

(2) In this Act, unless the context otherwise requires, a reference to the promotion of a lottery includes a reference to conduct of such lottery and 'promote' and 'promoter' shall be construed accordingly.

PART 1 – PROHIBITION OF CONDUCT OR PROMOTION OF LOTTERIES

2. Prohibition of conducting or promoting lotteries

Subject to the other provisions of this Act, no person shall promote or conduct any lottery within or outside Vanuatu, except in accordance with the provisions of this Act or regulations made thereunder or under the authority of a licence issued under this Act.

3. Offences in connection with lotteries

(1) Subject to the other provisions of this Act, no person shall in connection with any lottery promoted or proposed to be promoted either in Vanuatu or elsewhere –

- (a) print any tickets for use in lottery;
- (b) sell, or distribute, or offer or advertise for sale or distribution or have in his possession for the purposes of sale or distribution, any tickets or chances in the lottery;
- (c) print, publish or distribute, or have in his possession for the purpose of publication and distribution –

- (i) any advertisement of the lottery;
 - (ii) any list, whether complete or not of 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;
- (d) bring or invite any person to bring or send, into Vanuatu for the purpose of sale or distribution any ticket in, or advertisement of, the lottery;
- (e) send or attempt to send out of Vanuatu any ticket or chance in the lottery, any money or valuable thing received in respect of the sale or distribution, or any document recording the sale or distribution or identity of the holder of any ticket or chance in the lottery;
- (f) use any premises, or cause or knowingly permit any premises over which he has cause or control to be used, for purposes connected with the promotion or conduct of the lottery;
- (g) draw, throw or declare or exhibit expressly or otherwise the winner or winning number, ticket, lot, figure design, symbol or other result of any lottery; or
- (h) cause, procure or attempt to procure any person to do any of the above mentioned acts.
- (2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding VT 500,000 or to imprisonment for a term not exceeding two years, or to both.
- (3) In any proceedings instituted under subsection (1), it shall be a defence to prove that the lottery to which the proceedings relate was such a lottery, promoted or conducted in accordance with the provisions of this Act or any regulation made thereunder, or under the authority of a licence issued under this Act.

PART 3 – LOTTERIES INCIDENTAL TO ENTERTAINMENT

4. Lotteries incidental to entertainment

- (1) Any person may promote or conduct a lottery as an incident of an entertainment, if the conditions specified in subsection (2) are observed in connection with the promotion and conduct of that lottery.
- (2) In this section, "entertainment" means a bazaar, sale of work, fete, dinner, dance, sporting or athletic event or other entertainment of a similar character, whether limited to one day or extending over to two or more days.
- (3) The conditions referred to in subsection (1) are as follows –

LOTTERIES [CAP. 205]

(a) the whole of the proceeds of the entertainment (including the proceeds of the lottery) after deducting the expenses of the entertainment, including expenses incurred in connection with the lottery, and in particular –

(i) the expenses incurred in printing tickets in the lottery; and

(ii) such sum, if any not exceeding VT 500,000 as has been expended by the promoters of the lottery on account of any expenses incurred by them in respect of the 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 in 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.

(4) Any person who is concerned in the promotion or conduct of the lottery referred to in subsection (1) shall, if he fails to observe the conditions specified in subsection (2), be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 500,000 or to imprisonment for a term not exceeding two years, or to both.

PART 3 – SOCIETIES LOTTERIES

5. Societies lotteries

(1) Subject to the provisions of this Act, any person may conduct a society's lottery if –

(a) it is promoted in Vanuatu;

(b) permission is granted by the Minister under section 6 of this Act;

(c) if the conditions specified in subsection (3) are observed in connection with the promotion and conduct of that lottery.

(2) In this section "society's lottery" means a lottery promoted on behalf of a society which is 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 which are not described in paragraph (a) or (b) above but are neither purposes of private gain nor purposes of any criminal undertaking.

(3) The conditions referred to in subsection (1)(c) are –

LOTTERIES [CAP. 205]

- (a) the promoter of the lottery shall be a member of the society authorized in writing by the governing body of the society to act as such;
- (b) except with the approval of the Minister, no ticket or chance shall be sold at a price exceeding VT 2,000;
- (c) no person shall be admitted to participate in a society's lottery in respect of a ticket or chance except after payment to the society of the whole price of the ticket or chance, and no money received for or on account of a ticket or chance shall in any circumstances be returned;
- (d) the whole proceeds of a society's lottery, after deducting sums lawfully appropriated on account of expenses or for the provision of prize, shall be applied to purposes of the society, being purposes described in subsections (2)(a), (b) or (c);
- (e) except as otherwise permitted by the Minister –
 - (i) the amount of the proceeds appropriated on account of expenses shall not exceed the expenses actually incurred, or ten percent of the whole proceeds whichever is the less; and
 - (ii) 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) a notice stating the number of each winning ticket or chance in every lottery and the name and address of the winner of that ticket or chance, shall within 14 days from the date of the lottery, be exhibited by the promoter of that lottery on the premises of the society and a copy of notice shall be sent to the Minister;
- (h) every ticket and every notice of 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 or other determination by which the prize winners are ascertained will take place.

6. Permission to hold lotteries

The Minister may, in his discretion, grant permission to a society, established and conducted wholly or mainly for any of the purposes specified in subsections (2)(a), (2)(b) and (2)(c) of section 5 to promote and conduct lotteries in accordance with this Part.

7. Returns

(1) The promoter of a society's lottery shall, not later than the end of the third month after the date of the lottery, send to an officer duly authorized by the Minister a return certified by two other members of the society, being persons of full age appointed in writing by the governing body of the society, showing –

LOTTERIES [CAP. 205]

- (a) the whole proceeds of the lottery;
- (b) the sums appropriated out of these proceeds on account of expenses and on account of prizes, respectively;
- (c) the particular purpose or purposes referred to in subsection (2) of section 5 and the amount applied for that purpose, or for each of these purposes, as the case may be, and
- (d) the date of the lottery.

(2) The officer duly authorized by the Minister referred to in subsection (1) shall preserve at his office any return sent to him under subsection (1) for a period of at least 18 months, and during that period any member of the public may inspect it during office hours free of charge.

8. Unclaimed prizes

Any prize unclaimed by the person holding the ticket entitling him thereto, or by some person duly authorized in that behalf, for a period of three months after the drawing of the lottery shall be sold under the discretion of the Minister and the proceeds of the sale paid in to the Fund for which the society is formed.

9. Persons who are deemed to promote society's lottery

The head, secretary, and every member of the governing body of a society to which permission is granted under this Part, shall be deemed for the purposes of this Act, to promote the lottery in respect of which the permission is granted and, the provisions of this Act shall be construed accordingly.

10. Offences relating to societies lotteries

(1) If any provision of this Act or any regulations made under it in respect of a society's lottery is contravened, the promoter of that lottery and any other person who is a party to the contravention shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding VT 500,000, or to imprisonment for a term not exceeding two years, or to both.

(2) It shall be a defence for a person charged with any such offence only by reason of his being the promoter to prove that the contravention occurred without his consent or connivance and that he exercised all due diligence to prevent it.

PART 4 – LOTTERIES TO PROMOTE TRADE

11. Lottery for the promotion of trade

Subject to the provisions of this Act, any person may promote and conduct a lottery in connection with a competition for the promotion of trade if –

- (a) a permit for the conduct of the lottery has been issued by the Minister under this Part;
- (b) any conditions subject to which the permit was issued are complied with;

- (c) no entry fee is charged in connection with the lottery; and
- (d) any regulations made under this Act and relating to the lottery are complied with.

12. Application for grant of permit

An application for permit to conduct a lottery referred to in section 11 shall be made in writing to the Minister and shall be accompanied by the prescribed fee.

13. Issue or permit

(1) A permit to conduct or promote a lottery referred to in section 11 may be issued by the Minister under this section without conditions or subject to such conditions as may be imposed by the Minister either generally or in respect of any particular matter.

(2) The Minister after considering an application for the grant of a permit, may issue or refuse to grant a permit.

14. Lotteries conducted during a specified period

(1) Where in a permit issued under this Part, the Minister specifies that it is issued for all lotteries under this Part conducted during a specified period, that permit shall be deemed to be a permit issued separately for each lottery conducted under the authority of and by the holder of the permit during the period specified in the permit.

(2) Where in a permit issued under this Part, the Minister specifies that it is issued for a specified number of lotteries conducted during a specified period, that permit shall be deemed to be a permit issued separately for each lottery that does not exceed the number so specified, and conducted under the authority of and by the holder of the permit during the period specified in the permit.

15. Penalty for non-compliance

Any promoter of a lottery referred to in section 11 or any other person who contravenes the provisions of this Act, or fails to comply with the conditions of a permit issued under this Part, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding VT 500,000, or to imprisonment for a term not exceeding two years, or to both.

PART 4A – INSTANT LOTTERIES AND POOL BETTING SCHEMES

15A. Conduct or promote instant lotteries and pool betting schemes

(1) Any person may promote or conduct an instant lottery or pool betting scheme subject to the terms and conditions of a licence issued under this Part and in accordance with the provisions of this Act.

(2) For the purposes of this section –

- (a) an "instant lottery" is a lottery in which a person pays or becomes liable to pay

LOTTERIES [CAP. 205]

stake money in exchange for a thing that can be manipulated to reveal immediately whether or not a prize has been won;

(b) a "pool betting scheme" is a lottery in which a group of persons bet, otherwise than at fixed odds, on terms that the amount of a prize is wholly or partly determined by reference to the total amount of stake money paid or payable by the persons who constitute the group.

(3) A lottery referred to in subsection (2)(b) is not a pool betting scheme for the purposes of this Act if not more than 100 persons constitute the group and the total amount of stake money paid or payable by the persons who constitute the group does not exceed VT 50,000.

(4) Any person who contrary to the provisions of this section promotes or conducts an instant lottery or pool betting scheme shall be guilty of an offence, and on conviction shall be liable to a fine not exceeding VT 5 million or to imprisonment for a term not exceeding 10 years or to both such fine and imprisonment.

15B. Minister to enter into agreements

(1) Licences to promote or conduct instant lotteries or pool betting schemes may in accordance with the provisions of this Act be issued by the Minister.

(2) The Minister may, on behalf of the Vanuatu Government, enter into any agreement on such terms as the Minister, in his discretion, thinks fit with any person or body of persons under which that person or body of persons is authorized to conduct in Vanuatu, personally or by agent, an instant lottery or pool betting scheme.

(3) An agreement under subsection (2) may include a term –

(a) that the person or body of persons with whom the agreement is made shall conduct in Vanuatu, personally or by agent, instant lotteries or pool betting schemes, or both, during the period for which the agreement has effect; and

(b) have the right to administer and operate any instant lottery.

(4) The Minister shall not enter into an agreement under subsection (2) in respect of a pool betting scheme lawfully conducted under the law of another Country, State or Territory, except in accordance with an arrangement made between the Minister and the responsible minister of the other Country, State or Territory.

(5) All funds which are remitted by the other Country, State or Territory to the Vanuatu Government pursuant to an arrangement under subsection (4) shall be paid into the Revenue Fund.

(6) If an arrangement referred to in subsection (4) ceases to have effect, an agreement under subsection (2) to which the arrangement relates also ceases to have effect.

15C. Application for grant or renewal of licence

(1) An application for the grant of a licence for instant lotteries and pool betting schemes may be made by any person to the Minister in the prescribed form.

(2) The holder of a licence to operate or promote instant lotteries or pool betting schemes may apply from time to time for a renewal of that licence.

(3) The Minister may, after considering an application for the grant or renewal of a licence made under this section, refuse to grant or renew a licence, as the case may be.

15D. Duration of licence

Subject to the provisions of this Act, a lottery licence issued under this Part –

(a) shall cease to have effect on such date as may be specified in that licence:

Provided that the term of period of validity of that licence shall not exceed five years;

(b) if renewed, shall be valid for a further period not exceeding 5 years as may be specified, commencing from the date on which it was renewed or last renewed as the case may be.

15E. Lottery tax

(1) There shall be levied a tax in respect of instant lotteries and pool betting schemes.

(2) In cases where an arrangement has been made for funds to be remitted from another country pursuant to an arrangement made under subsection (5) of section 15B of this Part, and these remitted funds are in excess of the tax, exemption from payment of the tax will be granted.

(3) Lottery tax shall, subject to the provisions of this Act, be charged to and paid by the promoter of every lottery with exception of the exemptions granted under subsection (2) in which case the remittance of funds will be direct to the Vanuatu Government from the overseas promoter of the lottery.

(4) Lottery tax levied under this section shall be as determined by the Minister, and such rates shall be at a minimum of 10% of the subscription price of the lottery.

PART 5 – OVERSEAS LOTTERIES

16. Conduct or promote overseas lotteries

(1) Any person may promote and conduct an overseas lottery, subject to the terms and conditions of a licence issued under this Part and in accordance with the provisions of this Act.

(2) In this section "overseas lottery" means a lottery promoted and managed from within Vanuatu and which is conducted or operated or to be conducted or operated outside Vanuatu, whether it is described as a lottery or as a sweep, consultation, or golden casket, or called by any other name or designation.

(3) Any person who contrary to the provisions of this section promotes or conducts an overseas lottery shall be guilty of an offence, and on conviction shall be liable to a fine not

exceeding VT 5 million or to imprisonment for a term not exceeding ten years, or to both.

17. Minister to issue overseas lottery licence

Licence to promote or conduct an overseas lottery may in accordance with the provisions of this Act, be issued by the Minister.

18. Application for grant or renewal of overseas lottery licence

(1) An application for the grant of an overseas lottery licence may be made by any person to the Minister in the prescribed form and shall –

- (a) state the percentage of the gross proceeds designated to be allocated for prizes;
- (b) be accompanied by the prescribed fee.

(2) The holder of an overseas lottery licence may apply from time to time for the renewal of that licence.

(3) The Minister may, after considering an application for the grant or renewal of a licence made under this section, refuse to grant or renew a licence, as the case may be.

19. Duration of licence

Subject to the provisions of this Act, an overseas lottery licence issued under this Part –

- (a) shall cease to have effect on such date as may be specified in that licence:

Provided that the term of period of validity of that licence shall not exceed five years;

- (b) if renewed shall be valid for a further period not exceeding five years as may be specified, commencing from the date on which it was renewed or last renewed as the case may be.

20. Conditions of licence

(1) The licence issued under this Part shall be subject, in addition to any condition which may be prescribed by the Minister, to the following conditions: –

- (a) the overseas lottery in respect of which the licences is issued shall be conducted in accordance with the laws of the country where it is conducted;
- (b) the agent for overseas lottery may only transact business on the premises and in the manner specified in this licence:

Provided that the limitation shall not prevent business being transacted by post or by telephone to or from such premises;

- (c) the premises and the books and documents kept in connection with the lottery by the agent shall be open to inspection during normal office hours by any person authorized in that behalf by the Minister;

(d) all forms of advertisement used by the holder of an overseas lottery licence shall state the percentage of the gross proceeds designated to be allocated for prizes.

(2) The agent in this section means the agent appointed or approved in accordance with the conditions of a licence granted under this Part.

20A. Prize fund

(1) The prize fund shall be a tangible amount of money, in cash, deducted from the gross proceeds arising from the sale of lottery tickets, equal to the percentage of such gross proceeds designated to be allocated for prizes plus an additional one percent of such gross proceeds, the latter to contribute to the cost of redistributing the prize fund as provided for in subsection (5) of this section.

(2) The holder of an overseas licence hereinafter referred to as the "licensee" shall, within 2 months after the date of issue of such licence open a trust account in the name of the Trust in a Bank in Vanuatu, and each month or during such period as the Minister may approve, pay the percentage designated to be allocated for prizes, referred to in subsection (1), into the trust account to be held on trust for ticket holders.

(3) On each occasion, referred to in subsection (2), when the licensee pays into the prize fund the percentage designated to be allocated for prizes, the licensee shall submit to the Accountant General –

(a) evidence that the due amounts had been paid into the prize fund;

(b) names, addresses and amounts paid by every ticket purchaser.

(4) The money paid into the trust account shall not –

(a) form part of the working capital of the licensee;

(b) be encumbered, charged or used as collateral in any way;

(c) be used to finance day-to-day operations of the licensee.

(5) If the licensee fails to fulfill his obligation to hold a draw either through insolvency, fraud, receivership or any other cause, then the prize fund is to be redistributed, less costs of postage, on a *pro rata* basis to all ticket holders who hold a fully paid up valid ticket and creditors whether secured or otherwise of such licensee shall have no call on the prize fund.

20B. Trust

(1) There shall be established in respect of each overseas lottery operated under a licence from Vanuatu a Trust to be known by such name as the Minister shall approve.

(2) The Trust shall consist of the licensee or his nominee and the Accountant General or his nominee.

(3) The members of the Trust shall hold office for the term of the licence and any necessary

additional period agreed to by the Minister.

(4) Subject to section 20C(2) no action whatsoever may be taken affecting the funds in the prize fund unless all members of the Trust agree so to do.

20C. Draws

(1) Within 2 months of the date of issue of an overseas lottery licence, the licensee shall, in writing, inform the Minister of the dates on which draws shall be made.

(2) If at the end of one month following the date notified to the Minister on which is to be made, no draw is made, the Minister shall, after giving the licensee an opportunity to show cause, authorize the Accountant General to operate the trust account independently for the purposes specified in subsection (5) of section 20A.

(3) The decision of the Minister under subsection (2) is final.

21. Lottery tax

(1) There shall be levied a tax (in this Part referred to as "overseas lottery tax") in respect of every overseas lottery.

(2) Overseas lottery tax shall, subject to the provisions of this Act, be charged to and paid by the promoter of every overseas lottery.

(3) Overseas lottery tax shall, subject to the provisions of this Act, be levied on the gross turnover (i.e. all tickets sales and other receipts for purchasing of draw chances) of every overseas lottery.

(4) The rates of overseas lottery tax levied under this section shall be as determined by the Minister, in consultation with the Minister responsible for Finance, and such rates shall be within the minimum and maximum levels of rate and shall be for such period as specified in the schedule to this Act.

(5) The rate to be applicable to each individual receipt shall be determined according to the date of ticket sale and shall not be determined by the closure of the lottery to which it relates.

(6) For the purposes of this section, where an overseas lottery licence is renewed under this Act, the renewed period shall be construed as a continuation of the period, commencing from the date of the first issue of that licence, under this Act.

(7) Regulations may be made by the Minister in consultation with the Minister responsible for Finance in respect of all matters necessary for the effective levy and collection of overseas lottery tax under this section.

22. Prohibition of publication, etc.

No person shall, except in accordance with the provisions of this Act and subject to the conditions of the licence issued under this Part –

- (a) print or publish any advertisement, notice or information relating to an

overseas lottery in furtherance of the conduct of the lottery;

- (b) announce the result of an overseas lottery; or
- (c) display upon any premises in his occupation any card, poster, or notice relating to an overseas lottery in furtherance of the conduct of the lottery.

23. Penalty for non-compliance

Any promoter of an overseas lottery, or any other person who contravenes the provisions of this Act, or fails to comply with the terms and conditions of the licence issued under this Part, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding VT 1 million or to imprisonment for a term not exceeding five years, or to both.

24. Production of accounts and records

The Minister may by notice in writing require a promoter of an overseas lottery –

- (a) to lodge with the Minister a statement of all money received and all payments made in connection with that overseas lottery; and
- (b) to produce to a person a specified in the notice, at a time and place so specified, all records that relate to the overseas lottery and statements specifying all information contained in the records relating to the overseas lottery that are not written.

Record includes any book account, deed, writing and document and any source of information, compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means.

25. Audit

(1) The Minister may direct that the statements and records referred to in section 24 shall be handed to the Auditor-General or any other persons nominated by the Minister, and the Auditor-General or person so nominated, as the case may be, shall receive, examine and audit the same and for that purpose make such inquiries as to him shall seem proper and necessary, and to report the result of his audit to the Minister.

(2) If the Minister so directs, the cost of examination or audit carried out pursuant to subsection (1), or any part thereof specified in that direction shall be recoverable as a debt due to the Government from the promoter of the overseas lottery.

26. Penalties for non-compliance

(1) Any person who is required to lodge a statement referred to in section 24 and who fails to do so within the time specified in that behalf in the notice given to him shall be guilty of an offence and shall be liable to a fine not exceeding VT 500,000 or to imprisonment for a term not exceeding two years, or to both.

(2) Any person who refuses to answer the inquiries made by the Auditor-General or person nominated by the Minister under section 25 shall be guilty of an offence and shall be liable to a fine not exceeding VT 500,000 or to imprisonment for a term not exceeding two years, or to

both.

27. Falsification of books, etc.

Any person who with intent to defraud or deceive any other person –

- (a) alters or falsifies any record or statement referred to in section 24;
- (b) makes or concurs in the making of any false or fraudulent entry in any record or statement, referred to in section 24;
- (c) omits or concurs in omitting any material particular from any record,

shall be guilty of an offence and shall be liable to a fine not exceeding VT 5 million or to imprisonment for a term not exceeding ten years, or to both such fine and imprisonment.

PART 6 – GENERAL

28. Search warrants

(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, has been or is about to be committed on any premises he may issue a warrant in writing authorizing any police officer to enter these premises, at any time within 14 days from the issue of such warrant with the assistance and using such force as may be necessary and search them and any police officer who enters the premises under the authority of the warrant 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) In exercising the powers under subsection (1), any police officer may be assisted by any person authorized by the Minister.

29. Offences by bodies corporate

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 have been attributable to any neglect on the part of any director, manager, secretary or other 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.

30. No prosecuting but by authority of Attorney General

It shall not be competent for the court within Vanuatu to try any person for any offence or alleged offence against this Act, unless the prosecution of such person for such offence shall

LOTTERIES [CAP. 205]

have been expressly authorized by the Attorney General.

31. Delegation of powers of the Minister

The Minister may delegate to any person, any of his powers and functions under this Act.

32. Regulations

(1) The Minister may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may impose penalty not exceeding VT 500,000 for any breach thereof.

SCHEDULE

(Section 21(3))

RATES OF OVERSEAS LOTTERY TAX

The rates of Overseas Lottery Tax levied under section 21(3) shall be as follows: –

Year of Operation of Licence Agreement	Percentage Tax on Gross Turnover:	
	Minimum	Maximum
Year 1 (i.e. first 12 months)	1%	5%
Years 2 to 5	2.5%	5%
Years 6 to 10	5%	10%

Table of Amendments

15A-15E Inserted by Act 7 of 1994

15B (5) Substituted by Act 6 of 1996

18(1) Substituted by Act 12 of 1990

20(1)(d) Added by Act 12 of 1990

20A, 20B, 20C Inserted by Act 12 of 1990



REPUBLIC OF VANUATU

LOTTERIES (AMENDMENT) ACT NO. 29 OF 2017

Arrangement of Sections

1	Amendment.....	2
2	Commencement.....	2

REPUBLIC OF VANUATU

Assent: 02/01/2018
Commencement: 05/01/2018

LOTTERIES (AMENDMENT) ACT NO. 29 OF 2017

An Act to amend the Lotteries Act [CAP 205] and for related purposes.

Be it enacted by the President and Parliament as follows:

1 Amendments

The Lotteries Act [CAP 205] is amended as set out in the Schedule, and any other item in the Schedule has effect according to its terms.

2 Commencement

This Act commences on the day on which it is published in the Gazette.

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SCHEDULE

AMENDMENTS OF THE LOTTERIES ACT [CAP 205]

1 Whole of the Act (except subsections 15B(2) and (4), and section 32)

Delete “Minister” (wherever occurring), substitute “Director”

2 Subsection 1(1)

Insert in their correct alphabetical positions

“ “applicant” means an applicant for a licence;

“authorised officer” means a person appointed as an authorised officer under section 28D;

“beneficial owner” means a natural person who ultimately owns or ultimately controls an applicant or licensee;

“confidential information” means information that is supplied to or obtained by the Director in the performance of his or her functions or the exercise of his or her powers under this Act, but does not include information that:

- (a) can be disclosed under any provision of this Act; or
- (b) is already in the public domain; or
- (c) consists of aggregate data from which no information about a specific person or business can be identified;

“controller” of an applicant or licensee means a person who exercises influence, authority or power over decisions about the financial or operating policies of the applicant or licensee, including as a result of, or by means of, a trust, agreement, arrangement, understanding or practice, and “control” has a corresponding meaning;

“Court” means the Supreme Court of Vanuatu;

“Director” means the Director of Customs and Inland Revenue;

“domestic regulatory authority” means a body or agency established by or under a law of Vanuatu that:

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- (a) grants or issues under that law or any other law licences, permits, certificates, registrations or other equivalent permissions; and
- (b) performs any other regulatory function related to a matter referred to in paragraph (a), including developing, monitoring or enforcing compliance with standards or obligations prescribed by or under that law or any other law;

“Financial Intelligence Unit” means the Financial Intelligence Unit established under section 4 of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014;

“foreign government agency” means:

- (a) a body or agency established by or under a law of a foreign country; or
- (b) an arm, ministry, department or instrumentality of the government of a foreign country; or
- (c) a body or agency of a foreign country set up by administrative act for governmental purposes;

“foreign serious offence” means:

- (a) an offence against a law of another country that, if the relevant act or omission had occurred in Vanuatu, would be an offence against the laws of Vanuatu, for which the maximum penalty is imprisonment for at least 12 months; or
- (b) an offence prescribed by the Regulations;

“foreign tax evasion offence” means conduct that:

- (a) amounts to an offence against a law of a foreign country; and
- (b) relates to a breach of a duty relating to a tax imposed under the law of the foreign country (whether or not that tax is imposed under a law of Vanuatu); and
- (c) would be regarded by the courts of Vanuatu as an offence of fraudulent evasion of tax for which the maximum penalty is imprisonment for at least 12 months, had the conduct occurred in Vanuatu;

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“key person” of an applicant or licensee means a beneficial owner, owner or controller of the applicant or licensee;

“law enforcement agency” means:

- (a) the Vanuatu Police Force; or
- (b) the Office of the Public Prosecutor; or
- (c) the department responsible for customs and inland revenue; or
- (d) the department responsible for immigration; or
- (e) such other persons prescribed for the purposes of this definition;

“licence” means a licence granted under Part 4A or Part 5;

“licensee” means the holder of a licence;

“owner” of an applicant or licensee means a person who has a legal entitlement of 25% or more of the applicant or licensee, by way of ownership of shares or otherwise, and “own” and “ownership” have a corresponding meaning;

“regulatory law” means a law that provides for:

- (a) the grant or issue of licences, permits, certificates, registrations or other equivalent permissions; and
- (b) other regulatory functions related to a matter referred to in paragraph (a), including monitoring or enforcing compliance with standards or obligations prescribed by that law;

“Sanctions Secretariat” means the Sanctions Secretariat established under section 17 of the United Nations Financial Sanctions Act No. 6 of 2017;”

3 At the end of section 1

Add

“(3) For the purpose of the definition of a beneficial owner, ultimately owns and ultimately controls include circumstances where ownership or control is exercised:

- (a) through a chain of ownership; or

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- (b) by a means of indirect control that may not have legal or equitable force, or be based on legal or equitable rights.”

4 Section 15C

Repeal the section, substitute

“15C. Application for grant of licence for instant lotteries and pool betting schemes

- (1) An application for the grant of a licence for instant lotteries or pool betting schemes must:

- (a) be made to the Director in the prescribed form; and
- (b) include the following:
 - (i) details of each key person of the applicant;
 - (ii) details as required by the Director on whether a beneficial owner of the applicant is a beneficial owner, owner or controller of an entity licensed or registered under a regulatory law of Vanuatu or a foreign jurisdiction;
 - (iii) details of the source of funds used to pay the capital of the applicant; and
- (c) be accompanied by the prescribed fee; and
- (d) comply with section 27A.

- (2) The Director may require an applicant to provide such additional information as the Director considers necessary to determine an application.

15CA. Grant of licence

- (1) The Director may grant a licence for instant lotteries or pool betting schemes if:
 - (a) the application for the licence complies with section 15C; and
 - (b) the Director is:

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- (i) satisfied that each key person of the applicant is a fit and proper person; and
 - (ii) satisfied of the source of funds used to pay the capital of the applicant.
- (2) In deciding whether a key person of the applicant is a fit and proper person, the Director must have regard to:
- (a) whether the person has been convicted of an offence or is subject to any criminal proceedings; and
 - (b) whether the person is listed on a United Nations Financial Sanctions list, a financial sanctions list under the United Nations Financial Sanctions Act No. 6 of 2017 or a financial sanctions list under the law of any jurisdiction; and
 - (c) any other fit and proper criteria prescribed by the Regulations.

15CB. Renewal of licence

- (1) An application for the renewal of a licence for instant lotteries or pool betting schemes must be made in writing by the licensee to the Director.
- (2) The Director may, after considering an application, renew or refuse to renew a licence.”

5 Subsection 16(3)

- (a) Delete “VT 5 million”, substitute “VT 25 million”
- (b) Delete “ten years”, substitute “15 years”

6 Section 18

Repeal the section, substitute

“18. Application for licence for an overseas lottery

- (1) An application for the grant of an overseas lottery licence must:
 - (a) be made to the Director in the prescribed form; and
 - (b) state the percentage of the gross proceeds designated to be allocated for prizes; and

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- (c) include the following:
 - (i) details of each key person of the applicant;
 - (ii) details as required by the Director on whether a beneficial owner of the applicant is a beneficial owner, owner or controller of an entity licensed or registered under a regulatory law of Vanuatu or a foreign jurisdiction;
 - (iii) details of the source of funds used to pay the capital of the applicant; and
 - (d) be accompanied by the prescribed fee; and
 - (e) comply with section 27A.
- (2) The Director may require an applicant to provide such additional information as the Director considers necessary to determine an application.

18A. Grant of licence

- (1) The Director may grant a licence for an overseas lottery if:
- (a) the application for the licence complies with section 18; and
 - (b) the Director is:
 - (i) satisfied that each key person of the applicant is a fit and proper person; and
 - (ii) satisfied of the source of funds used to pay the capital of the applicant.
- (2) In deciding whether a key person of the applicant is a fit and proper person, the Director must have regard to:
- (a) whether the person has been convicted of an offence or is subject to any criminal proceedings; and
 - (b) whether the person is listed on a United Nations Financial Sanctions list, a financial sanctions list under the United Nations

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Financial Sanctions Act No. 6 of 2017 or a financial sanctions list under the law of any jurisdiction; and

- (c) any other fit and proper criteria prescribed by the Regulations.

18B. Renewal of licence

- (1) An application for the renewal of a licence for an overseas lottery must be made in writing by the licensee to the Director.
- (2) The Director may, after considering an application, renew or refuse to renew the licence.”

7 After section 20B

Insert

“20BA. Disclosure of status when acting as member of a trust

- (1) If a licensee is acting as a member of a Trust referred to in section 20B, the licensee must disclose its status as a member of the Trust to a reporting entity before or at the time the licensee:
- (a) opens an account with the reporting entity; or
 - (b) engages the services of the reporting entity; or
 - (c) enters into a business relationship with the reporting entity; or
 - (d) conducts with the reporting entity an occasional transaction that exceeds the prescribed threshold under section 27 or 28 of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014; or
 - (e) otherwise engages with the reporting entity as prescribed by the Regulations.
- (2) If a licensee fails to comply with subsection (1), the licensee commits an offence punishable upon conviction by:
- (a) if the licensee is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or
 - (b) if the licensee is a body corporate - a fine not exceeding VT 125 million.

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- (3) In this section, “account”, “reporting entity” and “business relationship” have the same meaning as in the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014.”

8 Subsection 26(1)

- (a) Delete “VT 500,000”, substitute “VT 15 million”
(b) Delete “two years”, substitute “5 years”

9 Subsection 26(2)

- (a) Delete “VT 500,000”, substitute “VT 25 million”
(b) Delete “two years”, substitute “15 years”

10 Section 27

- (a) Delete “VT 5 million”, substitute “VT 25 million”
(b) Delete “ten years”, substitute “15 years”

11 After Part 5

Insert

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“PART 5A—GENERAL PROVISIONS FOR LICENCES

27A. General requirements for applications for licences

- (1) This section applies to an application for a licence.
- (2) If the applicant is a body corporate, the application must also include the following details:
 - (a) the name of the body corporate;
 - (b) proof of incorporation of the body corporate;
 - (c) the registered business address of the body corporate.
- (3) If the applicant is a natural person, the application must also be accompanied by:
 - (a) a notarised copy of the passport of the applicant; and
 - (b) a criminal history record for the applicant with a certified translation where necessary.
- (4) If the applicant is not a body corporate or a natural person, the application must also include such other information as may be required by the Director.

27B. Suspension or revocation of licence

- (1) The Director may by notice in writing to a licensee suspend or revoke the licensee’s licence if the Director is:
 - (a) satisfied that the licensee has contravened a provision of the Anti–Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 and that contravention has resulted in the use of an enforcement measure under Part 10AA of that Act; or
 - (b) not satisfied that the fit and proper criteria under this Act or the Regulations are met; or
 - (c) not satisfied of the source of funds used to pay the capital of the licensee; or

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- (d) satisfied that the licensee has committed an offence against any provision of this Act.
- (2) Before suspending or revoking a licence, the Director must give written notice to the licensee that the Director proposes to suspend or revoke the licence and the reasons for the suspension or revocation.
- (3) The licensee may within 14 days after receiving a notice under subsection (2) give the Director written reasons why the licence should not be suspended or revoked.
- (4) The Director may suspend or revoke a licensee's licence if:
 - (a) the licensee does not give the Director reasons under subsection (3); or
 - (b) having taken into account the reasons of the licensee, the Director is of the opinion that the licensee has failed to show good cause why the licence should not be suspended or revoked.

27C. Licensee to give notice of certain changes to Director

- (1) A licensee must give the Director written notice of a change in:
 - (a) a key person of the licensee; or
 - (b) the circumstances of a key person of the licensee that may affect whether he or she meets fit and proper criteria; or
 - (c) the source of funds used to pay the capital of the licensee,within 14 days after the change occurs.
- (2) If a licensee fails to comply with subsection (1), the licensee commits an offence punishable upon conviction by:
 - (a) in the case of a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or
 - (b) in any other case - a fine not exceeding VT 125 million.
- (3) If a licensee fails to comply with subsection (1), the Director may by notice in writing to the licensee revoke the licensee's licence.

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- (4) If a licensee does provide the information as required under subsection (1), but the Director is not satisfied:
- (a) that the key persons of the licensee are fit and proper persons to fulfil the responsibilities of their positions having regard to the matters referred to in subsection 15CA(2) or 18A(2); or
 - (b) as to the source of funds used to pay the capital of the licensee,
- the Director may by notice in writing to the licensee revoke the licensee's licence.
- (5) Before revoking a licence under subsection (3) or (4), the Director must give written notice to the licensee that the Director proposes to revoke the licence and the reasons for the revocation.
- (6) The licensee may within 14 days after receiving a notice under subsection (5) give the Director written reasons why the licence should not be revoked.
- (7) The Director may revoke a licensee's licence if:
- (a) the licensee does not give the Director reasons under subsection (6); or
 - (b) having taken into account the reasons of the licensee, the Director is of the opinion that the licensee has failed to show good cause why the licence should not be revoked.

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PART 5B—MONITORING POWERS

27D. Definition

In this Part, “licensee” means the holder of a licence granted under Part 4A or Part 5, and is deemed to include the holder of a permit issued under Part 4 and a society granted a permission under Part 3.

27E. Director may require information and documents relating to licensee

(1) Subject to subsection (2), the Director may, by notice in writing to a licensee, require the licensee to provide the Director with information or documents, or both, specified in the notice within the period set out in the notice.

(2) The information or documents must relate to:

- (a) the licensee’s integrity, competence, financial standing or organisation; or
- (b) the licensee’s compliance with this Act or the Regulations.

(3) If the licensee:

- (a) refuses or fails to give the Director the information or documents required by the Director; or
- (b) knowingly or recklessly gives the Director information or documents that are false or misleading,

the licensee commits an offence punishable upon conviction by the penalty set out in subsection (4).

(4) The penalty is:

- (a) if the licensee is a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or
- (b) in any other case - a fine not exceeding VT 75 million.

27F. On-site inspections

(1) The Director may conduct on-site inspections at the business premises occupied by a licensee at any time during normal business hours.

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- (2) The Director may for the purposes of subsection (1):
 - (a) enter the business premises of the licensee during ordinary business hours; and
 - (b) inspect and take copies of any books, accounts and documents of the licensee that relate to:
 - (i) the licensee's integrity, competence, financial standing or organisation; or
 - (ii) the licensee's compliance with this Act or the Regulations.
- (3) The licensee must cooperate fully with the Director by:
 - (a) giving the Director all the information, and making available the documents he or she requires; and
 - (b) if necessary, giving the Director appropriate workspace and reasonable access to office services, during the inspection.
- (4) If a person intentionally obstructs the Director in the exercise of the Director's powers under this section, the person commits an offence punishable upon conviction by:
 - (a) in the case of a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or
 - (b) in the case of a body corporate - a fine not exceeding VT 75 million.
- (5) In this section, a reference to the Director includes an authorised officer.
- (6) An authorised officer must produce written evidence of his or her appointment if required to do so while carrying out on-site inspections."

27G. Director may request information and documents

For the purpose of performing a function or exercising a power under this Act, the Director may request information or documents, or both, from any or all of the following:

- (a) the Financial Intelligence Unit;

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- (b) a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014;
- (c) the Sanctions Secretariat;
- (d) a law enforcement agency;
- (e) a domestic regulatory authority;
- (f) a foreign government agency that carries out functions corresponding or similar to the functions carried out by a body or agency referred to in paragraph (a), (b), (c), (d) or (e).”

12 After Section 28

Insert

“28A. Disclosure of confidential information

- (1) The Director may disclose confidential information if the disclosure:
 - (a) is required or authorised by the Court; or
 - (b) is made for the purpose of performing a function or exercising a power under this Act; or
 - (c) is made to the Financial Intelligence Unit for the purpose of performing a function or exercising a power under the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014; or
 - (d) is made to a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 for the purpose of performing a function or exercising a power under that Act; or
 - (e) is made to a law enforcement agency for the purpose of investigating or prosecuting an offence against a law of Vanuatu for which the maximum penalty is a fine of at least VT 1 million or imprisonment for at least 12 months; or
 - (f) is made to a law enforcement agency for the purpose of investigating or taking action under the Proceeds of Crime Act [CAP 284]; or

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- (g) is made to a domestic regulatory authority for the purpose of carrying out its regulatory functions; or
 - (h) is made to the Sanctions Secretariat for the purpose of performing a function or exercising a power under the United Nations Financial Sanctions Act No. 6 of 2017; or
 - (i) is made to a foreign government agency in accordance with section 28B.
- (2) A person who contravenes subsection (1) commits an offence punishable upon conviction by:
- (a) for an individual-a fine not exceeding VT 15 million or imprisonment for a term not exceeding 5 years, or both; and
 - (b) for a body corporate- a fine not exceeding VT 75 million.

28B. Disclosure to foreign government agency

The Director may disclose confidential information to a foreign government agency if:

- (a) the Director is satisfied that the disclosure is for the purpose of:
 - (i) performing a function or exercising a power under the foreign government agency's own regulatory legislation, including investigating a breach of that legislation; or
 - (ii) performing a function or exercising a power under the foreign jurisdiction's anti-money laundering and counter-terrorism financing regulation and supervision laws; or
 - (iii) performing a function or exercising a power under the foreign jurisdiction's financial sanctions laws; or
 - (iv) investigating or prosecuting a foreign serious offence or a foreign tax evasion offence; or
 - (v) investigating or taking action under the foreign jurisdiction's proceeds of crime laws; and
- (b) the Director is satisfied that:

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- (i) the information will be used for a proper regulatory, supervisory or law enforcement purpose; and
- (ii) the agency is subject to adequate restrictions on further disclosure.

28C. Indemnity from liability

A person is not subject to any civil or criminal liability, action, claim or demand for anything done or omitted to be done by the person in good faith under or for the purposes of this Act.

28D. Appointment of authorised officers

The Director may in writing appoint persons to be authorised officers for the purposes of this Act.”

13 Transitional provision for certain licensee information

- (1) This provision applies to a licensee if, immediately before the commencement of this Act, the licensee’s licence was in force under the Lotteries Act [CAP 205].
- (2) The licensee must provide the Director with the information required under section 15C or 18 of the Lotteries Act [CAP 205] as amended by this Act (“the additional information”) within 6 months after the commencement of this Act.
- (3) If the licensee does not provide the additional information as required under subsection (2), the Director may by notice in writing to the licensee revoke the licensee’s licence.
- (4) If the licensee does provide the additional information as required under subsection (2), but the Director is not satisfied:
 - (a) that the key persons of the licensee are fit and proper persons to fulfil the responsibilities of their positions having regard to the matters referred to in section 15CA(2) or 18A(2) of the Lotteries Act [CAP 205] as amended by this Act; or
 - (b) as to the source of funds used to pay the capital of the licensee,the Director may by notice in writing to the licensee revoke the licensee’s licence.

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- (5) Before revoking a licence under subsection (3) or (4), the Director must give written notice to the licensee that the Director proposes to revoke the licence and the reasons for the revocation.
- (6) The licensee may within 14 days after receiving a notice under subsection (5) give the Director written reasons why the licence should not be revoked.
- (7) The Director may revoke the licensee's licence if:
 - (a) the licensee does not give the Director reasons under subsection (6); or
 - (b) having taken into account the reasons of the licensee, the Director is of the opinion that the licensee has failed to show good cause why the licence should not be revoked.
- (8) A term or expression used in this item has the same meaning as in the Lotteries Act [CAP 205] as amended by this Act.

14 Transitional provision for certain licences

- (1) If a licence was in force immediately before the commencement of this Act, the licence continues in force, on and after that commencement, as if it were a licence issued under the Lotteries Act [CAP 205] as amended by this Act.
- (2) A term or expression used in this item has the same meaning as in the Lotteries Act [CAP 205] as amended by this Act.