



Supreme Court verdict on the National Lottery Act: Implications for the lottery and gaming industry

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Introduction

On 22 November 2024, the Supreme Court of the Federal Republic of Nigeria, in Suit No. SC/1/2008 between the Attorney-General of Lagos State & Others and the Attorney General of the Federation & Others, unanimously declared the National Lottery Act invalid. This decision concludes a 16-year legal process initiated by the Lagos State Government seeking an interpretation of the Constitution that lotteries fall within the purview of residual matters, which are legislative issues reserved for State Governments.

According to Nigeria's constitution, a residual matter refers to legislative issues that are not explicitly listed in either the Exclusive Legislative List or the Concurrent Legislative List of the Constitution. These residual matters fall under the jurisdiction of the State Houses of Assembly, meaning that only State Governments have the authority to legislate on them. The judgment of the Supreme Court resolves the long-standing controversy between the Federal Government and State Governments over the regulation of lotteries and gaming activities. The decision is a win for State Governments asserting their regulatory autonomy in line with the spirit of the Constitution. Operators have to evaluate their strategies to meet up with the regulatory regimes in the states where they operate.

This alert examines the implications of this judgment for businesses in the lottery and gaming industry

Implications for the lottery and gaming industry

1 Impact on licensing and compliance

The judgment renders the National Lottery Act ("NLA" or the "Act") inapplicable across all the 36 states of the country. Consequently, the National Lottery Regulatory Commission (NLRC) no longer has authority over lottery and gaming activities in all these states. However, the Supreme Court affirmed the jurisdiction of the National Assembly to legislate on lottery matters for the Federal Capital Territory (FCT).

The Supreme Court ruling declaring the NLA invalid has several potential implications. It may be argued that the NLA is invalid only to the extent of its inconsistency with the Constitution, potentially leaving room for its applicability in the FCT. However, given that the Act was originally designed to be applicable across the Federation, it might be more appropriate and clearer for the National Assembly to initiate the legislative process to enact a Lottery Act specifically for the FCT.

This judgment introduces substantial uncertainty for gaming businesses holding licenses previously issued by the NLRC. These licenses, many of which cover periods extending into future years, are now unenforceable in states, raising questions about their validity beyond November 2024. Consequently, operators who have paid levies and license fees to the NLRC for future license periods may face a risk of double costs, as such payments may no longer shield them from the requirement to obtain licenses and pay levies to state regulators, where they operate.

To tackle the potential regulatory divergence, the Federation of State Gaming Regulators of Nigeria (FSGRN) is proposing a national unified licensing and compliance regime for online sport betting and online casino gaming called the Universal Reciprocity Licensing regime that would cover operators in all states that sign up into the regime. The aim is to create “standardized yet flexible licensing ecosystem that will enhance industry credibility, reduce operational bottlenecks, and drive growth in respective states”.

2 Ease of doing business

Nigeria’s business environment is often criticised for its regulatory unpredictability, high compliance costs, and duplication of efforts. This recent decision may adversely impact on ease of doing business if states, through their lottery boards/agencies, are not willing to collaborate and have a unified system. Operators in the lottery business may have to navigate diverse state requirements, with inconsistent rules, which could discourage investment in the sector.

A further complication arises for virtual gaming companies. It may not be in line with the spirit of the Constitution for companies to be deemed to be operating within a state simply because punters from that state access their online platform, even though the operator’s base of operations is not within that state.

Some states already require virtual operators to register, while others are silent on the matter in their local laws, creating ambiguity for remote gaming businesses. If it is clarified by the courts that states regulate online operators based on where the operations are located, rather than where the punters are resident, it could lead to fiscal inequality amongst states or fiscal competition.

3 Emergence of unregulated gaming businesses

Heightened compliance costs may drive some businesses underground as stringent regulatory environments often lead to the rise of illegal operations. Similarly, in the gaming industry, overly burdensome regulations could favour unlicensed businesses outside the legal framework, leading to a loss of revenue for the government and increased risks for consumers.

4 Overlap of functions and conflicts

Different states may potentially adopt diverse regulatory approaches, affecting the uniformity of operations and marketing strategies for lottery businesses. Key questions include:

- Will gaming companies be allowed to serve customers in states where they are not licensed to operate?
- How will states enforce their regulatory oversight on companies not registered in their jurisdictions, especially since betting and gaming have gone digital?
- How will businesses reconcile operations across states with differing regulations?

These uncertainties could disrupt uniformity in operations and marketing strategies, particularly for companies with a national presence.

5 Rethinking business models

Gaming companies may need to reassess the financial viability of expanding operations to multiple states. Businesses might be constrained to concentrate on states that offer the most favourable regulatory environments. On the one hand, this could lead to a market shift as overcrowded markets may see a redistribution of operators to emerging markets within the gaming industry. On the other hand, states with transparent and business-friendly regulatory frameworks might attract investments, fostering job creation and increased revenues.

6 Competition and innovation

States may seek to attract operators by offering competitive licensing fees or other regulatory benefits. This could create a competitive landscape, where operators strategically establish themselves in states that offer the most favourable business conditions. The absence of a harmonised regulatory framework among states could increase operational complexity, and operators must carefully navigate varying compliance requirements.

Additionally, this transition is likely to drive innovation among operators, as they tailor their offerings to meet diverse regulatory requirements and local consumer preferences. Unlike the previous system, where a single set of rules applied across the country, operators must now customise their lottery products and services to align with specific state laws. This could result in a more varied and localised gaming market, with different states offering unique lottery formats, betting structures, and prize pools.



Recommendations

Exploration of the FSGRN as a self-regulatory organisation (SRO) - The FSGRN through the Joint Tax Board and the Governors Forum could pursue formal recognition as a self-regulatory organisation (SRO). This would equip it with sufficient authority to drive regulatory uniformity, enhance transparency, and reduce administrative burdens across states. It would also allow for the Universal Reciprocity Licensing Regime to be expedited and rolled out nationwide to streamline licensing processes and foster regulatory coherence.

Introduction of tiered licensing categories - Tiered licensing categories may be introduced, such as state, regional, and national-level licenses, to provide flexibility and proportionality in compliance obligations based on the operator’s scale and footprint.

Issuance of transitional guidelines on previously paid NLRC licensing fees - The Federal Ministry of Finance should issue clear transitional guidelines on the treatment of licensing fees covering future periods to eliminate ambiguity and prevent financial losses on the part of operators.

Development of a centralised regulatory compliance platform - To support a modernised and harmonised regulatory environment, states through the FSGRN could invest in a centralised regulatory compliance platform, particularly to address the challenge of online transactions which is not location-specific. Key capabilities of such a system should include:

- End-to-end tracking of licensing applications, levy payments, and regulatory filings across participating states.
- Implementation of geolocation verification systems to ensure that operators only service customers physically located within licensed jurisdictions.
- API-based integrations between licensed operators and regulators to enable real-time sharing of operational data, including transaction volumes, player activity, and tax/levy obligations. This would improve transparency, facilitate effective supervision, and reduce manual bottlenecks.

Takeaway

The Supreme Court judgment has provided important guidance on a 16-year legal process that has lingered. Further clarification is required to reduce higher compliance costs for operators. Additionally, operators must reassess their financial commitments, particularly regarding licensing fees and levies previously paid to the NLRC. Important questions arise:

- What becomes of these payments considering evolving regulatory frameworks?
- Can operators seek refunds from the NLRC?
- Can state governments make a claim from the NLRC for historic payment against Federation Account Allocation Committee (FAAC) allocation?

Given these uncertainties, a thorough legal and regulatory health check is imperative to ensure compliance and mitigate potential financial exposure.

In the absence of a unified licensing regime, operators would need to perform a cost-benefit analysis to determine the feasibility of continuing operations across state lines. The Federal Supreme Court of Brazil recently ruled that online betting platforms must implement geolocation systems to verify that customers are physically present within the state borders where the platform is licensed to operate. This decision underscores the insufficiency of customers' self-declared location data as a reliable compliance measure.

Additionally, a collaborative solution which involves a roundtable of the State Regulators (through the FSGRN and the Governors Forum), and association for the operators is necessary to push for the swift adoption of harmonised licensing and deal with the uncertainty surrounding past levies paid to the NLRC. Overall, the most significant aspect of these changes is the reaffirmation of constitutional supremacy in clarifying the authority of states in overseeing lottery operations within their jurisdictions. It does not necessarily introduce a fundamentally new regulatory approach, as states have long been registering physical operators in their jurisdictions and collecting good cause levies. This development, however, highlights the need for operators to navigate state-level regulatory frameworks while ensuring compliance with evolving legal interpretations. At the same time, it calls for greater alignment among states to establish a more consistent regulatory regime.

PwC Nigeria supports businesses with compliance reviews, regulatory impact assessments, and strategic advice to navigate the Nigerian regulatory landscape. We can also assist State Governments in developing transparent regulatory frameworks to attract investors.

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