



ARTICLE:

IS ONLINE GAMBLING LEGAL IN SOUTH AFRICA?

The National Gambling Board (NGB) has noted with concern that the issue of the legality of online or interactive gambling is the subject of debate in some circles.

The National Gambling Act, 2004 (Act 7 of 2004) (“the NGA”) defines an “interactive game” as *“a gambling game played or available to be played through the mechanism of an electronic agent accessed over the Internet other than a game that can be accessed for play only in licensed premises, and only if the licensee of any such premises is authorised to make such a game available for play.”*

To eliminate any uncertainty in this regard, the NGB wishes to make it emphatically clear that the answer to whether online or interactive gambling is legal in South Africa, is a simple and unequivocal NO with the exception of online sports betting. Section 11 of the NGA, entitled *“Unauthorised interactive gaming unlawful”*, expressly states that *“a person must not engage in or make available an interactive game except as authorised in terms of this Act or any other national law.”*

The National Gambling Amendment Act, 2008 (Act no. 10 of 2008) (“the Amendment Act”), which was passed by the National Assembly and assented to by the Presidency on 10 July 2008, has never come into operation. In terms of section 44 of the Amendment Act, the Act *“comes into operation on a date fixed by the President by proclamation in the Gazette”*, and this has never taken place. Legislation comes into operation on the day of its publication in the Government Gazette.

As the Amendment Act prescribes that it will only come into effect on a future date to be fixed by the President, by proclamation in the Gazette, and the President has never done so, the Amendment Act thus cannot be relied upon or referenced as being the law regarding the regulation of interactive gaming or online gambling. The National Gambling Act of 2004 remains the supreme national regulatory prescript for regulating the gambling industry in the

Republic of South Africa, and in terms thereof, interactive gambling, as envisaged in the Amendment Act of 2008, remains prohibited.

Examples of such interactive gambling are casino-style gambling that is accessible through the use of a device such as a smartphone or tablet, as well as server-based gambling inside a physical establishment styled as an internet lounge. Casinos games can only be enjoyed at licensed land based casinos. Any establishment that is unable to display a valid gambling licence issued by a provincial licensing authority is operating illegally.

Operators offering or wishing to offer such gambling products and services to the South African public must be aware that they are committing an offence, and will be subject to criminal prosecution if detected. Punters are equally cautioned to avoid participating in any activity that is illegal, as such participation is also a criminal offence. A conviction for committing an offence in terms of the NGA can attract a fine of up to R10 million, or imprisonment of up to ten (10) years. Winnings derived from such activity will also be confiscated, and forfeited to the State.

The NGB thus encourages compliance with national and provincial gambling legislation. However, for those that choose to willfully persist in criminal conduct, the consequences will be severe.

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