

ARTICLE SERIES

IMPACT OF EXTANT LEGISLATIONS ON METAVERSE APPLICATIONS IN NIGERIA: FOCUS ON GAMING



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INTRODUCTION

The term 'metaverse' was coined by Neal Stephenson in his 1992 novel, 'Snow Crash', to describe a digital world beyond our analogue world.[1] The metaverse has gained popularity with the crypto space for providing another use case for cryptocurrencies, and similar decentralised ethos. It has also provided artists and art enthusiasts a space to create and trade in new forms of art, referred to as non-fungible tokens (NFTs). Gamers have also found a ready arena for real-time gaming in the metaverse.

The buzz around the metaverse took on new life after Facebook, rebranded as Meta Platforms in 2021,[2] in line with its pivot to the metaverse. The metaverse combines the use of virtual reality, augmented reality, decentralised finance technologies, and different virtual worlds, each built by the platforms that offer metaverse-based services. Since then, the biggest players in the metaverse ecosystem have been big tech companies (Microsoft, Apple, Meta), chip makers (Nvidia), gaming providers (Epic Games, Minecraft, Roblox, Niantic), restaurants (Chipotle Mexican Grill), and metaverse-focused companies (Decentraland, which sold a plot of virtual real estate in its metaverse for \$2.4 million).[3]

In 2021, the metaverse market was worth \$47.48 billion, [4] roughly half the contribution of ICT/Tech to Nigeria's 2022 GDP.[5] The metaverse market is further projected to hit \$678 billion in value by 2030.[6]

There is already activity in the Nigerian metaverse gaming, with one provider raising \$3.2 million in their seed round via a token offering.[7]

Gaming and gambling have gradually evolved from physical activities and transited online. The metaverse is a new domain and gaming providers have identified its potential to allow them offer their services in ways previously not envisaged. 52% of US gamers believe that the metaverse can revolutionise the gaming industry.[8] Entire virtual worlds and game economies can be created in the metaverse, ensuring that players are retained for longer; and additional value can be extracted from game playing activity beyond the primary gaming activity.

Because of this, it is necessary to consider if there are extant legislations that may apply to the metaverse gaming and gambling, to determine if they provide any safeguards or how well adjusted they are to this new domain. Some games are subject to legal restrictions in how they can be made available, and the rules guiding gameplay.

[1] Herrman J and Browning K, 'Are We in the Metaverse Yet?' The New York Times (10 July 2021) <https://www.nytimes.com/2021/07/10/style/metaverse-virtual-worlds.html> accessed 3 February 2023

[2] Marr B, 'A Short History Of The Metaverse' (Forbes) <https://www.forbes.com/sites/bernardmarr/2022/03/21/a-short-history-of-the-metaverse/> accessed 3 February 2023

[3] 'What Is The Metaverse: Origin, Platforms, Future, Warnings?' <https://www.bankcube.com/post/what-is-the-metaverse> accessed 3 February 2023

[4] Mileva G, '52 Metaverse Statistics | Market Size & Growth (2023)' (Influencer Marketing Hub, 25 February 2022) <https://influencermarketinghub.com/metaverse-stats/> accessed 3 February 2023

[5] Michael C, 'ICT Sector Contribution to GDP Hits 5-Year High' (Businessday NG, 29 November 2022) <https://businessday.ng/technology/article/ict-sector-contribution-to-gdp-hits-5-year-high/> accessed 3 February 2023

[6] Year: 2022 | B, 'Metaverse Market Size Suggesting \$678 Billion Industry by 2030' <https://www.strategicmarketresearch.com/market-report/metaverse-market> accessed 3 February 2023

[7] 'Metaverse Magna, a Nigerian gaming DAO, raises US\$3.2M funding round' (Further Africa, 12 September 2022) <https://furtherafrica.com/2022/09/12/metaverse-magna-a-nigerian-gaming-dao-raises-us3-2m-funding-round/> accessed 3 February 2023

[8] '52% of U.S. Gamers Believe the Metaverse Will Change the Game Industry' (VentureBeat, 13 July 2022) <https://venturebeat.com/metaverse/52-of-u-s-gamers-believe-the-metaverse-will-change-the-game-industry/> accessed 3 February 2023

The metaverse offers an opportunity to sidestep restrictions or bend gaming principles, where the rules are strictly defined to refer to physical gaming.

Using Nigeria as a case study in this two-part series (the second focusing on the UK), we review gaming legislations in Nigeria. While there is no direct reference to the metaverse, metaverse applications can be captured by provisions referring to remote communication or remote gaming. After these laws are considered, we provide recommendations on how the regulatory landscape can be improved.

FEDERAL LEGISLATION

Gaming Machines (Prohibition) Act 1977

This law was enacted to ban the importation, ownership and operation of gaming machines. Gaming machines refer to any 'gaming or gambling machine or other mechanical device capable of being operated automatically or by means of a lever or other device whatsoever, by any person, after insertion of a coin or token and with a view to obtaining pecuniary reward.'^[9] Slot machines are a good example of gaming machines.

[9] Gaming Machines (Prohibition) Act 1977, s. 3

[10] 'From Past to Present: The Evolution of Betting in Nigeria' (Daily Post Nigeria, 14 October 2022) <https://dailypost.ng/2022/10/14/from-past-to-present-the-evolution-of-betting-in-nigeria/> accessed 3 February 2023.

[11] Gaming Machines (Prohibition) Act 1977, s. 1(a)

[12] *ibid*, s. 1(2)

[13] 'Gambling Laws in Nigeria' (Punch Newspapers, 21 March 2022) <https://punchng.com/gambling-laws-in-nigeria/> accessed 3 February 2023

[14] *Ibid* 8

From Nigeria's independence, gambling was largely unregulated. Even when the Casino Taxation Act was passed in 1965, focus was on imposing tax on the revenue from gambling activities,^[10] while gambling activities were left open. The enactment of this 1977 law was a sharp turn from a government that largely ignored it before then. It made it illegal to own or operate gaming machines in Nigeria.

Any license issued before this law came into force was immediately terminated when the Act commenced on January 1st, 1977.^[11] Owners and operators of gaming machines were given till March 31st 1977 to dispose of their existing machines, either by export or any other means. Any machine left in Nigeria after the grace period would be forfeited to the government.^[12] No person has since then been granted a license to own and operate gaming machines in Nigeria under this federal law. Since gaming machines are mostly used by casinos, Nigeria has granted some licenses to casinos, like Le Meridien Eko Hotel & Casino, Federal Palace Hotel and Casino, and Transcorp Hilton Casino.^[13]

Any person who operates gaming machines in Nigeria while this law is in force would be guilty of an offence and liable upon conviction to imprisonment for a term of a year without option of fine. The gaming machine in question and proceeds thereof will also be forfeited to the Federal Government.^[4]

Depending on the interpretation approach taken, this law might be applicable to regulate online activity of metaverse gaming platforms. The definition of gaming machines presented above is not anchored on physical activity or devices. As such, a virtual representation of a gaming machine, that has the features described in the definition may be interpreted to be a violation of the law.

However, its effect has been mitigated by other laws that permit and license the use of gaming machines. Some of those laws will be reviewed subsequently in this article.

National Lottery Act 2005

The National Lottery Act 2005 provides for the operation of a national lottery, establishes the National Lottery Regulatory Commission (“the Commission”), and the National Lottery Trust Fund. It however does not envisage online or remote gambling like similar UK laws which will be subsequently considered. It only refers to electronic communication in the operations of a national lottery which are not broad enough to capture online or metaverse gaming.

A lottery includes any game, scheme, arrangement, system, plan, promotional competition or device for the distribution of prizes by lot or chance, or as a result of the exercise of skill and chance or based on the outcome of sporting events, or any other game, scheme, arrangement, system, plan, competition or device, which the President may by notice in the Gazette declare to be lottery and which shall be operated according to a license.[15]

This definition is broad enough to capture a wide range of gambling activities, irrespective of type and mode of delivery, physical or virtual. The Act also defines tickets as any receipt, symbol, sign, token, warrant, card, printed paper, document or any other means or device including an electronic record, which entitles a participant to take part in a lottery.[16]

When read together with the definition of a lottery, it is clear that though the Act does not directly make reference to online gambling, lotteries and the ticketing process are defined in a manner broad enough to capture the activities of online or metaverse gambling.

[9] Gaming Machines (Prohibition) Act 1977, s. 3

[10] 'From Past to Present: The Evolution of Betting in Nigeria' (Daily Post Nigeria, 14 October 2022) <https://dailypost.ng/2022/10/14/from-past-to-present-the-evolution-of-betting-in-nigeria/> accessed 3 February 2023.

[11] Gaming Machines (Prohibition) Act 1977, s. 1(a)

[12] *ibid*, s. 1(2)

[13] 'Gambling Laws in Nigeria' (Punch Newspapers, 21 March 2022) <https://punchng.com/gambling-laws-in-nigeria/> accessed 3 February 2023

[14] *Ibid* 8

[15] National Lottery Act 2005, s. 57

[16] *Ibid*

National Lottery Regulations 2007

The **National Lottery Regulations 2007** were released by the Commission and provide operational guidelines for national lottery operators. It makes reference to online tools, but in reference to general operations of lottery operators, not as a distinct class of operators. It establishes that the minimum share capital of a company that wishes to engage in lottery is N5,000,000. Before the company can be registered with the **Corporate Affairs Commission**, it must also obtain an approval in principle from the Commission.[17]

The Regulations however introduce an important restriction that curtail the scope of gaming activities that online or metaverse-based gambling providers can offer. It provides that the Commission shall adopt rules prohibiting the operation of any game using a video lottery machine. Video lottery machine is in turn defined to refer to any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game, including video poker, keno and blackjack, using a video display. [18]

The Regulation also states that licensees will not establish or operate a lottery game in which the winner is chosen on the basis of outcome of a sport event. Sport events refer to football, basketball, baseball, or similar games, or a horse or dog race, on which pari-mutual wagering is allowed.[19]

On the surface, it would seem that this provision bans the application of the metaverse for most video gaming applications. But a careful reading of these provisions reveal certain loopholes that can be leveraged by a licensed operator to offer gaming services in the metaverse without running foul of the Regulations. By replacing the 'insertion of cash' with virtual tokens and avoiding gambling or sports-related games, licensees can stay within the ambit of this Regulation and freely operate.

It should be noted that virtual tokens here are similar to in-game tokens which players buy with fiat currency. The virtual tokens will have no use outside the 'game world' of the licensee (unlike most cryptocurrencies), to avoid potential liability under the proposed **SEC Rules on Issuance, Offering and Custody of Digital Assets and the CBN Letter to all Deposit Money Banks, Non-Bank Financial Institutions and Other Financial institutions**, restricting processing of crypto-related transactions.

In the game world, the virtual tokens will be spent by players to gain access to the available games available. The licensee should also issue tickets upon payment with fiat currency, apart from the virtual tokens; to ensure compliance with several provisions of the Regulation.

[17] National Lottery Regulations 2007, Reg. 2(1) & (2)

[18] *ibid*, Reg. 20 (2) & (3)(b)

[19] *Ibid*, Reg. 20 (1) (3)(a)

State Legislation

Lagos State Lotteries and Gaming Authority Law 2021

In 2021, the Lagos State Government enacted a new gaming law, the **Lagos State Lotteries and Gaming Authority Law 2021 (“the Law”)**, which repealed the previous law and related regulations – **the Lagos State Lotteries Law 2004, the Lagos State Lotteries (Amendment) Law 2008, Casino and Gaming Regulatory Authority Law 2007, Casino and Gaming Regulations 2008, Pools Betting Control Law 2003, and the Pools Betting Tax Law 2003.**

The Law in turn introduces a new sleuth of subsidiary regulations – Responsible Gaming Regulations 2021, Casino and Gaming Regulations 2021, Online and Retail Gaming Regulations 2021, and Remote Gaming Regulations 2021. As their names suggest, they provide a legal framework more amenable to online gambling platforms.

The Law introduces several categories of licenses, allowing licensees to acquire more than one license.[20] These license categories are casino, bingo, pool betting, sport betting, lottery, combined licenses, agent or affiliate, sweepstakes, slots or gaming machine, car racing, horse racing, other games, other lotteries (private lotteries, charitable lotteries, society lotteries, promotional competitions),[21] scratch card, remote gaming, and amusement machine.[22]

These license categories show that the Lagos Law is more gamer-friendly than the National Lottery Regulations, as it explicitly permits licensing for some gaming activities that are outrightly banned under the national regulation. It would thus be advisable for prospective operator that wishes to leverage on online tools to deliver their services to secure license(s) in Lagos. Leveraging the metaverse and other online applications, they can deliver gaming services beyond Lagos to other parts of the country.

The Authority under the Law can also issue new license categories that are closely related to those stated under the Law.[23] They can also issue permits for activities that fall under other games, but do not require a license.[24] The definition of a ticket under the Law also encompasses tokens.[25] As such, the licensees in the Lagos Law may issue a single virtual token, which will also qualify as a ticket, unlike under the Regulations where it is advisable for both to be separate. The minimum share capital for a prospective licensee under the Law is N20,000,000.[26]

Earlier, it was mentioned that the Gaming Machines (Prohibition) Act 1977 prohibited the use of gaming machines and imposed penalties for their use.

[20] Lagos State Lotteries and Gaming Authority Law 2021, s. 1

[21] *ibid*, s. 1

[22] *ibid*, s. 33(1)

[23] *ibid*, s. 33(2)

[24] *ibid*, s. 34(1)(a)

[25] *ibid*, s. 1

[26] *ibid*, s. 34(1)(a)

The Lagos Law however permits their use, subject to registration with the Authority or a certified institution. Other equipment that should be registered are lottery terminals, pool betting terminals, gaming terminals, gaming platforms, gaming tables, and any other gaming equipment system or software as the Authority may deem necessary.[27]

Licensed operators who deploy the metaverse to deliver their gaming services may thus be required to register the underlying software applications used to run their operations. When registered, the approval will last for a period of five years.[28] A licensee is then expected to maintain and keep all registered equipment in a suitable condition.[29]

Licensees are prohibited from offering credit or any form of arrangement that assists or induces anyone to increase their participation in a gaming activity.[30]

The Law spells out the scope of online and retail gaming as meaning betting operations that include but not limited to pool betting, public online lottery, online sports betting, virtuals, online casino, keno and all or any form of gaming requiring the use of computer programming, randomisers, totalisators, etc., and any betting service offered through the web mobile, gaming terminals retail shops.[31] However, any licensee involved in the casino trade must incorporate the word ‘casino’ into their naming. [32]

A worrisome provision of the Law is the power it gives inspectors to enter the premises of a licensee without prior notice to inspect the available gaming operations, inspect gaming machines and equipment, records, documents connected to gaming activity, examine, make copies or take extracts, and request for explanations from the licensee or the person in charge of the premises as regards any document.[33] While this provision may be intended to ensure that licensees maintain the conditions of their license, the lack of prior notice may give room for abuse by overzealous officials.

Responsible Gaming Regulations 2021

The Responsible Gaming Regulations 2021 (“the Regulations”) introduces a formal set of ethical principles that all licensed operators should comply with. It defines responsible gaming as acceptable standards that licensed gaming operators, software suppliers and associated service providers need to uphold to ensure their offerings meet the standards of a fair and safe gaming experience that protects players from the adverse consequences of gaming.[34]

[27] *ibid*, s. 59(1) (2)

[28] *ibid*, s. 59(3)

[29] *ibid*, s. 60(1)

[30] *ibid*, s. 87

[31] Lagos State Lotteries and Gaming Authority Law 2021, s. 96

[32] *ibid*, s. 97

[33] *ibid*, s. 69(1)

[34] Responsible Gaming Regulations, r. 1

It also provides for self-exclusion, a measure to protect gamblers who voluntarily wish to be restricted from gambling. This could be done to recover from addiction or simply to curtail time and other resources spent on gambling and gaming. When a person registers on the self-exclusion list, the provider is required to comply with their wishes and restrict their access to the gaming platform, whether online or physical.[35] For metaverse gaming operators, this may involve freezing or suspending the access of the player to the platform. Self-excluded persons must also not receive any advertisement, promotion, or any targeted mailing relating to gaming activities.[36]

Licensees, their agents or affiliates are to post visible signs on their facilities or remote platforms warning against underage gaming. These signs should be at the entrance, exit, credit locations, websites and other online platforms.[37] Metaverse gaming platforms can comply with this provision if the notice is provided in their terms and conditions, on their sign-up page, before a game is commenced, and where payment is required, before processing payment details of the gamer.

Licensees are also subject to advertising regulations stated in the Regulations and those issued by the **Advertising Regulatory Council of Nigeria (ARCON)**. Nineteen advertising restrictions are spelt out in the **Responsible Gaming Regulations** which include:

- Encouraging any person to contravene a gaming law;
- Showing underage or vulnerable persons gaming;
- Portraying, condoning, or encouraging gaming behaviour that is socially irresponsible or could lead to financial, social or emotional harm; and
- Suggesting that gaming can enhance personal qualities, and links gaming to seduction, sexual success or enhanced attractiveness.

Remote Gaming Regulations 2021

Remote Gaming Regulations 2021 defines remote gaming as a game in which persons participate through the use of internet, telephone, television, radio, electronic device or other technology for facilitating communication and includes pooled prize gaming, where all or part of the money paid to play the game, known as the gaming fee, is paid into a pool from which the prizes are later paid to the winning players.[38]

The metaverse qualifies as other technology for facilitating communication. Licensees under this category are only to serve Lagos-based customers, termed state customers under the Regulation. Ascertaining that a person is a state customer under the Regulation rests on the updated and audited records maintained by the remote gaming provider.[39]

[35] *ibid*, r. 5(1)(a)

[36] *ibid*, r. 5(1)(b)

[37] *ibid*, r. 6(1) (2)

[38] Remote Gaming Regulations 2021, r. 1

[39] *ibid*, r. 4(a)

Proof that a person is a state customer includes the following:[40]

- The registered address of the player at the time of play
- Verified information of the player by the remote gaming provider where the player provides a non-Lagos State address
- Where verified information is found to be conflicting (for instance, address on NIN slip and Passport are different), residency in Lagos can be determined by bank statement, driver's license, Lagos State Residents Registration identity card, national identity card or utility bills.

However, Rule 4(b) of the Regulation introduces a notable exception that may serve as a window for remote gaming providers licensed in Lagos to serve customers in other states of the federation. It states that where at the time of play, no address is provided, the player shall be registered as a state customer. It is however unclear whether the player will always be allowed to play without providing an address, or restricted after a certain number of plays, as the Regulation is silent on this.

The remote gaming provider is expected to register with the Authority within 31 days before commencing operations, subsequent upon which, they will be issued a license.[41]

Upon commencing operations, the remote gaming provider is required to pay a gaming fee, referred to as Good Causes Money, which will be calculated based on the relevant gaming license category – the licenses earlier referred to in the discussion about the Law. For instance, if it is a pool betting license, the Good Causes Levy is a monthly fee of N150,000.[42] For casino licensees, the levy is 5% on gross gaming revenue.[43]

Generally, the Good Causes Money is chargeable on revenue.[44] Failure to pay this gaming fee will result in a penalty of 10% on the gaming fee for each day the default continues.[45] However, the penalty will not exceed double the amount of the gaming fee payable. Allowing a player participate freely in a game that involves winning prize money will not exempt the provider from paying the relevant gaming fee.[46] Monies generated from the Good Causes Money are paid into the Good Causes Fund. This Fund receives monies accrued from license fees, other levies and penalties, grants, and proceeds from investments.[47]

[40] *ibid*, r. 4(b) (c) (d)

[41] *ibid*, r. 5(1) (2)

[42] Lagos State Lotteries and Gaming Authority Law, 2021, s. 72(2)

[43] Casino and Gaming Regulations 2021, r. 11(1)

[44] Remote Gaming Regulations 2021, r. 6(1) (2)

[45] *ibid*, r. 6(6)

[46] *ibid*, r. 6(5)

[47] *Ibid* 39, s. 25(1)

After deducting 10% from the Good Causes Fund to meet its recurrent or operating expenses, the Authority will apply the remaining funds in the following manner:[48]

- 20% for expenditure on or connected with infrastructural objectives of Lagos State;
- 15% for expenditure on or connected with environmental objectives of the state;
- 20% for expenditure on or connected with social security and health related objectives in the state;
- 15% for expenditure on or connected with educational objectives in the state;
- 10% to the Lagos State Sport Trust Fund;
- 10% for expenditure in respect of any other matter approved by the Governor for that purpose;
- 5% to the Lagos State Neighbourhood Safety Corps Agency; and
- 5% to the Lagos State Security Trust Fund.

RECOMMENDATIONS

- The Gaming Machines (Prohibition) Act should be repealed as it limits the offerings of physical and remote casinos in Nigeria.
- The National Lottery Act and Regulations should be reviewed to accommodate remote and online gaming, taking a cue from the Lagos regulations.

- The restriction imposed on video gaming for cash under the federal legislations in Nigeria may serve as a disincentive for prospective licensees, who may prefer the Lagos licensing framework. Permitting video gaming will not only increase the value of the national license, but can also provide a potential use for eNaira, in line with the cashless policy of the government.
- While the Casino Gaming Regulations 2021 permit the provision of credit subject to ascertaining creditworthiness, it does not provide safeguards around this, to ensure that licensees do not provide credit to a customer who has a high risk of default, or ought to be self-excluded, under the Responsible Gaming Regulations 2021. An amendment should expressly require that credit must not be extended to high-risk customers and those ordinarily qualified for self-exclusion.
- The Responsible Gaming Regulations could consider using illustrative examples to explain the kinds of advertisements that should be not applied.
- The Responsible Gaming Regulations 2021 should be reviewed to expressly require that gaming platforms are used for only that purpose. Doing so will ensure that licensees do not offer additional services to serve as lure to their main gaming services.

[48] *ibid*, s. 26(1)

- Inspections should require prior notice, or where notice will be waived, it should be made pursuant to a court order, where it is proven that prior notice may give the licensee or owner of premises, the opportunity to hide or destroy evidence.

CONCLUSION

This article has considered gaming legislations in the Nigeria and their impact on metaverse gaming. No direct reference to the metaverse was detected, but some regulations offer a broad category like remote communications or remote gaming that can capture the metaverse. Federal gaming legislations in Nigeria are not attuned to modern realities, while Lagos State offers gaming laws that are more accommodating to metaverse gaming.

There is real industry interest in building metaverse gaming platforms for a ready audience. The major stumbling block would be the regulatory framework. Improvements here will better position Nigeria to tap into the economic opportunities that the metaverse offers.

[48] *ibid*, s. 26(1)



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