



Tuvalu

**GAMING AND LOTTERIES (PYRAMID
SCHEME BAN) AMENDMENT ACT 2021**



Tuvalu

GAMING AND LOTTERIES (PYRAMID SCHEME BAN) AMENDMENT ACT 2021

Arrangement of Sections

Section	Page
1 Short Title	5
2 Commencement	5
3 Application.....	5
4 Amendment to the Gaming and Lotteries Act	6



Tuvalu

GAMING AND LOTTERIES (PYRAMID SCHEME BAN) AMENDMENT ACT 2021

**AN ACT TO AMEND THE GAMING AND LOTTERIES ACT TO
INCLUDE THE PROHIBITION, REGISTRATION, ESTABLISHMENT,
PROMOTION AND OPERATION OF PYRAMID, PONZI AND CHAIN
LETTER SCHEMES**

Commencement [23rd December, 2021]

1 Short Title

This Act may be cited as the Gaming and Lotteries (Pyramid Scheme Ban) Amendment Bill 2021.

2 Commencement

This Act shall come into force upon publication.

3 Application

(1) This Act shall apply throughout Tuvalu and only in respect of –

- (a) negotiations carried on after the coming into force of this Act, leading to the formation of direct sales contracts; and
- (b) direct sales contracts entered into after the coming into force of this Act,

notwithstanding that negotiations leading to the formation of the contract may have taken place before that date.

4 Amendment to the Gaming and Lotteries Act

The Gaming and Lotteries Act is amended as follows;

(a) To insert the following words in Section 2(1) of the Principal Act;

“advertisement” includes every form of advertising (whether or not accompanied by or in association with spoken or written words or other writing or sounds and whether or not contained or issued in a publication) by the display of notices or by means of catalogues, price lists, labels, cards or other documents or materials or by the exhibition of cinematograph films or of pictures or photographs, or by means of radio or television, or in any way;

“chain letter scheme” means scheme of the type commonly known as a chain letter scheme (whether or not it provides for the supply of goods or services or both) that is likely to be unfair to many of the participants in the scheme, in that

–

- (i) the financial rewards of many of those participants are dependent on the recruitment of additional participants; and
- (ii) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants in the scheme;

“compensation” means the transfer of money or anything of value. It does not mean payment based on sales of goods or services to persons who are not participants in the scheme and who are not purchasing in order to participate in the scheme;

“consideration” means the payment of cash or the purchase of goods, services, or intangible property;

“direct sale” means a door-to-door sale, a mail order sale or sale through electronic transaction within the meaning of this Act;

“fixed place of business” means –

- (i) in relation to the sale of goods, the place at which the vendor normally carries on a business or at which goods of the description to which the sale relates, or goods of a similar description, are normally offered or exposed for sale in the course of a business carries on at that place;
- (ii) in relation to the sale of services, the place at which the vendor carries on business;

“goods” means every kind of movable property other than choses in action, negotiable instruments, shares, debentures and money;

“indirect Ponzi scheme investor” means any person (including any person with whom the Ponzi scheme investor deals as principal or agent) who is not a

customer of a Ponzi scheme, but who is an investor in a Ponzi scheme investor and on whose behalf the Ponzi scheme investor has a claim on account of securities received, acquired, or held by the Ponzi scheme in the ordinary course of its business as a broker or dealer from or for the securities accounts of such Ponzi scheme investor for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral, security, or for purposes of effecting transfer.

“mail order sale” means the sale of goods or services which a person conducts, either by himself or through any person authorized by him, by receiving an offer for a sale contract by mail or any other means of mailing including through electronic means;

“**Minister**” means the Minister responsible for Finance;

“**participant**” means a person who participates or gets benefits in a pyramid scheme;

“**person**” means an individual, body corporate, partnership or society;

“**pyramid selling scheme**” means the operation of a scheme that must involve the selling of goods and services.

“**prescribed**” means prescribed by the regulations;

“**property**” means movable property or immovable property of every description, whether tangible or intangible and includes an interest in any such movable property or immovable property, choses-in-action, negotiable instrument and money;

“**Ponzi scheme**” means any fraudulent investment operation which is managed in a manner that provides investors with returns (or purported returns) derived substantially from investments made by other investors rather than from profits.

“**Ponzi scheme investor**” means a customer of a debtor, where the trustee of such debtor has determined the debtor to be a Ponzi scheme;

“**pyramid promotional scheme**” means any plan or operation by which a person gives consideration for the opportunity to receive compensation a majority of which is derived from the introduction of other persons into the plan or operation rather than from the sale or consumption of goods, services, or intangible property by a participant or other persons introduced into the plan or operation;

“**pyramid scheme**” means any scheme, arrangement, plan, operation, or chain process having all or any of the features specified in the Schedule;

“promote” in relation to pyramid scheme prohibited by this Bill, means – (a) to contrive, prepare, establish, plan, advertise, operate or conduct by using any medium, including electronic transaction;

“purchaser” means the person to whom goods or services are supplied or are to be supplied under a contract and, if the rights of that person are transferred by operation of law, includes the person for the time being entitled to those rights;

“**services**” includes rights or benefit of any kind except the supply of goods and the performance of work under a contract of service, and a reference to the word “services” in this Act shall relate to direct sales and pyramid scheme;

- (b) To insert a section after section 6 of the Principal Act as ‘section 7’ and to read as follows;

7 Prohibition of pyramid and similar schemes

- (1) Section 3 shall not apply to pyramid, Ponzi and chain letter schemes.

The following applies instead:

- (2) A person must not promote or cause to be promoted or operate scheme for the supply of goods or services for reward if:

(a) to many participants in the scheme, the scheme constitutes primarily an opportunity to buy or sell an investment opportunity, whether personally or through and agent,

(b) the scheme is or is likely to be unfair to many of the participants in the scheme in that –

(i) the financial rewards for many of those participants are dependent on the recruitment of additional participants (whether or not at successfully lower levels); and

(ii) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants.

- (3) A person must not promote or operate a scheme of the type commonly known as a chain letter scheme (whether or not it provides for the supply of goods or services) that is likely to be unfair to many of the participants in the scheme, in that:

(a) the financial rewards for many of those participants are depends on the recruitment of additional participants (whether or not at successfully lower levels); and

(b) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards

to participants in the scheme is not attainable or is not likely to be attainable by many of the participants.

- (4) Any person who contravenes sections (2) and (3)
 - (1) shall be guilty of an offence and shall, on conviction, be liable –
 - (a) where such a person is a body corporate, partnership or society, to a fine of not more than 2,000 Australian dollars and, for a second or subsequent offence, to a fine of not less than 2,000 Australian dollars and not more than 5,000 Australian dollars;
 - (b) where such a person is not a body corporate, partnership or society, to a fine of not more than 2,000 Australian dollars or to imprisonment for a term not exceeding 3 months or to both and, for a second or subsequent offence, to a fine of not less than 2,000 Australian dollars and not more than 5,000 Australian dollars or to imprisonment for a term not exceeding five years or to both.
 - (5) Where a person, being a director, manager, secretary or other similar officer of a body corporate, a partner in a partnership or an office-bearer in a society, as the case may be, is guilty of an offence under this section, he shall be liable to the penalty provided for under paragraph (4)(b).
- (c) To renumber section 7 of the Principle Act as section 8 and the later sections in order of sequence and to have effect to the whole text of the Principle Act where these sections are cited.