



*Tonga*

# **BUSINESS LICENCES ACT**

**Chapter 17.01**

**2020 Revised Edition**





## BUSINESS LICENCES ACT

### Arrangement of Sections

#### Section

1	Short title.....	5
2	Act binds the Crown .....	5
3	Interpretation.....	5
4	Business person shall hold licence.....	6
5	When business licence shall not be issued.....	6
6	Business Licensing Officer .....	7
7	Application for business licence .....	7
8	Issue of business licence .....	8
9	Licence conditions .....	8
10	Validity of licence.....	8
11	Cancellation of business licence .....	9
12	Appeals .....	9
13	Licence not transferable.....	9
14	Licence may be amended.....	10
15	<i>Repealed by Act 21 of 2012</i> .....	10
16	Business licence shall be displayed .....	10
17	Production of licence .....	10
18	<i>Repealed by Act 21 of 2012</i> .....	11
19	Offences and penalties .....	11
20	Legal proceedings .....	12
21	Power to amend Schedule I.....	12
22	Business Licence Register .....	12
22A	Registration of Documents .....	12
22B	Notice by Registrar .....	13
23	Regulations .....	14

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<b>SCHEDULE I</b>	<b>15</b>
PROHIBITED ACTIVITIES.....	15



# BUSINESS LICENCES ACT

## AN ACT PROVIDING FOR THE LICENSING OF BUSINESS ACTIVITIES<sup>1</sup>

Commencement [2nd April 2007]<sup>2</sup>

### 1 Short title

This Act may be cited as the Business Licences Act.

### 2 Act binds the Crown

This Act binds the Crown.

### 3 Interpretation<sup>3</sup>

In this Act, unless the context otherwise requires —

“**business activity**” means any activity carried on by a business person for the purpose of generating revenue in trade, commerce or industry, including any trade, profession or calling, but does not include the hawking or selling of —

- (a) fish;
- (b) agricultural produce;
- (c) native articles,

which are the produce of, or articles of Tonga.

“**business licence**” means a business licence issued under section 8;

“**Business Licence Register**” means the register of business licences established under section 22;

“**business person**” means a person acting as a sole trader, a partnership, a joint venture, a registered company (including an overseas company) or any other entity or entities acting in collaboration in carrying on any business activity, whether for profit or not for profit;<sup>4</sup>

“**foreign investment registration certificate**” means a foreign investment registration certificate issued under section 8 of the Foreign Investment Act;<sup>5</sup>

“**foreign investor**” has the meaning given in section 2 of the Foreign Investment Act;

“**licensee**” means the legal entity or entities that is the holder of a business licence issued under section 8;<sup>6</sup>

“**Minister**” means the Minister responsible for Commerce;<sup>7</sup>

“**Ministry**” means the Ministry responsible for Commerce;<sup>8</sup>

“**principal place of business**” means the full postal and geographic address specified by a licensee or applicant in his application under section 7;

“**prohibited activity**” means an activity included in Schedule 1;

“**Registrar**” means the Registrar of Business Licences appointed in section 6(1);

“**Signature**” on any submittal to the Registrar means either the name of a person affixed with their own hand on a document, or, in the case of a document submitted to the Register by electronic means, the name of the person affixed to the document by a method deemed acceptable by the Registrar;

“**trade**” includes importing and exporting.

#### **4 Business person shall hold licence**

Subject to this Act, every business person in the Kingdom carrying on a business activity shall hold a valid business licence.

#### **5 When business licence shall not be issued<sup>9</sup>**

A business licence shall not be issued to —

- (a) a person carrying on a prohibited activity;
- (b) an individual under 18 years of age;
- (c) a partnership where any one of the partners is under 18 years of age; or
- (d) a foreign investor who does not hold a valid foreign investment registration certificate;

- (e) any sole trader who has in the prior five years been disqualified from being a director of a company under the Companies Act;
- (f) any partnership where any one of the partners has in the prior five years been disqualified from being a director of a company under the Companies Act;
- (g) any business person or proposed business person who has in the prior three years been convicted of an indictable offence;
- (h) any business person or proposed business person who has an outstanding judgment against them for the failure to pay a debt;
- (i) a person who is in the opinion of the Minister, may constitute a threat to national security and public order.

## **6 Business Licensing Officer<sup>10</sup>**

- (1) The Chief Executive Officer shall be the Registrar responsible for the issuing of business licences and the enforcement of all provisions under this Act.
- (2) The Registrar may delegate, in writing, any of his powers under this Act to one or more officers in the Ministry.

## **7 Application for business licence**

- (1) A business person who applies for a business licence shall do so in the prescribed form and in the manner prescribed in the Regulations.<sup>11</sup>
- (2) Every application shall be accompanied by the fee prescribed in the Regulations.
- (3) Every application for a business licence shall indicate —
  - (a) the address of the principal place of the business activity or activities to be permitted under the licence;
  - (b) the address of any additional locations at which the business activity or activities will be undertaken; or
  - (c) that there is no principal physical location at which the business activity or activities will be undertaken, in which case the activity or activities are permitted anywhere in the Kingdom.<sup>12</sup>
- (4) If the business is of a nature that the licenced activity or activities are undertaken at multiple temporary job sites, then a single business licence listing a principal place of business shall be valid throughout the Kingdom.<sup>13</sup>
- (5) Every application for a business licence shall state the name of the owner or owners of the business activities to be licenced, and whether such owners are acting on behalf of a third party in respect of the application.<sup>14</sup>

**8 Issue of business licence**<sup>15</sup>

As soon as the Registrar receives a properly completed application for a business licence accompanied by the proper fee, the Registrar shall —

- (a) register the application; and
- (b) issue a business licence:

Provided, however, that the Registrar shall not knowingly issue a business licence in contravention of section 5.

**9 Licence conditions**<sup>16</sup>

A business licence shall be issued —

- (a) that allows the business person to engage in any category or categories of business activities set forth in the regulations as permitted activities, with each such category or categories listed on the single licence; and
- (b) subject to the regulations and any conditions endorsed on the licence that are consistent with this Act.

**10 Validity of licence**<sup>17</sup>

- (1) Except as otherwise provided in this Act, a business licence shall be valid in perpetuity so long as it is renewed by the business person pursuant to this section.
- (2) Every licensee shall submit a notice of continued business activity on the prescribed form together with the prescribed fee to the Registrar each year prior to the date set by the Registrar.
- (3) As soon as the Registrar receives a properly completed notice of continued business activity accompanied by the proper fee, the Registrar shall register the notice: Provided, however, that the Registrar shall not register a notice of continued business activity in contravention of section 5.
- (4) If a notice of continued business activity is submitted after its due date, then in addition to the regular filing fee, the notice must be accompanied by an additional late filing fee as prescribed in the regulations. If a notice has not been filed within three months of its due date, then the business licence shall be cancelled by the Registrar.
- (5) If after cancellation of a business licence under this section 10 a licensee files a notice of continued business activity and pays the prescribed filing fee together with all additional late fees and penalties as prescribed in the regulations, then the Registrar shall reinstate the business licence. A business licence reinstated pursuant to this section shall be deemed to have remained valid for any period in which it was cancelled for the failure to file the notice of business activity in a timely manner. In no event shall a reinstatement be permitted where the notice of business activity has not been filed within one year of the date it was due.



## 11 Cancellation of business licence<sup>18</sup>

- (1) A business licence may be cancelled by the Registrar under any of the following conditions, if —
  - (a) the application form or any subsequent submittals to the Registrar related to the business licence contains any material misrepresentation or false statement;
  - (b) any information given in the application or any other submittals to the Registrar related to the business licence was materially incorrect so as to create a false impression of the ownership of the business or the nature of its business activity;
  - (c) the licensee carries on a prohibited activity;
  - (d) a condition imposed under section 9(b) is breached or a necessary approval or permit from another government agency is cancelled; or
  - (e) the licensee is convicted of an offence under this Act;
  - (f) the licensee is a sole trader, if that licensee has been disqualified from being a director of a company the Companies Act;
  - (g) the licensee is a partnership, if any one of the partners has been disqualified from being a director of a company under the Companies Act;
  - (h) the licensee has been convicted of or pleads guilty to an indictable offence;
  - (i) the licensee has an outstanding judgment against them for the failure to pay a debt;
  - (j) the licensee is a foreign national and is found to be operating without a valid business visa; or
  - (k) the licensee is convicted of or pleads guilty to an offence under the Immigration Act.

## 12 Appeals

- (1) Any holder of a cancelled business licence shall have the right to appeal the decision under section 11, to the Minister whose decision shall be final.
- (2) All appeals shall be filed within 10 working days of the decision.<sup>19</sup>
- (3) Any person appealing under this section shall have the right to be heard by the Minister.

## 13 Licence not transferable<sup>20</sup>

- (1) A business licence is not transferable.
- (2) In the event that the holder of a business licence seeks to sell or otherwise transfer its assets to a third party, such third party may submit an application

to the Registrar for a business licence prior to the completion of the sale or transfer of the assets, and the Registrar may, if the application is in compliance with this Act, issue the business licence to the third party in advance of the sale or transfer of assets so as to allow for continuous operation of the business.

#### **14 Licence may be amended<sup>21</sup>**

- (1) Subject to this Act, a business licence may be amended on the prescribed form or application to the Registrar.
- (2) The licensee shall inform the Registrar of any changes in the business person's name, address or other contact details within 10 working days of the change.
- (3) The licensee shall inform the Registrar of any proposed change in business activity at least three working days in advance of the date the proposed change is to occur.

#### **15 *Repealed by Act 21 of 2012***

#### **16 Business licence shall be displayed<sup>22</sup>**

- (1) A business licence shall be displayed in a conspicuous place in or at the licensee's principal place of business.
- (2) If there are additional locations at which the business is conducted then a copy of the business licence shall be displayed in a conspicuous place in or at the licensee's other places of business.
- (3) If a business person holding a business licence does not have a regular physical location at which the business activity is performed, then the business licence shall be maintained at the registered office address if the licensee is an incorporated entity, or at the residential address of the licensee if the licensee is a natural person.

#### **17 Production of licence<sup>23</sup>**

- (1) The Registrar or any Police Officer who has reason to believe a business person is required to hold a business licence may demand from the person carrying on the business activity the production of its business licence.
- (2) The Registrar or any Police Officer who has reasonable cause to believe a business person is engaged in a business activity that requires an approval or permit from another governmental agency or permitting authority may demand from the person carrying on the business activity the production of such other approvals or permits.

**18** *Repealed by Act 21 of 2012***19 Offences and penalties**<sup>24</sup>

(1) Subject to subsection (1A) any business person who carries on a business activity without a business licence commits an offence and is liable —

- (a) for a first offence, to a fine of an amount not exceeding \$50 per day that the offence continues, or \$500, whichever is greater;
- (b) for a second or subsequent offence, to a fine of an amount not exceeding \$100 per day that the offence continues, or \$1,000, whichever is greater, and to imprisonment for a period not exceeding 6 months.

(1A) If the Registrar determines that a business person is acting in violation of subsection (1) above, then the Registrar shall inform the business person of the offence in writing that provides all relevant details of the offence and provides the business person with five working days within which to apply for a business licence or an amended business licence.

(2) If a business person who holds a business licence has been required under section 17 to produce for inspection a business licence or an approval or permit from another governmental agency or permitting authority that the business person is legally obliged to have to conduct the relevant business, does not —

- (a) produce a business licence or an approval or permit from another governmental agency or permitting authority within 2 working days; and
- (b) permit the Registrar or designated officer to read and examine the business licence or an approval or permit from another governmental agency or permitting authority when produced,

the business person commits an offence and shall be subject to a fine not exceeding \$500 and in default of payment to imprisonment for a period not exceeding 3 months:

Provided that it shall be an absolute defence under this subsection that the licensee has taken reasonable steps to maintain in good standing such approvals or permits and that any failure to do so is beyond the reasonable control of the licensee.

For the purposes of this subsection the term “reasonable steps” includes, but is not limited to, the timely submission of requests for approvals or permits from other governmental agencies or permitting authorities.

(3) Any person who carries on a prohibited activity shall be guilty of an offence and, in addition to any other penalties that apply under any other law, the offender is liable upon conviction to a fine not exceeding \$5,000 and in default of payment to imprisonment for a period not exceeding six months.

**20 Legal proceedings**

- (1) All offences against this Act shall be prosecuted before the Magistrate's Court in the District where the offence occurs.
- (2) In a prosecution under this Act for an offence under section 19(1), the charge is deemed proved if it is shown to the satisfaction of the Magistrate that the accused person did carry on the business, unless the accused person produces the business licence to the Court or shows to the satisfaction of the Magistrate that a business licence has been issued to that person by the Registrar.<sup>25</sup>

**21 Power to amend Schedule I**

The Minister may, with the consent of Cabinet, by Order, amend the prohibited activities specified in Schedule 1.<sup>26</sup>

**22 Business Licence Register<sup>27</sup>**

- (1) The Registrar shall be responsible for establishing and maintaining in accordance with this Act and the Regulations, a register of business licences.
- (1A) The Business Licence Register may be kept in such manner as the Registrar thinks fit including, either wholly or partly, by means of a device or facility —
  - (a) that records or stores information electronically or by other means; and
  - (b) that permits the information so recorded or stored to be readily inspected or reproduced in usable form.
- (2) The Business Licence Register shall be available for inspection by the public during business hours and copies of entries shall be provided, upon payment of the prescribed fee.
- (3) The Registrar shall within seven days record any amendments or changes made under section 14 on the register.
- (4) An extract containing particulars of a document filed in the Business Licence Register that have been entered in any device or facility shall be, in the absence of proof to the contrary, conclusive evidence of the entry of those particulars.

**22A Registration of Documents<sup>28</sup>**

- (1) On receipt of a document for registration under this Act, the Registrar shall —
  - (a) subject to subsection (2), register the document in the register; and
  - (b) give written advice of the registration to the person from whom the document was received.
- (2) If a document received by the Registrar for registration under this Act —

- (a) is not in the prescribed form, if any;
  - (b) does not comply with this Act or regulations made under this Act;
  - (c) is not printed or typewritten;
  - (d) where the register is kept wholly or partly by means of an electronic device or facility, is not in a form that enables particulars to be entered directly by electronic or other means in the device or facility;
  - (e) has not been properly completed; or
  - (f) contains material that is not clearly legible —
    - the Registrar may refuse to register the document, and in that event, shall request either —
    - (i) that the document be appropriately amended or completed and submitted for registration again; or
    - (ii) that a fresh document be submitted in its place.
- (3) For the purposes of this Act, a document is registered when the document itself or its particulars are entered into the registry.
- (4) Neither registration nor refusal of registration of a document by the Registrar affects, or creates a presumption as to, the validity or invalidity of the document or the correctness or otherwise of the information contained in it.

## 22B Notice by Registrar<sup>29</sup>

- (1) A notice that the Registrar is required by this Act to give shall be given in writing and in a manner that the Registrar considers appropriate in the circumstances.
- (2) Without limiting subsection (1), the Registrar may give notice in writing any person by —
- (a) having it delivered to that person;
  - (b) posting it, or delivering it by courier, to that person at his last known address;
  - (c) sending it by facsimile machine to a telephone number used by that person for transmission of documents by facsimile;
  - (d) sending it to an email address that has been provided to the Registrar by the business licence person; or
  - (e) having it published in a newspaper or other publication in circulation in the area where that person lives or is believed to live.
- (3) A document that —
- (a) appears to be a copy of a notice given by the Registrar; and
  - (b) is certified by the Registrar, or by a person authorised by the Registrar, as having been derived from a device or facility that records or stores information electronically or by other means, —

shall be admissible in legal proceedings as a copy of the notice.

## **23 Regulations**

- (1) The Minister may, with the consent of Cabinet, make regulations for the proper and efficient administration of this Act.
- (2) Without limiting the power in subsection (1), regulations may be made under this section for the following purposes —
  - (a) forms used under this Act;
  - (b) fees payable under this Act;
  - (c) the business activities for which a business licence may be issued subject to conditions;
  - (d) the establishment and maintenance of the Business Licence Register; and
  - (e) penalties under section 14.

**SCHEDULE I**

(Section 3)

**PROHIBITED ACTIVITIES**

1. Storage, disposal or transport of nuclear or toxic waste
2. Pornography
3. Export, import or production of any products that are prohibited under the Laws of Tonga.
4. Prostitution
5. Processing or export of endangered species
6. Production of weapons of warfare.
7. An activity that, in the opinion of the Minister, may constitute a threat to national security and public order.<sup>30</sup>

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**ENDNOTES**

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<sup>1</sup> Act 23 of 2002

Amended by Act 42 of 2010

Amended by Act 5 of 2012, commencement 30 July 2012

Amended by Act 21 of 2012, commencement 17 December 2012

<sup>2</sup> GS 5/2007

<sup>3</sup> Amended by Acts 5 of 2012 and 21 of 2012

<sup>4</sup> Amended by Act 21 of 2012

<sup>5</sup> Cap. 38.18

<sup>6</sup> Amended by Act 21 of 2012

<sup>7</sup> Amended by Act 21 of 2012

<sup>8</sup> Amended by Act 21 of 2012

<sup>9</sup> Amended by Act 21 of 2012

<sup>10</sup> Amended by Act 21 of 2012

<sup>11</sup> Amended by Act 21 of 2012

<sup>12</sup> Amended by Act 21 of 2012

<sup>13</sup> Inserted by Act 21 of 2012

<sup>14</sup> Inserted by Act 21 of 2012

<sup>15</sup> Substituted by Act 21 of 2012

<sup>16</sup> Amended by Act 21 of 2012

<sup>17</sup> Substituted by Act 21 of 2012

<sup>18</sup> Amended by Act 21 of 2012

<sup>19</sup> Amended by Act 21 of 2012

<sup>20</sup> Amended by Act 21 of 2012

<sup>21</sup> Amended by Act 21 of 2012

<sup>22</sup> Amended by Act 21 of 2012

<sup>23</sup> Amended by Act 21 of 2012

<sup>24</sup> Amended by Act 21 of 2012

<sup>25</sup> Amended by Act 21 of 2012

<sup>26</sup> Amended by Acts 42 of 2010 and 21 of 2012

<sup>27</sup> Amended by Act 21 of 2012

<sup>28</sup> Amended by Act 21 of 2012

<sup>29</sup> Amended by Act 21 of 2012



<sup>30</sup> Inserted by Act 21 of 2012