



Tonga

# **BUSINESS LICENCES ACT 2002**

**No. 23 of 2002**





## BUSINESS LICENCES ACT 2002

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## BUSINESS LICENCES ACT 2002

No. 23 of 2002

### AN ACT PROVIDING FOR THE LICENSING OF BUSINESS ACTIVITIES

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I assent,  
TAUFA'AHAU TUPOU IV,  
23rd December, 2002

[14th October, 2002]

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**BE IT ENACTED** by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

#### **1 Short title and commencement**

- (1) This Act may be cited as the Business Licences Act 2002.
- (2) This Act shall come into force on a day proclaimed by His Majesty in Council.

#### **2 Act binds the Crown**

This Act binds the Crown.

#### **3 Interpretation**

In this Act, unless the context otherwise requires —

“**business activity**” means any activity carried on by a business person 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 Licensing Officer**” includes a person delegated by the Secretary under section 6 to act as such;

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

“**business person**” means a person carrying on any business activity for the purpose of generating revenue in trade, commerce or industry, and includes any trade, profession or calling;

“**foreign investment registration certificate**” means a foreign investment registration certificate issued by the Secretary under section 8 of the Foreign Investment Act 2002;

“**foreign investor**” has the meaning given in section 2 of the Foreign Investment Act 2002;

“**licensee**” means the holder of a business licence issued under section 8;

“**Minister**” means the Minister of Labour, Commerce and Industries;

“**Ministry**” means the Ministry of Labour, Commerce and Industries;

“**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;

“**Secretary**” means the Secretary for Labour, Commerce & Industries;

“**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**

A business licence shall not be issued —

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

## **6 Business Licensing Officer**

- (1) The Secretary shall be the Business Licensing Officer responsible for the issuing of business licences under this Act.
- (2) The Secretary 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 in the Regulations.
- (2) Every application shall be accompanied by the fee prescribed in the Regulations.
- (3) Every application by a foreign investor shall be accompanied by a valid foreign investment registration certificate.

## **8 Issue or refusal of business licence**

The Business Licensing Officer shall consider each application made under section 7 provided it does not contravene section 5, and issue a business licence to the applicant as soon as practicable.

## **9 Licence conditions**

A business licence shall be issued —

- (a) for the category or categories of business activity specified in the licence;
- (b) subject to the regulations and any conditions endorsed on the licence.

**10 Duration of licence**

- (1) A business licence shall be valid for the period ending on 31st December next following the date of its issue unless renewed.
- (2) If a licensee complies with the conditions endorsed on the business licence under section 9(b) and pays the prescribed fee for renewal the business licence shall be valid until 31st December in the year next following the renewal date.

**11 Cancellation of business licence**

- (1) A business licence may be cancelled by the Business Licensing Officer under any of the following conditions, if —
  - (a) The application form contains any material misrepresentation or false statement;
  - (b) any information given in the application for 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
  - (e) the licensee is convicted of an offence under this 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 fourteen days of the decision.
- (3) Any person appealing under this section shall have the right to be heard by the Minister.

**13 Licence not transferable**

A business licence is not transferable.

**14 Licence may be amended**

- (1) Subject to this Act, a business licence may be amended on written application to the Business Licensing Officer.
- (2) The licensee shall inform the Business Licensing Officer in writing of any changes within 30 days.



- (3) If a licensee fails to inform the Business Licensing Officer under subsection (2) the Business Licensing Officer may impose a penalty.

## **15 Location of business activity**

- (1) If a business licence does not specify a place or premises at which the licensee shall carry on its business activity, the licensee may carry on its business activity in any part of the Kingdom.
- (2) If a business licence specifies a place or premises at which the licensee shall carry on its business activity, the licensee shall carry on its business activity at that place or those premises.

## **16 Business licence shall be displayed**

A business licence shall be displayed in a conspicuous place in or at the licensee's principal place of business.

## **17 Production of licence**

The Business Licensing Officer, any Police Officer or any District 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 his business licence.

## **18 District Officer shall make annual return**

Every District Officer shall by the end of February each year furnish the Business Licensing Officer with a return showing the names, occupations and places of abode of all persons in the District Officer's village or district who have carried on or who have been exercising any business activity at any time during the previous calendar year.

## **19 Offences and penalties**

- (1) Any person who carries on a business activity without a business licence commits an offence, and is liable upon conviction to a fine not exceeding \$1000 and in default of payment to imprisonment for a period not exceeding 18 months.
- (2) If a person who has been required under section 17 to produce for inspection a business licence does not –
  - (a) produce a business licence within 2 working days;

- (b) permit the officer to read and examine the business licence when produced,

he commits an offence, and is liable upon conviction to a fine not exceeding \$1,000 and in default of payment to imprisonment for a period not exceeding 18 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 Business Licensing Officer.

## **21 Power to amend Schedule I**

His Majesty may by Order in Council, amend the prohibited activities specified in Schedule 1.

## **22 Business Licence Register**

- (1) The Business Licensing Officer shall be responsible for establishing and maintaining in accordance with this Act and the Regulations, a register of business licences.
- (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 Business Licensing Officer shall within seven days record any amendments or changes made under section 14 on the register.

## **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.

## **24 Repeal and saving**

- (1) The Licences Act (Cap. 47) is repealed.
- (2) A license issued under the repealed Act shall be valid until 31st December of the year in which this Act commences.
- (3) Subject to subsection (2) the provisions of this Act apply to the holder of a licence issued under the repealed Act as if the holder were a licensee under this Act.

Passed in the Legislative Assembly this 14th day of October, 2002.

**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.