LESOTHO
Government Gazette

Vol. 64 Friday – 23rd August, 2019 No. 50

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Published by the Authority of His Majesty the King
Price: M37.00

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ACT NO. 3 OF 2019

Business Licensing and Registration Act, 2019

An Act to provide for the licensing and registration of business enterprises, registration of business names and related matters.

Enacted by the Parliament of Lesotho.

PART I - PRELIMINARY

Short title and commencement

1. This Act may be cited as the Business Licensing and Registration Act, 2019 and shall come into operation on the date to be determined by the Minister by notice published in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires -

"business activity" means an activity carried on for the purpose of generating revenue and includes a profession but does not include the hawking and selling of agricultural produce grown or reared by a local farmer mainly for subsistence purposes;

"business permit" means a document issued under section 4 authorising a foreign business to engage in a business in Lesotho;

"enterprise" means an individual, company, entity or such other juristic person engaged in a business activity;

"foreign business" means -

(a) an individual who is not a citizen of Lesotho;

(b) a partnership in which the majority of the partners are not citizens of Lesotho;

(c) a company in which thirty percent or more of the

shareholders are not citizens of Lesotho;

"licence" means a document issued under section 5 authorising the holder to conduct the business activity stated on the document;

"Licensing Officer" means the Licensing Officer in the Ministry responsible for trade and industry;

"medium enterprise" means an enterprise which employs between 21 and 50 employees including the owner, with an annual turnover of less than M5,000,000;

"member" means a person appointed to the Business Enterprises Licensing Appeals Tribunal under section 33;

"micro enterprise" means an enterprise which employs a maximum of 5 employees including the owner, with an annual turnover of less than M200, 000;

"Minister" means the Minister responsible for trade and industry;

"person" includes a juristic person, association or any other entity that may engage in a business activity;

"prescribed" means set out in the regulations made under this Act;

"small enterprise" means an enterprise which employs between 6 and 20 employees including the owner, with an annual turnover of less than M1,000,000;

"Tribunal" means the Business Enterprises Licensing Appeal Tribunal established under section 31.

Objective of this Act

3. The objectives of this Act are to -

(a) promote private sector development through a conducive investment climate;

(b) facilitate the inclusion of all types of business into the formal business sector;

(c) facilitate speedy issuing of licences and registration of businesses;

(d) simplify and streamline business licensing and registration procedures; and

(e) facilitate registration of business names.

PART II - LICENSING OF BUSINESSES

Application for business permit and licence

4. (1) No person shall engage in a business activity set out in Schedule1 without a licence and, in the case of a foreign business, a business permit issued in accordance with this Act.

(2) A person who intends to engage in a business activity requiring a licence shall apply to the Licensing Officer, for a licence to do so.

(3) In the case where the person is a foreign business, the person shall apply, in a prescribed form, for a business permit prior to a licence.

(4) The Licensing Officer shall not issue a business permit unless the foreign business submits a business plan with the following details -

(a) capital resources of not less than M2,000,000;

(b) employment generation of not less than 6 employees who are residents or citizens of Lesotho;

(c) strategic nature of the business to the Lesotho economy;

(d) transfer of technology and business expertise; and

(e) advancement of business undertakings owned by citizens.

(5) The application for a licence shall be in a prescribed form and shall -

(a) contain the following information -

(i) capital resources required;

(ii) the proposed location and activity;

(iii) the estimated number of jobs to be created;

(b) be accompanied by the following -

(i) a business permit, in the case of a foreign business;

(ii) a certificate of occupancy issued under the Buildings Control Act, 1995[1] unless the business activity -

(aa) is carried out in an open space;

(bb) involves office administration, office support or any other business support activity operated from residential premises as may be prescribed from time to time; or

(cc) involves crop production, forestry, logging and related activities;

(iii) a business identification card issued under section15;

(iv) a fire protection plan;

(v) an emergency exit map according to building matrix;

(vi) a recommendation from a public authority set

out in the column opposite a business activity in Schedule 2.

Issuance of licence

5. (1) The Licensing Officer shall, within 5 working days of receipt of a completed application form made under section 4(2) -

(a) review the application and inform the applicant if there is any missing information;

(b) if satisfied that all the requirements in section 4 have been complied with and upon payment of a licence fee by the applicant, grant and issue a licence in a prescribed form;

(c) if the application is not approved, provide the applicant with reasons for refusal.

(2) In considering an application for a licence the Licensing Officer shall take into account the recommendations of the environment, public health, energy or any other authority.

(3) If the Licensing Officer fails to act in accordance with subsection (1), the Licensing Officer shall be deemed to have approved the application for the licence and shall, upon payment of a license fee, issue the licence.

(4) Notwithstanding subsections (1) and (2), the Licensing Officer may, in writing, request the Principal Secretary responsible for trade and industry to extend the period referred to in subsection (1) for a further 5 days.

(5) Where the Licensing Officer acts under subsection (4), the Licensing Officer shall inform the applicant about the request before the expiry of the 5 working days referred to in subsection (1).

(6) The Licensing Officer may impose such conditions on a licence as may be necessary and the conditions shall be written legibly on the back of the licence or may be attached to the licence.

(7) The Licensing Officer may, as may be prescribed, issue a single

licence for different categories of business activities where the activities are carried on or in the same premises and none of the activities is a manufacturing activity.

(8) Two or more persons may, with the consent of the Licensing Officer, operate or carry on business from the same premises.

Circumstances where the Licensing Officer may not issue a licence

6. The Licensing Officer shall not issue a licence if the applicant is -

(a) a person below the age of 18 years, except with the consent of the parent or a legal guardian;

(b) except with a leave of court -

(i) an unrehabilitated insolvent;

(ii) a person declared a prodigal by a court of law;

(iii) a person disqualified from being a director of a company under the Companies Act, 2011[2];

(iv) a person removed from an office of trust by a court of law on account of misconduct; or

(v) a person convicted of an offence involving dishonesty.

(c) a person who was convicted of any of the following criminal offences -

(i) human trafficking;

(ii) money laundering; or

(iii) terrorism.

Duration of licence

7. (1) A licence issued under this Act is valid unless suspended, revoked or cancelled under section 12 or by an order of court under section 41 (3)(c).

(2) Notwithstanding subsection (1), the Minister may, on the recommendation of the Licensing Officer, prescribe business activities whose licences shall be subject to annual renewal.

Transfer of licence

8. (1) A licence issued under this Act is not transferable except in a case of a merger and acquisition under section 9.

(2) Where a holder of a licence seeks to sell or otherwise transfer his business assets to a third party, the third party may submit an application for the transfer of the licence.

(3) The Licencing Officer shall, upon approval and on payment by the transferee of a transfer fee as set out in the regulations, make the necessary endorsement or change the name of the licencee to that of the transferee on the licence and record this change in the licence register.

(4) Notwithstanding subsections (2) and (3), sections 4, 5 and 6 shall apply to a person who bought a business and to an application for a licence following the sale of business assets.

(5) Where the licencee removes the licensed business to premises other than those mentioned on the licence, he shall surrender the licence and submit an application to the Licencing Officer for the transfer of the operations to another location and, in that case, the provisions of section 4 shall apply.

Merger and acquisition

9. (1) Where there is a merger or an acquisition, the licences of the enterprises involved may, upon application, be transferred to the merged or acquiring enterprise.

(2) The head of the management of the merged or acquiring enterprises shall notify the Licensing Officer of the merger or acquisition within 5 working days after the merger or acquisition becomes effective.

Display of licence

10. (1) A licencee shall display the licence, at a conspicuous place, on the business premises at all times and produce the original licence upon request by the Licensing Officer or any officer so authorised by the Licensing Officer.

(2) Where the licence is not readily available, the Licensing Officer or an officer authorised by the Licensing Officer may extend the period of production of the original licence to 3 days from the date it is requested.

Records or books to be kept

11. (1) A licencee shall -

(a) or a period of at least 3 years, keep such records or books as are necessary to exhibit the state of affairs of the enterprise and to explain the transactions and the financial position of the enterprise;

(b) produce the records or books to the Licensing Officer as and when the Licensing Officer so requires.

(2) If the licencee is unable to produce the records or books as required under subsection (1)(b), the Licensing Officer may extend the period of production of such records or books to 3 days from the date of demand.

(3) Records or books referred to in subsection (1) include -

(a) financial statements;

(b) audit report;

(c) employment figures;

(d) operational challenges; and

(e) order records and data.

Suspension and cancellation

12. The Licensing Officer may, after giving a hearing to a licencee, suspend for a period as may be determined by the Licensing Officer or cancel the licence on the following grounds -

(a) closure of business operations;

(b) failure to comply with rules and regulations related to health, environment and occupational safety ;

(c) misuse of the licence by -

(i) using a licence for -

(aa) a purpose different from the one it is issued for;

(bb) a fraudulent activity;

(ii) allowing another person to use the licence;

(d) failure to comply with the conditions of a licence or permit relating to the operations;

(e) the licencee being convicted of an offence under this Act, the Companies Act 2011 or any other law relating to or connected with business enterprises;

(f) the licencee is disqualified from being a director of a company under the Companies Act, 2011 or has an unsatisfied judgment against him for failure to pay a debt;

(g) the licencee being a foreign national, is -

(i) found operating without a business permit;

(ii) convicted of an offence under the immigration or labour law;

(h) a public health inspector, the National Environment Secretariat or any other relevant authority has submitted a report indicating that the continuation of the business activity could result in harm to human or animal life or to the environment;

(i) a public health inspector has submitted a report which indicates that the enterprise is selling unsafe products or is operating contrary to the prescribed conditions and guidelines;

(j) the application form or any subsequent submittals to the Licensing Officer related to the business licence contains a material misrepresentation, false statement, or materially incorrect information;

(k) any information given in the application or any other submittals to the Licensing Officer related to the business licence as materially incorrect so as to create a false impression of the ownership of the business or the nature of its business activity.

PART III - BUSINESS REGISTRATION

Registrar of Businesses

13. The Registrar of Companies appointed under section 86 of the Companies Act, 2011(in this Part referred to as "the Registrar") shall be the Registrar of Businesses and shall to that effect be responsible for the registration of business activities and the issuance or refusal of business identification cards under this Act.

Registration of businesses

14. (1) Subject to subsection (2), no person shall commence a business activity unless the person is issued with a business identification card by the Registrar except -

(a) a statutory authority or other body established under any law;

(b) a person carrying on any business consisting solely of the exercise of lay profession which under the provisions of any law can be exercised only by those who possess certain qualifications prescribed by law and whose names are registered or otherwise recorded in the manner prescribed by any law;

(c) a hawker or street vendor issued with a permit and is a stallholder under the Market Regulations, 1971[3] who -

(i) sells or exposes for sale any food, drink, goods, wares or merchandise of any kind;

(ii) is operating from a stall, plot, table, booth, floor space or any other shelter or structure and the business has an annual turnover of less than M100,000;

(iii) does not employ any other persons other than members of his household who shall be not more than 5 for the purpose of his business;

(d) any person who offers for hire his skill in handicraft or craftsmanship;

(e) a handicraft or craftsman who works from his premises, does not display his products for sale in public and does not employ any other person other than his immediate family for the purpose of his business; and

(f) any business of -

(i) a taxi driver;

(ii) a subsistence farmer in respect of their produce.

(2) A person who intends to carry on a business activity in Lesotho,

other than a business activity set out in subsection (1), shall, before commencing such business, register the business with the Registrar in a prescribed manner.

(3) A person who intends to carry on a business activity set out in subsection (1) may apply for registration of the business before or after commencing such business.

(4) Where a person intends to carry on a registered business activity under the same registered business name at another location the person shall notify the Registrar of the location of the business, and the notification and registration of each business shall be in the district in which it is intended to operate.

Issue of business identification card

15. (1) The Registrar shall not issue a business identification card unless the applicant submits a certificate of occupancy issued under the Buildings Control Act, 1995 in respect of the intended business premises.

(2) The Registrar shall not issue a business identification card to a foreign enterprise unless the application is accompanied by a business permit.

(3) There shall be charged and payable, in respect of a business identification card, a prescribed registration fee.

(4) The Registrar shall, upon receipt of a properly completed registration form and a registration fee, issue a business identification card which shall be in a prescribed form.

(5) Subject to this Act, a business identification card shall be valid for at least 3 years or such period as the Registrar may specify and shall be renewable upon payment of a fee.

(6) A business identity card lapses upon the death of the registered person, or dissolution or liquidation of registered entity.

(7) The Registrar may refuse to register a business activity if he is not satisfied with the accuracy of particulars or other information furnished under this Act.

(8) The provisions of section 6 shall apply with necessary changes to

applications for registration of businesses.

(9) A person issued with a business identification card shall comply with business requirements, guidelines or prescriptions as may be prescribed by the Minister.

Effect of registration

16. The business identification card -

(a) shall -

(i) be deemed as conclusive proof that the person named on the business identification card is registered in accordance with his Act;

(ii) not be deemed to exempt the person from compliance with any other law;

(b) may be used for different business activities.

Use of business identification card

17. (1) A person issued with a business identification card under this Act shall, for the purposes of identification in respect of every transaction he makes, use and inscribe on any document, whether electronically or otherwise -

(a) his business identification number; and

(b) where the person with whom the transaction is made is registered under this Act the business identification number of that person.

(2) A person who fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding M20,000.

(3) An authority or a public sector agency responsible for issue of permits, licence or any other authorisation shall not issue a permit, licence or any other authorisation to a person who is required to be registered under this Act unless the person holds a business identification card.

(4) Every authority or public sector agency shall use, indicate and keep in its records, electronically or otherwise, the business identification number of every person who is required to be registered under this Act and in respect of whom a record is required to be kept.

(5) For purposes of this section, a person, authority or public sector agency may, in reasonable circumstances and for the purposes of ascertaining the identity of a person engaged in a business activity request the person to produce his business identification card.

Display of business identification card

18. A person who carries on a business activity shall display a copy of his business identification card in a conspicuous place at each of his business premises or in the case of a business where there are no specific business premises, produce the business identification card when required to do so by an inspector.

Power to refuse registration

19. Notwithstanding this Act, the Registrar shall refuse to register a business activity under this Act where the Registrar is satisfied that the intended business activity is likely to be used for an unlawful purpose or for purposes prejudicial to public health or safety and environmental protection in Lesotho.

PART IV - REGISTRATION OF BUSINESS NAMES

Registrar of Business Names

20. The Registrar shall be the Registrar of Business Names (in this Part referred to as "the Registrar") and shall to that effect be responsible for the registration of business names and the approval or refusal of business names under this Act.

Business names

21. (1) A person registered under this Act shall not carry on a business under a name which is not registered and filed with the Registrar in accordance with this Act.

(2) The Registrar shall refuse to register or licence a business name

if the name -

(a) contravenes any law in Lesotho;

(b) is identical to a trade name well known nationally, regionally or internationally or to a trade mark registered or well known nationally, regionally, internationally;

(c) is identical or similar to a name that the Registrar of Companies has registered under the Companies Act 2011 or this Act;

(d) in the opinion of the Registrar is offensive; or

(e) includes the words "Imperial", "Royal", "Crown", Empire", "Government", "State", "Commonwealth", or the combination of these words, "African Union", "United Nations", or any other work or words which improve or suggest that the applicant enjoys the patronage of the sovereign or Government of Lesotho, or any part of the Commonwealth, or of any department of any such Government or Administration or of the General Assembly of the United Nations, unless the Registrar consents to the use of these words in a business name.

(3) The registration of a name under which a person carries on a business shall not be construed as authorising the use of that name if, apart from such registration, the use of that name would be prohibited.

(4) Where the Registrar is satisfied that a person has been registered to carry on a business under a name which -

(a) is referred to in subsection (2); or

(b) so nearly resembles the name of a corporation, company, entity or any other business as to be likely to be mistaken for it,

the Registrar may direct the person to change the name under which he carries

the business, and that person shall comply with the directive within 4 weeks after the date of the directive or such longer period as the Registrar may allow.

(5) The Registrar may cancel a business name of any person who fails to comply with a directive given under subsection (4).

(6) The Registrar shall notify the person of a cancellation under subsection 5.

PART V - MISCELLANEOUS PROVISIONS

Registration of changes

22. (1) Whenever a change is made or occurs in respect of ownership or the nature of the business, the licencee, his authorised agent or person shall, within 14 days after the change, or such period as the Licensing Officer may, on application, allow, lodge with the Licensing Officer a statement in such a manner and form as the Licensing Officer may determine, specifying the nature and date of the change, and containing such other information as may be prescribed.

(2) Subsection (1) shall apply, with necessary modifications, to changes made or which may occur in respect of ownership or the nature of an unlicensed business activity.

(3) Where, pursuant to the Companies Act 2011, a company has filed with the Registrar of Companies a change of office premises, change of name or any other change required to be reported under this section, that information shall be sufficient for purposes of this section.

Cessation of business

23. (1) Where a person registered under this Act ceases to carry on business, he shall, within 14 days of the cessation, notify the Registrar in such form as the Registrar may determine and if the person is licensed, the Registrar shall inform the Licensing Officer of the cessation.

(2) Notwithstanding subsection (1), a person may notify the Licensing Officer or the Registrar that he intends to cease operating the business on the date specified in the notice.

(3) The Licensing Officer may, on receipt of a notice of cessation under subsection (1) or (2), cancel the licence, and the Registrar may remove the name under which he carries on business from the register.

(4) Where the Licensing Officer or the Registrar has reasonable cause to believe that a person licensed or registered under this Act is not carrying on licensed or registered business, the Licensing Officer or the Registrar may give the person, by registered post or hand delivery, a notice to show cause why the licence may not be cancelled and the name under which he carries on business removed from the register within one month from the date the notice is delivered.

(5) If the Licensing Officer or the Registrar -

(a) receives an answer under subsection (4) that he is carrying on business and he has evidence to the contrary; or

(b) does not receive an answer showing cause to the contrary within one month after the notice referred to in subsection (4) is sent,

the Licensing Officer may cancel the licence of that person and the Registrar may remove from the register the name under which he carries on business.

Liability of manager and directors

24. (1) A person who, at any time, is managing, supervising or conducting business activity operations on behalf of the licencee shall be subject to the same penalties under this Act as the licencee, but this section shall not be interpreted to relieve the licencee from any obligations and penalties to which he may be liable to.

(2) Where the licencee is a company, the Licensing Officer may require the directors of the company, either jointly or severally, to discharge the obligations and pay all the penalties imposed on the company.

Extension and exemption

25. The Minister may, on the recommendation of the Licensing Officer -

(a) extend the periods of time in respect of which the obligations under this Act shall be complied with; and

(b) exempt a micro, small or medium enterprise, or a specific category of business activities from the application of this Act to the extent and on such conditions as may be prescribed.

Non-compliance

26. (1) Where a person required to be registered under this Act carries on business without being registered under this Act or under a name not registered in accordance with this Act, the rights of the person under or arising out of any contract, in relation to the unregistered business or business name, shall not be enforceable by action or other legal proceedings either in the business name or otherwise.

(2) This section shall not prejudice the rights of any other party as against the person in respect of a contract entered into under subsection (1).

(3) The Registrar may order closure of a business registered under this Act which fails to comply with the guidelines and specifications issued under section 15(10).

PART VI - ADMINISTRATION PROVISIONS

Functions of Licensing Officer

27. The functions of the Licensing Officer are to -

(a) provide licence application forms, advice and assist in the filling of application forms;

(b) advise the applicant of any further requirements to be complied with under any other law;

(c) publish a list of enterprises operating without valid licences, those with outstanding fines and those found to have contravened any law relating to their operations in Lesotho;

(d) conduct training and awareness campaigns in relation to developments and international requirements on business enterprises operations and international trade;

(e) publish a Business Enterprises Bulletin including a list of licensed businesses;

(f) develop risk based inspection schedules including procedures for verification and validation of active licences and risk based automatic licence renewal;

(g) keep, maintain, record and up-date a business register which shall contain information relating to licencees including business enterprises activities, employment created, target market and any other related information; and

(h) do any other activity related to business enterprises licensing pursuant to this Act or regulations made under it.

Functions of the Registrar of Businesses

28. The functions of the Registrar of Businesses are to -

(a) provide advice and assistance for registration of businesses; and

(b) keep and maintain a business register which shall contain information relating to all registered businesses.

Inspection

29. (1) The Registrar or an officer authorised by the Registrar shall, for the purposes of ascertaining whether or not the provisions of this Act are being complied with -

(a) inspect a business enterprises and prepare an inspection report; and

(b) facilitate an assessment and preparation of an impact assessment report, on environment or public health and safety for compliance with section 4.

(2) A public health officer may, at any reasonable time, enter any premises for the purpose of -

(a) enquiring into any possible cause of danger to public health; or

(b) examining food sold or prepared or offered for sale for human consumption,

and report to the Registrar if in his opinion a danger to public health exists or if any food so examined by him, or at his request by a competent person, is unfit for consumption.

(3) An environmental officer may, at any reasonable time enter any premises or a place of business (if the business is carried on in an open space) for the purpose of enquiring into any possible danger to environmental protection and report to the Registrar if in his opinion a danger to environmental protection exists.

(4) A person when exercising any power under this section, may engage the services of a police officer above the rank of Constable and shall declare his office and produce his official identity card to a person on the premises or affected by the exercise of his power.

PART VII - APPEALS

Appeals

30. (1) A person -

(a) whose application for a licence or registration is declined;

(b) whose licence is cancelled or suspended;

(c) whose business name is removed from the register;

(d) whose operations have been closed; or

(e) who is not satisfied with any decision made in the exercise of powers under this Act,

may, within 14 days after receiving notification of the decision, lodge an appeal with the Tribunal established under section 31 upon payment of a prescribed fee, and by stating the reasons for the appeal.

(2) The Tribunal shall determine the appeal within 30 working days after the receipt of notice of appeal, and failure to do so shall be deemed to be a decision in favour of the appellant and the Tribunal shall, upon request by the appellant, issue a written statement to the effect that the appeal has been upheld.

(3) The Tribunal may, in considering an appeal, affirm, modify or revoke a decision made under this Act.

Establishment of the Business Enterprises Licensing Appeals Tribunal

31. There is established the Business Enterprises Licensing Appeals Tribunal which shall hear appeals submitted under section 30.

Composition

32. (1) The Tribunal shall consist of -

(a) a chairperson who shall be a public officer with experience, knowledge and expertise in commercial law;

(b) 2 persons from the private sector with experience, knowledge and expertise in business management and public administration; and

(c) 3 alternate persons, with expertise and similar qualifications referred to in paragraph (b), who shall serve when a member of the Tribunal (in this Act referred to as "member") is not able to participate in the proceedings.

(2) The composition of the Tribunal shall be gender sensitive.

Appointment

33. (1) A member shall be appointed by the Minister for a period of 3 years through a competitive and transparent selection process based on merit.

(2) The Minister shall cause the names of the members to be published in the Gazette.

Vacation of office

34. (1) In this section, a member of the Tribunal is deemed to be an active member of a political party, if the member -

(a) speaks in public in favour of any political party, or by word or deed, does anything which is calculated to further political interest of any party;

(b) takes an active part in the support of any candidate in an election; or

(c) does anything, by word or conduct, which the public may reasonably associate or identify the member with an organisation or movement of a political character.

(2) A member shall cease to hold office if the member -

(a) dies or resigns;

(b) is removed from an office of trust because of misconduct, or is convicted of fraud or an offence involving dishonesty or is engaged in dishonourable conduct;

(c) is declared bankrupt or insolvent;

(d) becomes a member of Parliament or an active member of a political party; or

(e) does not attend 3 consecutive sittings of the Tribunal without giving a valid excuse.

Conduct of members and disclosure of interest

35. (1) A member shall not -

(a) engage in any activity that may undermine the integrity of the Tribunal;

(b) participate in any deliberations concerning a matter in which the member has financial or other personal interests; or

(c) use any confidential information obtained in the performance of his or her functions as a member to procure, directly or indirectly, a financial or other advantage, either personally or for any other person.

(2) A member who has or acquires any financial or other personal interest either directly or indirectly in any matter which is before the Tribunal shall -

(a) immediately and fully disclose the interest to other members; and

(b) recuse himself from the proceedings.

(3) A member who fails to comply with this section commits an offence and shall be liable on conviction to a fine of M50,000 or imprisonment for a period of one and half years or both.

(4) In addition to a penalty under subsection (3), the member shall be removed from office under section 34(b).

Remuneration of member

36. A member shall be paid such allowances as the Minister may, after consultation with the Minister responsible for finance, determine.

Proceedings

37. (1) An appeal shall be heard by 3 members and where a member is,

for any reason, not able to participate, the Chairperson shall call upon an alternate member to serve.

(2) The decisions of the Tribunal shall be taken by majority.

(3) The Chairperson shall preside at all sittings of the Tribunal and in his absence the members present shall choose one of them to preside.

(4) The Tribunal may appoint an expert to assist it in the proceedings and the expert may sit with the Tribunal, but shall not vote.

(5) The Tribunal shall consider any directive concerning a policy of business enterprises given to the Tribunal by written memorandum signed by the Minister.

(6) A party to the proceedings before the Tribunal -

(a) shall not be represented by a legal practitioner;

(b) shall bear his own costs.

(7) The Tribunal shall not make an order as to costs except where the Tribunal determines that the appeal or defence is frivolous, and in such a case the Tribunal may order costs against the appellant or defendant, respectively.

(8) Except as provided in this Act and the regulations, the Tribunal shall regulate its own proceedings and observe the rules of natural justice.

Powers of the Tribunal

38. The Tribunal shall have the power to -

(a) summon any person to give evidence before it;

(b) administer oaths;

(c) demand production of documents and data material;

(d) where necessary, because of the confidential nature of

the evidence or for any other reasons, hear an appeal wholly or partly in camera; and

(e) at any time, by certificate signed by the chairperson, correct any non-substantive error arising from the accidental slip or omission in a decision or order of the Tribunal.

Decision of the Tribunal

39. (1) A decision of the Tribunal shall be read out and communicated in writing and shall contain the reasons for the decision.

(2) A party to the proceedings of the Tribunal is entitled to the first copy of the record of the proceedings or the decision of the Tribunal free of charge.

(3) A prescribed charge shall be imposed for a subsequent copy.

Authentication of documents

40. A document requiring authentication by the Tribunal shall be sufficiently authenticated if it is signed by the chairperson of the Tribunal.

PART VIII - FINAL PROVISIONS

Offences and penalties

41. (1) A person who -

(a) provides false information or deliberately withholds information required under this Act;

(b) obstructs or refuses the inspector or a person authorized by the Registrar of Businesses entry or access to the business operations or processes;

(c) fails to -

(i) renew a licence or business registration while

still operating;

(ii) produce a licence or business identification card when so required;

(iii) comply with this Act, the licence or business identification card conditions;

(iv) display licence or business identification card as provided for in this Act;

(v) appear before the Tribunal to give evidence when summoned to do so by the Tribunal;

(vi) produce documents when directed to do so by the Tribunal; or

(vii) close business within the time stipulated in the order under section 26(3), having been served with an order to do so;

(d) bribes, for the purpose of corruption, an inspector;

(e) offers or receives a bribe for any advantage under this Act;

(f) allows another person not named on the licence to use the licence as if he is the owner;

(g) operates a business enterprise set out in Schedule 1 without a licence;

(h) fails to register a business in accordance with this Act;

(i) uses another person's licence as if he is the owner of the licence; or

(j) operates with a licence which has expired;

(k) having been served with an order of suspension,

cancellation or a letter to close the operations by the Registrar of Businesses, fails to do so within the time stated in the notice of suspension, cancellation or closure; or

(l) otherwise fails to comply with an order issued by the Registrar of Businesses pursuant to this Act,

commits an offence and is liable, on conviction, to a fine of M100,000 or in default of payment, to imprisonment for a period of 5 years or both.

(2) The Licensing Officer may order the licencee to close a business enterprise operation if the person -

(a) fails to renew the licence as prescribed;

(b) fails to register a business as provided in this Act;

(c) operates a business -

(i) without a licence; or

(ii) with a suspended or cancelled licence.

(3) The court before which a person is prosecuted for an offence against this Act or the regulations may, in addition to any order upon conviction or a determination that an offence has been committed, order that -

(a) equipment, appliances, stock and all assets used in the commission of the offence be forfeited to the state and be disposed of as the court may direct;

(b) the licencee or in the case of a body corporate, a manager or director to undertake community work; or

(c) the business operations be closed and the licence cancelled.

Proof of trading

42. (1) In any prosecution for -

(a) trading -

(i) without a licence,

(ii) with an expired licence,

(iii) with a cancelled or suspended licence; or

(b) failure to register a business,

it shall be presumed that trade is or has been carried on if -

(i) an advertisement has appeared in any newspaper circulating in Lesotho from which it can be reasonably inferred that the accused is offering to carry on such trade or business;

(ii) the accused holds himself out by notice exhibited at or near any premises occupied by him or by notices whether printed or otherwise which are distributed amongst the public or in any manner as carrying on such trade or business;

(iii) the accused offers or exposes for sale any goods usually sold in the course of such trade or business.

(2) If, in any prosecution for trading under a name not registered in terms of this Act -

(a) proof is given that the business name has been displayed in any premises;

(b) an advertisement has appeared in any newspaper circulating in Lesotho from which it can be reasonably

inferred that the accused is carrying on such trade or business under that business name;

(c) the accused holds himself out by notice exhibited at or near any premises occupied by him or by notices whether printed or otherwise which are distributed amongst the public or in any manner as carrying on such trade or business under that business name; or

(d) evidence is given that the business name has reference to the business of the accused carried on at the specified premises,

the person carrying on the business shall, in the absence of proof to the contrary, be presumed to be carrying on business under that business name.

Administrative monetary penalties or fines

43. The Minister may, by notice published in the Gazette, prescribe an administrative monetary penalty or fine for non-compliance with a provision of this Act.

Regulations

44. (1) The Minister may make regulations for the purposes of giving effect to the objectives of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may prescribe -

(a) duration of a licence;

(b) application forms for a licence and all matters relating to the handling of licence applications;

(c) registration forms and all matters relating to registration of businesses and business names;

(d) forms to be used for the issue of licences and registration of businesses;

(e) the general conditions attached to licences;

(f) licence and registration fees;

(g) the establishment and maintenance of the business licence register, register of business and register of business names;

(h) the procedure to be followed where -

(i) an enterprise is to be closed under sections 26(3) and 41(2);

(j) Licensing Officer fails to comply with 5 days requirement to issue licence;

(k) all matters relating to operation of the Tribunal;

(l) specific regulations for the promotion and development of micro, small and medium enterprises;

(m) . business activities that may be operated from residential premise; and

(n) any other matter required to be prescribed by the Minister under this Act.

(3) The Minister may, by regulations, amend -

(a) a penalty or fine payable under this Act; or

(b) a schedule to this Act.

Transitional Provisions

45. (1) A licence granted under the Liquor Licensing Act, 1998[4] shall continue to be in force until its expiry and may be renewed under this Act.

(2) Any pending application for a licence shall be processed under this Act.

Repeals and savings

46. Notwithstanding the provisions of subsection (1), upon the coming into operation of this Act -

(a) a licence granted under the Trading Enterprises Act,1993[5] shall continue to be in force until its expiry and may be renewed under this Act; and

(b) any pending application for a licence shall be processed under this Act.

NOTE

1. Act No. 8 of 1995
2. Act No. 62 of 2011
3. L.N. No. 13 of 1971
4. Act No. 8 of 1998
5. Act No. 11 of 1993

SCHEDULE 1:
BUSINESS ACTIVITIES FOR WHICH A LICENCE IS REQUIRED

(Section 4(1))

1. **Supply of Liquefied Petroleum Gas and petroleum products**

   a. Distribution and supply of liquefied petroleum gas and petroleum products

   b. Retail sale of automotive fuel, liquefied petroleum gas and petroleum products in specialized stores

   c. Retail sale of lubricants

   d. Retail sale of household fuel, bottled gas and coal

   e. Establishment for bulk processing, storage and handling of petroleum, petroleum products, liquefied gas, coal and petrol chemical products

2. **Waste collection and treatment supply**

Waste collection and treatment supply

3. **Sewerage**

   3.1 Waste collection, treatment and disposal activities; materials recovery

   3.2 Sewerage collection

   3.3 Collection of non-hazardous waste

   3.4 Collection of hazardous waste

   3.5 Treatment and disposal of non-hazardous waste

   3.6 Treatment and disposal of hazardous waste

3.7 Materials recovery

4. Remediation activities and other waste management services

Remediation activities and other waste management services

5. Wholesale and Retail sale of health related articles or products

5.1 wholesale and retail sale of cosmetic articles in specialized stores

5.2 wholesale and retail sale of adult goods and toys in specialized stores

5.3 wholesale and retail sale of tobacco and tobacco products

6. Food and beverage service activities

6.1 Fast Food activities, without full restaurant services

6.2 wholesale and retail sale of meat, including poultry, and meat products

6.3 Wholesale and retail sale of dairy products, eggs, edible oils and fats

6.4 wholesale and retail sale of alcohol and alcoholic beverages not consumed on the spot

6.5 Wholesale and retail sale of food and non alcoholic beverages

7. Personal service activities

7.1 Washing and (dry-) cleaning of textile and fur products

7.2 Hairdressing and other beauty treatment

7.3 Funeral undertaker and cremation activities

8. Metal wastes or scraps

8.1 Slag, dross, scalings and other waste from the manufacture of iron or steel

8.2 Ash and residue (except from the manufacture of iron or steel), containing metals or metallic compounds, except precious metals

8.3 Waste and scrap of precious metal

8.4 Ferrous waste and scrap

8.5 Re-melting scrap ingots of iron or steel

8.6 Waste and scrap of copper, nickel, aluminium, lead, zinc and tin or other metal

8.7 Waste and scrap of primary cells, primary batteries and electric accumulators; spent primary cells, primary batteries and electric accumulators

9. Repairs and Maintenance

a. Repairs and maintenance of motor Vehicle and Motor cycle

b. Cleaning of motor vehicles

10. Animal production

10.1 Raising of cattle and buffaloes

10.2 Raising of horses and other equines

10.3 Raising of camels and camelids

10.4 Raising of sheep and goats

10.5 Raising of swine/pigs

10.6 Raising of poultry

10.7 Raising of other animals

10.8 Mixed farming

10.9 Sale of livestock and livestock products

11. Fishing and aquaculture

11.1 Fishing

11.2 Marine fishing

11.3 Freshwater fishing

11.4 Aquaculture

11.5 Marine aquaculture

11.6 Freshwater aquaculture

12. Medical goods and chemicals (animals and crops)

12.1 wholesale and retail sale of pesticides

12.2 specialized store for wholesale or retail trade of animal drugs, plant chemicals and flora and fauna medicinal products

SCHEDULE 2:
LICENCED ACTIVITIES FOR WHICH A RECOMMENDATION OF A PUBLIC AUTHORITY IS REQUIRED

(Section 4(5)(b)(vi))

BUSINESS ACTIVITY		PUBLIC AUTHORITY
1.	**Supply of Liquefied Petroleum Gas and petroleum products**	**Ministry of Energy**
a.	Distribution and supply of liquefied petroleum gas and petroleum products	
b.	Retail sale of automotive fuel, liquefied petroleum gas and petroleum products in specialized stores	
c.	Retail sale of lubricants	
d.	Retail sale of household fuel, bottled gas and coal	
e.	Establishment for bulk processing, storage and handling of petroleum, petroleum products, liquefied gas, coal and petrol chemical products	
2.	**Waste collection and treatment supply**	**National Environmental Service**
Waste collection and treatment supply		
3.	**Sewerage**	**National Environmental Service**
3.1	Waste collection, treatment and disposal activities; materials recovery	
3.2	Sewerage collection	

	3.3	Collection of non-hazardous waste	
	3.4	Collection of hazardous waste	
	3.5	Treatment and disposal of non-hazardous waste	
	3.6	Treatment and disposal of hazardous waste	
	3.7	Materials recovery	
4.	**Remediation activities and other waste management services**		**National Environmental Service**
Remediation activities and other waste management services			
5.	**Wholesale and Retail sale of health related articles or products**		**Department of Public Health**
	5.1	wholesale and retail sale of cosmetic articles in specialized stores	
	5.2	wholesale and retail sale of adult goods and toys in specialized stores	
	5.3	wholesale and retail sale of tobacco and tobacco products	
6.	**Food and beverage service activities**		**Department of Public Health**
	6.1	Fast Food activities, without full restaurant services	
	6.2	wholesale and retail sale of meat, including poultry, and meat products	
	6.3	Wholesale and retail sale of dairy products, eggs, edible oils and fats	

	6.4	wholesale and retail sale of alcohol and alcoholic beverages not consumed on the spot	
	6.5	Wholesale and retail sale of food and non alcoholic beverages	
7.	**Personal service activities**		**Department of Public Health**
	7.1	Washing and (dry-) cleaning of textile and fur products	
	7.2	Hairdressing and other beauty treatment	
	7.3	Funeral undertaker and cremation activities	
8.	**Metal wastes or scraps**		**National Environmental Service**
	8.1	Slag, dross, scalings and other waste from the manufacture of iron or steel	
	8.2	Ash and residue (except from the manufacture of iron or steel), containing metals or metallic compounds, except precious metals	
	8.3	Waste and scrap of precious metal	
	8.4	Ferrous waste and scrap	
	8.5	Re-melting scrap ingots of iron or steel	
	8.6	Waste and scrap of copper, nickel,	

aluminium, lead, zinc and tin or other metal

8.7 Waste and scrap of primary cells, primary batteries and electric accumulators; spent primary cells, primary batteries and electric accumulators

9. Repairs and Maintenance — **National Environmental Service**

a. Repairs and maintenance of motor Vehicle and Motor cycle

b. Cleaning of motor vehicles

10. Animal production — **Department of Public Health**

10.1 Raising of cattle and buffalos

10.2 Raising of horses and other equines

10.3 Raising of camels and camelids

10.4 Raising of sheep and goats

10.5 Raising of swine/pigs

10.6 Raising of poultry

10.7 Raising of other animals

10.8 Mixed farming

10.9 Sale of livestock and livestock products

11.	**Fishing and aquaculture**	**Ministry of Water**
11.1	Fishing	
11.2	Marine fishing	
11.3	Freshwater fishing	
11.4	Aquaculture	
11.5	Marine aquaculture	
11.6	Freshwater aquaculture	
12.	**Medical goods and chemicals (animals and crops)**	**Department of Public Health**
12.1	wholesale and retail sale of pesticides	
12.2	specialized store for wholesale or retail trade of animal drugs, plant chemicals and flora and fauna medicinal products	

GOVERNMENT NOTICE NO. 17 OF 2019

The Parliament of Lesotho

Statement of Objects and Reasons of the Business Licensing and Registration Act, 2019

(Circulated with the authority of the Minister responsible for trade and industry, the Honourable Tefo Mapesela)

The Trading Enterprises Act 1993[1] provides for licensing of all business activities. The licensing regime under this Act has proven to be too long and cumbersome, time consuming and costly in business terms and as such a barrier to business entry. There is a need to review the 1993 Act in order to facilitate business entry in Lesotho.

The purpose of the Business Licensing and Registration Bill is to introduce risk based business licensing and flexible business regulation. Under the proposed Bill, business will be licensed depending on the risk they pose to public health or safety, national security or environment protection. It is important that activities which may harm the public or affect national security or environment are authorised and monitored so that risk is minimised and controlled.

The Bill proposes continuous monitoring of enterprises as this will be more effective than pre-qualification. To facilitate compliance and self inspection, detailed guidelines (based on standards or the provisions of proposed Bill) will be developed and widely published so that operators know exactly what inspectors will be looking for when their businesses are inspected. Further, the guidelines will be based on the risk to public health or safety, national security or environment protection. Failure to comply with the guidelines will inadvertently mean failure to comply with public health, safety, national security or environmental protection and legal requirements and as such, contravention of the Bill which will result in the prosecution of the operator.

The Bill prescribes a licensing procedure that is simple, short, cost effective and responsive to the needs of the business operators. The Licensing Officer is vested with the licensing powers. This makes the procedure short and will safe business operators time and money as applications for licenses will be considered as soon as they are lodged.

Under the proposed Bill businesses which do not pose any risk will be registered either before or after the operations have commenced. Although a person may not need a permit to operate these activities, the Government requires the information of who is operating what business and where in order to inform Government policies and strategies. The requirement to register a business under this Bill applies only to enterprises not registered under any other laws so as to avoid subjecting them to a duplicate or dual registration process. The registration process is thus short and simple. The Bill proposes the issuance of business registration identity card to business operators. The business registration identity card will be used by all public authorities in their dealing with the business enterprises. This will ensure that a business can be easily identified by its business identity number by all public authorities rather than a different number for each authority.

The Bill further provides for registration of business names. The requirement to register a business name applies to all enterprises operating in Lesotho, whether registered under this Act or any other law. The registration of business names ensures that the identity of the business person is easily determinable for accountability purposes.

The Bill establishes the Trading Enterprises Tribunal to hear appeals from decisions made pursuant to exercise of power under the Bill. It prescribes composition of the Tribunal and the timeframes within which to deal with an appeal. The Members of the Tribunal are appointed by the Minister and are subjected to a code of conduct.

The Bill encourages Small, Medium and Micro-sized Enterprises (SMMEs) development by providing a possibility for the Minister to provide flexibilities on compliance by SMMEs with the provisions of the Act. This possibility will ensure that the regulatory costs are kept minimal so that SMMEs are able to operate easily without too much regulation.

NOTE

1. Act No. 27 of 1993