



Tonga

**BUSINESS LICENCES (AMENDMENT)
ACT 2012**

Act No. 21 of 2012



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BUSINESS LICENCES (AMENDMENT) ACT 2012

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AN ACT TO AMEND THE BUSINESS LICENCES ACT 2002

I assent,
TUPOU VI,
21st November 2012.

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

1 Short Title, interpretation, commencement

- (1) This Act may be cited as the Business Licences (Amendment) Act 2012.
- (2) In this Act, the Business Licences Act 2002 is referred to as the Principal Act.
- (3) This Act shall come into force on a day proclaimed by Cabinet by Notice in the Gazette.

2 Section 3 amended

Section 3 of the Principal Act is amended as follows —

- (a) the definition of the term “**business activity**” is amended by inserting the phrase “for the purpose of generating revenue in trade, commerce or industry, including any trade, profession or calling,” after the word “person”;
- (b) the definition of the term “**Business Licensing Officer**” is deleted in its entirety;

- (c) the definition of the term “**business person**” is deleted in its entirety and a new definition is inserted as follows—
- “**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;”
- (d) the definition of “**foreign investment registration certificate**” is amended by deleting the phrase “by the Chief Executive Officer”;
- (e) the definition of “**licensee**” is amended by inserting the phrase “legal entity or entities that is the” after the word “the”;
- (f) new definitions are inserted after the definition of “**prohibited activity**” as follows—
- ““**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;”;
- (g) the definition of “**Chief Executive Officer**” is deleted in its entirety.

3 Section 5 amended

Section 5 of the Principal Act is hereby amended as follows—

- (a) in subsection (1) delete the word “registered” and insert in its place the word “registration”;
- (b) delete the fullstop (.) at the end of subsection (d) and insert a semicolon (;);
- (c) insert the following as new subparts (e) to (h) —
- “(e) any sole trader who has in the prior five years been disqualified from being a director of a company under the Companies Act of 1995;
- (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 of 1995;
- (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.”.

4 Section 6 amended

- (1) Section 6(1) of the Principal Act is amended by —
 - (a) deleting the phrase “Business Licensing Officer” and inserting in its place the phrase “Registrar”; and
 - (b) inserting the phrase “and the enforcement of all provisions” after the words “business licences”.
- (2) Section 6(2) of the Principal Act is amended by deleting the word “Chief Executive Officer” and inserting in its place “Registrar”.

5 Section 7 amended

- (1) Section 7(1) of the Principal Act is amended by inserting the phrase “and in the manner prescribed” after the words “prescribed form”.
- (2) Section 7(3) of the Principal Act is deleted in its entirety and in its place insert the following —
 - “(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.”.
- (3) Section 7 of the Principal Act is amended by inserting the following as new subsections (4) and (5)—
 - “(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.
 - (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.”.

6 Section 8 replaced

Section 8 of the Principal Act is deleted and in its place the following is inserted —

“8 Issue of business licence

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.”.

7 Section 9 amended

- (1) Section 9(a) of the Principal Act is deleted and in its place the following is inserted—

“(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”.
- (2) Section 9(b) of the Principal Act is amended by inserting the words “that are consistent with this Act” after the word “licence”.

8 Section 10 replaced

Section 10 of the Principal Act is deleted and replaced with the following—

“10 Validity of licence

- (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.”.

9 Section 11 amended

- (1) Section 11(1) of the Principal Act is amended by deleting the words “Business Licence Officer” and inserting in its place the word “Registrar”.
- (2) Section 11(1)(a) of the Principal Act is amended by inserting the phrase “or any subsequent submittals to the Registrar related to the business licence” after the word “form”.
- (3) Section 11(1)(b) of the Principal Act is amended by –
 - (a) inserting the phrase “or any other submittals to the Registrar related to” after the word “application”; and
 - (b) in the English version only, deleting the word “for”.
- (4) Section 11(1)(d) of the Principal Act is deleted in its entirety and the following is inserted in its place—

“(d) a condition imposed under section 9(b) is breached or a necessary approval or permit from another government agency is cancelled;”.
- (5) Section 11(1)(e) of the Principal Act is amended by deleting the fullstop (.) and inserting a semicolon (;) in its place.
- (6) Section 11(1) of the Principal Act is amended by inserting the following as new subsections (f) to (k)—
 - “(f) the licensee is a sole trader, if that licensee has been disqualified from being a director of a company the Companies Act 1995;
 - (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 1995;
 - (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.”.

10 Section 12 amended

Section 12(2) of the Principal Act is amended by deleting the word “fourteen” and inserting in its place the phrase “ten working”.

11 Section 13 amended

Section 13 of the Principal Act is amended by numbering the existing paragraph as subsection (1) and inserting a new subsection (2) as follows —

- “(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.”.

12 Section 14 amended

(1) Section 14(1) of the Principal Act is amended as follows —

- (a) by deleting the word “written” and inserting the phrase “on the prescribed form or”; and
- (b) by deleting the phrase “Business Licence Officer” and inserting in its place the word “Registrar”.

(2) Sections 14(2) and (3) of the Principal Act are deleted and replaced with the following—

- “(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.”.

13 Section 15 repealed

Section 15 of the Principal Act is deleted in its entirety.

14 Section 16 amended

Section 16 of the Principal Act is amended by numbering the existing paragraph as subsection (1) and inserting new subsections (2) and (3) as follows —

- “(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.”.

15 Section 17 amended

- (1) Section 17 of the Principal Act is amended as follows —
 - (a) by numbering the existing paragraph as subsection (1);
 - (b) by deleting the phrase “Business Licence Officer,” and inserting in its place the word “Registrar”;
 - (c) by inserting the word “or” after word “Registrar”;
 - (d) by deleting the phrase “or any District Officer”; and
 - (e) in the English version only, deleting the word “his” and inserting in its place the word “its”.
- (2) Section 17 of the Principal Act is amended by inserting the following as new subsection (2)—

“(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.”.

16 Section 18 repealed

Section 18 of the Principal Act is deleted in its entirety.

17 Section 19 amended

- (1) Section 19(1) of the Principal Act is deleted in its entirety and replaced with the following—

“(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.”.
 - (2) A new subsection 19(1A) is inserted immediately after section 19(1) as follows—

“(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.”.

- (3) Section 19(2) of the Principal Act is deleted and in its place the following is inserted—

“(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.”.

- (4) Section 19 of the Principal Act is amended by inserting the following new subsection (3) —

“(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.”.

18 Section 20 amended

Section 20(2) of the Principal Act is amended by deleting the phrase “Business Licence Officer” and inserting in its place the word “Registrar”.

19 Section 21 amended

Section 21 of the Principal Act is amended –

- (a) in the English version only, by deleting the phrase “Cabinet may by Order” and inserting in its place “The Minister may, with the consent of Cabinet, by Order”; and

- (b) in the Tongan version only, by deleting the phrase “E ngofua ke fakatonutonu ‘e he Kapineta ‘i ha Tu’utu’uni” and inserting in its place “E ngofua ki he Minisita, ‘i ha loto ki ai ‘a e Kapineta, ‘i he Tu’utu’uni, ke fakatonutonu”.

20 Section 22 amended

- (1) Section 22(1), (2) and (3) is amended by deleting the phrase “Business Licence Officer” and “Business Licence Register” and inserting in its place the word “Registrar”.
- (2) Section 22 of the Principal Act is amended by inserting the following as new subsection (1A) immediately after subsection (1)—
- “(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.”.

(3) Section 22 of the Principal Act is amended by inserting the following as new subsection (4)—

“(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.”.

21 New sections 22A and 22B

The Principal Act is amended by inserting new sections 22A and 22B immediately after section 22 as follows—

“22A Registration of Documents

- (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

- (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.”.

22 Schedule I amended

Schedule I of the Principal Act is amended by inserting a new clause 7 immediately after clause 6 as follows –

- “7 An activity that, in the opinion of the Minister, may constitute a threat to national security and public order.”

Passed in the Legislative Assembly this 12th day of October 2012.