



REPUBLIC OF NAURU

# BUSINESS LICENCES (AMENDMENT) ACT 2018

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No. 37 of 2018

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Enacted by the Parliament of Nauru as follows:

**1 Short title**

This Act may be cited as the *Business Licences (Amendment) Act 2018*.

**2 Commencement**

This Act commences on 15 January 2019.

**3 Amendment to the Business Licences Act 2017**

The Business Licences Act 2017 is amended by the provisions of this Act.

**4 Amendment of section 3**

Section 3 is amended:

(a) in the definition of **'applicant'** by deleting *'partnership'* and substituting it with *'firm'*;

(b) by repealing the definition of person and replacing it with:

**'person'** includes an individual, firm, an unincorporated or corporate body, trust or foreign business to which this Act applies and any branch thereof;

(c) inserting the following new definitions in the correct alphabetical order:

**'business name'** means the name or style under which a business is carried on by:

(a) an individual;

(b) a corporation if trading in a name other than the incorporated name under the Corporations Act 1972;

(c) a firm where a partnership is carrying on a business in its registered name under the Partnership Act or any other name;

(d) a trust carrying on a business other than its name registered under the Trusts Act 2018;

(e) a foreign business in Nauru;

**'corporation'** includes a corporation incorporated under the Corporation Act 1972 and a foreign corporation;

**'firm'** means an unincorporated body of two or more individuals or of one or more individuals and one or more corporations, or two or more corporations, who or which have entered in to partnership with one another with a view to carry on business registered under the Partnership Act or under this Act;

**'foreign business'** for the purposes of this Act means any individual, firm or corporation having a registered business outside the Republic of Nauru whether

by a Nauruan of foreign citizen and also carrying on or intends to carry on a business in Nauru as a foreign registered business;

**'individuals'** means a natural person and does not include a legal person;

**'trust'** means a trust registered under the Trusts Act 2018 which registers under this Act to carry on a business.'

## **5 Section 4 amended**

Section 4 is amended:

(a) in subsection (2) by repealing paragraph (a) to (c) and replacing it with:

'(a) keep and maintain the Register;

(b) perform the functions and duties conferred on him or her under this Act;

(c) do all things as are necessary to be done for the proper administration of this Act; and

(d) keep and maintain the records for applications and other documents required to be lodged or filed by persons seeking registration of or have a licence granted under the Act.';

(b) by inserting a new subsection after subsection (5):

'(6) The Deputy Registrar shall have the same powers as the Registrar in exercising the powers under subsection (5).'

## **6 Section 5 amended**

Section 5 is amended by inserting the following new subsections after subsection (2):

'(3) The Registrar shall be responsible for keeping and maintaining a Register of Business Licences as prescribed by regulations.

(4) The particulars registered in the Register and the records kept and maintained by the Registrar under section 4(2)(d) shall be evidence of the record of the business licence kept and maintained by the Registrar.

(5) A copy of or extract from any document contained in the Register certified to be a true copy or extract under the hand and seal of the Registrar is admissible as evidence in any legal proceedings as if it were the original document or a part of the document as extracted.

(6) In any legal proceedings, a licence granted under the hand and seal of the Registrar is prima facie evidence of the fact the requirements of this Act specified in the licence:

(a) had or had not been complied with at a date or within a period specified in the licence;

(b) had been complied with, but at a date later than that specified in the licence.

- (7) The Registrar may refuse to accept any document lodged and request that the document be amended, completed and relodged, or a new document be lodged, if he or she is of the opinion that the document:
- (a) contains matters contrary to law;
  - (b) by reason of any omission or misdescription has not been duly completed;
  - (c) does not comply with the requirements of this Act; or
  - (d) contains any error, alteration or erasure.'

**7 Section 6 repealed and replaced**

Section 6 is repealed and replaced with:

**'6 Prohibition on conducting business without a licence**

- (1) No person shall commence or carry on any business without a licence granted under this Act.
- (2) Any person who contravenes subsection (1) commits an offence under section 25.'

**8 Section 7 repealed and replaced**

Section 7 is repealed and replaced as follows:

**'7 Pre-requisite for licences**

- (1) An application for a licence shall only be accepted for consideration by the Registrar where the applicant has registered in case of:
  - (a) an individual, a business name under the Business Names Registration Act 2018;
  - (b) a firm or partnership under the Partnership Act 2018;
  - (c) a corporation under the Corporation Act 1972;
  - (d) a trust under the Trusts Act 2018; or
  - (e) a foreign corporation registered to conduct a business under the Corporations Act 1972.
- (2) The applicant shall provide the following documents when making an application under subsection (1):
  - (a) tax identification number issued under the Revenue Administration Act 2014; or
  - (b) in case of foreign corporation under paragraph (e), the:

- (i) relevant instrument registering the business under the laws of the foreign country; and
- (ii) tax identification number or tax number issued under the laws of the foreign country of the entity and the directors.

(3) The Cabinet may prescribe such other prerequisites for the purposes of this section.'

## **9 Insert new section 7A**

### **'7A Particulars to be included in an application to register a business licence**

- (1) A individual, firm, corporation or trust applying for a licence shall make an application in the prescribed form and deliver to the Registrar a statement in writing as prescribed in the regulations.
- (2) A foreign business shall provide the particulars prescribed by regulations.
- (3) The statements of particulars required under this section shall be provided by:
  - (a) in case of individual, the individual under whose name the business name is registered;
  - (b) in case of a firm, by all the individuals who are partners and by a Director or secretary of all corporations which are partners;
  - (c) in case of a corporation, by 2 Directors or a Director and Secretary;
  - (d) in case of a trust, by a trustee; or
  - (e) in case of a foreign business, paragraphs (a) to (d) apply corresponding to the nature of the licence being applied.
- (4) On receipt of a statement of particulars, the Registrar shall enter the individual, firm, corporation or trust business licence in the Register.
- (5) Where a business is carried on under two or more businesses, each of those businesses shall be registered.
- (6) The Cabinet may prescribe the requirements for any further particulars under this section.

## **10 Section 8 repealed and replaced**

Section 8 is repealed and replaced by:

### **'8 Application for registration**

- (1) An application for a licence shall:
  - (a) be in the prescribed form;
  - (b) provide the relevant information;
  - (c) provide copies of relevant documents;
  - (d) be declared and signed by the person stated in subsection (2); and
  - (e) accompanied by the prescribed fee.
  
- (2) The statement of particulars shall:
  - (a) in case of an individual, be declared and signed by him or her;
  - (b) in case of a firm, be declared and signed by all the individuals who are partners and by a Director or secretary of all corporations which are partners;
  - (c) in case of a corporation, be declared and signed by 2 Directors or a Director and Secretary;
  - (d) in case of a trust, be declared and signed by at least a trustee; or
  - (e) in case of a foreign business, paragraphs (a) to (d) apply subject to the person applying for a licence be declared and signed by the person applying for a licence.
  
- (3) Where a person has:
  - (a) a business operating under the registered name or business name; and
  - (b) operates such business from multiple places within the Republic,-

he or she shall apply for licences under this Act for each of the places of business separately.
  
- (4) A person under subsection (3) shall pay for each of licences issued under this Act as prescribed.
  
- (5) A person who contravenes subsections (3) commits an offence and upon conviction is liable to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 3 years or to both.

**11 Section 10 amended**

Section 10 is amended by inserting a new after subsection (2):

(3) Every licence granted under this section shall show the full name/ or names of the individuals, firm, corporation or trust and any other matters prescribed by regulations.'

**12 Amendment of section 17**

Section 17 is amended by repealing paragraph (a) and replacing it as follows:

(a) within 1 month from the date of the expiry of the licence - \$1,000;

**13 Section 18 repealed and replaced**

Section 18 is repealed and replaced with:

**18 Suspension or cancellation of licence**

(1) The Registrar may suspend or cancel a licence where:

- (a) the licence was obtained by fraud, misrepresentation or deliberate or negligent provision of false information;
- (b) in case of an individual, where the Registrar becomes aware that a licensee has died, and the personal representative fails to transmit the licence to a beneficiary of the estate of the licensee;
- (c) in case of a firm, the partnership is dissolved;
- (d) in case of a corporation, the corporation is wound up;
- (e) in case of a trust if it is dormant or wound up;
- (f) the registration of any business is struck off under the respective written law;
- (g) the licensee fails to file annual returns for 2 consecutive years;
- (h) the licensee contravenes this Act;
- (i) any person ceases to carry on its business activity under the licence and the licensee fails to notify the Registrar of such cessation of business; or
  - (i) the licensee fails to commence business under the licence within 2 years of;
  - (ii) from the date of the registration of the business; or
  - (iii) from the date of giving notice to the Registrar for temporary cessation business.
- (j) a licensee applies to have his or her licence cancelled;



- (k) the licensee fails to comply with any directions given by the Registrar; or
  - (l) the licensee assigns, permitted or transfers his or her licence in contravention of sections 20 and 20A.
- (2) Before suspending or cancelling a licence in accordance with subsection (1), the Registrar shall:
- (a) give a written notice to the licensee;
  - (b) provide reasons for the intention to suspend or cancel; and
  - (c) require the licensee to show cause within 14 days as to why the licensee shall not be suspended or cancelled.
- (3) The Registrar may not suspend or cancel a licence under this section if the licensee takes remedial measures to the satisfaction of the Registrar within 21 days of receipt of the notice under subsection (2).
- (4) Where the licensee fails to show cause under subsection (2) the Registrar may suspend or cancel the licence from the Register.

#### **14 Section 20 repealed and replaced**

Section 20 is repealed and replaced as follows:

##### **'20 Licence may be transferred**

- (1) A licence shall not be transferred to another person without the prior approval of the Registrar.
- (2) An application for the transfer of the licence shall be made to the Registrar in the prescribed form and payment of the prescribed fee.
- (3) The Registrar shall consider the application and inform the licensee of his or her decision.
- (4) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or a term of imprisonment not exceeding 2 years or both.'

#### **15 Insert a new section 20A**

##### **'20A Licence not to be assigned**

- (1) A licence shall not be assigned or permitted to be used by another person.

- (2) Any person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.'

## **16 Section 21 repealed and replaced**

Section 21 is repealed and replaced with:

### **'21 Variation of particulars**

- (1) A licensee shall notify the Registrar in the prescribed form and manner accompanied with the prescribed fee within 7 days of any variation in the registered particulars of the matters contained in section 8 or the regulations.
- (2) The Registrar shall upon receipt of the notice in subsection (1) amend the particulars contained in the Register.
- (3) Where the variation is in respect of the licence, ownership, address or nature of the business the Registrar shall issue an amended licence accordingly.
- (4) A person who fails to comply with subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.'

## **17 Section 22 amended**

Section 22 is amended by:

- (a) inserting a new subsection (1A) after subsection (1):
  - '(1A) Where a person registered under this Act has multiple places of business each of the licence granted separately under the Act shall be displayed and maintained at the respective registered place of business in a conspicuous position.'
- (b) inserting a new subsection (4) after subsection (3):
  - '(4) A person who complies with subsection (2) shall not be prosecuted for an offence under subsection (3).'

## **18 Insert a new section 22A**

### **'22A Duty to notify Registrar on cessation of business**

- (1) A licensee who intends to cease carrying on business on a temporary basis shall notify the Registrar of such cessation and the duration of such temporary cessation.
- (2) Where a licensee ceases to carry on with the business under the licence permanently, the licensee shall notify the Registrar of the permanent cessation of business within 30 days before the business ceases to be carried on.

- (3) A person who fails to comply with subsection (1) or (2) commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or both.'

**19 Insert a new section 22B**

**'22B Loss or destruction of licence**

- (1) Where a licence is lost or destroyed the licensee shall notify and may apply to the Registrar for a duplicate copy of the licence in the prescribed form and pay the prescribed fee.
- (2) The Registrar shall within 7 days issue a duplicate copy of the licence.
- (3) A person who without any reasonable excuse fails to notify the Registrar of the loss or destruction of a licence under subsection (1) commits an offence and is liable to a fixed penalty of \$300.'

**20 Insert a new section 22C**

**'22C Registrar to restore the cancellation of licence**

- (1) The Registrar may restore the registration of a licence upon application by the last registered licensee in the prescribed form and payment of the prescribed fee.
- (2) The Registrar may require the licensee to comply with the requirements of this Act before restoring the licence in the Register.
- (3) Where the licence after the cancellation is granted to another person, the Registrar shall not restore the registration under subsection (1).'

**21 Insert a new section 22D**

**'22D Surrender of licence**

- (1) Where a licensee ceases to continue with the business to which the licence relates he or she shall notify the Registrar in writing and surrender the licence.
- (2) Where a licence is surrendered under subsection (1) the licence shall lapse and be cancelled in the Register.'

**22 Insert a new section 25A**

**'25A Offence for obstructing an authorised officer**

A person who obstructs, hinders or in any way interferes with an authorised officer in the performance of his or her duties commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.'

**Part 5 repealed and replaced**

Part 5 is repealed and replaced as follows:

**‘PART 5 - MISCELLANEOUS****29 Records**

- (1) A licensee shall ensure that the records including the underlying documentation such as proper accounts and records relating to the affairs of the business operating under the licence are kept and maintained.
- (2) The accounts and records under subsection (1) shall be kept for a period not less than 7 years from the end of the period to which the information relates.
- (3) The records kept under subsection (1) shall include underlying documentation of the individual, firm, corporation, trust or foreign business under the relevant statutes of their establishment.
- (4) The licensee who contravenes this section commits an offence and upon conviction is liable to a fine not exceeding \$5,000.
- (5) The Cabinet may vary the requirements of records to be kept by the licensee under this section by regulations.

**30 Compliance with Beneficial Ownership Act 2017**

- (1) A firm, corporation, trust or foreign business applying for a licence under this Act shall concurrently comply with the requirements of the Beneficial Ownership Act 2017 by providing the details required for the purposes of that Act in the prescribed form.
- (2) The Registrar shall not grant a licence where the person applying for a licence fails to provide the prescribed form under subsection (1).
- (3) This section does not apply to individuals operating a business.

**31 Annual returns**

- (1) A licensee shall lodge annual returns to the Registrar under this Act of the licensee as follows:
  - (a) in case of individual, annual return filed under the Business Names Registration Act 2018;
  - (b) in case of a firm, annual returns filed under the Partnership Act 2018;
  - (c) in case of corporation, annual returns filed under the Corporations Act 1972;

- (d) in case of a trust, annual returns filed under the Trusts Act 2018;
- (e) in case of a foreign business, annual returns:
  - (i) of the operations in Nauru subsections (1) (a) to (d) shall apply with necessary modification; and
  - (ii) in the place of registration in the foreign country under any equivalent laws applicable in that foreign country.
- (2) The annual return under subsection (1) shall be:
  - (a) in the prescribed form;
  - (b) accompanied by the documents required by the prescribed form;
  - (c) signed by the licensee or an authorised person; and
  - (d) accompanied by the prescribed fee; andon anniversary of the registration date.
- (3) Subsection (2) shall not apply to subsection (1)(e)(ii) in respect of a foreign corporation in which the foreign country's form shall be filed.
- (4) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$5,000.'

## **32 Information sharing**

- (1) Subject to subsection (2), the Registrar may provide any information including any copy of a document, account or record that the Registrar has obtained under this Act to:
  - (a) a law enforcement or regulatory agency, whether in the Republic or a foreign jurisdiction for the purposes of carrying out the agency's duty, power or function;
  - (b) the competent authority of a foreign government with which the Republic has entered into an agreement providing for the exchange of information to the extent permitted under that agreement.;
  - (c) any treaties or agreements entered into by the Republic for the purposes of exchange of information.
- (2) For information sharing under subsection (1), the Registrar shall ensure that necessary protections are in place for maintaining the confidentiality of the information.

**33 Minister may authorise officers**

The Minister may by notice in the Gazette, authorise an officer of the Department or a police officer to be an authorised officer for the purposes of this Act.

**34 Liability of Registrar or authorised officer**

The Registrar or an authorised officer is not liable in any civil or criminal proceedings for anything done in the exercise of a power under this Act if the thing was done in good faith or on reasonable grounds.

**35 Jurisdiction of Court**

The District Court shall have jurisdictions to hear and determine all offences under this Act and shall have power to impose the full penalty or punishment in respect of the offences under this Act.

**36 Regulations**

The Cabinet may make regulations prescribing any matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**37 Repeal**

The Business Licences Act 2011 is repealed.

**38 Transitional and savings**

- (1) Despite the repeal of the Business Licences Act 2011, all business licences granted under that Act remain valid until its expiry
- (2) All applications submitted to the Registrar under the provisions of the Business Licences Act 2011 shall be determined in accordance with the provisions of that Act as if this Act had not commenced and all other matters shall be dealt with in accordance with the provisions of this Act.
- (3) All proceedings, fines or decisions made under that Act remain enforceable.'