

TRADE ACT, 2019

No. 25



of 2019

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An Act to simplify trade licensing procedures; to empower the Director responsible for domestic trade, through the council, to issue trade licences and register trades and businesses within the council area; and for matters incidental thereto.

Date of Assent: 28.08.19

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I — *Preliminary Provisions*

1. This Act may be cited as the Trade Act, 2019, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint. Short title and commencement
2. In this Act, unless the context otherwise requires — Interpretation
- “authorised officer” means a person appointed as an authorised officer in terms of section 22;
- “Authority” has the meaning assigned to it under the Companies and Intellectual Property Authority Act; Cap. 42:13
- “Board” means a Regional Appeals Board established under section 30;
- “business registration certificate” means a business registration certificate issued in terms of section 14;
- “council” has the meaning assigned to it under the Local Government Act; Cap. 40:01
- “Director” means the Director responsible for domestic trade or any person to whom the Director has delegated his or her powers in accordance with section 3(2);
- “fronting” means obtaining a licence to enable another person, who would otherwise not qualify to obtain the licence, to a trade or business under this Act;
- “health and safety concerns” means health and safety concerns as prescribed by the Minister in accordance with section 8;
- “large enterprise” means a business entity with such annual turnover as prescribed by the Minister in accordance with section 17(4);
- “licensed” means a trade or business licensed in accordance with section 5(1);
- “medium enterprise” means a business entity with such annual turnover as prescribed by the Minister in accordance with section 17(4);
- “member” means a member of the Board;
- “premises” means premises where any trade or business is carried on or operated, and includes any facility used in connection with such trade or business;
- “region” means an area made up of districts in the same geographical area;
- “register” means a register kept in accordance with section 38(e);
- “registered” means registered in accordance with section 14;
- “reserved trade or business” means a trade or business declared to be reserved in terms of section 17;
- “sell” means to sell by retail or wholesale, and includes to barter, exchange, offer or expose for sale;
- “subject in question” means a subject, industry or sector under which a trade or business activity, goods sold or services provided fall;
- “trade or business” means the selling of goods or services; and
- “trading licence” means a licence issued in terms of section 5.

PART II — *Functions and powers of Director*

Functions and powers of Director

3. (1) The Director shall be responsible for the administration of this Act and shall perform the duties and functions and exercise powers conferred upon him or her under this Act.

(2) The Director may, with approval of the Minister, delegate to any public officer at a District Council the power to carry out on his or her behalf functions or exercise such powers as the Director may determine.

Licensing and registration of business

4. Notwithstanding section 3 (1) the Director shall, in respect of a council area —

- (a) be responsible for licensing and registration of trades and businesses;
- (b) keep a register of —
 - (i) trading licences,
 - (ii) business registration certificates, and
 - (iii) micro business certificates issued out under the Act;
- (c) submit to the Minister when required to do so, data relating to the trading licences, business registration certificates and micro business certificates issued under the Act; and
- (d) perform such other functions as may be assigned to the Director under this Act.

PART III — *Licensing of Trade or Business*

Trade or business requiring trading licence

5. (1) The Minister may, make regulations prescribing a trade or business with health and safety concerns, which require a trading licence under this Act.

(2) A person shall not carry on a trade or business set out in the regulations unless he or she is issued with a trading licence, in the prescribed manner by the Director.

(3) A person who contravenes the provisions of this section commits an offence and shall be liable to a fine of not exceeding P50 000 or to imprisonment for a term not exceeding five years, or to both.

Trade or business with health and safety concerns

6. (1) Notwithstanding section 5, the Minister may, in the interest of public health and safety and for the purposes of supervision and monitoring of any trade or business, make regulations prescribing conditions of the premises on which the trade or business shall be carried on.

(2) The Minister shall, by Order published in the *Gazette*, declare trades and businesses supervised and monitored in accordance with subsection (1) to have health and safety concerns.

(3) In exercising the powers under subsections (1) and (2), the Minister shall —

- (a) be guided by health and safety standards, codes or guidelines for each category of trade or business, as the Minister may prescribe; and

(b) take into account any other standards, codes or guidelines as may be relevant under laws regulating the subject in question.

7. The Minister may, in consultation with the Minister responsible for the subject in question, prescribe health and safety standards, codes or guidelines for carrying on any licensed and registered trade or business.

Trade or business standards, codes or guidelines

8. (1) The Director shall not issue a trading licence or a business registration certificate where he or she is satisfied that —

Preconditions on issue of trading licence and business registration certificate

- (a) the applicant is below 18 years of age;
- (b) the issue of such licence or registration of a trade or business would conflict with —
 - (i) any approved or proposed town planning scheme or zoning area,
 - (ii) standard codes or guidelines prescribed under section 7(3), or
 - (iii) any other laws, as may be relevant to the subject in question;
- (c) the applicant is an unrehabilitated insolvent;
- (d) the applicant has surrendered his or her estate for the benefit of creditors;
- (e) the applicant has, within a period of two years immediately preceding the date of the application, been convicted of an offence involving dishonesty;
- (f) the applicant does not qualify in terms of section 17 to be issued with a trading licence; or
- (g) the applicant is a non-citizen and has failed to produce —
 - (i) proof of registration of his or her business or company where the applicant is not an individual, or
 - (ii) valid identification documents, as may be required by the Director.

(2) The Director shall not issue a licence to an applicant whose licence for the same trade or business was revoked, in accordance with section 12, in the preceding five years.

9. (1) The Director shall, where he or she is satisfied that an application meets the requirements for the issue of a trading licence, issue to the applicant a trading licence in such form as may be prescribed containing such conditions as he or she may consider necessary.

Issue and duration of trading licence

(2) A trading licence shall be valid for an indefinite period, subject to —

- (a) compliance with the conditions upon which it is issued; and
- (b) payment by a licence holder of an annual licence fee or such other fees, as may be prescribed.

10. (1) A person may, on application made in such form as may be prescribed, apply to the Director for a trading licence or a business registration certificate to be transferred to another person.

Transfer of trading licence and business registration certificate

(2) Without prejudice to the generality of subsection (1), the Director may transfer a trading licence or a business registration certificate where —

- (a) the licensee or a business registration certificate holder is a citizen or a wholly citizen owned company, carrying on a reserved trade or business, to another citizen or wholly owned citizen company;
- (b) the licence or business registration certificate issued is in respect of specified premises, to another premises within the same council area;
- (c) the licensee or a business registration certificate holder has died, to his heir or beneficiary;
- (d) the licensee or a business registration certificate holder has been declared insolvent or has surrendered his or her estate for the benefit of creditors, to his or her trustees; or
- (e) the licensee or a business registration certificate holder becomes subject to any legal disability, to his or her legal representatives.

(3) For purposes of this section “transfer a trading licence or business registration certificate” means re-issuing a trading licence or a business registration certificate for a trade or business to a person other than the person who holds or has held the licence or business registration certificate in respect of such trade or business.

(4) Any person who transfers, or is the transferee of, a trading licence or a business registration certificate in contravention of the provisions of this section commits an offence and is liable to a fine not exceeding P10 000, or to imprisonment for a term not exceeding three years, or to both.

Suspension of trading licence and business registration certificate

11. (1) The Director may suspend or impose further conditions on a trading licence or on a business registration certificate —

- (a) where a licensee or a holder of a business registration certificate —
 - (i) contravenes the provisions of this Act or fails to comply with any lawful direction or requirement of the Director,
 - (ii) defaults on or breaches any material condition of the licence or registration, or
 - (iii) is declared bankrupt, insolvent or enters into liquidation; or
- (b) as may be necessary in the interests of public health and safety.

(2) A suspension or imposition of further conditions upon a trading licence or business registration certificate shall not be made until the licensee or a person whose business is registered has, by notice in writing, been given the opportunity by the Director to —

- (a) rectify, within such time as the Director may specify, that contravention or failure; or
- (b) show cause, within such time as the Director may specify, why the licence or registration certificate should not be suspended or have further conditions imposed thereon.

(3) The Director may defer giving notice under subsection (2), until after the powers are exercised, where the Director considers that to give notice would —

- (a) materially prejudice the exercise of his or her powers; or
- (b) be prejudicial to public health and safety.

12. (1) The Director may revoke a trading licence or a business registration certificate where —

Revocation of trading licence and business registration certificate

- (a) the licensee or a holder of a business registration certificate has failed, at the expiration of the time specified under section 11, to satisfy any condition imposed on the licence or the business registration certificate or rectify such contravention or failure;
- (b) the licensee or the holder of a business registration certificate has failed to comply with section 18;
- (c) a report made in accordance with section 24 has recommended revocation;
- (d) the licensee or the holder of a business registration certificate has failed to pay an annual fee payable under section 9 and 14 for a continuous period of 2 years;
- (e) the licence or business registration certificate is not collected within 3 months from the time it is issued by the Director;
- (f) the licensee or the holder of a business registration certificate is convicted of an offence under this Act; or
- (g) the licensee or the holder of a business registration certificate is found to have presented false information which formed the basis of the licence or registration certificate being granted;

(2) Where a licence or a business registration certificate is being revoked under subsection (1), the Director shall give a licensee or a holder of a business registration certificate three months to wind up such business or trade.

PART IV — Registration of Trade or Business

13. (1) A person who carries on any trade or business in a council area to which Part V does not apply shall register such trade or business with the Authority and shall, within 30 days from the date the trade or business is registered with the Authority, apply to the Director, for licensing or registration of a trade or business in a prescribed manner.

Requirement to register trade or business

(2) A person who operates a business or trade without registration with the Authority under subsection (1) commits an offence and shall be liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding five years, or to both.

(3) A person who fails to apply to the Director for licensing or registration of a trade or business under subsection (1) within 30 days from date of registration with the Authority commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding three years, or to both.

14. (1) The Director may, on application by any person, register a trade or business in the council area, where he or she is satisfied that the applicant is carrying on a trade or business in the council area, issue to an applicant, a business registration certificate, in such form and on conditions as may be prescribed.

Registration of trade or business

(2) A registration certificate shall be valid for an indefinite period, subject to —

- (a) compliance with the conditions upon which it is issued; and
- (b) payment by a holder of a business registration certificate of an annual business registration certificate fee or such other fees, as may be prescribed

Privileges of registration

15. A business registration certificate shall contain the following —

- (a) the name of the person in whose favour registration is made;
- (b) the specific trade or business for which the certificate is issued; and
- (c) the premises where the trade or business is carried on.

PART V — *Applications for Licensing and Registration*

Application for trading licence or business registration certificate

16. An application for a trading licence or a business registration certificate shall be made to the Director —

- (a) in such form as may be prescribed;
- (b) accompanied by such information as the Director may require;
- (c) accompanied by such fee as may be prescribed; and
- (d) stating the council area where the applicant, wishes to carry on a trade or business.

Certain trades and businesses reserved for citizens

17. (1) The Minister may, by Order published in the *Gazette*, declare a trade or business to be a reserved trade or business.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations prescribing that only citizens or companies wholly owned by citizens shall —

- (a) be entitled to carry on a reserved trade or business —
 - (i) in such areas in the country, as may be prescribed, or
 - (ii) from such premises, as may be prescribed; or
- (b) engage in specific types of businesses.

(3) Notwithstanding subsection (2), a joint venture of a medium enterprise or large enterprise between a citizen and a non-citizen may be issued a trading licence or business registration certificate in a reserved trade or business where the citizen has a minimum beneficial ownership of 51 per cent of the joint venture:

Provided that in such cases, as may be approved by the Minister in writing upon the written application of the citizen, that citizen may hold less than 51 per cent in the joint venture.

(4) The Minister shall, by an Order published in the *Gazette* prescribe such annual turn over that a business is required to make in order to be classified as either a medium enterprise or a large enterprise.

Proof of shareholding

18. (1) A licensee or person whose business is registered in accordance with section 17 (3) shall —

- (a) maintain a citizen shareholding in the trade or business of at least 51 per cent; and

(b) when requested to do so by the Director, furnish the Director with proof that shareholding of the trade or business is in accordance with paragraph (a).

(2) The Director shall, subject to the requirements in section 12, revoke a trading licence or business registration certificate if a trade or business is carried on in contravention of this section.

19. A licensee or person whose trading licence or business registration certificate is lost, destroyed or mutilated, may make an application to the Director in such form and on payment of such fee as may be prescribed for a duplicate licence or certificate.

Issue of duplicate licence or business registration certificate

20. (1) A licensee or person whose business is registered in accordance with this Act shall not permit another person to manage or conduct a licensed or registered trade or business unless such person is fully conversant with the business and is capable, when called upon by an authorised officer, to supply all such information about the business as may be required under this Act.

Conversant person to manage trade or business

(2) Without prejudice to the generality of subsection (1), a licensee or person whose business is registered in accordance with this Act shall not allow a person to manage the business premises, if the person —

- (a) has, during the preceding two years from the time the application is made, been convicted of an offence under this Act or of an offence involving dishonesty; or
- (b) in case of a non-citizen, does not have a residence and work permit.

(3) Any person who contravenes the provisions of this section commits an offence and shall be liable to a fine of not exceeding P10 000 or to imprisonment for a term not exceeding three years, or to both.

PART VI — *Supervision and Enforcement*

21. (1) The Director shall supervise and monitor a trade or business licensed or registered under this Act to ensure —

Supervision by Director

- (a) compliance and implementation of the provisions of this Act;
- (b) compliance with the terms and conditions of a trading licence or business registration certificate; and
- (c) implementation of any decision and instruction issued by the Director to any person or licensee.

(2) When exercising his or her supervisory functions under subsection (1), a Director may —

- (a) carry out an investigation on a trade or business licensed or registered in accordance with this Act;
- (b) carry out inspections on any premises where any trade or business is carried on; or
- (c) request for any information from any person, as the Director considers necessary for purposes of this Act.

Authorised officers

22. (1) The Minister shall, by notice published in the *Gazette*, appoint such number of persons, as the Minister considers necessary, to be authorised officers.

(2) An authorised officer may, at any time, enter trading or business premises to —

- (a) conduct routine inspections as may be necessary for purposes of this Act;
- (b) require a person on the premises to furnish any information including documents in his or her possession relating to the activities conducted on the premises and the person by whom they are conducted; or
- (c) confiscate any goods sold in contravention of this Act or the conditions of a trading licence or business registration certificate.

(3) A person who obstructs an authorised officer in the discharge of his or her duties under this Act commits an offence and is liable to a fine of not exceeding P10 000 or to imprisonment for a term not exceeding three years, or to both.

Premises posing danger to health and safety

23. (1) An authorised officer within a council area may conduct a routine inspection on any premises during the hours when such premises are open to the public.

(2) A person who obstructs an inspection under subsection (1) commits an offence and is liable to a fine of not exceeding P10 000 or to imprisonment for a term not exceeding three years, or to both.

Shutdown of trade or business on inspection

24. (1) Where, after an inspection conducted in terms of this Act —

- (a) a trade or business is found not to be licensed or registered in terms of this Act, such trade or business shall be closed forthwith; or
- (b) an authorised officer finds the premises under subsection (1) in a state that poses a danger to public health and safety or where a danger to public health is likely to occur, the authorised officer shall write a report to the Director recommending a rehabilitation of the premises or revocation of a trading licence or business registration certificate.

(2) The provisions of section 28(3) to (5) shall apply to subsection (1).

(3) A person whose business or trade is shutdown under subsection (1) (a), shall be charged with an offence under section 13.

Breach of peace

25. (1) An authorised officer or police officer of the rank of Sergeant or above may, in writing, order premises to be closed for such period as the authorised officer or police officer considers appropriate, where a serious breach of peace has occurred or is likely to occur.

(2) A person who resists or obstructs the execution of an order given under this section commits an offence and shall be liable to a fine of not exceeding P10 000 or to imprisonment for a term not exceeding three years, or to both.

Display of trading licence or business registration certificate

26. (1) Where a trading licence or business registration certificate is issued in respect of any premises, the licensee or holder of the certificate shall exhibit and keep exhibited in a prominent place in the premises, the licence or certificate and a sign board or name plate bearing in legible letters, the name or style under which he or she carries on trade or business.

(2) A licensee or a holder of a business registration certificate who contravenes the provisions of this section commits an offence and shall be liable to a fine of not exceeding P5 000 or to imprisonment for a term not exceeding two years, or to both.

27. (1) The Director may, either on his or her own initiative or upon receipt of any information or a complaint from any person, investigate a licensed or registered trade or business where the Director has reasonable grounds to suspect that such trade or business is carried on in contravention of the provisions of this Act or conditions of its trading licence or business registration certificate.

Investigation
by Director

(2) Where the Director decides to conduct an investigation under subsection (1), the Director shall as soon as practicable, give written notice of the investigation to the licensee or person in whose favour such trade or business is registered and any other person as may be necessary, and the notice shall —

- (a) indicate the subject matter and the purpose of investigation;
- (b) request the licensee, holder of or such persons to submit to the Director any information which may be relevant to the investigation within the time specified in the notice; and
- (c) invite the licensee or such persons to submit to the Director, any representation which the licensee or such persons may wish to make to the Director in connection with the investigation within the time specified in the notice.

(3) Where the Director considers that to give notice under subsection (2) would materially prejudice the exercise of his or her powers, he or she may defer the giving of notice until after the powers have been exercised.

28. (1) The Director may instruct an authorised officer to enter and inspect or search premises in connection with an investigation under sections 21 (2) and 27.

Search of
premises

(2) An authorised officer shall, when entering the premises, produce his or her authorised officer's identity card and state the reason for the visit.

- (3) An authorised officer may, at any time —
- (a) enter the premises where information or documents are kept by the licensee or the holder of a business registration certificate and examine any document or article found in the premises that has a bearing on the investigation;
 - (b) search the premises, or any person on the premises if there are reasonable grounds for believing that the person has possession of any document or article that has a bearing on the investigation;
 - (c) require information to be given on any document by the owner of the premises, person in control of the premises, any person who has control of the document or information or any other person who may have the information;
 - (d) take extracts from or make copies of any document found on the premises that has a bearing on the investigation; and

(e) take possession of such documents or information, where it appears —

- (i) necessary to prevent interference with the investigation, or
- (ii) not reasonably practicable to make copies.

(4) An authorised officer shall not interfere with the premises more than is reasonably necessary to exercise his or her powers under this section.

(5) An authorised officer may be accompanied and assisted by other persons specified in the Director's instruction or authorised by the Director.

Search warrant

29. (1) Subject to subsection (4), an authorised officer may not enter and search any premises unless he or she obtains a warrant, in accordance with subsection (2), authorising such entry and search.

(2) Where a magistrate is satisfied, upon application made on oath or affirmation by the authorised officer, that there are reasonable grounds for the authorised officer to exercise the powers conferred on him or her by this Act, the magistrate may grant a warrant authorising the authorised officer to exercise those powers in relation to any premises specified in the warrant.

(3) Notwithstanding subsection (1), an authorised officer may without a warrant enter any premises, other than a private dwelling, to exercise the powers under subsection (1) if the licensee or the person in control of the premises consents to the entry and search of the premises.

(4) It shall be lawful for —

- (a) a police officer of the rank of Sergeant or above; or
- (b) an authorised officer having a special written authority from a magistrate,

to enter and inspect, without a warrant, any premises where a trade or business declared to have health and safety concerns in accordance with section 6 is carried on.

PART VII — *Establishment of Regional Appeals Board*

Establishment
of Regional
Appeals Board

30. (1) There shall continue to be, for each region, a Regional Appeals Board.

(2) The Minister shall, by notice published in the *Gazette*, appoint members of the Regional Appeals Board for a maximum period of three years on such terms and conditions as may be specified.

(3) A member of the Regional Appeals Board may be re-appointed for a further term not exceeding three years.

(4) A Regional Appeals Board shall consist of the following members —

- (a) a member from the private sector, who shall be Chairperson;
- (b) the Council Secretary or Town Clerk;
- (c) two representatives from the private sector appointed on a regional basis;
- (d) an attorney;

- (e) a representative of the Ministry responsible for land;
 - (f) a representative of the Ministry responsible for trade; and
 - (g) such two Councillors, as the Minister may determine.
- (5) Members of a Regional Appeals Board shall elect from among their number, a Vice Chairperson.
- (6) Five members of a Regional Appeals Board shall form a quorum.

31. A person shall not be appointed or qualify to be a member, if the person —

Disqualification
from
appointment

- (a) has in terms of any law in force in any country —
 - (i) been adjudged or otherwise declared insolvent or bankrupt, and has not been rehabilitated or discharged, or
 - (ii) made an assignment to, or arrangement or composition with, his or her creditors, which has not been rescinded or set aside; or
- (b) has, within a period of five years immediately preceding the date of his or her proposed appointment, been convicted —
 - (i) in Botswana, of a criminal offence, or
 - (ii) outside Botswana, of an offence which, if committed in Botswana, would have been a criminal offence,
 and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon.

32. A member shall vacate office and the member's office shall become vacant —

Vacation of
office

- (a) if the member becomes disqualified, in terms of section 31, to hold office as a member;
- (b) if the member is adjudged bankrupt or insolvent;
- (c) if the member is absent from three consecutive meetings of the Board without reasonable excuse;
- (d) upon such member's death;
- (e) upon expiry of one month's notice, given in writing to the Minister, of the member's intention to resign from office;
- (f) upon the expiry of such time as the Minister may by notice in writing specify, notifying such member of removal from office by the Minister;
- (g) if the member becomes mentally or physically incapable of performing his or her duties efficiently as a member and a medical doctor has issued a certificate to that effect; or
- (h) if the member is convicted of an offence under this Act, or under any other Act for which he or she is sentenced to imprisonment for a term of six months or more without the option of a fine.

Suspension of member

33. The Minister shall, in writing, suspend a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed, and whilst that member is so suspended, he or she shall not carry out any duties or be entitled to any remuneration or allowances as a member of the Board.

Removal from office by Minister

34. (1) The Minister may remove a member from office, if the member —

- (a) has been found to be physically or mentally incapable of performing his or her duties efficiently and a medical doctor has issued a certificate to that effect;
- (b) contravenes the provisions of this Act or otherwise misconducts himself or herself to the detriment of the objectives of this Act; or
- (c) has failed to comply with the provisions of sections 39 and 40.

(2) For purposes of subsection (1), the word “misconduct” includes any act or omission, done by a member without reasonable excuse, which —

- (a) amounts to a failure to effectively perform any duty imposed on him or her as such;
- (b) is prejudicial to the efficient carrying out of the functions of the Board; or
- (c) tends to bring the Board into disrepute.

Filling of vacancies

35. (1) Where the office of a member becomes vacant before the expiry of the member’s term of office due to the member’s death, resignation or removal from office, the Minister may, within four months from the date the vacancy occurs and in accordance with section 31, appoint another person to be a member in place of the member who has vacated office.

(2) Subsection (1) shall not apply where the remaining period in office for the member vacating office is less than six months.

(3) The person appointed under subsection (1) shall hold office for the remainder of the term of office of the member in whose place he or she was appointed and shall be eligible for re-appointment.

Appeals

36. (1) A person who is aggrieved by the Director’s decision —

- (a) not to issue a trading licence or business registration certificate;
 - (b) not to transfer a trading licence or a business registration certificate;
 - (c) to suspend or impose further conditions on a trading licence or business registration certificate; or
 - (d) to revoke a trading licence or business registration certificate,
- may appeal, in writing, to the Regional Appeals Board within 30 days of notification of the decision.

(2) A person aggrieved by a decision of the Regional Appeals Board on any matter may appeal to the Minister, in writing, within 30 days of notification of the decision of the Board.

PART VIII — *Secretariat of Board*

37. The Minister shall designate an office to be the Secretariat of the Board.

Secretariat

38. The Secretariat shall —

Functions of Secretariat

- (a) be responsible for the accurate and complete recording of the proceedings of the Board and the keeping of such records;
- (b) be responsible for arranging the business of the Board and shall carry out such other functions as the Board may direct;
- (c) be the liaison office between a Board, the Ministry, the applicants and the general public;
- (d) receive appeals made under section 36 and submit them to the Regional Appeals Board or the Minister, as the case may be;
- (e) keep a register of trading licences and business registration certificates issued by the Director; and
- (f) when required to do so by the Minister, submit to the Minister data relating to the trading licences and business registration certificates issued under this Act.

39. (1) Where at any meeting of a Regional Appeals Board, a matter is deliberated on in which a member or the member's immediate family member has a direct or indirect interest in a private capacity, the member shall, as soon as practicable, before the matter is deliberated on or immediately upon the commencement of the meeting, disclose such interest to the Minister and shall not, unless the Minister otherwise directs, take part in the deliberation of that matter.

Disclosure of interest

(2) For purposes of this section "immediate family member" means a spouse, son, daughter, sibling or parent.

(3) A disclosure of interest made under subsection (1) shall be made in writing to the Minister.

(4) Where a member fails to disclose his or her interest in accordance with subsection (1) and he or she takes part in making a decision which benefits that member, or his or her immediate family member, that decision shall be null and void.

(5) Any member who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P6 000 or to imprisonment for a term not exceeding two years, or both.

40. (1) A member shall observe and preserve the confidentiality of all matters coming before the Regional Appeals Board and shall not disclose that information, and such confidentiality shall subsist even after the expiry of a member's term of office.

Confidentiality

(2) Any person to whom confidential information is revealed through working with the Regional Appeals Board shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) A person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P6 000 or to imprisonment for a term not exceeding two years, or both."; and

PART IX — *General Provisions*

Minister's
powers

41. The Minister may, after due inquiry and after giving the licensee, a holder of a business registration certificate or any affected person an opportunity of being heard, if the Minister determines that it is in the interest of public health and safety or in the interest of the efficient development of the subject in question to do so, give written directions to the Director —

- (a) to amend, suspend or cancel such licence or business registration certificate subject to such conditions as the Minister may consider appropriate; or
- (b) on matters of policy, as may be necessary to resolve the matter.

Trade or
business
restrictions

42. Nothing in this Act shall entitle a licensee or person whose trade or business is registered under this Act to carry on a trade or business for which a separate trading licence or business registration certificate is required.

Offences and
penalties

43. (1) Any person who —

- (a) gives a false statement in order to obtain a licence or a business registration certificate under this Act;
- (b) forges any document under this Act;
- (c) alters a licence or a business registration certificate issued under this Act; or
- (d) participates in fronting for a licence or business registration certificate under this Act,

commits an offence and shall be liable to a fine not exceeding P50 000, or to imprisonment for a term not exceeding five years, or to both.

(2) Any person who contravenes the provisions of this Act or any notice or information issued by the Director in terms of this Act for which a penalty is not provided for, commits an offence and is liable to a fine not exceeding P50 000, or to imprisonment for a term not exceeding five years, or to both.

(3) The Director may impose an administrative penalty of an amount not exceeding that specified in subsection (1) where a person contravenes any of the provisions of any regulations, instructions, requirements, notices or information made under this Act.

(4) Subject to subsection (5), where a manager, agent or servant of a licensee or the holder of a business registration certificate does or omits to do anything which if done or omitted to be done by the licensee or the holder of a business registration certificate would be in contravention of any provision of this Act, the licensee or the holder of a business registration certificate shall be deemed to have contravened such provision and shall be liable to the penalties thereof.

(5) Subsection (4) shall not apply where —

- (a) the act or omission was done without the licensee's knowledge, consent or connivance; and
- (b) all reasonable steps were taken by the licensee to prevent the act or omission.

(6) Where the licensee issued instructions forbidding an act or omission, such action shall not of itself be sufficient proof of compliance with subsection (5) (b).

44. (1) The Minister may make regulations prescribing anything under this Act which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act or to give force and effect to its provisions.

Regulations

(2) Without prejudice to the generality of subsection (1), regulations may provide for —

- (a) forms to be used and fees to be paid for any application made under this Act;
- (b) administrative penalties;
- (c) trades, businesses, business areas, premises and investment limits reserved for citizens;
- (d) facilities to be maintained on premises;
- (e) procedures for winding up of a business licensed or registered under this Act; or
- (f) designations of authorised officers and the procedures to be followed by authorised persons;

45. (1) The Trade Act (hereinafter referred to as “the repealed Act”) is hereby repealed.

Repeal and
savings
Cap. 43:02

(2) Notwithstanding the repeal under subsection (1) —

- (a) any subsidiary legislation made under or in accordance with the provisions of the repealed Act and in force immediately prior to the coming into operation of this Act shall, in so far as it is not inconsistent with the provisions of this Act, continue to have force and effect as if it was made under this Act;
- (b) any licence issued under the provisions of the repealed Act and in force immediately prior to the coming into operation of this Act shall, in so far as it is not inconsistent with the provisions of this Act, continue to have force and effect as though it were done under or in pursuance of the provisions of this Act;
- (c) any decisions and any other actions lawfully taken by the Licensing committee prior to commencement of this Act, in so far as they are not inconsistent with the provisions of this Act, are deemed to be decisions made and actions taken under this Act;
- (d) a member of the Regional Appeals Board appointed under the repealed Act shall continue to be a member of the Regional Appeals Board for such period as was specified in the instrument of appointment; and
- (e) any application lodged under the repealed Act shall, in so far as it is not inconsistent with this Act, be concluded under this Act as it was lodged under this Act.

Transitional
provisions

46. The Minister may, by order published in the *Gazette*, make such transitional arrangements as shall be necessary for the coming into operation of this Act.

PASSED by the National Assembly this 8th day of August, 2019.

BARBARA N. DITHAPO,
Clerk of the National Assembly.