

CHAPTER 43:02
TRADE
ARRANGEMENT OF SECTIONS

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Act 5, 2004,
S.I. 21, 2008.

An Act to simplify trade licensing procedures; to empower a licensing committee in a council to issue trade licences within the council area; to provide for comprehensive regulation of trade and formatters incidental thereto.

[Date of Commencement: 1st April, 2008]

PART I

Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Trade Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"auctioneer" means a person selling goods by public auction;

"authorised officer" means a person so designated under section 23;

"bookshop" means a shop selling stationery, books and other reading materials;

"boutique" means a small shop selling fashionable clothes, shoes and accessories;

"bulk" means quantities of goods as packaged by the manufacturer and not broken up into smaller quantities or single units, save that in the case of high value items such as fridges, furniture and bicycles, a wholesaler may sell an item in smaller quantities or single units;

"car wash" means a business which washes automobiles for a fee;

"council" means a city or town council established under the Townships Act or a district council established under the Local Government (District Councils) Act;

"cleaning services" means a business which renders the service of general cleaning of premises such as shops, offices and residential places including household goods such as carpets, sofas and curtains for a fee;

"curio shop" means a business selling handicrafts, antiques and ornaments;

"departmental store" means a store, being not less than 2 500 square metres in size, which sells different categories of goods in different departments under one roof;

"distributor" means a person who carries on the business of negotiating contracts between parties for any product for which he is an agent for reward;

"dry-clean" means a business of washing with chemicals, drying and ironing of clothes and textile materials;

"fresh produce" means a business that primarily sells dairy products, fruits and vegetables, meat and meat products;

"fronting" means obtaining a licence to enable another person, who would otherwise not qualify to obtain such a licence, to run a business;

"funeral parlour" means an establishment which is engaged in the business of funeral undertaking;

"furniture shop" means a shop selling movable household furnishings;

"general clothing" means a shop, not being a boutique, which sells clothes, shoes and other accessories;

"general dealer" means a store selling a wide range of groceries and general merchandise;

"hairstylist" means a person who cuts and arranges people's hair;

"hardware" means a shop selling building materials and general tools;

"hire service" means a business which hires equipment for a fee;

"laundromat" means a business of washing and drying of clothes;

"licensee" means a person to whom a licence has been issued under this Act;

"licensing committee" means a committee of a council established under section 4, which committee issues licences under section 11;

"miscellaneous trade or business" means a trade or business dealing in goods that cannot be categorised under any other licence in this Act being a licence which is issued subject to the approval of the Minister;

"motor dealer" means a business of selling motor vehicles and motor spare parts;

"petrol filling station" means a place where branded petrol or diesel and paraffin are sold from a calibrated pump;

"register" means a register kept in accordance with section 11(b);

"region" means an area made up of districts in the same geographical area;

"**restaurant**" means a business that prepares meals and sells meals, refreshments and beverages for consumption on the premises;

"**sell**" means to sell by retail or wholesale and includes to barter, exchange, offer or expose for sale;

"**supermarket/chain store**" means a self service store of at least 1 000 square metres, that sells a wide range of food items, household goods and wines but not beers and spirits;

"**takeaway**" means a business that primarily prepares and sells meals from fixed premises for consumption elsewhere;

"**trade**" means to carry on the business of selling goods or services;

"**wholesale**" means a store of at least 1 500 square metres selling goods in bulk per product or line item; and

"**workshop**" means a business that maintains and repairs motor vehicles and other equipment.

PART II

Application for a Licence to Trade or do Business (ss 3-25)

3. Trade or business required to be licensed

(1) No person shall carry on any trade or business for which a licence is required under this Act, unless the person holds a licence authorising him to carry on such trade or business.

(2) Subsection (1) shall not apply to a person who has been issued a hawkers' registration certificate or a street vendor's certificate under any enactment authorising the person to carry on trade or business as a hawker or street vendor.

(3) A person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding P10,000 or to imprisonment for a term not exceeding three years, or to both.

4. Establishment of licensing committees

(1) There is hereby established a licensing committee for each council, the members of which committee shall be appointed by the Minister.

(2) Every committee shall consist of the following members—

- (a) a senior officer of the council who shall not be below the rank of C1;
- (b) a Commercial Officer from the council;
- (c) a member of the private sector, who shall be Chairman; and
- (d) a Councillor.

(3) A member of a committee shall hold office for such period as may be specified in the notice appointing him, which period shall not exceed three years.

(4) A member of a committee may be re-appointed for a further term of office not exceeding three years.

(5) Three quarters of the members of a committee shall form a quorum.

5. Disqualification for appointment as committee member

No person shall be appointed as a member of a committee, nor shall any person be qualified to hold office as a member of a committee, who—

- (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,
 - (ii) made an assignment to, or arrangement or composition with, his creditors, which has not been rescinded or set aside; or
- (b) has, within a period of five years immediately preceding the date of his 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

has not received a free pardon.

6. Vacation of office of member of committee

A committee member shall vacate his office and his office shall become vacant—

- (a) if he becomes disqualified in terms of section 5 to hold office as a committee member;
- (b) if he is adjudged bankrupt or insolvent;
- (c) if he is absent from three consecutive meetings of the committee without reasonable excuse;
- (d) upon his death;
- (e) upon the expiry of one month's notice, given in writing to the Minister, of his intention to resign his office;
- (f) upon the expiry of such time as the Minister may specify in writing, notifying him of his removal from office by the Minister;
- (g) if he becomes mentally or physically incapable of performing his duties as a member of a committee; or
- (h) if he is convicted of an offence under this Act, or under any other Act for which he is sentenced to imprisonment for a term of six months or more without the option of a fine.

7. Removal and suspension from office by Minister

(1) The Minister may, if he is satisfied that a committee member has acted improperly as such member, or is mentally or physically incapable of performing his duties efficiently, require that member, in writing, to vacate his office within such time as he may specify.

(2) The Minister shall, in writing, suspend from office, a committee 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 shall not carry out any duties or be entitled to any remuneration or allowances as a member of the committee.

8. Filling of vacancies of committees

On the death of, or the vacating of office by, a committee member, the Minister shall appoint a person to take the place of the member who died or vacated his office until the expiry of the period during which such member would have otherwise continued in office.

9. Disclosure of interest

(1) Where a member is present at a meeting at which is being discussed a matter in which the member has direct or indirect interest in a private capacity, the member shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching such matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Where a member fails to disclose his interest in accordance with subsection (1) and a decision by a committee is made benefiting such member, such decision shall be null and void.

(4) A member who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding P6,000 or to imprisonment for a term not exceeding two years, or to both.

10. Application for a licence

(1) A person shall make an application for a licence in such form as may be prescribed and shall submit the application to a licensing committee of the council in the council area he wishes to trade from.

(2) A licensing committee shall forward, to the Minister, an application made under this section where the application is for a miscellaneous trade or business.

11. Licences to be issued under the Act

A licensing committee shall—

- (a) licence, in accordance with the provisions of this Act, the following trades or businesses—
- (i) auctioneer,
 - (ii) bookshop,
 - (iii) boutique,
 - (iv) car wash,
 - (v) cleaning services,
 - (vi) curio shop,
 - (vii) department store,
 - (viii) distributor,
 - (ix) dry-clean,
 - (x) fresh produce,
 - (xi) funeral parlour,
 - (xii) furniture shop,
 - (xiii) general clothing,
 - (xiv) general dealer,
 - (xv) hairdresser,
 - (xvi) hardware,
 - (xvii) hire service,
 - (xviii) laundromat,
 - (xix) motor dealer,
 - (xx) petrol filling station,
 - (xxi) restaurant,
 - (xxii) supermarket/chain store,
 - (xxiii) takeaway,
 - (xxiv) wholesale,
 - (xxv) workshop, or
 - (xxvi) miscellaneous trade or business;
- (b) keep a register in such form as may be prescribed, of all the licences it has issued; and
- (c) perform such other functions as may be assigned to it by the Minister under this Act.

(2) A licensing committee shall not issue a licence under paragraph (xxvi) unless the issue of the licence has been approved by the Minister.

12. General principles affecting issue of licences

A licensing committee shall not issue a licence where it is satisfied that—

- (a) the applicant is below 18 years of age;
- (b) the issue of such licence would conflict with any approved or proposed town planning scheme or zoning area, or any health or other regulations;
- (c) the applicant is an unrehabilitated insolvent;
- (d) the applicant has surrendered his estate for the benefit of his 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 15 for the issue of a particular licence; or
- (g) the applicant is a non citizen and has failed to produce—
 - (i) proof of registration of his business or company where the applicant is not an individual;
 - (ii) a valid identification document;
 - (iii) a valid work permit; or
 - (iv) a valid residence permit.

13. Issue and duration of licence

(1) The licensing committee shall, where it is satisfied that an application meets the

requirements for the issue of a licence, issue to the applicant a licence containing such conditions as it may consider necessary.

(2) A licence issued under this Act shall, unless previously renewed or revoked, expire at the end of a period of 12 months of the date of issue.

14. Renewal of licence

(1) An application for the renewal of a licence that has not been revoked shall be made to a licensing committee by a licensee in such form as may be prescribed.

(2) The licensee shall, when applying for the renewal of a licence under subsection (1)—

- (a) pay any outstanding fines;
- (b) pay such fee as may be prescribed; and
- (c) comply with such other conditions as the Minister may, by regulation, determine.

(3) Where an application for renewal is made after a period not exceeding 12 months after the expiry of a licence, a licensing committee may renew the licence subject to the payment of such penalty as may be prescribed.

(4) A penalty payable in accordance with subsection (3) shall be a sum equal to a quarter of the renewal fee multiplied by the number of months which have elapsed since the date on which the validity of the licence expired, calculated to the nearest Pula.

(5) An application for the renewal of a licence that had expired 12 months or more prior to the application shall be treated as an application for a new licence and the provisions of section 12 shall apply.

15. Certain trades and businesses to be reserved for citizens

(1) The Minister may make regulations declaring any trade or business to be a reserved trade or business and a licence for such reserved trade or business shall be issued only to citizens of Botswana or companies wholly owned by citizens of Botswana.

(2) Regulations made in accordance with subsection (1) may further provide that only citizens of Botswana shall—

- (a) be entitled to carry on trade or transact 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) A joint venture of a medium business enterprise between a citizen and a non citizen may be granted a licence 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 partner, that citizen partner may hold less than 51 per cent in the joint venture.

(4) A reserved trade or business such as a bakery or take away shall be run in a non citizen owned supermarket or chain store only where the person who owns that reserved trade or business is a citizen who is licensed to run such trade or business.

(5) For the purposes of this section, "medium business enterprise" means a business which employs less than 100 people and has an annual sales turnover of between P1,500,000 and P5,000,000.

16. Proof of shareholding

A trade or business licensed under section 15 (3) shall—

- (a) maintain shareholding in the trade or business of at least 51 per cent citizen; and
- (b) on renewal of the licence under section 14, furnish the licensing committee with proof that its shareholding is in accordance with paragraph (a).

17. Transfer of licence

(1) A person may, on application in such form as may be prescribed, apply to a licensing committee for a licence to be transferred to another person.

(2) Without prejudice to the generality of subsection (1), a licensing committee may

transfer a licence where—

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

(3) For purposes of this section "transferring a licence" means reissuing a licence for a trade or business to a person other than the person who holds or has held the licence in respect of the trade or business.

18. Issue of a duplicate licence

A licensee whose licence is lost, destroyed or mutilated, may make an application in such form and on payment of such fee as may be prescribed, to a licensing committee for a duplicate licence.

19. Suspension of licence

(1) A licensing committee may suspend a licence where an inspection report made in accordance with section 24 has recommended suspension.

(2) A suspension under this section shall be for such period as the licensing committee may determine to enable the licensee to take remedial action so as to comply with such requirements of his licence and the provisions of this Act, the non compliance of which form the basis of the suspension of his licence.

20. Revocation of licence

(1) A licensing committee may revoke a licence where—

- (a) the licence was issued with conditions and the licensee has failed to satisfy those conditions;
- (b) the licensee has failed to comply with section 16;
- (c) a report made in accordance with section 24(2) has recommended revocation; or
- (d) the licensee has been convicted of an offence under this Act.

(2) A licensing committee may revoke a licence where a licensee has failed to take remedial action referred to under section 19(2) at the expiration of the time given thereunder.

(3) A licensee shall be given three months to windup a business where his licence has been revoked under subsection (1).

21. Regional Appeals Board

(1) There is hereby established, for each region, a Regional Appeals Board.

(2) The Minister shall, by notice published in the *Gazette*, appoint members of the Regional Appeals Board.

(3) Aboard established in accordance with subsection (1) shall consist of the following members—

- (a) a member from the private sector who shall be Chairman;
- (b) the Council Secretary or Town Clerk;
- (c) two representatives from the private sector appointed on a regional basis;
- (d) a member of the Botswana Police Service of the rank of Sergeant or above;
- (e) a representative of the Ministry of Lands and Housing;
- (f) a representative of the Ministry of Trade and Industry; and
- (g) such three Councillors as the Minister may determine.

(4) The members shall elect from among their number, the Vice Chairman.

(5) The provisions of this Act in respect of licensing committees relating to tenure of office, disqualification for appointment as a committee member, vacation of office of member of a committee, removal and suspension from office by Minister, filling of vacancies of committees,

and disclosure of interest shall apply mutatis mutandis to the Regional Appeals Board.

(6) A person aggrieved by a licensing committee's decision—

- (a) not to issue or renew a licence;
- (b) not to transfer a licence;
- (c) to suspend a licence; or
- (d) to revoke a licence,

may appeal in writing, to the Regional Appeals Board within 30 days of notification of the decision.

(7) 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.

22. Conversant person to manage in absence of licensee

(1) A licensee shall not permit another person to manage or conduct the licensed business unless such person is fully conversant with the business and shall where called upon by an authorised officer in accordance with section 23(2)(b), supply all such information about the business as may be required under this Act.

(2) Without prejudice to the generality of subsection (1), a licensee shall not allow a person who—

- (a) is below the age of 18 years;
- (b) 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
- (c) does not have a Botswana residence and work permit, to manage the licensed premises.

(3) A licensee who contravenes a provision of subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding P2,000 or to imprisonment for a term not exceeding three months, or to both.

23. Authorised officers

(1) The Minister shall, by notice published in the *Gazette*, appoint such number of persons as appear to him to be necessary, as authorised officers, which authorised officers shall perform the duties set out in subsection (2).

(2) An authorised officer may enter at all times, trading business premises and may—

- (a) inspect the premises;
- (b) require a person on the premises to furnish any information including documents in his possession as to the activities conducted on the premises and the person by whom they are conducted; or
- (c) confiscate goods where the goods are being sold in contravention of the Act or conditions of a licence.

(3) Each authorised officer shall be issued with an identity card, in such form as may be prescribed, and shall have such identity card in his possession when performing any function under this Act.

(4) A person who obstructs an authorised officer in the discharge of his duties under this section shall be guilty of an offence and liable to a fine not exceeding P4,000 or to imprisonment for a term not exceeding three months, or to both.

24. Environmental health officers may inspect premises

(1) Environmental health officers within a council area of a licensed premises may inspect the premises during the hours when such premises are open to the public.

(2) Where an environmental health officer finds the premises in a state that poses a danger to public health or where a danger to public health is likely to occur, he shall write a report to the licensing committee recommending revocation in accordance with section 20.

(3) The council may commence action to rehabilitate premises under subsection (2) and the cost of such rehabilitation shall be recovered as a civil debt from the licensee.

(4) A person who obstructs an inspection under subsection (1) shall be guilty of an

offence and liable to a fine not exceeding P4,000 or imprisonment for a term not exceeding one year, or to both.

25. Breach of peace

(1) An authorised officer or member of the Botswana Police Service of the rank of Sergeant or above may order, in writing, licensed premises to be closed for such period as he considers appropriate, where 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 shall be guilty of an offence and liable to a fine not exceeding P4,000 or to imprisonment for a term not exceeding one year, or to both

PART III
General (ss 26-32)

26. Display of licence

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

(2) A licensee who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding P500 or to imprisonment for a term not exceeding three months, or to both.

27. Exemption from Act

The Minister may, by regulation, exempt any person from any provision of this Act if in the opinion of the Minister it is desirable in the interest of the public that such exemption be granted.

28. Restriction of licensee by other laws

Nothing in this Act shall entitle a licensee to sell a thing for which a separate licence is required by another law.

29. Transitional provisions

The Minister may make regulations providing for such transitional arrangements as shall be necessary for the licensing of trade under this Act.

30. Offences and penalties

(1) A person who—

- (a) wilfully makes a false statement in any form, book or other document required to be kept under this Act;
- (b) forges a licence;
- (c) alters or erases any part of a licence or any entry lawfully made thereunder;
- (d) produces or uses a licence which is forged or which to his knowledge has been unlawfully altered;
- (e) produces or uses a licence in the name of some other person or of a fictitious person;
- (f) forges any document for the purposes of obtaining a licence;
- (g) fronts for another person; or
- (h) runs a business under a licence obtained under paragraph (g),

shall be guilty of an offence and liable to a fine not exceeding P1,000 for a first offence and to a fine not exceeding P10,000 and imprisonment for a term not exceeding five years or to both for a second or subsequent offence.

(2) Subject to subsection (3), where a manager, agent or servant of a licensee does or omits to do anything which if done or omitted to be done by the licensee would be in contravention of any provision of this Act, the licensee shall be deemed to have contravened such provision and shall be liable to the penalties thereof.

(3) Subsection (2) 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.

(4) Where the licensee issued instructions forbidding an act or omission, such action

shall not of itself be sufficient proof of compliance with subsection (3)(b).

31. Regulations

(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.

(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 to be made under this Act;
- (b) trades, businesses, business areas, business premises and investment limits reserved for citizens;
- (c) hours of operation of trades or businesses licensed under this Act;
- (d) facilities to be maintained on licensed premises;
- (e) procedures for winding up of a business licensed under this Act;
- (f) designation of persons to be authorised officers and the procedures to be followed by authorised persons;
- (g) the names and number of regions which it is necessary for the purposes of this Act to create; or
- (h) exemption of certain people from the Act.

32. Repeal and savings

(1) The Trade and Liquor Act is hereby repealed.

(2) Any subsidiary legislation made under and in accordance with the provisions of the Trade and Liquor Act shall continue to be of force and effect as if made under the provisions of this Act, to the extent that it is not inconsistent with such provisions, until revoked or amended by or under this Act.

(3) Any licence, permit or authorisation issued or granted under the provisions of the Trade and Liquor Act shall remain valid until its expiry date whereupon the licensee shall apply under this Act for a new licence.