

LICENCES ACT, 2010

(Act 23 of 2010)

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LICENCES ACT, 2010

(Act 23 of 2010)

I assent

A handwritten signature in black ink, appearing to read "Michel".

J. A. Michel
President



25th September, 2010

AN ACT to repeal and replace the Licences Act, 1986 and to provide for connected matters.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. This Act may be cited as the Licences Act, 2010.

Short title

Interpretation

2.(1) In this Act —

“Appeals Board” means the board appointed under section 19;

“Authority” means the Licensing Authority established by section 3(1);

“Board” means the Board of the Authority provided for in section 4;

“Chairperson” means the Chairperson of the Board appointed under section 4(2);

“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed under section 5(1);

“licence” means the permission that a person shall obtain before engaging in a licensable business activity.

“licensable business activity” means a business activity listed in the Schedule;

“Member” means a member of the Board and includes the Chairperson;

“Minister” means the Minister responsible for Finance.

PART II - SEYCHELLES LICENSING AUTHORITY

Establishment
of the
Authority

3.(1) There is established for the purposes of this Act the Seychelles Licensing Authority.

(2) The Authority shall be a body corporate.

The Board

4.(1) The Authority shall be administered by a Board which shall consist of not less than five members appointed by

the President by notice published in the Official Gazette for such term and on such conditions as the President may determine.

(2) The President shall appoint one of the members to be the Chairperson of the Board.

5.(1) There shall be a Chief Executive Officer of the Authority appointed by the President for such term and on such conditions as the President may determine.

CEO of the
Authority

(2) The Chief Executive Officer has, in addition to such other functions which the Board may from time to time assign to the Chief Executive Officer and, subject to the direction of the Board, the supervision over and direction of the affairs of the Authority.

(4) Subject to any direction of the Board and, unless prevented by reasons which appear to be reasonable to the Board, the Chief Executive Officer shall attend and participate in the meetings of the Board but shall have no right to vote at the meetings.

6.(1) The President may appoint a Deputy Chief Executive Officer for such term and on such conditions as the President may determine.

Deputy Chief
Executive Officer

(2) The Deputy Chief Executive Officer shall —

- (a) discharge the functions of the Chief Executive Officer when the Chief Executive Officer is absent on leave or delegates them to the Deputy Chief Executive Officer; and
- (b) perform such other functions as may be assigned to the Chief Executive Officer by the Board.

7. The Authority may, on such terms and conditions as

Staff of the
Authority

may be determined by the Board, employ such persons as are necessary for the Board to perform its functions.

Guiding
principles

8. The Authority shall be guided by the following principles in performing its functions —

- (a) The regulation of licensable activities shall aim to set minimum standards relating to such activities and to ensure —
 - (i) public safety and hygiene;
 - (ii) national security; and
 - (iii) environmental protection;
- (b) Licence fees will cover the administrative costs relating to issuing licences;
- (c) Applications for licences shall be dealt with within 14 days after they are received;
- (d) Licences shall be issued on the basis of clearly defined and transparent criteria;
- (e) An application shall only be disallowed for sufficient reason and the applicant shall be entitled to appeal against the decision.

Functions
of the
Authority

9.(1) Where a licence is required under this Act, the Authority may —

- (a) grant a licence or renew a licence;
- (b) attach or vary conditions of a licence;
- (c) subject to subsection (3), suspend a licence; or
- (d) in accordance with subsection (7), revoke a licence.

(2) Where the Authority deems it fit to consult any other

public authority before exercising its powers under subsection (1), the Authority shall consult such authority.

(3) Notwithstanding subsection (1)(c) —

- (a) where any activity, business, trade, profession, premises, animals, goods, vehicles or vessels in respect of which a licence is granted by the Authority is under the control, superintendence or management of another public authority, the Authority may for a breach of any conditions of the licence or for any other reasonable cause suspend the licence for a period not exceeding 60 days where, after giving the holder of the licence an opportunity to show cause, the other public authority is of the opinion that such action is necessary in the interests of such activity, business, trade, profession, premises, animals, goods, vehicle or vessels, and informs the Authority of such opinion;
- (b) where pursuant to a conviction of any person by a court for any offence, the court is empowered by any Act to suspend, cancel or revoke a licence issued by the Authority, the court may temporarily suspend the licence for a period of 21 days and shall inform the Authority of such action.

(4) Where a person complains to the Authority against a licensee the Authority may, where it does not consider the complaint frivolous or vexatious, —

- (a) inquire into the complaint; and
- (b) subject to this Act, take such measures against the licensee as the Authority considers appropriate.

(5) The Authority shall ensure that a licensee complies with the conditions of the licence.

(6) The Authority shall keep a record of all the licences it has granted.

(7) Where the Authority is satisfied upon such enquiry as it may consider necessary, that the holder of a licence—

- (a) has furnished false, misleading or inaccurate information or has concealed or failed to disclose a material fact in the application; or
- (b) has contravened any written law or any condition of the licence,

the Authority may revoke the licence:

Provided that the decision to revoke the licence shall not take effect within 15 days from the date of the decision, or if an appeal is lodged under section 17, pending the determination of the appeal.

(8) The Authority shall, before it decides under subsection (1) to suspend, revoke or refuse to grant a renewal of a licence, give the holder of the licence an opportunity of showing cause against such action.

Powers of the
Authority

10.(1) In the exercise of its functions under this Act, the Authority may —

- (a) require any person to furnish any information on any matter relating to a licence;
- (b) summon a person to appear before the Authority to answer questions and to produce such documents as the Authority may specify in the summons;

- (c) administer an oath to a person appearing before it or allow that person to make an affirmation or declaration;
- (d) nominate, appoint or authorise any person or any other public authority to enquire and report on any matter relating to —
 - (i) an application for a licence;
 - (ii) the alleged breach of a condition of a licence;
 - (iii) the renewal, revocation or suspension of a licence; or
 - (iv) a complaint against a licensee;
- (e) where the Authority has reasonable grounds to believe that any activity, business, trade or profession is being engaged in or carried on or any animals, goods, vehicles or vessels are kept, used or possessed or any premises are kept or managed in breach of this Act, and has given the holder of the licence an opportunity to show cause, order —
 - (i) the closure of the premises in which such activity, business, trade or profession is engaged in or carried on or which are kept or managed;
 - (ii) the seizure of any material, equipment, animals, goods, vehicles or vessels used in connection with the breach;
- (f) call for and obtain the assistance of any police officer, public officer or other person, and use such force as may be necessary, in carrying out any order under paragraph (e).

(2) Where in the exercise of the powers of the Authority under subsection (1) (e), any premises have been closed or any material, equipment, animal, goods, vehicle or vessel has been seized and no prosecution in relation to the premises, material, equipment, animal, goods, vehicle or vessel has been instituted within 60 days after the closure or seizure —

- (a) the premises shall be released from closure;
- (b) subject to subsection (3), the material, equipment, animal, goods, vehicle or vessel shall be released to the person from whom they were seized.

(3) Where any goods seized under subsection (2) are of a perishable nature or where the custody of goods or animals seized under that subsection would involve unreasonable expense and inconvenience, the goods or animals may be disposed of in such manner as the Authority thinks fit and —

- (a) where no prosecution has been instituted in relation to the goods or animals within 60 days after the seizure, the Authority shall pay to the person who claims those goods or animals their market value;
- (b) where a prosecution has been instituted in relation to the goods or animals within the period of 60 days after the seizure, the Authority shall comply with the order of the court in which the prosecution has been instituted in respect of the goods or animals.

(4) Where in the exercise of its powers under subsection (1) (e) (i) the Authority orders the closure of any premises, the Authority shall affix upon a conspicuous part of the premises a copy of the closure order.

(5) Upon being so affixed such notice shall be deemed to be notice to all persons that the premises are the subject of a closure order.

(6) Save with the permission of the Authority, no person shall enter, open or allow to be kept open any premises at any time while a closure order is in force in respect of those premises.

11.(1) Subject to subsection (2), the Minister may give the Authority directions of a general character in writing as to the exercise of its functions and powers in relation to matters concerning the public interest and the Authority shall comply with those directions.

Powers of the
Minister

(2) In the exercise of the Minister's powers under subsection (1), the Minister shall not give a direction to the Authority with respect to a particular application, licence or case.

12.(1) The Board shall meet at such time and at such place as the Chairperson may determine.

Meetings of the
Board

(2) The Chairperson or, in the absence of the Chairperson, any member elected by the members present, shall preside at any meeting of the Board.

(3) Half, or where the Board comprises an odd number of members, half of the members plus one shall constitute a quorum for a meeting of the Board.

(4) Questions arising at a meeting of the Board shall be decided by a majority of the votes of the members present and, in the event of an equality of votes, the Chairperson or the member presiding shall have a second or casting vote.

(5) Subject to this section, the Board shall regulate its own proceedings.

Disclosure of
interest by
members

13. A member or the Chief Executive Officer attending a meeting of the Board, who has a direct or indirect interest in any matter which falls to be decided by the Board —

- (a) shall disclose the nature of such interest at a meeting of the Board; and
- (b) shall not take part in any deliberation or decision in respect of that matter.

Delegation of
powers

14.(1) The Board may, subject to such conditions and restrictions as it may impose, delegate to the Chief Executive Officer such of its powers as are necessary to enable the Chief Executive Officer to transact effectively the day-to-day affairs of the Authority.

(2) The Chief Executive Officer may, subject to the approval of the Board, delegate to an officer of the Board, any of the Chief Executive Officer's functions.

Funds of the
Authority

15.(1) The funds of the Authority shall consist of money appropriated by an Appropriation Act and paid to the Authority.

(2) The Authority shall apply its funds for the purpose of meeting expenditures incurred by the Authority in the performance of its functions, the payment of emoluments to the members, officers and staff and meeting such other expenses as may be authorised by the Board.

Accounts and
audit

16.(1) The Authority shall keep proper accounts of the Authority and records in relation to the accounts and shall prepare, in respect of each financial year of the Authority, a statement of accounts in such form as the Auditor-General may direct.

(2) The accounts and statement of accounts of the Authority shall be audited by the Auditor-General.

(3) As soon as the accounts and statement of accounts of the Authority in respect of any financial year have been audited, the Authority shall furnish to the Minister a copy of the statement together with a copy of any report made by the Auditor-General on that statement or on the accounts of the Authority.

(4) The Authority shall prepare in respect of each financial year of the Authority a report of its activities and submit a copy of the report to the Minister and the Minister shall cause the report to be presented to the National Assembly.

(5) The financial year of the Authority shall be the year ending on 31st December.

17. A person aggrieved by any decision of the Authority may submit a notice of appeal in writing to the Appeals Board. Appeals

18.(1) There shall be an Appeals Board to hear and determine appeals against the decisions of the Authority. Appeals Board

(2) The Appeals Board shall consist of the following members appointed by the President—

- (a) a chairperson;
- (b) a representative of the Attorney General;
- (c) a representative of the Fair Trading Commission;
- (d) a representative of a non-governmental organisation that represents the interests of the private sector.

(3) A person appointed as a member of the Appeals Board shall have experience in legal, administrative, economic or financial matters.

(4) A member of the Appeals Board shall be appointed on such terms and conditions as the President may determine.

(5) The Chairperson and other members of the Appeals Board shall hold office for three years and shall be eligible for reappointment.

(6) The President shall at any time terminate the appointment of a member who has been found guilty of—

- (a) any misconduct, default or breach of trust in the discharge of that member's duties; or
- (b) an offence of such nature as renders it desirable that the member's appointment be terminated.

(7) The Appeals Board may regulate its own proceedings.

Decision on
appeal

19. The Appeal Board may, where it entertains a notice of appeal, decide the appeal by—

- (a) confirming the decision of the Authority;
- (b) varying the decision;
- (c) quashing the decision;
- (d) ordering the Authority to reconsider the Authority's decision as directed by the Appeals Board.

PART III - LICENCES

Licences

20.(1) Notwithstanding anything in any other Act, no person shall—

- (a) engage in or carry on any activity, profession, trade or business specified in the Schedule;

- (b) keep or manage any premises specified in the Schedule,

except under and in accordance with a licence granted by the Authority.

(2) Regulations may provide for all matters in respect of a licence under subsection (1) including the levy of a fee or other charge in respect of the licence.

(3) The regulations presently governing the activities professions, trades and businesses referred to in Part II of the Schedule shall continue to apply until they are amended or replaced by regulations made under this Act.

(4) Where, for any purpose specified in another Act, a licence is required under that other Act, it may be provided by or under that Act that this Act shall apply to such licence and, notwithstanding anything to the contrary in that other Act, the Authority may exercise its functions and powers in respect of such licence as if it were a licence required under this Act.

21.(1) An application for a licence shall be made to the Authority and shall contain such particulars as may be prescribed.

Application
for a licence

(2) The Authority may, in writing, direct—

- (a) a person who is required by this Act to hold a licence to apply for a licence not later than a date specified in the direction;
- (b) an applicant for a licence to furnish such particulars as the Authority may consider necessary,

and such person or applicant, as the case may be, shall comply with the direction.

Payment of
licence fee

22.(1) Where a licence under this Act is granted —

- (a) for a period of one year, the licence fee for that year shall, subject to paragraph (c), be paid before the grant of the licence;
- (b) for a period in excess of one year —
 - (i) the licence fee for the whole period may be paid before the grant of the licence;
 - (ii) the licence fee for the first year of the period shall, subject to paragraph (c), be paid before the grant of the licence; and
 - (iii) the licence fee for each year subsequent to the first year shall, subject to paragraph (c), be paid on or before the beginning of each subsequent year;
- (c) the Authority may permit the holder of the licence to pay the licence fee in such instalments as may be determined by the Authority.

(2) Where the holder of a licence fails to pay the licence fee or any instalment thereof in accordance with subsection (1), the licence shall cease to be valid on the date the fee or the instalment of the fee is due, without prejudice to the right of the Authority to recover the fee or instalment due on the date the licence ceased to be valid.

Powers of
entry etc

23.(1) The Authority may authorise an officer of the Authority to exercise any of the powers pursuant to subsection (2).

(2) An officer so authorised may, where the officer has reason to believe that an offence under this Act has been, or is being, committed —

- (a) enter and search any premises, vehicle or vessel;
- (b) call for and examine any licence, book or other document;
- (c) take copies of or extracts from any book or document or any entry of the book or document.

(3) An officer shall, if so requested, produce the officer's Authority to exercise powers under this section.

24.(1) Any person who without lawful Authority or reasonable excuse communicates to another person information which the person has acquired while acting as a member, officer, employee or agent of the Authority is guilty of an offence.

Offences

(2) Any person who without lawful Authority or reasonable excuse —

- (a) wilfully fails to furnish any information when required by the Authority to do so;
- (b) wilfully fails to comply with a summons issued or an order made by the Authority;
- (c) wilfully fails to answer a question put to the person by a member in the course of proceedings of the Authority held under this Act;
- (d) knowingly gives false evidence before the Authority;
- (e) wilfully obstructs a member, officer, employee or agent of the Authority exercising functions under this Act; or
- (f) acts in contempt of the Authority,

is guilty of an offence.

(3) A person who in any application for a licence under this Act or pursuant to any requirement under section 10(1)(a) or 24(2) makes any statement which the person knows to be false in a material particular is guilty of an offence.

(4) A person who contravenes section 20(1) or, when directed by the Authority, contravenes section 21(2) or contravenes any condition of a licence or contravenes any regulation is guilty of an offence:

Provided that, where a person is charged with contravening section 20(1), the burden of proving that the person is the holder of a licence shall be on that person.

(5) Any person who without reasonable excuse enters, opens or allows to remain open any premises in respect of which a closure order is in force is guilty of an offence.

(6) Any person who removes or otherwise tampers with a closure notice shall be guilty of an offence.

(7) Any person who without a valid licence solicits, advertises, invites or offers for hire or rent any licensable services for a fee is guilty of an offence.

Penalties

25. Any person who is guilty of an offence under this Act shall on conviction be liable —

- (a) subject to paragraph (c), in the case of an offence under section 24(4), to a fine of not less than R5,000 and not exceeding R50,000;
- (b) in the case of an offence under section 24(1), (2), (5), (6) or (7), to a fine or R50,000 and to imprisonment for 5 years;

- (c) in the case of an offence constituted by the selling of lapire or baka otherwise than under a licence issued in that behalf, to a fine of not less than R8000.

26. The Board may revoke a licence where the holder of a licence granted by the Board —

Revocation of
licence upon
conviction

- (a) is convicted of an offence under this Act; or
- (b) is convicted of an offence under any other law which disqualifies the person upon conviction from holding the licence or which allows on conviction the revocation of the licence.

27.(1) If the Chief Executive Officer is satisfied that a person has committed an offence against this Act and if that person admits that fact and agrees in writing to the matter being dealt with under this section the Chief Executive Officer may—

Compounding
of offences

- (a) compound such offence by accepting from such person a sum of money not exceeding the maximum fine specified for that offence; and
- (b) deal with the sum of money received under this section as though it were a fine imposed by the court.

(2) In any proceedings brought against any person for an offence against this Act, it shall be a good defence if the person proves that the offence has been compounded under this section.

28.(1) The Minister may make regulations for carrying into effect the principles and provisions of this Act.

Regulations

(2) The Minister may by regulations amend the Schedule.

Transfer of
assets and
liabilities

29. The movable and immovable property vested in and managed by, and the assets, rights, privileges, liabilities and obligations of, the Seychelles Licensing Authority constituted under the Licences Act 1986 shall stand transferred to the Authority established by this Act upon the coming into operation of this Act.

Repeals and
modifications

30.(1) The Licences Act, 1986 is repealed.

(2) Notwithstanding subsection (1), any licence granted under that Act and in force on the day immediately prior to the date of coming into operation of this Act shall, unless earlier revoked, continue in force for the period for which the licence was granted.

(3) The Authority may exercise any of its functions and powers under this Act in respect of such a licence as if it were a licence granted under this Act.

SCHEDULE

PART I

1. Keeping a Cafe;
2. Providing Catering Services;
3. Keeping a Hotel;
4. Keeping a Restaurant;
5. Keeping a Self-Catering Establishment
6. Keeping a Guesthouse;
7. Keeping a Discotheque;
8. Engaging in a Take-away Business;
9. A Bottle Licence;
10. Off-Liquor Licence;
11. Public Bar;
12. Members Club Licence;
13. Lapire/Baka Licence
14. Dive Centre

15. Dive Operator
16. Hairdresser
17. Beautician
18. Labour Contractor
19. Garage Operator;
20. Importation and Distribution of Pesticides;
21. Import/Wholesale/Retail
22. Hirer of self-drive Public Omnibus
23. Storage and Retail of Petroleum Products
24. Operator of Casino
25. Licensing of Divers
26. Registration
27. Use of Vehicles on Public Roads

PART II

Licences (Accommodation, Catering and Entertainment Establishment Regulations, 2001

Licences (Manufacturing) Regulations, 1999

Licences (Liquor and Out-Door Entertainment) Regulations, 1998

Licences (Diving Business) Regulations, 1991

Licences (Miscellaneous Services) Regulations, 2000

Licences (Trades) Regulations, 1987, amended in 1992

Licences (Petroleum Storage and Sale) Regulations, 1987

Licences (Casino) Regulations, 1987 amended 1994

Licences (Gaming Machines) Regulations, 1994

Licences (Game of Chance) Regulations, 1994

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 14th September, 2010.



Veronique Bresson
Clerk to the National Assembly