

Proclamation No. 128/2002

A Proclamation to Amend the Business Licensing System Control and the Business Licensing Office Establishment Proclamation No.72/1995

WHEREAS, it is necessary to amend Proclamation No. 72/95, pursuant to a thorough assessment of eight years experience;

WHEREAS, the elimination of cumbersome procedures and delays is important, so as to enable an investor to obtain a business license in the most expeditious manner;

WHEREAS, unjustifiable administrative and regulatory laxity with the BLO often failing to request, obtain and verify from applicants, minimum and absolute requirements such as permanent address, type and size of facilities, working capital, business plan as well as some feed back information that is necessary for renewal of licenses;

WHEREAS, it is important to avoid the obtaining of business licenses for non-existent and speculative activities, the illegal renting of licenses for tax evasion purposes;

WHEREAS, it is necessary to eliminate unnecessary bureaucratic delays and obstacles;

WHEREAS, for better alignment it is necessary to amend the authority and status of the BLO with the mandate and functions of the Ministry of Trade and Industry.

Now, therefore. Proclamation No. 72/1995 is hereby amended as follows:

PART ONE GENERAL PROVISIONS

Article 1. Short Title

This Proclamation may be cited as the "Business Licensing Amendment Proclamation No. 128/2002".

Article 2. Definitions

In this Proclamation, unless the context otherwise requires:

- 1 "Business License" shall mean an authorization issued by the Ministry of Trade and Industry (MTI) to a person to engage in business activity falling under any one of the classifications recognized under this Proclamation.

- 2 "Certify Grade" shall mean an action of a competent regulatory body by which it indicates that a person has been categorized into a given grade for the purpose of undertaking an occupation or profession permitted for that grade. This grading shall also include the categorization of any hotel or other catering facilities, motor vehicle, motor cycle, boat, ship, airplane or any other conveyance operated on land, sea or in the air.
- 3 "Certify Qualification" shall mean an action of competent regulatory body by which it indicates that a person possesses the necessary education, training, skill and/or experience to undertake or perform any occupation or profession.
- 4 "Conditions/Requirements for Engaging in a Business Activity" shall mean any regulatory or policy framework issued by a competent regulatory body for conducting, operating or carrying on a business activity.
- 5 "Engage in a Business Activity" shall mean to conduct or carry on any trade, occupation, business, profession, with the object of gain, benefit or advantage, either direct or indirect within Eritrea.
- 6 "Foreign Investor" shall have the meaning ascribed to it under the relevant Eritrean rules and regulations.
- 7 "Licensee" shall mean any person holding a business license issued by the Ministry of Trade and Industry.
- 8 "Ministry" shall mean the Ministry of Trade and Industry.
- 9 "Permit" shall mean a certificate of qualification or a certificate of grade issued by a competent regulatory body.
- 10 "Person" shall mean any natural or juridical person engaged in business activity and shall include any business organisation or association engaged in business activity, whether national or foreign, whether private or public, whether secular or religious.
- 11 "Public Service" shall mean to include both the Civil Service and the public enterprise sector.
- 12 "A Regulatory Body" shall mean any ministry, authority, commission, office and any other national and local agencies or institutions of the State of Eritrea empowered by law to regulate any activity.
- 13 "Subsistence Activity" shall mean any economic activity in which a person is

engaged in order to earn his or his family's livelihood, but sells occasionally his products in the market in order to supplement his or his family's livelihood.

A word importing the masculine gender shall include the feminine as well.

Article 3. Repeal

Any provisions of any proclamation, decree, order, legal notice or directive concerning matters provided for in this Amendment Proclamation are hereby repealed and replaced by this Amendment Proclamation.

Article 4. Objectives

The objectives of this Amendment Proclamation shall be to:

- 1) regulate the business licensing system in order to rationalise and harmonise the system;
- 2) regulate the management of the commercial register; and
- 3) avoid unnecessary delays and harmful legal practices.

PART TWO CONTROL OF THE BUSINESS LICENSING SYSTEM

Articles 5. Classification of Business Licenses

- 1) For purposes of this Proclamation, business licenses are hereby classified into the following classes- depending on their business activities:
 - a) Agriculture, Hunting, and Forestry License, which shall include the following categories growing crops, market gardening; horticulture; farming of animals (mixed farming), agricultural and animal husbandry services activities, except veterinary activities; hunting, trapping and game propagation; forestry and logging; and any other related activities.
 - b) Fishing License, which shall include the following categories: fishing, operation of fish hatcheries and fish farms, and any other related activities
 - c) Manufacturing License, which shall include the following categories: manufacture of food products and beverages; manufacture of tobacco products; manufacture of textiles; manufacture of wearing apparel, dressing and dyeing of fur; tanning and dressing of leather, manufacture of luggage, handbags, saddlery, harness and footwear; manufacture of wood and of products of wood and cork; manufacture of paper and paper products; publishing, printing and reproduction of recorded media; manufacture of coke, refined petroleum products; manufacture of chemicals and chemical products; manufacture of rubber and plastic products; manufacture of basic metals; manufacture of fabricated metal products; manufacture of machinery and equipment; manufacture of office, accounting and computing machinery; manufacture of electrical machinery and apparatus; manufacture of radio , television and communication equipment and apparatus; manufacture of medical, precision

and optical instruments, watches and clocks; precision and optical instruments, watches and clocks; manufacture of motor vehicles, trailers and semi-trailers; manufacture of other transport equipment; manufacture of furniture, recycling; and any other related activities.

- d) Mining and Quarrying License, which shall include the following categories: mining of coal and lignite; extraction of peat; extraction of crude petroleum and natural gas; service activities incidental to oil and gas extraction, excluding surveying; mining of uranium and thorium ores; mining of metal ores; other mining and quarrying; and any other related activities
 - e) Electricity, Gas and Water Supply License, which shall include the following categories: electricity, gas, steam and hot water; and other related activities;
 - f) Construction License, which shall include the following categories: site preparation; building of complete constructions or parts thereof; civil engineering; building installation building g completion, renting of construction or demolition equipment with operator, and any other related activities;
 - g) General Trading, Repair of Motor Vehicles, Motor Cycles and Personal and Household Goods License, which shall include the following categories import and export trade; wholesale trade and commission trade, except of motor vehicles and motor cycles; repair of personal and household goods; sale, maintenance and repair of motor vehicles and motor cycles; retail sale of automotive fuel; and any other related activities.
 - h) Transport, Storage and Communications License, which shall include the following categories: land transport and transport via pipelines; water transport; air transport; supporting and auxiliary transport activities and activities of travel agencies; post and telecommunications; and any other related activities;
 - i) Financial Intermediation, Real Estate and renting License, which shall include the following categories: financial intermediation, insurance and pension funding; activities auxiliary to financial intermediation; real estate activities; renting of machinery and equipment without operator and personal and household goods; and any other related activities;
 - j) General service license, which shall include the following categories: hotels, camping sites and other provisions of short-stay accommodation, restaurants, bars and canteens; sewage and refusal disposal and sanitation activities; amusement, recreational, sporting activities; library, archives museums and other cultural activities: news agency activities; washing and dry-cleaning activities, hairdressing and other beauty treatment activities: funeral services activities, private detective and security services activities; advertising and other public relations activities; non-professional personal services activities; and any other related activities.
 - k) Professional Service License, which shall include the following categories; health and medical activities; legal service activities; educational activities; architectural, engineering and other technical activities; computer and related activities; accounting, auditing and bookkeeping activities; research and development on natural sciences, social sciences and humanities; management activities; consulting activities; and any other related activities.
2. Based on generally accepted international standard classification of business activities the Ministry of Trade and Industry:

- (a) may introduce categories in addition to those listed under sub-Article 1 of this Article; and
- (b) shall develop a coding system for all classes and categories to facilitate licensing and renewal of business licenses.

Article 6. Separate Business License for Each Class

A person desiring to engage in a business activity falling under any one of the classes listed in Article 5 (1) of this Proclamation must obtain a separate business license for each business activity in which he wishes to engage. If a person desires to engage in more than one category of business within a given class, the person shall be allowed to engage in as many categories as he requests within that classification by paying a fee determined in accordance with Article 8 hereof. His business license shall indicate the number of categories in which he is permitted to engage.

Article 7. Exemptions From Acquiring Business License

- 1) Any person who engages in:
 - a) subsistence farming, subsistence pastoral or fishing activities in order to earn for his or his family's livelihood, but who sells occasionally his products in the market to supplement his or his family's livelihood; and
 - b) any other subsistence activities exempted specifically by regulations issued by the Ministry of Trade and Industry with the approval of the Government shall not be required to acquire business license under this Proclamation.
- 2) Any person, holding any of the business licenses indicated in Article 5(1) of this Proclamation, who desires to:
 - a) import inputs for his business activity shall be allowed to do so without acquiring business license for such import, provided that he does not pass imported inputs to third parties; or
 - b) market his locally produced commodities at the local or foreign markets, whether as a whole sale or retail, shall be allowed to do so without acquiring business licenses for such marketing, provided that he does not market to the public commodities produced locally or imported by other persons.

Article 8. Fees Payable For Each Class of Business License

Every licensee shall pay every year a business license fee for engaging in any business activity within Eritrea, in the amount as shall be provided in regulations to be issued by the Ministry. The fees shall be so determined as to reflect the number of categories a licensee is allowed to engage in within a given class to be operated.

Article 9. Requirements For The Issuance of Business Licenses

To qualify for a business license under this Proclamation, the applicant shall:

- 1) be at least 18 years of age;

- 2) be a person who knows and understands the conditions/requirements for operating, conducting or carrying on business activity for which he is applying as stipulated in Articles 23 and 24 hereof;
- 3) not be a person who is judicially interdicted, interdicted by law or is notoriously insane as defined under the provisions of the Civil Code of Eritrea;
- 4) not be an employee of the public service;
- 5) be a person who has fulfilled his national duty;
- 6) produce permit from relevant government body, and
- 7) produce clearance or no objection letter from inland revenue.

Article 10. Application for and Issuance of a Business License

- 1) Any person desiring to engage in any business activity within Eritrea under one or more of the classes of business licenses listed under Article 5 hereof shall apply to the Ministry on a form to be furnished by the Ministry. The application shall be prepared by the applicant in writing and shall state all required information.
- 2) An application could be filled out and submitted by a duly-authorized agent of an applicant.
- 3) If the Ministry determines that the applicant has fulfilled all the requirements for the issuances of a business licence under Article 9 hereof, and if the report of inspectors is favourable under Article 10 hereof, the business license shall be prepared and issued by Ministry of Trade and Industry. Each business license so issued shall state upon the face thereof the following:
 - a) the name of the person to whom the license is issued,
 - b) the kind of business, occupation or profession licensed thereby; and
 - c) the location of such business/occupation of profession;

The following language shall be set forth on the face of each business license issued hereunder, as follows:

“This business license does not authorize the licensee or any agent or employee thereof to conduct the business, occupation, profession, or to perform any act incident thereto without strictly complying with Article 21 of this Proclamation.”

Article 11. Renewal of a Business License

- 1) A business license may be renewed by an application submitted to Ministry of Trade and Industry. The application for renewal for a business license shall be filed with the Ministry of Trade and Industry in writing on a form provided by the Ministry.
- 2) A business license shall be renewed before the expiration of the current business license upon payment of renewal fee, provided that it has not been suspended or revoked earlier.
- 3) The renewed license shall indicate the validity date and shall be effective a day after the expiration date of the old license.
- 4) Any person licensed under this Proclamation who fails to renew his business license on the date of its expiration shall be permitted to renew the license subject to the following conditions:
 - a) that the business license was in full force and effect on the date of expiration;

- b) that the application for renewal is made in writing within ninety (90) days as of the end of the fiscal year;
 - c) produce permit from the relevant government body;
 - d) produce clearance or no objections letter from inland revenue; and
 - e) that the applicant for renewal of an expired license shall provide answers to questions relative to the application for renewal that the Ministry may require.
- 5) In the event that a licensee fails to renew his business license in accordance with sub-Article (4) of this Article, the licensee may be allowed to renew his business license within 60 days after the grace period mentioned in sub-article 4 (b) by paying a penalty of Nfa two (2) for every day of delay.
- 6) If a business licence expires while the licensee is in the National Service, the business license may be renewed on payment of renewal fee, and upon presentation of the application for renewal to the Ministry within six (6) months after his discharge from the National Service. Proof that the licensee was a member of said service on the date of expiration of the license shall accompany the application for renewal.

Article 12. Licensing System for Investment from Outside Eritrea

The Ministry of Trade and Industry shall issue business license to foreign nationals pursuant to pertinent Eritrean laws and regulations.

Article 13. Expiration of Business License

- 1) A business license shall run for one (1) fiscal year.
- 2) Unless renewed as stipulated in Article 11 of this Proclamation, a business license shall expire after the date specified under Article 11 (5) of this Proclamation.

Article 14. Transfer and Assignment of a Business License

- 1) A business license may be transferred and assigned by sale, gift or inheritance.
- 2) A business license shall be transferred and assigned only by the Ministry upon presentation of proof of sale, gift or inheritance in accordance with the law.

Article 15. Suspension, Revocation or Reinstatement of a Business License

- 1) A business license issued under this Proclamation may be suspended or revoked by the Ministry when it is shown that the licensee:
 - a) in his application for a new business license or for its renewal, knowingly made a false statement or misrepresentation deemed material to the issuance or renewal of the business license;
 - b) fails to meet the conditions/ requirements for engaging in a business activity set by a regulatory body, does not have employees or agents who can fulfill the qualifications required to operate, conduct or carry on the business; or fails to live up to the certificate of grade he has acquired for his business; or

- c) fails to meet any requirements set for the issuance of business licenses under Article 9 of this Proclamation.
- 2) Upon the application of any person whose business license has been revoked or suspended and upon showing a good cause, the Ministry of Trade and Industry may reinstate the business license. Where revocation or suspension was done on the recommendation of a regulatory body, the Ministry shall consult such regulatory body before reinstating the business license.

Article 16. Display of a Business License

Each person licensed to engage in a business activity under this Proclamation shall display the business license in a frame under a glass or other transparent material in a conspicuous place accessible for inspection by enforcement officers in the location specified on the business license.

Article 17. Duplicate or Amended Business Licenses

- 1) If a business license is lost, destroyed or defaced, the licensee shall present to Ministry of Trade and Industry ample proof to show that any one of these events has occurred. Upon showing ample proof acceptable to the Ministry a duplicate business license shall be issued upon payment of a fee for such duplication.
- 2) If a licensee is licensed to operate his business activity in more than one place the Ministry may issue as many duplicate licenses as shall be necessary upon payment of a fee for such duplications
- 3) Where a business license is issued authorizing a person to engage in a business activity at a particular place, such a licensee may, upon application therefore, and paying a fee, have the license previously issued amended so as to authorize the operation, conduct or carrying on of such business from some other place or location, provided that such other place or location is approved by inspectors under Article 10 hereof.

Article 18. Surrender of Fees Collected by Ministry of Trade and Industry

All business license and registration fees collected by the Ministry of Trade and Industry shall be surrendered to the Ministry of Finance.

Article 19. Registration Requirement of all Persons Engaged in Business Activities in Eritrea.

- 1) The Commercial Register required to be established under the Transitional Commercial Code of Eritrea shall consist of;
 - a) local registers kept at the provincial offices of Ministry of Trade and Industry, and
 - b) a central register kept at Ministry of Trade and Industry Headquarters. Articles 87-93 of the Transitional Commercial Code of Eritrea shall, subject to paragraphs (a) and (b) of this sub-Article, apply *mutatis mutandis*.
- 2) All persons engaged in business activity who are required under this Proclamation to acquire a license shall register in the Commercial Register and pay the prescribed registration fee.
- 3) All persons required to register under sub-Article (2) of this Article shall do so at the:

- a) provincial offices of the Ministry of Trade and Industry, or
 - b) the Ministry of Trade and Industry Headquarters. Articles 94-123 of the Transitional Commercial Code of Eritrea shall apply *mutatis mutandis*.
- 4) All files dealing with the registration of persons engaged in business in the Commercial Register hitherto held at the Ministry of Trade and Industry or at the provincial offices shall be transferred to Ministry of Trade and Industry Headquarters or to its provincial offices, respectively.

Article 20. Powers and Duties of Regulatory Bodies

- 1) All competent regulatory bodies shall, in accordance with the law, set all conditions/ requirements for engaging in any business activity under their jurisdiction, and make these conditions / requirements available to all persons engaged or expecting to engage in any business activity.
- 2) All competent regulatory bodies shall inspect, monitor and/or supervise any licensee to ascertain whether or not such licensee is operating, conducting or carrying on his business activity in accordance with the conditions/requirements issued by them. In case any licensee fails to adhere to any of the conditions/requirements set by a regulatory body, such a regulatory body shall take all measures necessary to correct the situation and/or levy and collect any penalty against the alleged culprit, and if necessary, request the Ministry to suspend or revoke his license. The Ministry shall, either directly itself or through appropriate enforcement officers, take all measures necessary for the suspension or revocation of the business license.
- 3) A competent regulatory body shall certify qualification in accordance with the law and issue a permit to that effect. This permit shall not constitute a business license to engage in a business activity.
- 4) A competent regulatory body shall certify grade in accordance with the law and issue a permit to that effect. This permit shall not constitute a business license to engage in a business activity.
- 5) Title to any kind of property shall be issued by a competent regulatory body in accordance with the law.

Article 21. Compliance with Government Conditions/ Requirements in Operating Business

All licensees, their agents and employees, engaged in business activities licensed under this Proclamation, shall strictly comply with all applicable conditions/requirements to engage in business activity, including, but not limited to, those regarding the payment of taxes, water, sewerage and electric charges, fees and other charges of any kind which are related to the operations of such licensed business activity and which are payable to the Government of Eritrea or its agencies, and such legal requirements regarding compliance with the building, fire, health and sanitation, water, electrical, zoning, and any other rules and regulations affecting public health, safety and welfare as a condition for engaging in a business activity, and all other regulatory

conditions/requirements for the operation of business, including, but not limited to, those regarding requirements of qualifications and grading.

PART FOUR

MISCELLANEOUS PROVISIONS

Article 22. Prohibited Acts and Penalties

- 1) No person shall engage in a business activity without having been issued a business license under which that business may be engaged. The business license must currently be valid and in full force and effect.
- 2) Any business license that is changed and altered shall be void.
- 3) No person holding a business license under this Proclamation shall allow any other person to use or engage in business under that business license, unless the licensee duly appoints an agent or leases his business activity in accordance with the law.
- 4) No business license shall be transferred and assigned, without the approval of the Ministry.
- 5) No person shall display a sign stating or implying that he is engaged in business activity requiring a business license under this Proclamation, unless he is licensed to do so as provided in this Proclamation.
- 6) No person shall advertise by means of business cards, stationery, any publication or directory, claim orally to a prospective customer, or otherwise indicate that he is engaged in a business activity, unless he has a business license as provided under this Proclamation.
- 7) Any person who violates the provisions of this Proclamation or regulations issued hereunder shall be charged and tried under the Penal Code and the Criminal Procedure Code of Eritrea, and shall, upon conviction, be subject to imprisonment and/or fine.

Article 23. Judicial Review

- 1) A person aggrieved by an adverse decision under Articles 11, 12, 18 and 23 hereunder may, within 30 days after such decision has been rendered, seek a review by the High Court of Eritrea, upon paying the required court fee. The High Court shall have exclusive jurisdiction.
- 2) The High Court shall set aside a decision which it decides is:
 - a) arbitrary, an abuse of discretion, or otherwise not consistent with law; or
 - b) not made consistent with required procedures; or
 - c) unsupported by substantial evidence.
- 3) The decision of the High Court shall be final.

Article 24. Conversion to the New System

Any business license issued prior to the effective date of this Proclamation shall be renewed in accordance with the terms and conditions of this Proclamation.

Article 25. Authority to Issue Regulations

The Minister of Trade and Industry shall have the authority to issue regulations that are necessary and proper for the carrying out of the provisions of this Proclamation.

Article 26. Effective Date

This Proclamation shall enter into force on the date of its publication in the Gazette of Eritrean Laws.

**Done at Asmara this 27th day of December, 2002
GOVERNMENT OF ERITREA.**