

Trading Enterprises Order, 1993

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TRADING ENTERPRISES ORDER 1993

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ORDER NO. 11 OF 1993

Trading Enterprises Order, 1993

ORDER

To provide for the licensing of trading enterprises and services and related matters and to repeal the Trading Enterprises Order 1987¹.

ENACTED BY THE MILITARY COUNCIL

Part I – Preliminary

Short title and commencement

1. This Order may be cited as Trading Enterprises Order 1993 and shall come into operation on the day of publication in the Gazette.

Interpretation

2. In this Order, unless the context otherwise requires,
“Board” means the Trading Enterprises Board established under section 3;
“citizen” means a person who is a citizen of Lesotho;
“Commissioner” means the person appointed as Commissioner of Trade under section 7;
“Commercial Officer” means a person appointed as such under section 9;
“enterprise” means an individual, any entities or such other legal persons, recognized by any law for the time being in force in Lesotho, engaged in trading activities;
“health inspector” has the same meaning as health officer under the Public Health Order 1970²;
“Minister” means the Minister responsible for Trade and Industry;
“Trade Counsellor” means a person appointed as such under section 10.

Part II – Licensing Authorities

Establishment of the Board

3. (1) There is established a Board to be known as the Trading Enterprises Board

(2) The Board shall consist of:

(a) The Principal Secretary of the Ministry responsible for Trade and Industry or his representative, who shall be the chairman;

(b) The Principal Secretary of the Ministry responsible for Interior and Chieftainship Affairs or his representative;

(c) The Principal Secretary of the Ministry responsible for Health or his representative;

(d) The Principal Secretary of the Ministry responsible for Employment and Social Welfare or his representative;

(e) The Principal Secretary of the Ministry responsible for Agriculture, Cooperatives and Marketing or his representative;

(f) a representative of the Royal Lesotho Defense Force nominated by the Commander of the Royal Lesotho Defence Force;

(g) The Commissioner of Police or his representative;

(h) The Commissioner of Trade who shall be the Secretary of the Board; and

(i) a representative of the Lesotho Chamber of Commerce and Industry, who shall be appointed by the Minister

Functions of the Board

4. (1) The functions of the Board shall be:

(a) To make recommendation to the Minister to ensure the proper implementation of the policy of government regarding trading activities and services;

(b) To provide for the expansion of local trading activities and the promotion of citizens' participation in trading, investment, ownership, management and control of enterprises;

(c) To recommend to the Minister areas where citizens' participating activities may be promoted;

(d) To recommend to the Minister areas where non-citizen may undertake trading activities in joint ventures with citizens;

(e) To evaluate applications made to the Board;

- (f) To approve or disapprove applications for licences, pursuant to the provisions of this Order and the regulations and where appropriate to issue licences subject to conditions to be specified on the licence;
 - (g) To suspend or cancel licences granted under this Order in accordance with the provisions of this Order.
- (2) The Board may delegate any or all of its functions to a Local Licensing Board established under section 11.

Criteria for Licensing

5. (1) In considering applications for trading licences, the Board shall take into account the merits of a particular applicant and national priorities
- (2) Without the prejudice to the generality of subsection (1), the Board shall take into account the following factors:
- (a) The magnitude and origin of the tangible and intangible assets;
 - (b) Employment generation;
 - (c) Strategic nature of enterprises;
 - (d) Whether the business in relation to the application provides for the transfer of business expertise;
 - (e) Advancement of business undertakings owned by citizens; and
 - (f) Environmental protection

Meetings of the Board

6. (1) The Board shall meet as often as it deems necessary, but at least once a month.
- (2) Five members of the Board, including the Chairman shall form a quorum
- (3) In the case of equality of votes, the chairman shall, in addition to his deliberative vote have a casting vote.
- (4) The Commissioner in his capacity as Secretary to the Board shall not vote at the meetings of the Board.

(5) The Board may co-opt any competent person to help in its deliberation, but such a person shall not take part in the actual decisions of the Board

(6) No person shall sit as a member of the Board at the consideration of any application in which he has an interest directly or indirectly.

(7) Subject to this Order, the Board shall determine its procedure and the conduct of its business

Commissioner of Trade

7. There is established an office of Commissioner of Trade whose office shall be an office in the public service

Powers and duties of Commissioner

8. (1) The Commissioner shall,
 - (a) Examine the application and seek any other relevant information pertaining to the application;
 - (b) Prepare recommendations based on the application and on any other relevant information and submit them to the Board for consideration and decision;
 - (c) Communicate the decision of the Board to the applicants and where a licence has been granted by the Board he shall issue a licence certificate; and
 - (d) Do anything which he is required to do under this Order or which the Board has authorized him to do in furtherance of the objectives of this Order
- (2) The Commissioner may delegate any of his powers to any Commercial Officer

Commercial Officer

9. The Minister may appoint a Commercial Officer for every district, who shall exercise the functions conferred on him by this Order or the regulations.

Trade Counsellor

10. The Minister may appoint a Trade Counsellor for every district, as he deems necessary who shall exercise the functions conferred on him by this Order or the regulations

Establishment of Local Licensing Board

11. (1) There is established in each district a Local Licensing Board
- (2) A Local Licensing Board shall consist of:
 - (a) A person holding the office of District Secretary, who shall be the chairman;
 - (b) A Military District Officer or his representative
 - (c) A Police Officer in command of the district or his representative;
 - (d) A Health Inspector for the district or his representative;
 - (e) A Commercial Officer for the district or his representative, who shall be Secretary;
 - (f) A representative of the Lesotho Chamber of Commerce and Industry, who shall be appointed by the Minister;
 - (g) A member of the District Development Council who shall be appointed by the Minister;
 - (h) A person representing the interests of consumers who shall be appointed by the Minister.

Functions of the Local Licensing Board

12. A Local Licensing Board shall perform such functions as may be delegated to it by the Board or as may be prescribed in regulations.

Meetings of Local Licensing Board

13. (1) A Local Licensing Board shall meet as often as it deems necessary but at least once a month.
- (2) Four members of a Local Licensing Board including the Secretary shall form a quorum.

(3) In the absence of the District Secretary members present at any meeting shall elect one of their member to be the chairman.

(4) No member of a Local Licensing Board shall sit as such a member at the consideration of any application in which he has an interest directly or indirectly

(5) In the case of equality of votes the chairman shall, in addition to his deliberative vote, have a casting vote.

Part III – Licensing of Business

Licences

14. (1) Any person who carries on lawful trade or occupation under this Order shall possess a licence

(2) An application for a licence shall be submitted to the Commissioner in the prescribed form.

Display of Licences

15. A licence shall be displayed prominently at or close to the main entrance at the place of business.

Licence Fees payable

16. In respect of every licence issued under this Order there shall be charged and payable, a licence fee specified in the regulations: Provided that a clear distinction in the licence fees shall be drawn between an individual licence holder and other licence holders.

Duration of Licences

17. A licence issued under this Order shall be valid for a period of one year from the date of issue.

Renewal of Licences

18. (1) A licence issued under this Order shall be renewable on or before the date of its expiry

(2) An application for renewal of a licence shall be submitted to the Commissioner at least one calendar month before the date of its expiry, to enable him to perform his functions under section 8.

(3) A person who fails to submit an application according to sub-section (2) shall pay in addition to the licence fee, a late application fee prescribed in the regulations.

Other obligations of licence holders

19. A licence holder shall cause to be laid before the Board, when required, all contracts relating to transfer of expertise entered into by him.

Suspension and Cancellation

20. (1) Subject to subsection (2), the licences prescribed in the regulations shall be of full force and effect in respect of premises and the type of enterprise in relation to which they have been granted.

(2) Subject to the other provisions of this section, the Board may,

(a) On the advice of the Commissioner, if continuance of any trade or occupation constitutes a danger to public health or public morality; or

(b) Where it is satisfied that the contract submitted to it under section 19 concerning the trade or occupation is not conducive to the development and promotion of trade in Lesotho, suspend or cancel any licence in relation to trade or occupation.

(3) The notice of suspension shall state the reasons for that suspension and the period for which it is to be effective:

Provided that the period may be extended by the Board as it deems necessary but the total period of suspension shall not exceed 60 days.

(4) The Board may revoke a suspension if it considers that the necessity for the suspension no longer exists.

(5) The suspension of a licence and the revocation of that suspension shall be by notice in writing signed by the Commissioner and shall be served on the licence holder at his place of business or, in the absence or if he cannot be found, on any person apparently in charge of the enterprise to which the licence relates.

(6) Copies of such notice shall be forwarded to the commercial officer and the police officer in charge of the area where the enterprise to which the licence relates is situated.

(7) The board may, in its discretion, cancel a license if the reasons for which it was suspended have not been changed before the expiry of the suspension.

(8) If any person has been cancelled, the owner of the business shall not operate that type of the business in that particular area.

Appeals

21. (1) Any person aggrieved by any decision of the board or by the exercise of any power under this order, may appeal to the minister within 14 days from the date of notification of that decision by the commissioner or from the date of the exercise of the power and shall furnish the commissioner with the notice of the appeal.

(2) Upon receipt of the notice of the appeal the commissioner shall, within 14 days forward to the minister and to the appellant a full report setting out the reasons for the decision of the board.

(3) The minister shall consider the appeal and either affirm the decision, vary the decision or set aside the decision of the board.

Books to be kept

22. A license holder shall keep such record or books as are necessary to exhibit clearly and correctly the state of affairs of his business and explain the transaction and financial position of his business.

Prosecution

23. Subject to section 5 of the Criminal Procedure and Evidence Act 1981³, any officer authorized by the Director of the Public Prosecutions may, in court of competent jurisdiction, prosecute an offender for an offense under this Order.

Partnership licenses

24. Notwithstanding anything contained in the law relating to partnership, any license issued to a partnership shall contain the full names of each of the partners and the style under which the trade or occupation is to be carried on.

Transfer of license in the event of death, liquidation, insolvency or other legal disability

25. In the event of death of a license holder, other than license holder referred to in section 24, the widow or widower or successor as the case may be, or executor of the deceased estate, and failing the appointment of an executor, any curator bonis duly appointed for taking charge of the estate of the deceased, and in case of insolvency or assignment of an estate or in case of company in liquidation, the liquidator or trustee, and in the case where the license holder becomes subject to any legal disability, any curator bonis appointed under an order of competent court, then any of these mentioned may, on payment of a transfer fee specified in the

regulation, carry on the trade or occupation in respect of which such license issued for the unexpired term of such license.

Transfer of license I the event of removal to other business premises

26. In the event of removal of a licensed business to premises other those mentioned in the license certificate the commissioner may, on surrender of that license certificate, issue a new license certificate on payment by the license holder of a transfer fee specified in the regulations for the unexpired period of the surrender license:

Provided that the commissioner is satisfied that the business so removed is in all material respects the same as the previously licensed business:

Provided further that, when required to do so by the commissioner, the licensed holder shall furnish proof that the premises are suitable for the proper carrying on of such business.

Transfer of interest of license holder

27. The interest of a license may be transferred to any person purchasing or taking over such license holder's interest with the written consent of the commissioner. Where such transfer is effected, the transferee shall pay a transfer fee specified in the regulations:

Provided that a sworn declaration made by transferor in either the Sesotho and English language consenting to the transfer shall be furnished to the commissioner.

Part IV – Miscellaneous Provisions

Trading without license

28. (1) Any person who carries on any lawful trade or occupation without being in possession of a license, as required by this Order or in contravention of any condition subject to which a license has been granted, commits an offence and is liable on conviction to a fine of M500 or to imprisonment for a period of 6 months or to both such fine and imprisonment.

(2) Notwithstanding anything to the contrary in this Order, any enterprise which is in possession of a license issued under the Industrial Licensing Act 1969⁴, may sell, either at retail or wholesale terms, goods which are manufactured by it pursuant to that license without obtaining, in respect of such sale, a license under this Order.

Failing to pay the prescribed fee

29. (1) Any person who fails to pay any fee required under this Order or under regulations within one calendar month from the date when his obligation to do so commenced, or who pays an amount less than the sum due on such license shall, in addition to the license fee prescribed in the regulations, pay for each month or part of a month during which he carries on any lawful trade or occupation without the prescribed license, or during which any amount due in respect thereof is short paid, a sum calculated at the rate of fifteen per cent of the license fee prescribed in respect of such enterprise or of the amount short paid in respect of such license, as the case may be:

Provided that any such additional amount shall not exceed the amount of the license fee so specified or the amount so short paid, as the case may be.

(2) The payment by any person of any sum under this section not be deemed to relieve such person of any criminal liability incurred through his failure to take out a license nor shall the fact of any criminal liability having been imposed upon any such person for any such failure relieve him from any obligation to pay any amount payable under this section.

Recovery of fee

30. (1) Any license fee, penalty or other fee shall, when it becomes due or if payable, be deemed to be a debt to the government and shall be payable to the commissioner as notified or directed by him.

(2) If a person fails to pay any license fee, penalty or other fee when it becomes due or is payable by him, the Commissioner may file with the clerk or registrar of any enterprise of any court of competent jurisdiction a statement certified by him as correct setting forth the amount of the fee or penalty so due or payable by that person, and such statement shall thereupon, have all the effects of, and any proceedings may be taken thereon as if it were all the effects of, and any proceedings may be taken thereon as if it were, a civil judgment lawfully given in that court in favour of the commissioner for a liquid debt of the amount specified in the statement.

Right to enter premises

31. (1) A police officer or trade counsellor or commissioner or any other officer authorized by the commissioner may enter any premises upon or in which any enterprise liable to be licensed under this Order is being carried on or reasonably suspected of carrying on, and may require the occupier of such business premises to allow him access to all parts of the business premises in order to

satisfy himself that merchandise being traded in is covered by an appropriate license, and, to demand the production of the license issued under this Order for the purpose of inspection; and any such occupier who fails to produce his license upon such request or who fails or refuses to permit access to his premises, commits an offense and is liable on conviction to a fine not exceeding M200 or to imprisonment for a period of 3 months or both.

(2) A health inspector or medical officer may, at all reasonable hours, enter any premises upon or in which any enterprise licensed under this Order is being carried on, for the purpose of enquiring into any possible cause of danger to public health, or of examining food sold or prepared or offered for sale for human consumption, and, report to the Commissioner if, in his opinion, a danger to public health exists, or, if any of the food so examined by him, or at his request, by a competent person, is unfit for human consumption.

(3) Notwithstanding section 20, on receipt of such report, the Commissioner may suspend the licence concerned until such time as the holder thereof has complied with the requirements of the medical officer or health inspector, as the case may be

Theft and receiving stolen property and consequences thereof

32. (1) Whenever a holder of a licence issued under this Order is convicted of the offence of theft or of receiving stolen property knowing it to have been stolen, in respect of goods belong to any class of goods which he is entitled to sell under licence, the court so convicting him may suspend such licence for such period as it may deem fit or cancel such licence and declare the person so convicted disqualified for such period as the court may determine from obtaining any licence of the same description as and in the place of the licence so cancelled.

(2) Whenever a licence has been suspended or cancelled under subsection (1) and the person to whom it was issued has been declared to be disqualified from obtaining such a licence, no licence shall, in respect of the period of such suspension or disqualification, whichever is applicable, be issued in the place of a licence previously issued.

Proof of trading

33. (1) In any prosecution for carrying on a trade or proof of enterprising without a licence, it shall be presumed, unless the contrary be proved, that such trade or occupation has been carried on:

(a) if an advertisement has appeared in any newspaper circulating in Lesotho from which it can be reasonably inferred that the accused is offering to carry on such trade or business;

(b) if the accused holds himself out by notice exhibited at or near any premises occupied by him or by notices whether printed or otherwise which are distributed amongst the public, or in any other manner as carrying on such trade or business; or

(c) if the accused offers or exposes for sale any goods usually sold in the course of such trade or business.

Regulations

34. (1) The Minister may make regulations for the purposes of giving effect to the provisions of this Order.

(2) Without prejudice to the generality of the foregoing the regulations may prescribe,

(a) the forms to be used, the fees to be paid and the conditions to be complied with in making any application;

(b) the forms to be used for the issue of licences;

(c) general conditions to which all licences shall be subject without such conditions being endorsed on the licence concerned;

(d) the hours and days of business to be observed in any business carried on under any class of trading licence;

(e) the conditions under which the use of touts or runners may be employed by licence holders;

(f) the returns to be rendered by the holders of licences;

(g) the nature of premises required for the conduct of business carried on by virtue of any trading licence;

(h) standards of morality and safety to be observed by licence holders;

(i) The conditions and circumstances under which the members of the Board shall be disqualified;

(j) The remuneration of the members of the Board other than civil servants;

(k) The tenure of office of the non-ex-officio members of the Board;

(l) The contents of a register to be maintained by the Commissioner including all particulars concerning issuance, suspension and cancellation of licences;

(m) The enterprises which are obliged to report to the Commissioner on their activities;

(n) The types of licences which may not be issued to certain enterprises; and

(o) Any other matter required to be prescribed under this Order

Offences and penalties

35. (1) Any person who,

- (a) Fails, neglects or refuses to produce any books, accounts or other documents upon a lawful demand under this Order
- (b) Fails to display the licence under this Order;
- (c) Obstructs or hinders any person in the exercise of his lawful powers under this Order;
- (d) Being the holder of the licence in respect of specified premises, carries on business elsewhere than on such premises;
- (e) Operates any business or trade in respect of which a licence has been suspended or cancelled;
- (f) By advertisement in any newspaper or periodical or by any writing upon any building, premises, vehicle or package represents himself to be the holder of a licence of which he is not the holder;
- (g) In or in connection with any application under this Order submits any written information, whether an affidavit or otherwise, which he knows to be false or does not know to be true or any false document;
- (h) Being the holder of a licence, hires, cedes, transfers otherwise than in terms of this Order or, in any way whatsoever, makes use of the licence to any other person or allows his licence to be used by any other person;
- (i) For any purpose whatsoever, makes use of the licence held by another person;
- (j) Contravenes any provision of this Order for which no penalty has been specified;

Commits an offence and is liable on conviction to a fine of M200 or to imprisonment for a period of 3 months.

(2) Any person who contravenes any provisions of any regulations made under section 34 commits an offence and is liable on conviction to a fine not exceeding M100 or to imprisonment for a period of 2 months or to both such fine and imprisonment.

Liability of manager

36. Any person who, at any time, is managing, superintending or conducting the business or affairs of a licence holder shall be subject to the same duties, obligations and penalties under this Order as such licence holder:

Provided that nothing in this section contained shall be deemed to relieve a licence from any duty, obligation or penalty to which he may be subject or liable

Repeal and Savings

37. (1) The Trading Enterprises Order 1987, is repealed

(2) Notwithstanding subsection (1) on or after the coming into operation of this Order;

(a) Any licence granted under the Order repealed by this section and in force at the commencement of this Order shall be deemed to have been issued under this Order; and

(b) Any application for a licence under the Trading Enterprises Order that is pending shall be dealt with in accordance with this Order.

NOTE

1. Order 10 of 1987
2. O. of 12 of 1970
3. A. 9 of 1981
4. A. 27 of 1969

Given under my hand at Maseru this 17th day of March, 1993

E.P. Ramaema

Chairman of the Military Council and Council of Ministers.

