



ANGUILLA

LICENSING OF BUSINESSES ACT, 2021

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LICENSING OF BUSINESSES ACT, 2021

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I Assent


Dileeni Daniel-Selvaratnam
Governor23.xii.21.
Date

ANGUILLA

No. 24/2021

LICENSING OF BUSINESSES ACT, 2021[Gazette Dated: 24th December, 2021] [Commencement: Section 31]

An Act to provide for the licensing of businesses.

ENACTED by the Legislature of Anguilla

Interpretation

1. (1) In this Act—

“Board” means the Business Licensing Board established under section 2;

“business” means any activity that is carried on for gain or reward, or in the course of which goods or services are acquired or supplied;

“company” means body corporate that is incorporated or continued under the Companies Act, R.S.A. c. C65;

“Comptroller” means the Comptroller of the Inland Revenue Department;

“licensed premises” means premises in relation to which a licence has been issued under this Act;

“licensee” means a person who has been granted a licence under this Act and includes a body corporate;

“limited partnership” means a limited partnership constituted in accordance with section 3 of the Limited Partnership Act, R.S.A. c. L70;

“Ministry” means the Ministry responsible for Commerce;

“partnership” means a partnership established under the Partnerships Act, R.S.A. c. P5 or a limited partnership constituted in accordance with the Limited Partnership Act, R.S.A. c. L70;

“Permanent Secretary” means the Permanent Secretary in the Ministry responsible for Commerce;

“Registrar” means the Registrar of Companies.

(2) For the purposes of this Act—

- (a) a body corporate is the holding body corporate of another if that other body corporate is its subsidiary; and
- (b) a body corporate is a subsidiary of another body corporate if it is controlled by that other body corporate.

(3) For the purposes of this Act, a business is carried on by an Anguillian if the business, is at least 51% owned by one or more Anguillians.

Business Licensing Board

Establishment of the Board

2. (1) The Business Licensing Board hereinafter referred to as the Board is established.
- (2) The Board shall observe the procedures set out in Schedule 1.

Membership of the Board

3. (1) The Board shall comprise the following persons—
 - (a) the Permanent Secretary, responsible for Commerce who shall be an *ex officio* member and the Chairperson;
 - (b) the Director of Economic Planning who shall be an *ex officio* member and Deputy chairperson; and
 - (c) a representative of the Anguilla Chamber of Commerce and Industry who—
 - (i) has at least an undergraduate degree in business, commerce, economics or related area or at least 5 years’ experience in business ownership or working at a senior level in a related sector, and
 - (ii) shall be appointed by the Minister with the approval of Executive Council for a term not exceeding 3 years and may be reappointed for no more than 1 additional 3 year term.

(2) There shall also be appointed one alternate member each from the Ministry and the Anguilla Chamber of Commerce and Industry respectively who shall attend a meeting of the Board where a person referred to in—

- (a) subsection (1)(a) or (b) representing the Ministry; or
 - (b) subsection (1)(c) representing the Anguilla Chamber of Commerce and Industry;
- is unable to attend a meeting of the Board.

(3) The attendance of 2 persons is required for a quorum.

(4) The member of the Board representing the Anguilla Chamber of Commerce and Industry shall be paid such remuneration as may be determined by the Executive Council.

Functions of the Board

4. The Board shall be responsible for the following—

- (a) considering all applications for licences;
- (b) the granting, refusal, variation, suspension, or revocation of a licence;
- (c) the enforcement of compliance with a licence issued under this Act;
- (d) the closure of a business for non-compliance with the provisions of this Act;
- (e) advising the Minister on policy related issues; and
- (f) any other functions as required or prescribed by law.

Requirement to have a Licence and Exemptions

Obligation to obtain licence to carry on business activity

5. (1) Every person seeking to carry on a business, set out in the Schedule 2 shall take out a licence in accordance with this Act and such licence is required whether such business is being carried on from a premises or virtually.

(2) No person shall carry on any business, from any premises or place unless a licence has been granted in accordance with this section.

(3) Where different places of business, stores, shops or other premises are operated in the name of one person, a separate licence shall be obtained for each location.

(4) Where different businesses are carried on by the same person in one premises, a separate licence shall be obtained for each business.

(5) Where a person is found to be operating a business without a licence the Board shall issue to the person a notice of cessation.

(6) Where a person referred to in subsection (5) fails to comply with a notice of cessation issued under subsection (5) the Board shall inform the Royal Anguilla Police Force that the person has committed an offence under this Act.

(7) Where a person who has been granted a licence to operate a business under this Act, has not operated such business for a period of 3 years or more, such person shall be required to submit a new application for a licence to operate the business in accordance with section 7.

(8) For the avoidance of doubt, a store or place of reception of goods at which no sales are effected shall not be deemed to be a premises from which a business is being carried on for licensing purposes under this section.

(9) Notwithstanding subsection (8) a business offering storage services shall be required to obtain a licence to carry on business.

(10) Subsections (1) to (9) also apply where the business is being carried on as a partnership or a company.

Exemptions

6. (1) This Act shall not apply to—

(a) any business, licensed or carried on under another Act—

(i) in relation to which an annual licence fee is paid or payable under such Act, or

(ii) where such Act exempts the business, from the requirement to obtain a licence or to pay a fee under this Act; or

(b) persons who do not carry on a business on their own account but are employed by some other person;

(c) the sale of fish, milk, meat, fruit or agricultural products by the producers thereof;

(d) any corporation or body which the Board is satisfied has been formed for the purposes of social or public welfare, education, religion, charity, art or science and which applies its income or profits solely for promoting such purposes and which does not permit the payment of dividends or any form of remuneration to its members; and

(e) Government departments conducting business type activities.

(2) Notwithstanding subsection (1)(c) the Minister may by regulations require a person carrying on a business specified in subsection (1)(c) to obtain a licence under this Act.

Issuing of licences

Licence application

7. (1) Every application for a licence under this Act shall be—

(a) in the prescribed form;

(b) accompanied by proof of payment of the non-refundable application fee specified in Item B of Schedule 2; and

(c) submitted to the Commerce Unit in the Ministry along with any supporting documentation specified in Schedule 3.

(2) Where an application referred to in subsection (1) is received, the Commerce Unit in processing such application shall comply with the procedure set out in Schedule 4.

(3) The Commerce Unit shall forward the following to the Board for consideration—

- (a) the application and any supporting documentation received in relation to the application; and
- (b) findings from consultations and due diligence conducted in relation to the application.

(4) Where the applicant wishes to have the application processed within 5 days of submission of application along with all required documentation, an additional fee as specified in section 10(3) shall be payable to expedite the process.

Board's consideration of applications

8. (1) When considering an application for a licence, the Board may have regard to the following—

- (a) the application, supporting documentation and the findings of any consultations and due diligence conducted by the Commerce Unit;
- (b) any additional information or advice it requires;
- (c) compliance with policy or legislative requirements related to the business in relation to which an application is received;
- (d) business data relevant to the application;
- (e) Ministerial Orders issued under this Act;
- (f) the capacity of the applicant or employees of the applicant to properly operate the business and carry out the work; and
- (g) where applicable, the applicant's previous history or conduct in relation to licences previously issued.

(2) When determining whether or not the applicant has the capacity to safely and properly carry out or operate the business, the Board may require proof of qualifications and experience of the applicant and any persons employed by the applicant to conduct or operate the business or competently provide the services offered.

(3) Where the Board receives an application in relation to a business related to the areas referred to in subsection (4) the Board may require the applicant to provide the following—

- (a) certificates proving qualification in the area;
- (b) performance assessments of the work of the applicant or employees of the applicant; or
- (c) job references from previous employer of the applicant or his employees.

(4) The areas in relation to which subsection (3) applies shall include but are not limited to the following—

- (a) construction, including contractors, plumbers, carpenters, electricians and Heating Ventilation and Air Conditioning technicians;
- (b) engineering;
- (c) maintenance and repair of motor vehicles;
- (d) hairdressing and other beauty treatment; and
- (e) other human health activities.

Grant of licence

9. (1) Where the Board having considered an application, determines that a licence should be granted it shall grant such licence.

(2) The Board shall make a determination in relation to an application for a licence within 15 working days of receiving the application from the Commerce Unit unless the fee to expedite the application is paid in accordance with section 7(4).

(3) The Board shall not grant a licence where—

- (a) the applicant is under 18 years old;
- (b) the applicant is a non-Anguillian who—
 - (i) is not the holder of a self-employed work permit under the Labour (Relations) Act, unless the applicant is exempt from work permit requirements, or
 - (ii) is the holder of a work permit in relation to employment in an existing business.
- (c) the applicant is, under the provisions of this or any other law, disqualified from holding the licence sought;
- (d) the application form or supporting documentation contains any material misrepresentation or false statement;
- (e) the Board determines that there is some other reasonable ground for not granting a licence.

(4) The Board may attach such conditions to a licence as it may deem necessary to conform with the provisions of this Act.

(5) Where the Board—

- (a) refuses to grant a licence; or
- (b) imposes conditions or restrictions pursuant to subsection (4);

the Board shall immediately serve on the applicant, notice of such decision.

(6) A decision of the Board under subsection (5) may be subject to appeal to the Magistrate in accordance with section 23.

(7) The Comptroller shall establish and maintain a register of the business licenses issued under this Act, and such register shall—

- (a) be published in the *Gazette* at the end of the first quarter of each year;
- (b) be available at the Inland Revenue Department for viewing by the public during opening hours; and
- (c) be available in electronic media.

Renewal and duration of licences and licence fees

10. (1) An application for the renewal of a licence shall be made in the prescribed form on or before the 31st day of January of the current year and shall be accompanied by the fee specified in Schedule 2 and subsection (2) for the renewal of the licence.

(2) The fee for issue of a new licence or the renewal of a licence is as follows—

- (a) when a business is carried on by an Anguillian, the fee for the business is the base annual fee as set out in the Schedule 2;
- (b) when an Anguillian carries on 2 or more business activities from the same premises, the fee—
 - (i) for the principal business activity is the base annual fee for the business, as set out in Schedule 2, and
 - (ii) for each additional business activity is an amount equal to $\frac{1}{2}$ the base annual fee for the business, as set out in Schedule 2;
- (c) when an Anguillian carries on the same business, from more than one premises, the fee—
 - (i) for the principal business activity is the base annual fee for the business, as set out in Schedule 2, and
 - (ii) for each business activity carried out at different premises is an amount equal to $\frac{1}{2}$ the base annual fee for the business, as set out in Schedule 2;
- (d) when an Anguillian carries on 2 or more unrelated business activities, from a different premises in relation to each business, the fee for each business activity is the base annual fee for the business, as set out in Schedule 2;
- (e) when the business, is carried on by a non-Anguillian, the fee is an amount equal to $1\frac{1}{2}$ times the base annual fee for the business, set out in Schedule 2;
- (f) when a non-Anguillian carries on 2 or more business activities from the same premises, the fee—

- (i) for the principal business activity is an amount equal to $1\frac{1}{2}$ times the base annual fee for the business, as set out in Schedule 2, and
 - (ii) for each additional business activity is an amount equal to $\frac{3}{4}$ times the base annual fee for the business, as set out in the Schedule 2;
- (g) when a non-Anguillian carries on the same business, from more than one premises, the fee—
- (i) for the principal business activity is an amount equal to $1\frac{1}{2}$ times the base annual fee for the business, as set out in Schedule 2, and
 - (ii) for each business activity carried out at different premises is an amount equal to $\frac{3}{4}$ the base annual fee for the business, as set out in Schedule 2; and
- (h) when a non-Anguillian carries on 2 or more unrelated business activities, from a different premises in relation to each business, the fee for each business activity is $1\frac{1}{2}$ times the base annual fee for the business, as set out in Schedule 2.

(3) The fee to expedite the processing of an application within 5 days of submission shall be the non-refundable application fee specified in Item B of Schedule 2 and the additional expedition fee specified in Item C of Schedule 2.

(4) All licences shall expire on the 31st day of December in each year.

(5) Where a business—

- (a) fails to renew its business licence after it has expired; and
- (b) continues to operate without a valid licence;

the licence shall not be renewed until the business pays the arrears for the months that the business was operating without a licence, and a penalty of 1% of the total arrears shall be applied .

(6) The requirement to pay the arrears and penalty referred to in subsection (5) shall not apply where a temporary closure of the business has been approved by the Inland Revenue Department for the period in question.

(7) Where an application for a new licence is made during the course of a year, the licence fee payable shall be $\frac{1}{4}$ of the fee specified in subsection (2) for the licence multiplied by the number of calendar quarters from the day the licence is granted until the end of the year, a part of a calendar quarter being calculated as a whole quarter.

(8) The licence fee referred to in subsection (1) for the renewal of a licence may be paid on a quarterly basis over the course of a year.

Change of address, business activity, ownership, etc.

11. (1) Every licensee under this Act shall immediately give written notice to the Board of any change—

- (a) in the address from which the business is carried on;

- (b) in the activities carried in relation to the business;
- (c) in the ownership of the business; or
- (d) of any circumstances affecting the licence.

(2) Where the Board determines that there is a material change in relation to the business carried on by the licensee the Board may—

- (a) require the licensee to submit an application for another business licence; or
- (b) vary the business licence where it is deemed appropriate.

(3) Where the address from which the business is carried out has changed the licence may be amended to reflect this change subject to the satisfactory completion of consultations and due diligence by the Commerce Unit.

(4) Where a business owned by a licensee is sold, the new owners of the business shall be required to obtain a new business licence to carry on that business.

(5) No licence issued under this Act to any person may be transferred to any other person.

Renewal of licence (businesses other than companies and limited partnerships)

12. (1) Where a licence has been granted under this Act, it shall be automatically renewed annually where—

- (a) the licensee pays the requisite fee and produces to the Inland Revenue Department—
 - (i) a completed renewal form including a signed declaration indicating that the conditions of original approval have not changed, and
 - (ii) where applicable in the case of non-Anguillians, proof that their work permit has been renewed; and
- (b) the Inland Revenue Department is satisfied that the licensee has not breached any of the conditions of the licence.

(2) Where the Inland Revenue Department determines that any of the conditions of the licence have been breached, section 13(3) to (7) with the appropriate modifications shall apply.

Renewal of licence for companies and limited partnerships

13. (1) Where a company or limited partnership seeks to have its licence renewed, the company or limited partnership shall—

- (a) comply with section 12(1)(a); and
- (b) submit an annual return to the Inland Revenue Department.

(2) On receipt of an annual return under subsection (1)(b), the Inland Revenue Department shall verify the accuracy of such returns.

(3) Where the Inland Revenue Department determines that—

- (a) false or inaccurate annual returns have been submitted; or
- (b) any of the conditions of the licence have been breached;

the Inland Revenue Department shall report its findings to the Commerce Unit along with any documents or other information supporting the Department's findings.

(4) If the Commerce Unit agrees with the findings of the Inland Revenue Department, the Unit shall forward the matter for consideration by the Board.

(5) The Board after considering the matter referred to it under subsection (4) may issue the company or limited partnership with a notice to comply requiring—

- (a) the production of specified documents within a specified time to demonstrate the company's or limited partnership's compliance; or
- (b) the company or limited partnership to rectify the breach within a specified time.

(6) The Board shall promptly communicate to the Comptroller of Inland Revenue its decision made under subsection (5) and if there is continued non-compliance, the Board may direct the Comptroller not to renew the licence.

(7) Where the Board—

- (a) is satisfied that the company or limited partnership did not breach its licence conditions; or
- (b) has no reason to believe that the annual returns are false or inaccurate;

the Board shall issue a direction to the Inland Revenue Department to renew the licence.

Suspension and revocation of licence

14. (1) Where a licensee fails to comply with the conditions of the licence the Board may—

- (a) suspend the licence for such period as is specified by the Board; and
- (b) issue such orders to be complied with by the licensee within such time specified by the Board;

and the licensee shall be required to pay the licence fee for the period during which the licence has been suspended.

(2) Where a licensee—

- (a) fails to comply with an order issued under subsection (1); or
- (b) repeatedly breaches the conditions of the licence;
- (c) commits a breach that the Board deems to be very grave;

the Board may revoke a licence granted under this Act.

(3) Where the Board revokes a licence under this section, the business shall be deemed to be closed for business and is prohibited from conducting business unless a licence is granted under this Act.

(4) Where a licence has been revoked under this section, the licence fee paid under this Act shall be forfeited.

(5) A breach which may be deemed to be very grave for the purposes of subsection (2)(c) may include but is not limited to the following—

- (a) the commission of an offence;
- (b) the furnishing of false information to obtain a licence; or
- (c) the breach of health and safety requirements which may pose a danger to the public.

Revocation of licence by Court

15. (1) Where a licensee is convicted of any offence in connection with the conduct of the business licensed, the Court may order the licence to be revoked and that the licensee be disqualified from applying for a new licence for a period not exceeding 3 years.

(2) Where the Court makes an order under subsection (1) the Court shall notify the Board of the order and no licence fee which may have been paid shall be refundable.

Permitting licensed premises to be used for drug offences

16. (1) Where a licensee has been found guilty of an offence under the Drugs (Prevention of Misuse) Act in relation to the premises used for carrying on the business, the court may order that the licence be revoked forthwith and that the licensed person be disqualified from holding any licence under this Act for such period not exceeding 5 years as the court may determine.

(2) Where the Court makes an order under subsection (1) the Court shall notify the Board of the order and no licence fee which may have been paid shall be refundable.

Certificate of licence to be displayed at all times

17. (1) A licence granted under this Act shall be evidenced by a certificate and such certificate shall be framed by the licensee and shall be publicly and prominently displayed on the site location or premises to which it relates.

(2) Where a licence is granted to a person offering a service or goods online—

- (a) a trust badge or seal shall be displayed on the homepage of licensee's website; and
- (b) a link shall be provided to an electronic copy of the certificate referred to in subsection (1).

Exchange of information

18. Nothing in the Confidential Relationships Act shall prevent the disclosure between the Comptroller of Inland Revenue, the Chief Immigration Officer, the Registrar of Companies, the Labour Commissioner or any other Head of a Department in the Anguilla Public Service or

Government Statutory Bodies of information in their possession which in their view would assist in the due administration, control and enforcement of this Act.

Ministerial Order

19. (1) The Minister responsible for Commerce, with the approval of Executive Council, may from time to time issue Ministerial Orders which may—

- (a) stipulate the number of licences that may be approved annually in a certain industry;
- (b) prohibit the issuing of licences in a particular industry for a specified period;
- (c) impose a temporary fee reduction or exemption to incentivize new business or encourage growth; and
- (d) direct that a particular industry is reserved for local enterprise, and that licences should only be issued to—
 - (i) Anguillians or Anguillian controlled entities, or
 - (ii) non-Anguillians where approval of Executive Council has been granted under section 20; and
- (e) impose a mandatory requirement for minimum qualifications for owners or employees of businesses offering particular services;

and such Ministerial Orders shall be published in the *Gazette*.

(2) The Minister, may with the approval of Executive Council, make such other Ministerial Orders as he sees fit and necessary.

(3) When determining whether or not a Ministerial Order should be made the Minister shall consider the following—

- (a) trade and business data;
- (b) the number of business licences already issued and active in particular industries and the need for moratoriums in specific industries in the economy;
- (c) the need to encourage growth in certain industries;
- (d) promotion of new types of businesses;
- (e) issues of public safety and the general public interest.

(4) Where a Ministerial Order has been made reserving an industry for local business, such order shall not apply to a business that—

- (a) existed before such order was made; and
- (b) is wholly or majority owned by non-Anguillians.

Reserved industries

20. (1) Where by Ministerial Order, an industry is reserved for local enterprise the Board shall, in relation to that industry, only issue a licence where—

- (a) an Anguillian owns 100% of share interest in the business; or
- (b) the business is jointly owned by an Anguillian and a non-Anguillian, the Anguillian owns 51% or more share interest in the business.

(2) Notwithstanding subsection (1) a licence may be issued in relation to an industry reserved for local enterprise, to a non-Anguillian who owns 51% or more of share interest in the business where Executive Council approves the issuance of such licence.

(3) A non-Anguillian who wishes to operate a business in an industry reserved for local enterprise shall—

- (a) comply with the application requirements set out in section 7; and
- (b) pay the non-refundable application fee specified in Item E of Schedule 2.

(4) Where a licence is issued under subsection (2) the non-Anguillian shall pay the fee specified in Item D of Schedule 2.

Business engaging in specified activities required to form a company or limited partnership

21. (1) Where an activity listed in subsection (2) is being carried on by a business and this business is owned by more than one person, such business shall be a company or a limited partnership.

(2) The activities referred to in subsection (1) include—

- (a) the operation of distribution and service centres;
- (b) the operation of headquarters;
- (c) fund management;
- (d) financing and leasing;
- (e) shipping;
- (f) intellectual property business.

(3) Where a business referred to in subsection (1) makes an application for a licence under this Act, the application shall be accompanied by the following, in addition to the documentation outlined in Schedule 3—

- (a) articles of incorporation where an application is made by a company; or
- (b) where an application is made by a limited partnership—
 - (i) the partnership agreement, and

(ii) a copy of the certificate of registration issued by the Registrar.

(4) The activities referred to in subsection (2) are defined in Schedule 5.

Businesses owned jointly by an Anguillian and non-Anguillian to be a company

22. (1) Where a business is jointly owned by an Anguillian and a non-Anguillian, the business shall be incorporated under the Companies Act.

(2) Where a business referred to in subsection (1) wishes to obtain a licence under this Act, such business shall submit the following documents, in addition to those outlined in Schedule 3—

- (a) the application for a licence under this Act;
- (b) the certificate and articles of incorporation; and
- (c) registers of shareholders and directors.

Appeal against decision of the Board

23. (1) A person dissatisfied with the Board's decision pursuant to section 9(5) may, within 30 days of notice of such decision—

- (a) lodge a notice of appeal with the Magistrate; and
- (b) serve a copy of the notice of appeal on the Board.

(2) A person making an appeal to the Magistrate under subsection (1) shall state grounds on which such appeal is being made.

(3) In deciding an appeal, the Magistrate may—

- (a) affirm the decision of the Board to refuse the licence or to impose conditions; or
- (b) require the Board to grant the licence;
- (c) require the Board to vary or remove the conditions imposed under section 9(4).

Electronic signatures

24. Where an electronic signature has been used to sign a document for the purposes of this Act, such signature shall be deemed to be valid and shall have the same legal status as a handwritten signature.

Power to alter Schedule

25. The Minister with the approval of Executive Council may by regulation revoke, amend, add to or alter in any manner the Schedules to this Act and the fees prescribed.

Regulations

26. The Minister with the approval of Executive Council may make regulations prescribing anything required to be prescribed by this Act and generally for the better carrying out of the provisions thereof.

Offences and penalties

27. Whoever—

- (a) wilfully makes a false or inaccurate representation to the Board;
- (b) carries on or attempts to carry on without a licence a business, which is required to be licensed under this Act;
- (c) carries on or attempts to carry on any business, for which a licence has been granted in contravention of any condition or restriction contained in such licence; or
- (d) otherwise fails to comply with this Act;

is guilty of an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of 3 months, and in the case of a continuing offence a further fine of \$250 in respect of each day the offence continues.

Transitional Provisions

28. (1) Where an existing business, is jointly owned by an Anguillian and a non-Anguillian, such business shall, in accordance with section 22(1), be required to incorporate as a company before 1 January 2023.

(2) Notwithstanding subsection (1) where an existing business, is carrying on an activity specified in section 21(2), such business shall in accordance with section 21(1) form a company or limited partnership with immediate effect after the coming into force of this Act.

(3) For the avoidance of doubt, all other requirements under this Act have immediate effect for new and existing businesses after the coming into force of this Act.

(4) For the purpose of this section—

“existing business” means a business that has been granted a licence under the Trades, Businesses, Occupations and Professions Licensing Act, R.S.A. c. T40;

“new business” means a business that is granted a licence under this Act.

Repeal

29. The Trade Business Occupations and Professions Licensing Act, R.S.A. c. T40 is hereby repealed.

Citation and commencement

30. This Act may be cited as the Licensing of Businesses Act, 2021 and shall come into force on 31st December 2021.

SCHEDULE 1

(Section 2)

BOARD PROCEDURES**Board Procedures**

1. The Board will be quorate once the chairperson or deputy chairperson and one other member (substantive member or alternate member) are present. Decisions will be by majority vote.
2. The Board may:
 - (a) meet virtually or in person;
 - (b) request additional information from applicants or other sources to carry out its functions;
 - (c) co-opt any representatives from a Department or Agency or any other person to attend a meeting for the purpose of providing information or advice only. These persons will not have voting privileges;
 - (d) approve licences with conditions;
 - (e) request the applicant's attendance at the relevant Board meeting; and
 - (f) give notice with regard to any intended action before that action is taken.
3. The members of the Board shall sign an agreement of confidentiality which forbids any member from disclosing, any confidential information which he obtains as a member of the Board.
4. A Board member who has a conflict or a potential conflict of interest is required to disclose such conflict to the Board. Where there is a conflict or potential conflict, the interested Board member shall be prohibited from voting on any matter relating to such conflict.
5. Decisions of the Board will be communicated to the applicant via the Commerce Unit. Licences will be issued on payment of the requisite fees.
6. Appeals of decisions of the Board should be made to the Magistrate.
7. The Commerce Unit will serve as the Secretariat to the Board. The Secretariat will be responsible for the day to day administration of the Board and, to the extent of the authority delegated to it by the Board, will be responsible for the carrying out of the administrative duties of the Board. There will be a recording secretary who will record and keep the record of proceedings and decisions of the Board.

SCHEDULE 2
(Sections 5 and 10)

BUSINESSES

A. LICENCE FEES

<i>Business</i>	<i>Base Annual Fee</i>
	\$
1. Accounting Firms	6,000.00
2. Accountant (Degree, not professionally certified)	1,800.00
3. Accountant (Sole Practitioner, not professionally certified)	2,400.00
4. Accountant (Technician)	1,200.00
5. Agent—	
Debt Collection	2,400.00
Insurance	6,000.00
Shipping A-International	6,000.00
B-Local	1,200.00
C-Regional	2,400.00
6. Air Ambulance Operator/Pilot	1,800.00
7. Air Charter Service/ Airline	1,800.00
8. Air Condition Services	1,200.00
9. Architectural Firms.....	6,000.00
10. Architect	2,400.00
11. Architect (Sole practitioner, professionally certified)	3,600.00
12. Architect (Degree, not professionally certified)	2,400.00
13. Art Gallery (Located at hotel)	6,000.00
14. Art Gallery (Not located at hotel)	3,000.00
15. Art Gallery/ Studio	3,000.00
16. Artist (Studio)	3,000.00
17. Asphalt Plant	6,000.00
18. Auctioneer	2,400.00
19. Auto Garage	1,200.00
20. Actuarial Firm	6,000.00
21. Baker (Self-employed)	500.00
22. Bakery	800.00
23. Barber Shop	400.00
24. Beautician/ Cosmetologist	800.00
25. Beach Vendors.....	400.00
26. Blasting and Demolition Services	1,800.00
27. Boat Builder	800.00
28. Bottling Plants (excluding water)	2,400.00
29. Broker—	
Customs	1,200.00
Stock/Securities Firm	6,000.00
30. Building Contractor (with under 10 employees)	2,400.00
31. Building Contractor (with 10 – 20 employees)	3,600.00
32. Building Contractor (with 20+ employees)	6,000.00
33. Boat Manufacturer	6,000.00
34. Bulk Station gas—	
Fuel Importer	6,000.00
Retailer	3,000.00
35. Business Advisory/Consulting Firms	6,000.00
36. Business Advisor (Sole Practitioner)	2,400.00
37. Carpenter, where an Employer	1,200.00

38.	Carpenter, where not an Employer	600.00
39.	Carpet Laying and Cleaning Services	600.00
40.	Car Wash Operator	600.00
41.	Caterer	600.00
42.	Chemist and Druggist	1,800.00
43.	Cinema House	1,200.00
44.	Cleaning Contractors	1,200.00
45.	Coffee Shop and Ice-cream Parlour	500.00
46.	Commercial Boat Rentals	1,000.00
47.	Commercial Warehousing	1,200.00
48.	Computer Services—	
	Technologist	1,800.00
	Technology Firm/Company	6,000.00
49.	Consultant/Arbitrator	1,800.00
50.	Courier Service	1,000.00
51.	Day Care Centres (10+ clients)	450.00
52.	Day Care Centres (under 10+ clients)	250.00
53.	Dermatologist	1,800.00
54.	Dispenser	1,800.00
55.	Dive Operator	1,000.00
56.	Doctor/Dentist—	
	Firm	6,000.00
	Sole Practitioner	2,400.00
57.	Draughtsman	1,800.00
58.	Driving School	800.00
59.	Duty Free Shop	3,600.00
60.	E-Commerce Business	3,000.00
61.	Electrician	1,200.00
62.	Electrician, where not an Employer	1,000.00
63.	Electronic Repair	800.00
64.	Engineering Firm	6,000.00
65.	Engineer/Engineering Consultant (Sole Practitioner)	2,400.00
66.	Engineer	1,800.00
67.	Event Promoter (Annual fee)	1,200.00
68.	Event Promoter (per event/show)	300.00
69.	Fax Machine, Copiers, T V Rentals	1,200.00
70.	Fencing Company	1,000.00
71.	Ferry Boat Operator—	
	Licenced Passenger Ferry	6,000.00
	Charter Boat Operator (per boat)	1,200.00
	Cargo Boat Operator (per boat)	1,000.00
72.	First Aid Services	600.00
73.	Fisherman (other than an Anguillian)	1,800.00
74.	Fisherman (Charter)	1,000.00
75.	Fitness Centre/Gym (Located at hotel)	3,000.00
76.	Fitness Centre/Gym (Not located at hotel)	1,800.00
77.	Flea Market	800.00
78.	Flower Shop Operator/Florist	800.00
79.	Foreign Farmers	1,200.00
80.	Gaming Machines	1,000.00
81.	Garbage Disposal Services (Government contracts)	5,000.00
82.	Garbage Disposal Services (other contracts)	1,000.00
83.	Gas Dealer/Cooking Gas	600.00
84.	Ground Services	1,200.00
85.	Guest House Operators (per room)	60.00
86.	Hairdresser	800.00
87.	Heavy Equipment Rental	1,000.00

88.	Herbalist	1,000.00
89.	Horse Stables for trail tours	800.00
90.	Hotels—	
	US\$300 or less per night	120.00
	Over US\$300 per night	300.00
	Minimum Annual Licence Fee	500.00
	Villas and Apartments—	
	US\$300 or less per night	120.00
	Over US\$300 per night	300.00
	Minimum Annual Licence Fee	500.00
	Inns—	
	US\$100 or less per night	60.00
	Over US\$100 per night	120.00
	Minimum Annual Licence Fee	300.00
	Guest Houses—	
	per room	60.00
	Minimum Annual Licence Fee	300.00
	Licence fee is charged as per room based on room rate for each of the above category	
91.	Hotel Management Company	6,000.00
92.	Hydroponic Farm	1,000.00
93.	Import and Export Services	1,800.00
94.	Importers of Security Equipment for Resale	1,200.00
95.	Information Systems Operator	1,800.00
96.	Information Technology Consulting Firm	3,000.00
97.	Interior Decorator/Landscaper	1,200.00
98.	International Trader	1,800.00
99.	Internet Service	1,800.00
100.	Itinerant Trader	1,200.00
101.	Jeweller or Watch Repair	1,000.00
102.	Joiner, where an Employer	1,200.00
103.	Joiner, where not an Employer	600.00
104.	Journalist	1,000.00
105.	Landlord (Commercial Space)—	
	Under 600 sq. ft. per building	300.00
	From 600 to 1,000 sq. ft. per building	450.00
	Over 1,000 sq. ft. per building — for the first 1,000 sq. ft.	450.00
	— for each additional sq. ft.	1.00
106.	Landlord (residential tenancy over 3 months)—	
	Residential Apartment per unit	300.00
	Apartment/Cottages with 2 bedrooms or less	300.00
	Apartment/Cottages with more than 2 bedrooms	500.00
	Villas	1,500.00
107.	Launderer	800.00
108.	Law Firm	6,000.00
109.	Lawyer/Solicitor/Barrister (Sole Practitioner)	2,400.00
110.	Locksmith	500.00
111.	Lottery Agent	1,000.00
112.	Management Consultant (Sole Practitioner)	2,400.00
113.	Management Services Firm	6,000.00
114.	Manufacture of Concrete Products	3,600.00
115.	Manufacturer of Aerated/Purified Water	2,400.00
116.	Marketing and Sales Agent (Firm)	3,600.00
117.	Marketing and Sales Agent (Individual)	2,400.00
118.	Mason, where an Employer	1,000.00
119.	Mason, where not an Employer	600.00
120.	Massage Centre (Located at hotel)	3,600.00

121.	Massage Centre (Not located at hotel)	2,400.00
122.	Masseuse, where not an Employer	1,200.00
123.	Mechanic	1,000.00
124.	Medical Firm	6,000.00
125.	Medical School	6,000.00
126.	Medical Laboratory Technologist	2,400.00
127.	Merchant—average stock less than \$5,000	NIL
	average stock exceeding \$5,000 but not exceeding \$25,000	800.00
	average stock exceeding \$25,000 but not exceeding \$100,000	1,200.00
	average stock exceeding \$100,000 but not exceeding \$250,000	2,400.00
	average stock exceeding \$250,000 but not exceeding \$500,000	6,000.00
	average stock exceeding \$500,000 but not exceeding \$1,000,000	9,600.00
	average stock exceeding \$1,000,000	14,400.00
128.	Mining/Quarrying Operation	6,000.00
129.	Mobile Restaurant	1,000.00
130.	Mobile Trader	1,000.00
131.	Money Transfer Service	1,800.00
132.	Museum Operator	600.00
133.	Music Teacher	600.00
134.	Nail Care Salon	800.00
135.	Newspaper Operator	800.00
136.	Night Club/Disco Operator	1,200.00
137.	Nurse/Masseur	1,200.00
138.	Ophthalmic Dispenser	1,200.00
139.	Optician/Optomtrist	2,400.00
140.	Painter (Self-employed)	600.00
141.	Painting Contractor, where an Employer	1,200.00
142.	Pest Control Services	800.00
143.	Photographer	1,000.00
144.	Plastic Laminating Services	800.00
145.	Plumber, where an Employer	1,200.00
146.	Plumber, where not an Employer	600.00
147.	Preschool	600.00
148.	Primary School	800.00
149.	Printer	1,000.00
150.	Product Agent and Distributor	1,200.00
151.	Psychologist	2,400.00
152.	Radio and Broadcasting Equipment Rental	1,200.00
153.	Real Estate Agency	2,400.00
154.	Real Estate Agent	3,000.00
155.	Real Estate Developer	6,000.00
156.	Recording Studio	1,200.00
157.	Reflexologist	1,200.00
158.	Refrigeration Services	1,200.00
159.	Restaurant (located at hotel, villa or guest house)	3,600.00
160.	Restaurant (not located at hotel, villa or guest house)—	
	Offering local cuisines	1,200.00
	Offering cuisines other than local cuisines	2,400.00
161.	Road Construction Contractor	2,400.00
162.	Rum Manufacturer	3,600.00
163.	Screen Making	800.00
164.	Seamstress	800.00
165.	Secondary School	1,200.00
166.	Secretarial Services	800.00
167.	Security Service	1,000.00
168.	Shoemaker	500.00
169.	Sign Shop	1,200.00
170.	Silk Screen Operator/Printer	1,200.00

171.	Solar heating Contractors	1,200.00
172.	Spa (Located at hotel)	6,000.00
173.	Spa (Not located at hotel)	3,000.00
174.	Sports and Entertainment Promoters	1,800.00
175.	Surveyor	2,400.00
176.	Tailor	800.00
177.	Teacher/Tutor	600.00
178.	Telecommunications Contractor (Firm)	3,000.00
179.	Telecommunications Expert	2,400.00
180.	Telecommunications Technician (Sole Practitioner)	1,200.00
181.	Tertiary Institute (Learning)	2,000.00
182.	Therapist	1,200.00
183.	Tiler, where an Employer	1,200.00
184.	Tiler, where not an Employer	600.00
185.	Tour Guides/Tourism Rentals	800.00
186.	Tour Operator	800.00
187.	Trades Licence	1,000.00
188.	Travel Agent	1,200.00
189.	Trucking Service	1,000.00
190.	Tyre Repair Shop	500.00
191.	Undertaker	1,500.00
192.	Upholsterer	800.00
193.	Vehicle Dealer	1,800.00
194.	Vendor's Licence.....	500.00
195.	Veterinary Doctor	1,200.00
196.	Video/Movie Rental Operator	1,200.00
197.	Villa Agent—	
	General Agent	3,600.00
	Specific Agent	1,800.00
198.	Water Sports Operator	1,000.00
199.	Welding Services	1,000.00
200.	Business other than those specified	1,000.00
	B. Non-refundable application fee	\$50.00
	C. Non- refundable expedition fee for licence applications	\$300.00
	D. The fee for business licences issued to non-Anguillians operating a business in an industry reserved for local enterprise shall be the relevant fee specified in Item A multiplied by 5	
	E. Non-refundable application fee for non-Anguillians operating a business in an industry reserved for local enterprise.....	\$500.00

SCHEDULE 3

(Section 7(1))

DOCUMENTATION REQUIREMENTS**1. Standard Documentation**

The required documents to be submitted to the Commerce Unit to support ALL applications will be as follows:

- a) Identification - specifically passport copy, biodata page;
- b) Tax Clearance Certificate;
- c) Outline business plan (template will be provided);
- d) Proof of Anguillian status or the documentation referred to in the next section.

2. Applications by non-Anguillians

When the applicant for a licence is a non-Anguillian the following additional documentation will be required:

- a) three (3) character reference letters;
- b) current Police Record;
- c) statement & reference letter from financial institution of the applicant's financial ability to carry out business.

3. Additional Documentation:

Other documents may be required based on the type of business involved. These may include:

- a) Detailed business plan;
- b) Alien Land Holding Licence;
- c) Physical Planning approval;
- d) Lease Agreement (where applicable);
- e) Copy of land register;
- f) Food handler's permit;
- g) Business agreements;
- h) Certification of qualifications; or evidence of relevant experience;
- i) Authorization letter from the applicant for others to act on his/her behalf;
- j) Other permits, clearances, licences etc. that may be required under other legislation related to the trade or business under consideration.

4. Applications by Partnerships

In addition to the documentation outlined in items 1 to 3 above, which must be produced for each partner, such applications must be accompanied by:

- a) the partnership agreement, and
- b) in the case of limited partnerships, a copy of the certification of registration issued by the Registrar of Companies.

5. Applications by Companies

In addition to the documentation outlined in items 1 to 3 above, which must be produced for each director and major shareholder, such application must be accompanied by:

- (a) a certificate of incorporation;
- (b) documents which show:
 - (i) the number and par value of each class of shares issued by the company;
 - (ii) the voting and other rights attached to each class of shares;

- (iii) a statement of the number and par value of each class of shares beneficially owned by Anguillians;
 - (iv) a statement of the number and par value of each class of shares held by persons who are not Anguillian;
 - (v) statement that the effective control and benefit of the company are not, either directly or indirectly or by reason of any artifice or device vested in or permitted to pass to persons other than as specifically shown in the return of shareholdings;
- (c) in the case of a company that was registered twelve or more months prior to the application for a licence, a copy of the company's annual return and a return of shareholdings containing the particulars listed above.

Companies will be required to submit copies of their annual returns to the Inland Revenue Department on an annual basis as part of the process for their business licences to be renewed.

SCHEDULE 4
(Section 7(2))

COMMERCE UNIT PROCEDURES

Commerce Unit Procedures

1. The Commerce Unit in the Ministry of Commerce will manage the licensing process.
2. Persons must submit applications by completing the required form¹ with the required supporting documentation to the Commerce Unit either in hard copy or via the online application portal which will be developed to support the new regime. At the time of submission of the application, a non-refundable processing fee will be payable.
4. The Commerce Unit will vet the application and documentation to ensure they are completed accurately and contain the required information. The Unit will consult with other Government Departments or Agencies (including the Department of Labour in relation to consideration of work permits) and also conduct the necessary due diligence and other checks (as outlined below) depending on the applicant and the type of trade or business for which a licence is being sought.
5. As part of its due diligence and consultation protocols, the Commerce Unit will require the collaboration of other Ministries and Departments. Depending on the type of business being contemplated, inspections of the proposed premises/ location will be required from the:
 - Department of Health Protection;
 - Anguilla Fire and Rescue Services; and the
 - Department of Physical Planning.The outcome of these inspections will be documented and submitted to the Commerce Unit for transmission to the Board.
6. On completion of this process, the Unit will forward the application, supporting documentation and findings from consultations and due diligence checks to the Permanent Secretary, with responsibility for Economic Development and Commerce who will convene a meeting of the Board.

¹ Social security numbers will be required on forms


SCHEDULE 5

(Section 22)

DEFINITIONS OF ACTIVITIES


Relevant activity*	Definition
Fund Management	A business earning income from providing management services (including making decisions on investments) to an investment fund or its investors.
Financing and leasing	A business earning income from providing credit facilities for any kind of consideration to another person but does not include financial leasing of land or an interest in land, banking business, fund management business or insurance business.
Distribution and service centre	A business earning income from – (a) purchasing raw materials and finished products from other group members and reselling these; or (b) providing services to other entities of the same group, including transporting and storing goods, managing stocks, taking orders, or providing consulting or other administrative services.
Headquarters	A business earning income from providing services such as managing, coordinating or controlling business activities for a group with which it is affiliated, whether for the group as a whole or for members of the group in a specific geographical area including— (a) taking relevant management decisions; (b) incurring expenditures on behalf of group entities; or (c) co-ordinating group activities.
Intellectual property business	A business earning income from intellectual property assets, including royalties and income from the sale of an intellectual property asset.
Shipping	A business earning income from shipping activities (via the sea) including— (a) managing the crew (including hiring, paying or overseeing crew members); (b) hauling and maintaining ships; (c) overseeing and tracking deliveries; (d) determining what goods to order and when to deliver them; or (e) organising and overseeing voyages.

*For the purpose of this Schedule “Group” means a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange.



Barbara Webster-Bourne
Speaker

Passed in the House of Assembly on this 14th day of December, 2021



Lenox J. Proctor
Clerk of the House of Assembly

OBJECT AND REASONS

(The objects and reasons do not form part of the Bill)

The objects and reasons for the Bill for the Licences of Businesses Act, 2021:

Clause 1: The key terms used in the Bill are defined.

Clause 2: The Business Licensing Board is established as the licensing authority.

Clause 3: The membership of the Board will include two public officers and a member of the private sector. There is also provision for the appointment of alternate members to ensure that the Board is always quorate. Only the private sector member of the Board will receive remuneration for these duties.

Clause 4: The Board's responsibilities include consideration of applications, granting, refusing, varying, suspending or revoking licences, enforcement of compliance, business closure and advising the Minister of Commerce on policy matters.

Clause 5: Persons carrying on a business must obtain a licence to do so. Licences are required for each place of business and each business type. Failure to comply can result in a notice of cessation being issued by the Board. Where a notice of cessation is not complied with the matter can be referred to the police for action. Further, where a licence has been granted and a business has not operated for a 3 year period, a new application must be submitted if the business wishes to commence or recommence operations.

Clause 6: This clause outlines the types of business and persons exempt from the requirements of the Act. It includes businesses licensed under other legislation, employees, farmers and fishers selling their own produce, charitable organisations and Government Departments. However, the Minister may by regulation require categories of persons involved in sale of fish or agricultural products to obtain a licence.

Clause 7: The licence application process is explained. It requires submission of the application form and supporting documentation to the Commerce Unit and proof of payment of the non-refundable application fee of EC\$50. The Commerce Unit is obligated to conduct due diligence and consultations on the application before forwarding to the Board. This clause also provides for an expedited (i.e. 5-day) application process which can be facilitated if all the documentation required is submitted with the application and a fee of EC\$300 is paid. It should be noted that depending on the nature of the application, an expedited process may not be possible.

Clause 8: The Board will have regard to various factors when considering the applications. In addition to the information received from the Commerce Unit, the Board can also consider business data, ministerial orders, the applicant's previous history, the capacity of the persons involved in the business to provide the services offered. In relation to the latter, proof of qualifications or job references may be required.

Clause 9: This clause provides for the grant of the licence by the Board. In the normal course, the Board has to make a decision within 15 days of receiving the application from the Commerce Unit. There are some circumstances in which the Board is prohibited from granting a licence. These include if the applicant is under 18 years old or is not the holder of a work permit (if non-

Anguillian); if there has been a misrepresentation of fact etc. The Board can also refuse to grant a licence or grant a licence with conditions. Persons aggrieved by the decision of the Board can appeal to the Magistrate.

The Comptroller of Inland Revenue is obligated to maintain a register of businesses and publish it at the end of the first quarter of each year. That register will be available for inspection by the public physically and electronically.

Clause 10: All business licences automatically expire on 31 December each year. Renewals must be made by 31st January each year. Licence fees for new licences and renewal of licences are the same as the existing fees. However, where persons are carrying on the same business activity from more than one premises, they will pay the full fee in relation to one location and half fee for the other locations. Where the fee for a new licence is being paid during the course of a year, the fee will be prorated by quarters. Licence renewal fees can also be paid quarterly.

Where a business continues to operate without renewing its licence, it will be required to pay the arrears and a 1% penalty before the licence is renewed, unless there was a temporary closure of the business, approved by the Inland Revenue Department, during that period.

Clause 11: There is an obligation on every licensee to notify the Board of any change of any circumstances affecting the licence including change of location, ownership, activities etc. In such case, the Board can either vary the licence or require that a new application be submitted.

Clause 12: This section applies to businesses which are not companies or limited partnerships. Licences are automatically renewed once the licence fee is paid, the requisite information is submitted to the Inland Revenue Department and the Department is satisfied that the conditions of the licence have not been breached.

Clause 13: In the case of companies and limited partnerships, annual returns must also be submitted at renewal. There is a procedure outlined in which there will be communication between the Inland Revenue Department if the Department believes something to be amiss. The Commerce Unit will report this information to the Board. The Board will determine what actions should be taken based on its review of the information. This could include requesting production of documents or remedying of a breach by the applicant, or a direction to the Comptroller to renew or not renew the licence. This process enables corrective action to be taken even at the licence renewal stage.

Clause 14: Under this clause, the Board is empowered to suspend a licence to enforce compliance with licence conditions. The Board also has the power to revoke a licence and hence close a business if there is a failure to comply with a Board request for compliance, there are repeated breaches or a single serious breach.

Clause 15: A licence can be revoked by the court and the licensee disqualified from applying for a new licence for up to 3 years, if the licensee is convicted of an offence in relation to the conduct of the business.

Clause 16: Following from the above, where the offence is under the Drugs (Prevention of Misuse) Act, the licence can be revoked by the court and the period of disqualification is up to 5 years.

Clause 17: In order to demonstrate to the public that a business is licensed, that business is required to display the licence on its premises or in the case of an online business on its website.

Clause 18: To facilitate the licensing process, Government departments and statutory bodies are authorised to share information relevant to the licence application.

Clause 19: Under this clause, the Minister of Commerce is able, with the approval of Executive Council, to give policy directions to the Board. These directions are provided in the form Ministerial Orders which must be published in the Gazette. The Orders can stipulate the number of licences to be issued in a particular industry, prohibit issuing of licences, impose temporary fee reductions, impose qualification requirements or reserve certain industries for local enterprise. In the latter case, non-Anguillian businesses already operating in those industries will not be affected. The factors which the Minister should consider when making the Orders, are outlined.

Clause 20: Generally, licences will only be issued for reserved industries where entities have at least 51% Anguillian ownership. However, the Board with the approval of Executive Council can issue licences for reserved industries to non-Anguillian entities at higher licence fees.

Clause 21: This clause provides for businesses engaging in specified activities to be required to form a company or limited partnership in order to obtain a licence to operate. These activities are further described in Schedule 5 of the Bill. Such businesses are expected to bring themselves into compliance once the legislation is in effect.

Clause 22: Businesses owned jointly by Anguillians and non-Anguillians will be required to form companies to be licensed under this Bill. New businesses are expected to comply immediately, but existing businesses have until 1 January 2023 to comply (note the transitional provisions).

Clause 23: The procedure for appeal against a decision of the Board is outlined. The appeal must be made to Magistrate within 30 days of notice of the decision.

Clause 24: Electronic signatures can be accepted and will have the same validity as hand-written signatures.

Clauses 25 and 26: These clauses give the Minister, with the approval of Executive Council, a power to change the Schedules to the Bill by regulation and also to make other regulations to further the provisions of Bill.

Clause 27: This clause creates offences and outlines the penalties for non-compliance with the provisions of the Bill.

Clause 28: These are the transitional arrangements to bridge the gap between the old regime and the new regime particularly for existing businesses.

Clauses 29 and 30: The Trades, Business, Occupations and Professions Licensing Act is repealed and the new Bill comes into force on 31st December 2021.