

[Legal Notice No. 168]

**PROVINCIAL GOVERNMENT ACT 1997  
(No. 7 of 1997)**

**THE CHOISEUL PROVINCE BUSINESS LICENCE  
ORDINANCE 2011**

**AN ORDINANCE TO PROVIDE FOR THE LICENCING OF  
BUSINESS OPERATING IN CHOISEUL PROVINCE**

**ENACTED** by the Choiseul Provincial Assembly with the assent of the Minister.

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## CHOISEUL PROVINCE BUSINESS LICENCE ORDINANCE 2011

### PART 1 - GENERAL

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|----------------|---|
| Short title    | 1. This Ordinance may be cited as the Choiseul Province Business Licence Ordinance 2011 and shall come into effect on the date it is published in the <i>Gazette</i> .  |
| Interpretation | 2. In this Ordinance, except where the context otherwise requires: <ul style="list-style-type: none"> <li>“the Assembly” means the Choiseul Provincial Assembly.</li> <li>“Business” has the meaning assigned to it by section 3.</li> <li>“Court” means the Magistrates Court or the High Court.</li> <li>“the Division” means the Choiseul Province Treasury Division, or any Division or other body established in the place of that Division.</li> <li>“the Executive” means the Choiseul Provincial Executive.</li> <li>“Fee” means a fee set under section 32 of this Ordinance.</li> <li>“Financial Year” means the period from 1 April to 31 March in any given year.</li> <li>“Licence” means a licence issued under section 13 of this Ordinance.</li> <li>“Locally Based Business” has the meaning assigned to it by section 5.</li> <li>“the Minister” means the Minister for the time being responsible for the Division.</li> <li>“Operate in the Province” has the meaning assigned to it by section 4.</li> </ul> |

“the Province” means Choiseul Province, and includes the waters of Choiseul Province.

“the Register” means the register created under section 26 of this Ordinance.

“the Treasurer” means the treasurer for the time being of the Province, or any person in a subsequent equivalent position.

3. “Business” means any activity carried out in order to make a profit, including: Meaning of Business
- (a) provision of services;
  - (b) manufacturing;
  - (c) retailing;
  - (d) wholesaling;
  - (e) harvesting or collection of natural resources;
  - (f) farming;
  - (g) purchasing goods within the Province for sale outside the Province;
  - (h) working on contract for another business;
- but does not include being an employee.

4. “Operate in the Province” in relation to any Business means to carry out either all, or any part of the Business’ activities in the Province, whether in the short or long term, and includes: Meaning of Operate in the Province

- (a) selling;
  - (b) manufacturing;
  - (c) storing items;
  - (d) quartering staff or customers;
  - (e) investigating any matter; and
  - (f) using any place as a base for Operations or administration;
- with the Province.

Meaning of  
Locally Based  
Business

5. (1) “Locally Based Business” means a Business the majority of which is beneficially owned and managed by persons ordinarily resident in the Province.

(2) Whether a Business is locally based shall be determined based on the substance of the case, and not by the legal form of the entities and contracts involved. In particular, where a Business owned and managed by people within the Province subcontracts substantially all the activities of the Business to another entity that is not owned and managed by people within the Province, the Business will not qualify as a Locally Based Business under this Ordinance.

## PART II - REQUIREMENT TO HOLD A LICENCE

No Business to  
Operate without  
a Licence

6. (1) No Business may Operate within the Province without a Licence issued under this Ordinance, unless that Business is exempted under section 7 of this Ordinance.

(2) A Licence shall specify the activities to be carried on by the Business, and the person or entity owning the Business, and any other conditions of the Licence and that Licence shall only be valid for that type of Business owned by that person or entity on those conditions.

Exempted  
Business

7. The Assembly may exempt any type of Business from the requirement to hold a Licence by regulations.

Separate  
Business on  
same premises

8. Where two separate and distinct Businesses Operate from one premises, each Business shall require a separate Licence.

One Business at  
several locations

9. Where one Business Operates from several locations, the Business shall only require one Licence, but may be required to pay an additional Fee for each location in which it Operates.

One Business  
with several  
activities

10. Where one Business carries out several different activities it shall only require one Licence, but shall be required to pay an additional Fee for each activity.

11. (1) Where a Business subcontracts part of its Operations in the Province to any other business, both Businesses will be deemed to be Operating in the Province, and each Business shall be required to hold a Licence, shall be liable to have conditions imposed on that Licence, and shall be liable to pay a Fee in accordance with each Business' Operations. Subcontracting

(2) Where a Business subcontracts all, or substantially all of its Operations within the Province to a single Business, both the Businesses shall still be deemed to be Operating with the Province in accordance with subsection (1) of this section, however where the charging of two Fees would be unjust this may provide grounds for the waiver of part of the Fees for one or both of the Businesses.

### PART III - GRANT OF LICENCE

12. Applications for a Licence shall be made to the Division and shall specify: Applications for Licence

- (a) The name of the person, entity, or group that owns the Business;
- (b) The name of the Business to be Operated;
- (c) A description of the activities of the Business;
- (d) A description of the area in which the Business wishes to Operate, and the location of any fixed premises;
- (e) Contact details for the management and owners of the Business, or where the applicant is a company, contact details for the management and the Registered Office of the company.
- (f) Any other information reasonably requested by the Division or required by regulations made under this Ordinance.

13. Provided that:

Grant of Licence

- (a) The appropriate Fee for the Business is paid;
- (b) The other requirements of this Ordinance are fulfilled; and

- (c) There are no reasons to refuse a Licence under section 15;

and subject to such conditions as may be imposed under section 18, the Treasurer shall grant an applicant under section 12 a Licence.

14. No Licence shall be granted to any Business:

- (a) which requires a licence under either the Forest and Timber Resources Utilisation Act (Cap.40), or the Mines and Minerals Act (Cap.42), or any subsequent equivalent legislation; or
- (b) which is required to be registered under the Foreign Investment Act 2005, or any subsequent equivalent legislation; without the prior approval of the Executive.

15. (1) The Treasurer may refuse a Licence on the grounds

that:

- (a) The Business does not meet health or hygiene standards;
- (b) The Business equipment, premises, or staff do not meet appropriate quality standards;
- (c) The Business would cause undue harm to the Province or the people of the Province;
- (d) The applicant for the Licence is not a fit and proper person to be granted a Licence; or
- (e) The applicant does not have the lawful right to carry on the activities applied for in the area they intend to Operate.

Approval of Executive for certain Licences

Reasons for refusal of Licence



(2) Grounds for determining that a Business would cause undue harm to the Province may include that it is a type of activity that the Province wishes to discourage within the Province.

(3) Grounds for finding that a person is not a fit and proper person to be granted a Licence may include the fact that person has failed to comply with the conditions of previous Licences.

16. Where an application for a Licence is to be refused, the applicant shall be given notice in writing of the reasons for the refusal of the application. Notification of refusal

17. (1) Where any person objects to a decision to refuse an application for a Licence they may appeal to the Minister. Objections to refusal of Licence

(2) If the applicant is still unhappy with the decision of the Minister under subsection (1) of this section, they may appeal to the Executive, and the decision of the Executive shall be final.

18. (1) It shall be a condition of all Licences that the Business complies with all laws relevant to the Business and its Operations. Conditions of Licence

(2) The Treasurer may in addition impose such conditions on a Licence as he sees it, for the benefit of the Province, on either the grant or the renewal of a Licence.

(3) Conditions under subsection (2) of this section may include conditions for the protection or development of the Province.

(4) Conditions under subsection (2) may include limitations on the area in which the Business Operates, the premises or equipment that the Business must use, or the times during which the Business may Operate.

Inspections

19. (1) The Minister may by regulations provide that a Business' premises or equipment must be inspected before the grant or renewal of a Licence, and whether the Licence is granted or renewed may be determined from that inspection.

(2) Where an inspection is required under subsection (1) a fee may be charged for that inspection.

Ratings

20. (1) Regulations under section 19 may provide that the person inspecting the premises or equipment provide a rating for the Business.

(2) Any rating under subsection (1) shall be printed on the Licence.

(3) Regulations under subsection (1) may set out the types of ratings to be given, the criteria on which such ratings will be based, and who shall carry out any inspection.

#### **PART IV - LICENCE GENERAL**

Duration of  
Licences

21. (1) Unless withdrawn earlier under section 25, Licences shall be valid from the date of issue to the end of the Financial Year for which they were granted, unless the Licence is granted for a different period under this section.

(2) Where a Business is Operating in the Province on a temporary basis, the Treasurer may grant a Licence for a period of less than a year under section 22.

(3) With the approval of the Executive a Licence may be granted for a period of up to two years.

Temporary  
Licences

22. (1) A Temporary Licence under section 21(2) may be granted for 3, 6, or 9 months.

(2) The Fee for a Temporary Licence shall be the Fee for that type of Business, multiplied by the percentage of the year for which the Licence is to be granted, plus 25%.

- 678 23. (1) A Licence may be renewed each year upon: Renewal of Licence
- (a) Payment of the Fee set for that type of Business for that year, or making an arrangement to pay the Fee under section 35, and
  - (b) Providing confirmation that there have been no material changes in particulars provided at the time of the application for a Licence.
- (2) Renewal under this section may be recorded by an endorsement on the Licence and being recorded in the Register, or by the issue of a new Licence.
24. Where a Business has held a Licence, but has failed to properly renew their Licence, the Province shall notify the Business in writing at least 14 days before requiring the Business to cease operations under section 45. Process on failure to renew
25. (1) The Treasurer may withdraw a Licence at any stage where a Business has: Withdrawal of licence
- (a) Made a material misstatement in its application for a Licence;
  - (b) Failed to comply with an agreement to pay over time under section 35;
  - (c) Carried on any unlawful activities;
  - (d) Failed to comply with any conditions of the Licence.
- (2) Before withdrawing a Licence under subsection (1)(b), (c), or (d), where the default can be remedied, and poses no serious immediate threat to the Province, the Treasurer shall give reasonable notice to correct the default before withdrawing the Licence.

Business Licence  
Register

26. (1) The Division shall keep a Register of all Businesses that hold a Licence.

(2) The Register shall state:

- (a) The name of the owner or owners of the Business;
- (b) The activities for which the Licence has been granted;
- (c) The physical address of the Business, where it has one;
- (d) The locations of the Business' Operations;
- (e) The contact details of the owners and management of the Business;
- (f) Any conditionss set for the Licence under section 18;
- (g) Any rating under section 20;
- (h) The period for which the Licence has been granted

(3) The Register will be available to the public for inspection.

27. Where at any stage the particulars set out in the application under section 12 change, other than the activities carried out, or the ownership of the Business, the Business shall notify the Province of this change and it shall be recorded on the Licence and the Register.

Change in partic-  
ulars

28. (1) Where a Business wishes to change the activities that it carries on, it shall require the consent of the Province.

Change of  
Business type

(2) Prior to approving a change under subsection (1) the Province may request any information it requires from the Business, and the failure to provide such information may be grounds for the refusal of the change.

(3) Where any new activities fall into one of the categories under section 14 the change must be approved by the Executive. Where the new activities do not fall into one of those categories the change may be approved by the Treasurer.

(4) Where the change takes place during a Financial Year, the Business shall be required to pay the annual Fee for any new activity, divided by 12, multiplied by the number of whole or part calendar months during which the Business is carrying out the new activity in that Financial Year.

(5) The Treasurer may impose new conditions under section 18 on a change of Business activities.

(6) Where an inspection is required under section 19 for the new activity, that inspection shall be required before the new activity can commence.

(7) Any change under this section shall be recorded in the Register and either be recorded on the Licence, or a new Licence shall be issued.

(8) Sections 15 to 17 shall apply to the refusal of a change of Business activities.

29. (1) Where a Business changes ownership a Licence may be transferred to the new owner, provided that the new owner provides the information under section 12(a) and (e) and meets the fit and proper person test in section 15(1)(d). Transfer of Licence

(2) Prior to granting a transfer the Province may request any information it requires from the transferee, and the failure to provide such information may be grounds for the refusal of the transfer.

(3) Where a Business falls into one of the categories under section 14 the transfer must be approved by the Executive. Where the Business does not fall into one of those categories the transfer may be approved by the Treasurer.

(4) Where the Business is changing from a Locally Based Business to a Business that is not Locally Based, and there is a different Fee for Locally Based Businesses, the Business must pay a percentage of the difference between the two Fees equal to the percentage of the Financial Year remaining.

(5) Where the Business is changing from a Business that is not Locally Based to a Locally Based Business, and there is a different Fee for Locally Based Businesses, the Province shall pay the Business a percentage of the difference between the two Fees equal to the percentage of the Financial Year remaining.

(6) Any transfer under this section shall be recorded in the Register and either be recorded on the Licence, or a new Licence shall be issued.

Display of Licence

30. (1) Where a Business Operates from permanent premises, the Licence, or a copy of the Licence, shall be displayed in a place visible to the public in those premises, or where the Business Operates from more than one premises, in each of those premises.

(2) Where a Business does not Operate from permanent premises, the Business shall show a copy of its Licence to any person who requests to see it.

Issue of duplicate Licence

31. Where the original of a Licence is lost or destroyed the Treasurer may issue a duplicate Licence, and may charge such fee as may be prescribed for the issue of a duplicate Licence.

## **PART VI - FEES**

Licence Fees

32. (1) The Fees for a Licence shall be set by subsidiary legislation made by the Assembly.

(2) Separate Fees will be charged for each type of activity carried on by the Business.

- (3) Different Fees may be set based on:
- (a) the type of activity;
  - (b) The size of the activity;
  - (c) The volume of trade in the activity;
  - (d) The number of locations in which the Business carries on the activity within the Province;
  - (e) Where the activity is in the Provincial Capital,
  - (f) Whether or not the Business is a Locally Based Business.
- (4) Where a Business starts Operating during a Financial Year, the Fee will be the annual Fee, divided by 12, multiplied by the number of whole or part calendar months during which the Business is Operating in that Financial Year.

33. (1) The Treasurer shall be responsible for determining which of the different Fees set under section 32 applies when there is a dispute. Classification of Businesses

(2) The onus shall be on the person operating the Business to prove the facts that they rely on to establish which Fee applies to their Business.

(3) Where a person does not accept the Fee for the Business set by the Treasurer under subsection (1) of this section they may appeal to the Minister, whose decision shall be final.

34. (1) Where no Fee has been set under section 32 for a particular activity and a person applies for a Licence for that type of activity, or the Treasurer wishes to commence action for collection of Fees from that Business under section 44, the Treasurer shall set a Fee for that activity, taking into account the Fees charged for similar activities. Fees for unclassified businesses

(2) The Fee set by the Treasurer shall be considered by the next meeting of the Assembly and an amendment passed to the appropriate subsidiary legislation incorporating a Fee for that activity.

(3) Where the Fee set by the Treasurer is higher than that set by the Assembly the difference shall be refunded to the Business.

Time to pay

35. (1) The Treasurer may allow Fees to be paid in instalments where the total Fees due from that Business for the year exceed \$999, provided that all Fees must be paid within the Financial Year for which the Licence is granted.

(2) The Treasurer may place any conditions they see fit when allowing payment by instalments under this section.

(3) The Treasurer may refuse a request to pay by instalments under this section on any reasonable grounds, including that the administrative costs of the arrangement to the Province would be too great.

(4) Where the Treasurer allows a Fee to be paid by instalments, the Treasurer may require the Business to pay up to an additional 15%.

Waiver of fees

36. (1) The Treasurer may permit an individual Business to pay a lower Fee than that set by the subsidiary legislation if:

- (a) The Business only Operates occasionally;
- (b) The Business is a Locally Based Business commencing Operations or a new activity, and the Province wishes to encourage the development of Locally Based Businesses;
- (c) The Business is considering commencing Operations or a new activity in the Province, and the Executive wishes to provide an incentive for that Business to Operate in the Province;
- (d) The Business is in financial difficulty, and there is a risk of serious damage to or closure of the Business if they are required to pay the full Fee;
- (e) The Business is beneficially owned by an organisation with charitable tax status; or
- (f) In the circumstances described in section 11(2).



(2) A Business may be required to demonstrate the basis of the waiver to the satisfaction of the Treasurer before any waiver is granted.

(3) No request for a waiver will be considered unless the request is made before the Fee is due.

## PART VI - OFFENCES

37. Any person who breaches section 6 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or imprisonment for a term not exceeding three months, or both, and shall remain liable to pay Fees and interest in accordance with section 44 for any period in which they Operated the Business without a Licence. Operating without a Licence

38. Any person who Operates a Business outside the terms and conditions of their Licence shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or imprisonment for a term not exceeding one month, or both, and shall remain liable to pay any additional Fees and interest in accordance with section 44 for any period in which they Operated the Business outside the terms of their Licence. Operating outside the terms of a Licence

39. (1) Any person who fails to comply with a requirement to cease Operations or activities under section 45 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or imprisonment for a term not exceeding 3 months or both, and to an additional fine of \$5,000 for each week that they continue to Operate after the requirement to cease Operations. Failure to cease operation

(2) For clarity, the offences in sections 37 & 38 and this section are separate offences and a person can be found guilty of both in respect of one set of circumstances.

40. Any person who wilfully obstructs, assaults or threatens with violence the Treasurer or a person authorised under section 49 in the exercise of any of their powers or duties shall be guilty of an offence and liable to a fine not exceeding \$10,000, or imprisonment not exceeding 3 months, or both. Obstruction

Failure to notify  
of change of par-  
ticulars

41. Any person who fails to notify the Province of a change in Particulars under section 27 commits an offence and shall be liable on conviction to a fine not exceeding \$25,000.

Providing false  
particulars

42. Any person who knowingly provides false particulars on an application for a Licence, or on any other document required under this Ordinance commits an offence and shall be liable on conviction to a fine not exceeding \$50,000 or imprisonment not exceeding three months, or both.

Fraudulent use  
of licence

43. (1) Any person who uses a Licence fraudulently commits an offence and shall be liable on conviction to a fine not exceeding \$50,000, or imprisonment not exceeding six months or both.

(2) Fraudulent use of a Licence includes:

- (a) purporting to carry out Business under a Licence, that is not in fact covered by that Licence; and
- (b) Altering the particulars on any Licence.

## **PART VII – OTHER ENFORCEMENT**

Collection of  
unpaid Licence  
Fees

44. (1) Where any Business Operates or has Operated in the Province without a Licence, or without paying the appropriate Fees for that Business' activities, the Province may, in addition to any other penalty, and irrespective of whether any other proceedings are taken, collect the Fees that the Business would have been charged, or the difference between what was paid and what should have been paid, for each Financial Year or part Financial Year in which the Business has Operated without a Licence or without paying the appropriate Fees, as a civil debt.

(2) In addition to the amount in subsection (1) of this section, the Province may also claim interest on any amounts under subsection (1) at the rate of 15% per annum, accruing from the date at which the amount would have become due.

45. (1) The Treasurer, or any Police Officer may require any Business Operating in the Province without a Licence, to cease its operations immediately. Requirement to cease Operations or activities

(2) The Treasurer, or any Police Officer may require any Business performing activities that it does not have a Licence for to cease those activities immediately.

46. (1) Where any Business is Operating within the Province without a Licence or without a Licence for the activities it is performing, the Treasurer, or any Police Officer may seize any items being used for the purpose of that Business or those activities, and hold those items pending payment of the Fee under section 44. Seize

(2) Any perishable items seized under subsection (1) of this section may be sold and the proceeds of sale kept in place of the goods sold.

(3) Where items seized under subsection (1) of this section have been held for more than six months, the Province may sell items up to the value of any Fees due under section 44. The amount of those Fees shall be forfeited to the Province, and any remaining items or monies shall be returned to the person from whom they were sized.

### **PART VIII – MISCELLANEOUS PROVISIONS**

47. Where the Ordinance places any duty on a Business, the responsibility to ensure that the duty is complied with: Responsibilities of Businesses

(a) if that Business is a company or other incorporated legal entity, falls on the company or other incorporated legal entity;

(b) if that Business is a sole proprietor, falls on the owner of the Business;

(c) if that Business is an unincorporated group, falls on each member of that group jointly and severally.

Licence does not  
convey rights

48. A Licence issued under this Ordinance does not give the Business the right to carry on any particular activities if any other law would prevent the Business from carrying on those activities.

Authorised  
Persons

49. (1) The Treasurer may appoint any other person to carry out any task assigned him under this Ordinance or any regulations made under this Ordinance.

(2) Any appointment under this section may be in writing or verbal.

(3) Any person who has been required to do something by a person authorised under this section may request confirmation of that person's authorisation from the Treasurer.

(4) An authorised person may be an employee of the Province, or any other person, either paid or unpaid.

(5) Prior to appointing any person under this section the Treasurer must ensure that the person is qualified for the tasks assigned, and trustworthy.

Confidentiality of  
information

50. Information provided by a Business to the Province under this Ordinance, other than information in the Register, shall not be released to the general public unless such release is necessary in the public interest.

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