DRAFTING NOTE

BUSINESS LICENSING ACT 2026

1. Status and purpose of this note

This drafting note is explanatory and is not part of the proposed Assembly Act. It identifies the legislative need, the relationship with earlier Eritrean law, the principal matters retained, the modernization choices made and the place of the draft within the emerging constitutional statute book. The instrument remains a consultation draft and should be finalized only after legal, institutional, fiscal and public review.

2. Legislative need and prior law

Earlier commercial licensing rules were dispersed through Proclamation 72/1995, later amendments and sectoral legal notices. They reflected paper administration and broad discretion that can obstruct entry and competition.

3. What the draft retains

The draft retains registration of traders, licenses genuinely required for public protection, reliable business information and enforcement against fraud or unsafe activity.

4. What the draft updates and modernizes

It separates business registration from exceptional activity licensing, creates objective and published criteria, interoperable electronic filing, deemed or time-bound decisions where appropriate, reasons, appeals and restraints on duplicative permits and unofficial charges.

5. Constitutional, code and treaty fit

The draft is framed under the Constitution of Eritrea 1997 and must be read with the Civil Code, Penal Code, Civil Procedure Code and Criminal Procedure Code of Eritrea 2015 where those Codes govern. It is also coordinated with the other institutional, financial, commercial, land, labour, administrative and sectoral drafts in this collection. References to international or regional standards guide compatibility and implementation; they do not bypass the Treaty-Making Act or convert an unincorporated instrument into domestic law.

6. Scope and organization

The principal divisions address preliminary provisions; freedom of enterprise and the licensing threshold; licensing institutions and coordination; applications and decisions; conditions, duration and changes; fees and financial integrity; inspection and compliance; suspension, revocation and sanctions; review, accountability and remedies; transition from the inherited system; final provisions.

7. Transition, implementation and consultation

The draft preserves lawful accrued rights, completed transactions, pending proceedings and institutional continuity where appropriate, while preventing temporary savings from preserving unconstitutional coercion or indefinite executive discretion. Before enactment or issuance, authentic predecessor instruments and amendments should be verified, cross-references and fiscal capacity confirmed, implementing regulations and digital systems prepared, and affected institutions, professions, communities and the public given a practical opportunity to comment.

CONSULTATION DRAFT — NOT ENACTED LAW

ACT NO. ___/2026

BUSINESS LICENSING ACT 2026

(ACT)

AN ACT TO ESTABLISH A SIMPLE, TRANSPARENT AND RISK-BASED SYSTEM FOR BUSINESS LICENCES AND REGULATORY PERMITS, PROTECT FREEDOM OF LAWFUL ENTERPRISE, AND PROVIDE FOR RELATED MATTERS.

PREAMBLE

WHEREAS Articles 8, 21 and 23 of the Constitution of Eritrea support economic development, dignified livelihood and protection of property within a lawful and socially responsible market order;
WHEREAS Proclamation 72/1995 sought to reduce inherited duplication and delay in business licensing, but modern Eritrea requires a system in which lawful enterprise is free and prior permission is exceptional, risk-based and expressly authorized by law;
WHEREAS company formation, legal personality and the Commercial Register are governed by the Commercial Code and must not be confused with regulatory permission to conduct an activity presenting a defined public risk;
WHEREAS licensing must not become a means of political control, economic exclusion, revenue extraction, protection of incumbents or arbitrary administrative discretion;
NOW, THEREFORE, the National Assembly of Eritrea enacts as follows:

CHAPTER I
PRELIMINARY PROVISIONS

Article 1 — Short title

This Act may be cited as the Business Licensing Act 2026.

Article 2 — Objects

1. protect the freedom to commence and conduct lawful business;
2. confine licensing to activities presenting a material public risk;
3. provide one coordinated, digital and accessible licensing system;
4. ensure timely, reasoned and reviewable decisions; and
5. separate commercial registration, taxation and sector regulation.

Article 3 — Application

1. This Act applies to every ministry, local government, authority and public body that issues or administers a business licence or regulatory permit.

2. A sector Act may impose additional substantive standards but shall follow the minimum procedural safeguards of this Act unless it expressly provides greater protection.
3. This Act binds public enterprises when they engage in commercial activity or exercise a delegated licensing function.

Article 4 — Definitions

1. “business” means a lawful economic or professional activity conducted for gain or livelihood;
2. “licence” includes a permit, authorization, approval or certificate required before conducting a business activity, but excludes commercial registration, tax registration and a judicial licence;
3. “licensing authority” means a public body expressly empowered by an Act to issue a licence;
4. “one-stop portal” means the unified physical and electronic service established under this Act;
5. “regulated activity” means an activity listed in the Licensing Schedule because it presents a material risk requiring prior control; and
6. “sector regulator” means a body established by an Act to regulate a defined industry, profession, resource or public service.

Article 5 — Constitutional interpretation

1. A licensing requirement shall be interpreted narrowly in favour of lawful enterprise, equality and livelihood.
2. Any restriction must be authorized by law, pursue a legitimate public purpose, and be necessary, proportionate and procedurally fair.

Article 6 — Relationship with other laws

1. The Commercial Code exclusively governs formation, legal personality, traders, business organizations and the Commercial Register.
2. Tax law governs tax registration, assessment, clearance and collection; tax administration shall not be used to create an unauthorized licensing condition.
3. The Civil Code governs civil obligations and remedies, and the Penal Code governs criminal offences and punishments.
4. The Labour Code of Eritrea 2026, environmental law, land law, competition law, consumer law and sector Acts continue to apply within their proper fields.

Article 7 — No power by implication

A ministry, local government or public body may require a licence only where an Act expressly authorizes the requirement and identifies the regulated activity or permits its identification by regulations within stated criteria.

CHAPTER II
FREEDOM OF ENTERPRISE AND THE LICENSING THRESHOLD

Article 8 — Freedom to conduct lawful business

1. A person may commence and conduct a lawful business without a general business licence unless the activity is listed in the Licensing Schedule.
2. Commercial registration, a tax number, premises registration or statistical notice does not convert an unregulated activity into a licensed activity.

Article 9 — Grounds for requiring a licence

1. A licence may be required only to control a material risk to life, health, safety, the environment, consumers, financial stability, scarce public resources, essential infrastructure or another comparably important public interest.
2. A desire to collect revenue, limit competition, protect an incumbent, monitor political opinion, allocate ordinary commerce or preserve administrative habit is not a lawful ground.

Article 10 — Least restrictive regulation

1. Before proposing a licence, the responsible authority shall consider disclosure, registration, standards, insurance, inspection after entry, professional certification and civil liability.
2. A licence is justified only where a less restrictive measure cannot reasonably manage the identified risk.

Article 11 — Licensing Schedule

1. The regulated activities and responsible authorities shall be stated in a consolidated Licensing Schedule published in the Gazette and on the one-stop portal.
2. An activity may be added only by an Act or by regulations made under specific legislative authority after the assessment required by Article 12.
3. An unpublished or obsolete entry is unenforceable against a person without actual notice, but this does not excuse conduct creating an immediate and serious danger.

Article 12 — Regulatory impact assessment

1. A proposal to create or materially expand a licence shall identify the risk, evidence, affected persons, alternatives, costs, competition effects, administrative capacity and safeguards.
2. The assessment and draft instrument shall be published for at least thirty days of public comment except during a narrowly defined emergency.

Article 13 — Periodic review

1. Each licensing requirement shall be reviewed at least once every five years for necessity, proportionality, performance and burden.
2. A requirement not reviewed within seven years is suspended until reviewed, unless the National Assembly extends it for stated reasons.

Article 14 — Equal access

1. Licensing shall not discriminate on political opinion, ethnicity, religion, sex, disability, region, family, diaspora residence or another prohibited ground.
2. A lawful nationality, residency or local-participation requirement must be stated in an Act and applied consistently with Eritrea's international obligations.

CHAPTER III
LICENSING INSTITUTIONS AND COORDINATION

Article 15 — Responsible ministry

1. The Ministry responsible for trade shall coordinate licensing policy, maintain the Licensing Schedule and operate the one-stop portal.
2. The Ministry shall not decide a technical sector licence unless another Act assigns that function to it.

Article 16 — Licensing authorities

1. Each licensing authority shall publish its legal mandate, service standards, forms, fees, criteria, responsible officers, decisions and review routes.
2. It shall separate policy, application, inspection and appeal functions sufficiently to prevent conflict and abuse.

Article 17 — One-stop portal

1. The Government shall maintain one interoperable portal through which a person may identify requirements, apply, pay a lawful fee, track progress, receive a decision and seek review.
2. Physical assistance shall remain available for persons lacking connectivity, devices, literacy or accessibility.
3. An applicant shall not be required to submit information already held by another public body where lawful and secure verification is reasonably available.

Article 18 — Unique business identifier

1. The identifier assigned under the Commercial Code shall be used across licensing, taxation, customs and public services.

2. A licensing authority shall not create a competing identifier except where a sector Act requires a subordinate technical number linked to the unique identifier.

Article 19 — Inter-agency coordination

1. Authorities shall coordinate inspections, data requests and conditions to avoid duplication and inconsistent demands.
2. A lead authority may obtain technical views but remains responsible for meeting the decision deadline.

Article 20 — Local government role

1. Local governments may administer licences expressly assigned by an Act and regulate location, sanitation, nuisance, markets and local safety within lawful competence.
2. They shall not impose market-entry restrictions, internal customs barriers or discriminatory fees on businesses from another province (zoba) or locality.

Article 21 — Advisory council

1. A Business Regulation Advisory Council shall advise on simplification, competition, small enterprise, technology and regulatory burden.
2. Its membership shall include public authorities, local government, consumers, workers, professions, micro and small enterprises, larger enterprises, persons with disabilities and diaspora investors.

CHAPTER IV
APPLICATIONS AND DECISIONS

Article 22 — Application requirements

1. An application shall require only information relevant to published statutory criteria.
2. The form shall state the authority, purpose, required documents, fee, deadline, contact point, privacy notice and review rights.

Article 23 — Submission and acknowledgment

1. An application may be submitted electronically or through an accessible physical office.
2. The authority shall immediately acknowledge receipt and within five working days identify any specific deficiency.

Article 24 — Single request for completion

1. An authority shall ordinarily make one consolidated request for missing information and shall not prolong proceedings through successive avoidable demands.
2. A further request requires written reasons showing that the need could not reasonably have been identified earlier.

Article 25 — Decision periods

1. A low-risk licence shall be decided within five working days, an ordinary licence within twenty working days, and a technically complex licence within forty working days.
2. A sector Act may prescribe a different period justified by the nature of the risk.
3. One reasoned extension not exceeding half the original period may be notified before expiry.

Article 26 — Deemed approval

1. For a licence designated low-risk in the Licensing Schedule, failure to decide within the period constitutes provisional approval.
2. Deemed approval does not apply to firearms, explosives, nuclear or hazardous materials, banking, insurance, mining, petroleum, aviation, medicines, major environmental risk or another activity expressly excluded by an Act.

Article 27 — Objective decision

1. A licence shall be granted where the applicant satisfies the published legal criteria.
2. An authority shall not refuse because it considers the market adequately supplied, prefers another applicant, doubts an unregulated business model or disapproves of lawful opinion or association.

Article 28 — Reasons and notice

1. A decision shall state findings, legal authority, conditions, reasons, commencement, duration and review rights.
2. A refusal or restrictive condition shall address the applicant's material evidence and identify what lawful change could permit approval, where applicable.

Article 29 — Public register of licences

1. Each authority shall maintain a searchable register stating licensee, regulated activity, status, duration and material public conditions.
2. Personal, commercially sensitive and security information shall be protected consistently with data-protection and access-to-information law.

Article 30 — Assistance to small enterprises

1. Authorities shall publish plain-language guidance and provide reasonable pre-application assistance without favouritism.
2. Micro and small enterprises shall receive simplified forms, coordinated inspections and proportionate compliance periods where risk permits.

CHAPTER V
CONDITIONS, DURATION AND CHANGES

Article 31 — Licence conditions

1. A condition must be authorized, relevant to the identified risk, certain, measurable and proportionate.
2. A condition shall not dictate price, supplier, customer, production quantity or business organization unless a sector Act expressly authorizes that control for a legitimate purpose.

Article 32 — Standard and individual conditions

1. Standard conditions shall be published before application and applied consistently.
2. An individual condition requires case-specific reasons and an opportunity to respond unless urgently necessary to prevent serious harm.

Article 33 — Duration

1. A licence shall be indefinite unless continuing risk, resource scarcity, international obligation or another reason stated in an Act justifies a fixed term.
2. A fixed term shall be no shorter than reasonably necessary and renewal shall focus on continued compliance, not repetition of the original application.

Article 34 — Renewal

1. A timely renewal application keeps the licence effective until decision unless a court or authority after hearing finds an immediate serious risk.
2. Renewal may use self-certification and risk-based verification where compliance history supports it.

Article 35 — Modification

1. A licensee shall notify a material change relevant to statutory criteria.
2. The authority may modify a condition only after notice and hearing, except for a temporary urgent measure under Article 48.

Article 36 — Transfer and succession

1. A licence dependent on personal competence or integrity is not transferable without approval.
2. Other licences may pass with a business, merger, inheritance or reorganization upon notice and verification of continuing compliance.

Article 37 — Multiple locations and activities

1. A separate licence for each location may be required only where site-specific risk requires inspection or local conditions.
2. One application may cover multiple related activities and locations where this does not impair effective regulation.

CHAPTER VI
FEES AND FINANCIAL INTEGRITY

Article 38 — Authority for fees

1. A fee may be charged only under an Act or valid regulation and shall be published.
2. A fee shall reflect reasonable administrative cost unless an Act transparently establishes a regulatory levy for a stated purpose.

Article 39 — Prohibited charges

1. No officer or authority may demand an unofficial payment, contribution, deposit, purchase, service or facilitation charge.
2. Payment of unrelated tax arrears, debt or penalties shall not be a licensing condition unless an Act expressly makes it relevant and affords contest and review.

Article 40 — Payment and receipt

1. Fees shall be payable through secure traceable means and immediately receipted.
2. Cash payment shall remain available where necessary but shall use controlled collection, daily reconciliation and audit.

Article 41 — Fee review and waiver

1. Fees shall be reviewed periodically and reduced where digitalization or simplification lowers cost.
2. Law may provide transparent waivers or reductions for micro-enterprises, persons with disabilities, disaster recovery or activities serving a defined public interest.

CHAPTER VII
INSPECTION AND COMPLIANCE

Article 42 — Risk-based inspection

1. Inspection frequency and scope shall reflect actual risk, compliance history and credible information.
2. Routine inspection shall not be used to harass, extract payment, obtain political intelligence or disrupt lawful competition.

Article 43 — Inspector identification and powers

1. An inspector shall identify the authority, legal power and purpose and provide a written or electronic inspection record.
2. Entry into a non-public dwelling or forcible access requires consent or judicial warrant except during an immediate emergency recognized by law.

Article 44 — Rights during inspection

1. The business may have a representative present, receive copies, protect legal privilege and comment on findings.
2. Trade secrets and personal data shall be accessed only when necessary and protected from unauthorized use or disclosure.

Article 45 — Coordinated inspections

1. Authorities shall combine or sequence inspections where practicable and share lawful findings instead of repeatedly demanding the same material.
2. An inspection by one body does not authorize another body to exceed its statutory jurisdiction.

Article 46 — Compliance notice

1. For a remediable contravention not presenting immediate serious harm, the authority shall issue a notice stating facts, law, required correction, reasonable time and review rights.
2. The authority may provide technical guidance, but compliance responsibility remains with the licensee.

Article 47 — Proportionate response

1. Enforcement shall consider severity, duration, intention, harm, cooperation, history, capacity and corrective action.
2. Education, warning and correction are preferred for a first minor contravention; deliberate, repeated or dangerous conduct warrants stronger action.

Article 48 — Urgent protective order

1. An authority may temporarily restrict an activity without prior hearing only on reasonable evidence of an imminent and serious risk to life, health, safety or the environment.
2. The order shall state reasons, be no broader than necessary, and expire within fourteen days unless confirmed after an expedited hearing.

CHAPTER VIII
SUSPENSION, REVOCATION AND SANCTIONS

Article 49 — Grounds for suspension

1. A licence may be suspended for a material continuing breach, serious risk, fraud essential to issuance or refusal of a lawful inspection.
2. Suspension shall be limited in scope and duration and shall permit correction where reasonably possible.

Article 50 — Revocation

1. Revocation is a last resort for fundamental ineligibility, incurable serious breach, repeated grave violation or fraud without which the licence could not lawfully issue.
2. Economic punishment, retaliation, change of policy or unproven allegation is not a ground.

Article 51 — Notice and hearing

1. Before suspension or revocation, the authority shall disclose the case and evidence and allow adequate time to answer.
2. A decision shall be made by an impartial officer who did not investigate the matter, where practicable.

Article 52 — Administrative penalty

1. A monetary administrative penalty may be imposed only where an Act states the contravention and maximum amount.
2. Amount shall be proportionate and reasoned, and imprisonment or criminal stigma arises only under the Penal Code or another express criminal Act.

Article 53 — Unlicensed activity

1. A person knowingly conducting a regulated activity without a required licence may be ordered to apply, cease the risky part, remedy harm or pay a lawful administrative penalty.
2. A technical registration defect shall not invalidate unrelated contracts or confiscate property unless a court determines that consequence under law.

Article 54 — No collective or extraneous sanction

1. A licence shall not be denied, suspended or revoked because of conduct of a relative, associate or employee unless legally attributable to the licensee and relevant to the licence.
2. A sanction shall not extend to another lawful activity beyond what is necessary to control the proven risk.

CHAPTER IX
REVIEW, ACCOUNTABILITY AND REMEDIES

Article 55 — Internal reconsideration

1. An applicant or licensee may request reconsideration by a senior officer not responsible for the original decision.
2. The request is optional and shall not prevent direct access to an independent tribunal or court where law permits.

Article 56 — Independent appeal

1. A refusal, condition, delay, fee, inspection order, suspension, revocation or penalty is appealable to the competent tribunal or court.
2. The reviewing body may confirm, vary, set aside, remit, order issuance, grant interim relief and award another lawful remedy.

Article 57 — Burden and record

1. The authority bears the burden of establishing the legal and factual basis for an adverse licensing decision.
2. It shall preserve the complete decision record and produce it promptly on review.

Article 58 — Interim protection

1. An appeal ordinarily preserves an existing licence unless continued operation creates a serious and demonstrated risk.
2. The reviewing body shall decide an urgent stay application promptly and balance rights, public safety and reversibility.

Article 59 — Compensation and civil remedies

1. A person harmed by bad-faith, discriminatory, corrupt or manifestly unlawful licensing action may seek declaration, injunction and compensation under applicable civil law.
2. This Act does not diminish constitutional, delictual, contractual or administrative remedies.

Article 60 — Officer responsibility

1. An officer shall record decisions honestly, disclose conflicts and refuse unlawful direction.
2. Good-faith action within lawful duty is protected, but corruption, malice, knowing illegality and grave abuse are not.

Article 61 — Complaints and reporting

1. Each authority shall maintain an accessible complaint channel and protect complainants against retaliation.

2. It shall publish annual data on applications, time, approvals, refusals, deemed approvals, inspections, sanctions, appeals, fees and complaints.

Article 62 — Audit

1. The Auditor General may audit licensing revenue, systems, performance, integrity and burden.
2. The responsible Assembly committee may require explanations and recommend repeal or reform of unnecessary licensing.

CHAPTER X
TRANSITION FROM THE INHERITED SYSTEM

Article 63 — Review of existing requirements

1. Within twelve months, every ministry and local government shall identify every licence, permit, certificate, approval and fee it administers and state its legal basis.
2. The Ministry responsible for trade shall publish the inventory and assess each requirement under Articles 9 to 13.

Article 64 — Expiry of unsupported requirements

1. A requirement lacking express statutory authority ceases six months after publication of the inventory.
2. A requirement with authority but failing the necessity review ceases or is narrowed on the date specified in the review, not later than eighteen months after commencement.

Article 65 — Existing licences

1. An existing lawful licence remains valid during transition and shall be converted without a new entry fee or repetitive submission.
2. Conversion does not preserve an unlawful monopoly, discriminatory condition or power inconsistent with the Constitution.

Article 66 — Separation from the Commercial Register

1. Commercial Register records and functions shall be administered exclusively under the Commercial Code.
2. Licensing data may interoperate with the Register but shall not alter legal personality, trader status or registered particulars except through Commercial Code procedure.

Article 67 — Institutional transfer

1. Functions of the former Business Licensing Office shall transfer to the appropriate ministry or sector regulator under a published plan.

2. Personnel, records and assets shall be individually reviewed and lawfully transferred without validating past abuse or imposing collective dismissal.

Article 68 — Repeal

1. Proclamation 72/1995 and amendments governing general business licensing are repealed upon full commencement of this Act.
2. A sector licence previously made under them continues temporarily only if listed in the transitional Licensing Schedule and consistent with this Act.

CHAPTER XI
FINAL PROVISIONS

Article 69 — Regulations

1. The authority designated by law may make regulations on the Licensing Schedule, portal, forms, deadlines, coordination, fees, inspection records and transitional conversion.
2. Regulations shall follow public consultation, remain within delegated power and be published before enforcement.

Article 70 — Emergency regulation

1. A temporary licensing measure may be made to address an epidemic, disaster or comparable immediate threat where delay would cause serious harm.
2. It shall be necessary, proportionate, published, reviewed within thirty days and expire within ninety days unless continued by an Act.

Article 71 — International and regional obligations

1. Licensing shall be administered consistently with treaties lawfully binding upon Eritrea, including obligations concerning equality, labour, trade, environment, public health and due process.
2. No treaty or foreign standard shall be applied domestically to create a licence or sanction except through constitutionally authorized law.

Article 72 — Five-year legislative review

1. The National Assembly shall review this Act five years after commencement and thereafter at intervals not exceeding five years.
2. The review shall assess enterprise entry, employment, competition, informality, safety, corruption, regional access, digital performance and effects upon small businesses.

Article 73 — Commencement

1. Chapters I, II, III and X commence on publication in the Gazette.

2. The remaining Chapters commence six months after publication to permit establishment of the portal, Schedule and procedures.

Made at Asmara, this ___ day of __________ 2026.

THE NATIONAL ASSEMBLY OF ERITREA