

DILIGENCE
GLOBAL BUSINESS INTELLIGENCE



IDD CLIENT FOLLOW UP:
BIOFUEL AS, BIOFUEL AFRICA AS
& BIOFUEL AFRICA LTD
JANUARY 2009

CONTENTS

NOTE ON INTELLIGENCE AND CONTEXT.....	3
QUESTION ELIGIBLE FOR CLARIFICATION & CONTEXTUALISATION.....	4
CLIENT QUESTIONS OUTSIDE THE SCOPE OF THE PROPOSED IDD OF 04/11/08 *	6
APPENDICES	9
QUOTE A.....	9
QUOTE B.....	9
QUOTE C.....	9
QUOTE D.....	10
QUOTE E	10
STATUTORY FUNCTIONS OF EPA AND NPA.....	12
EPA.....	12
NPA.....	12

DRAFT

INTELLIGENCE & CONTEXT

NOTE ON INTELLIGENCE AND CONTEXT

Much official documentation in Ghana is either not publicly available or can, in the best of cases, be obtained only by physical retrieval. The Client has historically made it clear to Diligence that it does not wish to receive official documents which are not intended for public dissemination. Consequently, IDD's in jurisdictions such as Ghana are conducted to a large extent on the basis of source intelligence which is reflected in the Proposal for Services submitted by Diligence. Human intelligence is naturally subjective and not always comprehensive. In order to mitigate against this, Diligence always strives to identify those individuals most likely to have in-depth knowledge of a situation while also describing the provenance of the source so that the Client can decide on the veracity of the intelligence. To the extent possible Diligence corroborates source intelligence and offers analysis based on past experience and context. It is at the Client's discretion whether to follow Diligence's recommendations depending on the Client's internal assessment of the risks and recommendations presented.

DRAFT

IDD CLIENT FOLLOW UP

QUESTION ELIGIBLE FOR CLARIFICATION & CONTEXTUALISATION	
<p>FASSINE FOFANA</p> <p>Questions raised by the Client:</p> <ol style="list-style-type: none"> 1. which BA representatives joined Mr Fofana in this meeting? 2. which BA representative paid a sum of money to the government official? 3. why would BA pay money to NPA when, as far as we know, it is the EPA that issue licences? 4. could the sum have been part of a payment in accordance with a land lease agreement? 5. exactly where and when was this done? 	<p>This intelligence emanates from a member of the Board of Directors (BoD) of one of BA's shareholders. This source also sits on another company's BoD with Fofana. As such it should be treated with EXTREME SENSITIVITY and should not be viewed as being negatively motivated in itself or as ignorant. (See Quote A in Appendices)</p> <ol style="list-style-type: none"> 1. Based on the intelligence received, particularly the detailed description of the meeting, Diligence has found no reason to question that the member of the BoD of BA's shareholder (above) accessed by a Diligence source attended this meeting. 2. As with 1 above - or someone close to this individual. 3. The report does not make mention of BA paying money to the NPA in relation to Fofana. NPA sources confirmed this rumour, but did not imply that the NPA had received the money (see p. 23 of the IDD Report). 4. Unlikely as there was no reference to any official agreement or contract and intelligence (Quote A) indicates that the money was paid to an unidentified, single government official. 5. Diligence sources with access to the relevant individuals were not made aware of exactly when or where this incident occurred 6. Diligence's IDD report referenced Mwana Africa as "local contact" and "actively promotes its (the Company's) interests" only (see pp.4 & 23 of the IDD Report). Enquiries did not identify any evidence that Mwana Africa has a legal arrangement to represent Biofuel in Ghana. Source intelligence indicated that Mwana Africa is a well-connected company in Ghana and, as such, maintaining positive relations with Mwana Africa would benefit Biofuel's activities in Ghana. While Diligence does not consider the relationship with Mwana Africa to be a cause for concern in itself, should the Client wish, Diligence can conduct a separate investigation of the nature of Mwana Africa's relationship with Biofuel in Ghana.
<p>MWANA AFRICA</p> <p>Question raised by the Client:</p> <ol style="list-style-type: none"> 6. which companies have an agreed role to represent BioFuel in Ghana? 	<p>This intelligence emanates from a member of the Board of Directors (BoD) of one of BA's shareholders. This source also sits on another company's BoD with Fofana. As such it should be treated with EXTREME SENSITIVITY and should not be viewed as being negatively motivated in itself or as ignorant. (See Quote A in Appendices)</p> <ol style="list-style-type: none"> 1. Based on the intelligence received, particularly the detailed description of the meeting, Diligence has found no reason to question that the member of the BoD of BA's shareholder (above) accessed by a Diligence source attended this meeting. 2. As with 1 above - or someone close to this individual. 3. The report does not make mention of BA paying money to the NPA in relation to Fofana. NPA sources confirmed this rumour, but did not imply that the NPA had received the money (see p. 23 of the IDD Report). 4. Unlikely as there was no reference to any official agreement or contract and intelligence (Quote A) indicates that the money was paid to an unidentified, single government official. 5. Diligence sources with access to the relevant individuals were not made aware of exactly when or where this incident occurred 6. Diligence's IDD report referenced Mwana Africa as "local contact" and "actively promotes its (the Company's) interests" only (see pp.4 & 23 of the IDD Report). Enquiries did not identify any evidence that Mwana Africa has a legal arrangement to represent Biofuel in Ghana. Source intelligence indicated that Mwana Africa is a well-connected company in Ghana and, as such, maintaining positive relations with Mwana Africa would benefit Biofuel's activities in Ghana. While Diligence does not consider the relationship with Mwana Africa to be a cause for concern in itself, should the Client wish, Diligence can conduct a separate investigation of the nature of Mwana Africa's relationship with Biofuel in Ghana.

IDD CLIENT FOLLOW UP

<p>BYBERG & NPP</p> <p>Questions raised by the Client:</p> <p>7. ...there are no allegations that this support is viewed as illegal even if it is said that it is in "a more or less illegal situation" What is meant by this – is it legal or not?</p> <p>8. Support by industrial leaders to political parties is also well known in Norway. Could such support be viewed as a private contribution or is it something that clearly is linked to the company?</p>	<p>7. (See Quote B in Appendices). The report does not state that Byberg's support of the NPP is illegal – the source commented that Biofuel (as a company) "acts in a more or less illegal situation" presumably in reference to the land-lease scandal. The main concern in relation to Byberg's support of the NPP was that of political exposure particularly given recent elections.</p> <p>8. According to sources, Byberg made these contributions as a representative of Biofuel and not as a private citizen.</p>
<p>LICENSES / REGULATORY BODY INTERACTION</p> <p>Questions raised by the Client:</p> <p>9. Is it NPA or EPA that provides such legal licenses in Ghana? As we understand, EPA is the body providing such licenses. Does NPA and the responsible civil servants providing BioFuel with its current licenses view them as being illegitimate or not sufficient?</p> <p>10. We need to have the EPA view on this.</p>	<p>9. Please see Appendices pp.12-16 regarding the statutory responsibilities of the NPA / EPA with relation to licence issuing. From RAINS' reporting it would appear that, initially, the invalid land lease involved the Company and local government bodies as opposed to either the NPA / EPA. (Please see Quote E in Appendices)</p> <p>10. Diligence, according to the Proposal for Services for the IDD proposed to "Review BAG's activities in Ghana, with a specific focus on events surrounding BAG's dealings with the local population in relation to land purchases in Kusawgu..." Review of open source material indicates that the EPA, together with the Central Gonja District Assembly, was involved in <u>suspending</u> BAG's work on the site in question.</p>

IDD CLIENT FOLLOW UP

CLIENT QUESTIONS OUTSIDE THE SCOPE OF THE PROPOSED IDD OF 04/11/08 *	
<p>FASSINE FOFANA</p> <p>Question raised by the Client:</p> <p>11. Exactly when and where was this done? (Payments)</p>	<p>11. Diligence cautions against requesting further clarification from this source on specific details that would further incriminate the source and jeopardise the Client's confidentiality. As part of the Review Diligence proposed to obtain informed source comment and judged this source – a BoD member of a BA shareholder as described above – as being such.</p>
<p>MWANA AFRICA</p> <p>Questions raised by the Client:</p> <p>12. Which companies have an agreed role to represent BioFuel in Ghana?</p> <p>13. Proof of these claims</p>	<p>12. Identification of BAG's legal representatives was not a proposed Service as outlined in the Proposal of Services submitted to the Client. Should Diligence nevertheless have identified information on legal representatives during the course of enquiries, such information would have been included in the report.</p> <p>13. The provision of non-publicly available official documentation falls outside the scope of agreed services to the Client.</p>
<p>BYBERG & NPP</p> <p>Questions raised by the Client:</p> <p>14. Giving financial support to a legal political party may be viewed as negative even if it is not directly illegal. Are there any evidences supporting the alleged financial support?</p> <p>15. If so, may these contributions be viewed as transparent?</p>	<p>14. (See Quote B in Appendices) Diligence concurs that political association can, in certain circumstances, constitute a risk to the Client. This is a source comment emanating from a senior contact within the NPP and, in Diligence's analysis, is a strong indication that Byberg, on behalf of Biofuel does indeed support the NPP financially. As with Fofana above, Diligence was asked to obtain informed source comment; obtaining non-publicly available official documentation falls outside the scope of agreed services to the Client even were it to be available.</p> <p>15. No evidence or rumour was identified to indicate that that the support of the NPP could be viewed as being non-transparent. In Diligence's analysis, the NPP source's willingness to discuss the issue indicates that the support is not highly confidential nor necessarily controversial.</p>

IDD CLIENT FOLLOW UP

<p>TRIBAL CHIEFS</p> <p>Questions raised by the Client:</p> <p>16. It is claimed that BioFuel has made contracts through local community leaders and that the chief himself...was not informed. This should have been checked.</p> <p>17. Please confirm by consulting the relevant paramount chiefs if they have not been informed or if not the right local routines are followed. Please also verify if BioFuel had been made aware of such local decision procedures and if they have ignored them.</p>	<p>16. This issue has been highlighted and investigated by NGOs and media organisations, both Norwegian and international. At the onset of this Review, the Client sent Diligence a link to a Norwegian televised documentary and Diligence further notes that, in June 2008, this issue was raised before the Environment Committee of the European Parliament by the African Biodiversity Network. Diligence's report showed corroboration of the allegations by sources within the NPA and NPP (See Quotes B, C and D in Appendices)</p> <p>17. Diligence proposed to "Review BAG's activities in Ghana, with a specific focus on events surrounding BAG's dealings with the local population in relation to land purchases in Kusawgu..." Diligence considers the steps mentioned above as meeting the scope outlined in the proposal. Consultation with the relevant paramount chiefs falls outside of the agreed scope of work. Such consultation can be conducted but requires a significantly different time frame and budget than that applicable for an IDD Review as per the Proposal agreed with the Client.</p>
<p>AUTHORISED LAND CLEARANCE</p> <p>Questions raised by the Client:</p> <p>18. Proof of the unauthorised clearing of 2600 ha should be provided including pictures of the said area. The report is far from supplying convincing arguments as our information is, that RAINS may also have other agendas</p> <p>19. It should be verified which clearances/approvals/licenses that BioFuel still miss to make their current activity legal.</p> <p>20. Have Diligence consulted the chiefs and paramount chiefs in the area and got an impression of whether they see BioFuel's current activities as being legal or not?</p>	<p>18. Providing photographic evidence of the unauthorised clearance is outwith the scope of the proposed IDD. This information was provided in the report as part of BA's public profile. As stated by the Client, BA itself has admitted that an area was unlawfully cleared and this issue has been highlighted by NGOs and media.</p> <p>19. Providing official documentation relating to approvals or licenses falls outside the scope of the proposed IDD and would, in some instances, require legal opinion specific to Ghana which Diligence is not in a position to issue nor has proposed to issue.</p> <p>20. Diligence proposed to "Analyse BA and BAS' business practices in Norway, and BAG's in Ghana, and review any inconsistencies in the Companies' performance..." under which the land clearance issue was raised. Diligence considers the information presented in the report as meeting the requirement as outlined in the proposal.</p>

IDD CLIENT FOLLOW UP

<p>21. How is the relationship between EPA and NPA? How do they co-operate and what is their division of responsibility? Are there any strides over authority or responsibility between the two offices?</p> <p>22. Is RAINS in any way representing official or local bodies of Ghana? It could be viewed this way when they take on the job of presenting alternative lease contracts to BioFuel?</p>	<p>21. This question falls outside the scope of Diligence's proposed IDD as it is wholly concerned with the relationship between the EPA and NPA. Should the Client wish a separate investigation of this relationship can be conducted under a new Service agreement with the Client.</p> <p>22. According to open source information, RAINS is a non-governmental organisation (NGO) that works with local communities and development partners. The organisation's website provides annual reports and a full list of its trustees. A separate investigation can be carried out into RAINS and its principals to establish whether there are any linkages between the organisation and other entities that may wish to hinder Biofuel's activities in Ghana. Please note that RAINS itself has argued that local bodies were politicised against its efforts to suspend Biofuel's operations (see Quote E in Appendices).</p>
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*** FOR THOSE ISSUES WHICH REMAIN OF CONCERN TO THE CLIENT, DILIGENCE RECOMMENDS THAT A FURTHER IDD REQUEST AND PROPOSAL IS ISSUED. IN SOME INSTANCES THIS MAY REQUIRE FIELD WORK BY DILIGENCE STAFF IN GHANA ITSELF.**

APPENDICES

APPENDICES

QUOTE A

"Fassine Fofana is the man we use in order to maintain confidential contacts to the Governments of the area. If we have been sure that it was possible to start our project in Ghana only with the contact we got from the Tribe we met, this was because Fassine Fofana brought us to a meeting with a member of a Commission that has the target to deregulate the whole licensing system in Ghana. That man, I don't remember his name but he had eyeglasses, assure us that with a little bit of money everything would be alright. Fofana asked us a sum, we paid it in an envelop, the man had a broad smile and said that we can consider us as his friends. Then Fofana asked for 10% of that sum and we paid it in despite of the fact that it was a very high fee, but we have been happy because we could start immediately with our work. This is the reason why I accepted to work with Fofana in some other projects: he's a very [reputable] man in West Africa, has a lot of connections and could be very relevant for our company in the near future".

QUOTE B

Diligence's contact with access to the Chairman of NPP stated that the latter explained that: *"Finn Byberg has a lot of good friends in our party. We believe that Ghana should say 'welcome' to the Norwegian investments because he (has) already shown us that he's a good friend of our people."* The NPP source posited that *"I know that there are rumours about bribes that he paid to some politician, but this is not true. Finn Byberg is officially (supporting) the NPP – also financially – but not (a) single person."* *"We have an election to win in the next weeks and it's going to be important also for Norway: Despite disputing claims of bribery, the NPP source did say that "actually Biofuel acts in a more or less illegal situation. If Mr. Byberg would help us to win this election we will show him how much gratitude we can have. Always respecting the law, of course".*

QUOTE C

The Head of NPA National Petroleum Authority of Ghana: *"We all know about the problem with Biofuel. They are usurping a large territory with a contract, which is less worth (than) the paper it's made of. The State of Ghana never gave any contract or exploitation's license to Biofuel. Never. The*

APPENDICES

problem is that Biofuel bribed several members of the local authorities around the concession and they let them live and work in despite of the fact that they are illegal there. In summer we started a proceeding to oblige them to leave the country. Their reaction is to use the security guards to intimidate some of our managers in that region and the influence of people like Fassine Fofana – who are always bringing beautiful gifts and most of all cash to the politicians and tribal chiefs he meets. But this doesn't change the situation: Biofuel is completely illegal here and sooner or later they will be obliged to go”.

QUOTE D

Head of Legal Division of the NPA National Petroleum Authority of Ghana: *“Biofuel has no contract with our country. They are acting against the law. Their strategy is to try to let us lose time in boring negotiations and wait for the day in which they can buy a real license corrupting Mr. Attafuah and Mr. Mensah, which are the leading persons of NPA. As you know, nowadays Ghana is deregulating the whole exploitation's system. Everything will be in the hands of Mr. Attafuah and Mr. Mensah, but most of all in the hands of Inkum Adipa, the chief of Cirrus Oil. Then Biofuel needs only to bribe Cirrus Oil, two leaders of NPA, get a deal with Vitol (because they are still very mighty here and are the former owners of Cirrus Oil) and finally have a contract with Trigon for the bulks and you will see that a wonder could happen. Normally we should go there with the Army and kick them all out of the country”.*

QUOTE E

Biofuel land grabbing in Northern Ghana, 18.12.2008, By Bakari Nyari, Vice Chairman of Regional Advisory and Information Network Systems (RAINS), Ghana and African Biodiversity Network Steering Committee member.

“The strategy for the acquisition of the land often takes the following course: The imaginations of a few influential leaders in the community are captured. They are told about prospects for the community due to the project and they were swayed with promises of positions in the company or with monetary inducements. The idea is that these people do the necessary “footwork” in the villages where they spread the word about job opportunities. A document is then prepared, essentially a contract, to lease the land to the company. In the event of problems the developer can press their claim by enforcing the ‘contract’ or agreement. When the legality of the process is not adequately

APPENDICES

scrutinized, the developers have their way but, subject to proper scrutiny, it emerges these contracts are not legally binding as they have not gone through the correct legal channels. This is what happened in this particular case in the Alipe area.

"RAINS immediately contacted the District Chief Executive (DCE), the political head of the District to inquire about the project. Neither he nor the District Assembly had any information about it. He had noticed the work on the site and was in the process of finding the "culprits" because they did not have any planning permission to undertake the development. To gain time, we advised the DCE to use the planning powers conferred on the District Assembly under the Local Government Act 1993 Act 462 to stop the destruction of the vegetation."

"Under this law nobody can undertake any development of land without seeking the prior approval of the District Assembly of the area. In this particular case the Assembly could not stop them owing perhaps to the highly politicized nature of the Assembly process and the vulnerability of the personnel there. Eventually, using the Environmental Assessment Regulations LI 1652, we managed to get them to stop the destruction but not before more than 2 600 hectares of land had been stripped of its natural vegetation cover."

APPENDICES

STATUTORY FUNCTIONS OF EPA AND NPA

EPA	NPA
<p>Under the Environmental Protection Agency Act, 1994 (ACT 490), the functions of the Agency are:</p> <p>(a) To advise the Minister on the formulation of policies on all aspects of the environment and in particular make recommendations for the protection of the environment;</p> <p>(b) To co-ordinate the activities of bodies concerned with the technical or practical aspects of the environment and serve as a channel of communication between such bodies and the Ministry;</p> <p>(c) To co-ordinate the activities of such bodies as it considers appropriate for the purposes of controlling the generation, treatment, storage, transportation and disposal of industrial waste;</p> <p>(d) To ensure in collaboration with such persons as it may determine the control and prevention of discharge of waste into the environment and the</p>	<p>National Petroleum Authority Act, 2005 Act 691 section on licensing.</p> <p>Licences</p> <p>Requirement for licence</p> <p>11. (1) A person shall not engage in a business or commercial activity in the downstream industry unless that person has been granted a licence for that purpose by the Board.</p> <p>(2) The business or commercial activities of the downstream industry in respect of crude oil, gasoline, diesel, liquefied petroleum gas, kerosene and other designated petroleum products are</p> <p>(a) importation,</p> <p>(b) exportation,</p> <p>(c) re-exportation,</p> <p>(d) shipment,</p> <p>(e) transportation,</p> <p>(f) processing,</p> <p>(g) refining,</p> <p>(h) storage,</p> <p>(i) distribution,</p> <p>(j) marketing, and</p>

APPENDICES

<p>protection and improvement of the quality of the environment;</p> <p>(e) To collaborate with such foreign and international agencies as the Agency considers necessary for the purposes of this Act;</p> <p>(f) To issue environmental permits and pollution abatement notices for controlling the volume, types, constituents and effects of waste discharges, emissions, deposits or other source of pollutants and of substances which are hazardous or potentially dangerous to the quality of the environment or any segment of the environment;</p> <p>(g) To issue notice in the form of directives, procedures or warnings to such bodies as it may determine for the purpose of controlling the volume, intensity and quality of noise in the environment;</p> <p>(h) To prescribe standards and guidelines relating to the pollution of air, water, land and other forms of environmental pollution including the discharge of wastes and the control of toxic substances;</p> <p>(i) To ensure compliance with any laid down environmental impact assessment procedures in the</p>	<p>(k) sale.</p> <p>(3) The Authority may by legislative instrument limit or expand the scope of activities under section 11 subsection (2).</p> <p>Qualification for licence</p> <p>12. A licence under this Act may only be granted to</p> <p>(a) a citizen of Ghana; or</p> <p>(b) a body corporate registered under the Companies Code, 1963 (Act 179) or</p> <p>(c) a partnership registered under the Incorporated Private Partnerships Act, 1962 (Act 152); or</p> <p>(d) a foreign individual or foreign company in a registered joint venture relationship with a citizen of Ghana or a Ghanaian company.</p> <p>Application for licence</p> <p>13. (1) A person may apply to the Board for licence in the manner determined by the Board with the prescribed fee.</p> <p>(2) The Board shall, within thirty working days of the receipt of an application, acknowledge receipt and inform the applicant in writing of the decision of the Board.</p> <p>(3) The Board shall on satisfaction that an applicant has met all the preconditions including the payment of the prescribed fee, direct the entry of the applicant's name in the Register of licences established under section 20.</p> <p>Conditions of licence</p> <p>14. (1) A licence shall not be granted to an applicant unless the applicant has complied with any other requirement specified by the Board and any other relevant enactment.</p> <p>(2) A licence granted by the Board is subjected to the conditions specified in the licence.</p>
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APPENDICES

<p>planning and execution of development projects, including compliance in the respect of existing projects;</p> <p>(j) To act in liaison and co-operation with government agencies, District Assemblies and other bodies and institutions to control pollution and generally protect the environment;</p> <p>(k) To conduct investigations into environmental issues and advise the Minister thereon;</p> <p>(l) To promote studies, research, surveys and analyses for the improvement and protection of the environment and the maintenance of sound ecological systems in Ghana;</p> <p>(m) To initiate and pursue formal and non-formal education programmes for the creation of public awareness of the environment and its importance to the economic and social life of the country;</p> <p>(n) To promote effective planning in the management of the environment;</p> <p>(o) To develop a comprehensive database on the environment and the environmental protection for the information of the public;</p>	<p>(3) The Board may request from the applicant where necessary, (a) a clearance certificate or an appropriate permit from the Environmental Protection Agency and Ghana Standards Board;</p> <p>(b) evidence of</p> <p>(i) financial viability for the ownership or operation of the business or commercial activity,</p> <p>(ii) adequate training, qualification and experience to engage in the business or commercial activity in accordance with this Act, and</p> <p>(iii) other requirements</p> <p>in the manner and at the times the Board may determine.</p> <p>Issue and renewal of licence</p> <p>15. (1) Where an applicant meets the condition required by this Act for a licence to engage in a business or a commercial activity in the petroleum downstream industry, the Board shall approve the application and issue the applicant with the licence.</p> <p>(2) Despite subsection (1), the Board may for reasons in the public interest, public safety or public security decide not to issue an applicant with a licence and shall inform the applicant of its decision in accordance with subsection (1) of section 19.</p> <p>(3) A licence issued is valid for the period specified on it and may be renewed upon satisfying all the conditions for renewal as specified in the licence.</p> <p>(4) An application for the renewal of a licence shall be made to the Board not later than sixty days prior to its expiry and in the manner determined by the Board.</p> <p>(5) The applicant who seeks to renew a licence shall pay the prescribed fee prior to the issue of the licence.</p>
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APPENDICES

<p>(p) To conduct seminars and training programmes and gather and publish reports and information relating to the environment;</p> <p>(q) To impose and collect environmental protection levies in accordance with this Act or regulations made under this Act;</p> <p>(r) To co-ordinate with such international agencies as the Agency considers necessary for the purposes of this Act; and</p> <p>(s) To perform any other functions conferred on it under this Act.</p>	<p>Display of licence</p> <p>16. A licence issued under this Act shall be conspicuously exhibited by the licensee in a prominent place on the business premises of the licensee.</p> <p>Non transferability of licence</p> <p>17. A licensee issued with the licence shall not transfer that licence to another person without the prior approval of the Board.</p> <p>Revocation, suspension and refusal to renew licence</p> <p>18. The Board may revoke, suspend or refuse to renew a licence issued under this Act where</p> <p>(a) the provisions of this Act of the Regulations are not being satisfactorily complied with,</p> <p>(b) the continued operation of a business or commercial activity poses a risk to public health, safety and security,</p> <p>(c) the services provided by the licensee have deteriorated below the required standard,</p> <p>(d) the licensee has not complied with any of the conditions of the licence,</p> <p>(e) an offence under this Act in relation to the licensee is being investigated,</p> <p>(f) the licensee has contravened but has not been convicted of a provision of this Act.</p> <p>Notice of revocation, suspension or refusal to issue or renew licence.</p> <p>19. (1) where the Board intends to revoke, suspend or refuse to issue or renew a licence under this Act, the Board shall give the applicant or licensee</p> <p>(a) thirty days prior notice of the revocation, suspension or the intention to refuse to issue or renew the licence,</p> <p>(b) reasons for the intention to revoke, suspend or refusal to issue or renew the licence, and</p> <p>(c) an opportunity to make an oral or written representation to the Board.</p>
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APPENDICES

	<p>(2) An applicant or licensee who receives a notice may make a representation to the Board within fifteen working days from the date of receipt of the notice.</p> <p>(3) The Board shall within three months after the representation take a decision on the representation and inform the applicant or licensee.</p> <p>(4) The Board shall as soon as practicable inform the Minister in writing of any decision it takes on a representation.</p>
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