

CHAPTER 43:01
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Act 3, 2007,
S.I. 22, 2008.

An Act to re-enact, with amendments, the Industrial Development Act.

[Date of Commencement: 1st April, 2008]

PART I

Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Industrial Development Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires-

"application" means an application for a licence, in accordance with section 16, to manufacture any product at any place in Botswana, and includes-

- (a) an application to manufacture a different or additional product;
- (b) an application to manufacture at a different or additional place; and
- (c) an application to transfer a licence to another person;

"authorised officer" means a public officer appointed by the Minister in terms of section 29 (1);

"Chairperson" means a Chairperson of a committee;

"committee" means a licensing committee, a Regional Appeals Board or the Industrial Licensing Authority;

"council" means a city or town council established under the Townships Act or a district council established under the Local Government (District Councils) Act;

"Industrial Licensing Authority" means the Industrial Licensing Authority established under section 26;

"large enterprise" means a business entity with such annual turnover and staff complement as the Minister may, by order published in the *Gazette*, prescribe;

"licence" means a licence to manufacture, issued under section 17;

"licensing committee" means a committee established under section 3;

"manufacture" means to subject physical matter to any process which materially changes it or its packaging in substance, character or appearance and includes the assembly of parts;

"medium enterprise" means a business entity with such annual turnover and staff complement as the Minister may, by order published in the *Gazette*, prescribe;

"member" means a member of a committee and includes a chairperson;

"micro enterprise" means a business entity with such annual turnover and staff complement as the Minister may, by order published in the *Gazette*, prescribe;

"product" means any article, thing or substance produced by any manufacturing enterprise to which this Act applies, but excludes any immovable structure;

"Regional Appeals Board" means the Board established under section 25; and

"small enterprise" means a business entity with such annual turnover and staff

complement as the Minister may, by order published in the *Gazette*, prescribe.

(2) This Act shall apply to any manufacturing enterprise which-

- (a) is either wholly or partly owned by citizens of Botswana and employs, in the aggregate at any given moment anywhere in Botswana, 10 or more persons, including managers, directors, or sales or clerical or other staff;
- (b) any person not being a citizen of Botswana carries on by himself or herself or with others; or
- (c) irrespective of the number of persons employed therein, uses any engine, motor or other appliances providing energy derived from steam, water, sun, wind, electricity, the combustion of fuel or any other source of not less than 20 kilowatts or equivalent power in aggregate.

(3) Notwithstanding the provisions of subsection (2), the provisions of this Act shall not apply to-

- (a) the Botswana Meat Commission including any individual enterprises undertaken by that Commission;
- (b) any manufacturing enterprise for milling licensed under the Control of Maize Milling Act;
- (c) any co-operative society registered under the provisions of the Co-operative Societies Act;
- (d) any manufacturing enterprise whose premises are licensed in terms of any regulations made under the provisions of the Hides and Skins Export Act;
- (e) any diamond cutting licensed under the Diamond Cutting Act; and
- (f) the Botswana Vaccine Institute.

PART II

Licensing Committees (ss 3-8)

3. Establishment of licensing committees

(1) There is hereby established a licensing committee for each council, the members of which committee shall be appointed by the Minister.

(2) A licensing committee shall consist of the following members-

- (a) a senior officer of the Council who shall not be below a salary scale of C1;
- (b) a member of the private sector, who shall be Chairperson;
- (c) a Councillor;
- (d) a police officer of the rank of Sergeant or above; and
- (e) a Commercial Officer from the Council.

4. Tenure of office of member

(1) A member shall hold office for such period, not exceeding three years, as may be specified in the instrument appointing him or her.

(2) A member whose office expires shall be eligible for reappointment as a member for a further term of office not exceeding three years.

5. Disqualification from appointment as a member

No person shall be appointed as a member, nor shall any person be qualified to hold office as a member, who-

- (a) has in terms of any law in force in any country-
 - (i) been adjudged or otherwise declared insolvent or bankrupt, and has not been rehabilitated or discharged, or
 - (ii) made an assignment, or arrangement or composition with his or her creditors, which has not been rescinded or set aside;
- (b) has, within a period of five years immediately preceding the date of his or her proposed appointment, been convicted-
 - (i) in Botswana, of a criminal offence, or
 - (ii) outside Botswana, of an offence which, if committed in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to

imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he has not received a free pardon.

6. Removal, suspension and vacation from office of member

(1) The Minister may, by notice in writing, remove a member from office where a member-

- (a) is absent without reasonable cause from three consecutive meetings of the licensing committee of which he or she has had notice;
- (b) is inefficient;
- (c) has been found to be physically or mentally incapable of performing his or her duties efficiently, and a medical doctor has issued a certificate to that effect;
- (d) contravenes the provisions of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the licensing committee; or
- (e) has failed to comply with the provisions of section 13.

(2) The Minister shall, in writing, suspend from office, a member of a licensing committee against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed, and whilst that member is so suspended, he or she shall not carry out any duties or be entitled to any remuneration or allowances as a member of the committee.

(3) A member may resign his or her office by giving 30 days notice, in writing, to the Minister.

(4) The office of a member shall become vacant after-

- (a) a period of 30 days from the date a ruling against the member is made on all appeals made in respect of a conviction against him or her under section (5) (b);
- (b) a period of 30 days has elapsed from the date the member gives notice in writing to the Minister under subsection (3), of his or her intention to resign;
- (c) a period of 30 days has elapsed from the date the member is given notice in writing by the Minister to vacate office; or
- (d) the member is summarily dismissed by the Minister on grounds of contravening a provision of this Act or misconduct under subsection (1) (d).

(5) For the purposes of subsection (1) (d), "misconduct" includes any act done without reasonable excuse by a member which-

- (a) amounts to failure to perform, in a proper manner, any duty imposed on him or her as a member;
- (b) is prejudicial to the efficient conduct of the licensing committee; or
- (c) tends to bring the licensing committee into disrepute.

7. Filling of vacancies

The Minister shall, on the death or vacation of office by a member, appoint another person to take the place of the member who died or vacated his or her office.

8. Remuneration of member

A member shall be paid such remuneration, and such travelling expenses, incurred in connection with his or her service on a licensing committee, as the Minister may from time to time determine.

PART III

Powers and Duties of Licensing Committee (s 9)

9. Powers and duties of licensing committee

A licensing committee shall be responsible for the issue, in accordance with the provisions of this Act, of licences to small and medium enterprises to manufacture any product, and the suspension or cancellation of such licences for sufficient reasons.

PART IV

Meetings and Proceedings of a Licensing Committee (ss 10-15)

10. Meetings and proceedings of licensing committee

- (1) A licensing committee shall meet weekly to discharge its functions.
- (2) The Chairperson shall preside over all meetings of the licensing committee and if the Chairperson is absent from a meeting, the members shall elect one of their number to act as Chairperson for that meeting.
- (3) The Chairperson may, at any time, convene a special meeting of the licensing committee when he or she considers it desirable to do so.
- (4) Four members of a licensing committee shall form a quorum.
- (5) Subject to the provisions of this Act, a licensing committee shall regulate its own procedure.
- (6) The decisions of a licensing committee shall be by a simple majority of votes and, in the event of an equality of votes, the Chairperson shall have a casting vote in addition to his or her deliberative vote.
- (7) An act, decision or proceeding of a licensing committee shall not be rendered invalid on account of the appointment of any member being defective or by reason of a vacancy in the membership of the committee, if the act was done, or the decision, or the proceeding took place, in accordance with a majority vote of the persons who were at the time entitled to sit as members.

11. Secretariat

The Minister shall designate an office to be the Secretariat of a committee.

12. Functions of Secretariat

The Secretariat shall-

- (a) be responsible for the accurate and complete recording of the proceedings of a committee and the keeping of such records;
- (b) be responsible for arranging the business of the committee and shall carry out such other functions as a committee may direct;
- (c) be the liaison office between a committee, the Ministry, the applicants and the general public;
- (d) receive appeals made under section 25 or 26 (3) and submit them to the Regional Appeals Board or the Minister, as the case may be;
- (e) keep register of licences issued under this Act; and
- (f) submit to the Minister data relating to the licences issued when required to do so by the Minister.

13. Disclosure of interest

(1) Where a member is present at a meeting of a licensing committee at which any matter, which is the subject of consideration and in which matter the member is directly or indirectly interested in a private capacity, is to be discussed, he or she shall immediately upon the commencement of the meeting or becoming aware of the interest, disclose such interest and shall not, unless the committee otherwise directs, take part in any consideration or discussion of or vote on, any question concerning that matter.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting at which it was made.

(3) Where a member fails to disclose his or her interest in accordance with subsection (1) and a decision by a licensing committee is made benefiting such member, such decision shall be null and void.

(4) A member who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding P6,000, or to imprisonment for a term not exceeding 12 months, or to both, and for a second or subsequent offence to a fine not exceeding P10,000, or to imprisonment for a term not exceeding two years, or to both.

14. Confidentiality

(1) The members and any expert assisting a licensing committee shall observe and

preserve the confidentiality of all matters coming before the committee, and such confidentiality shall subsist even after the termination of their terms of office or their expert mandates.

(2) Any person to whom confidential information is revealed through working with a licensing committee, shall not disclose that information to any other person unless he or she is required to do so in terms of any written law.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding P6,000, or to imprisonment for a term not exceeding 12 months, or to both, and for a second or subsequent offence to a fine not exceeding P10,000, or to imprisonment for a term not exceeding two years, or to both.

15. Co-option of advisory personnel

A licensing committee may co-opt any person to attend any meeting of the committee on any matter for the purpose of assisting or advising the committee, but such person shall have no right to vote.

PART V

Licensing (ss 16-24)

16. Licence requirements

(1) Subject to the provisions of this Act, no person shall manufacture, for sale, any product at any place in Botswana unless he or she is in possession of a licence to manufacture such product at such place, issued by a licensing committee.

(2) An application for a licence to carry on a manufacturing enterprise shall be made in the prescribed form to a licensing committee.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine of P10,000, or to imprisonment for a term not exceeding two years or to both, and, in the case of a continuing offence shall be liable to a further fine of P500 or to imprisonment for one month in respect of each day on which the offence continues.

17. Issue of licence

(1) A licensing committee shall, where it is satisfied that an application meets the requirements for the issue of a licence, issue, to the applicant, a licence containing such conditions as it may consider necessary.

(2) A licensing committee shall provide, as a condition of a licence, that the licence may be used to sell the product in relation to such licence, only within the premises in which such product is manufactured.

(3) A licence issued under this Act shall be valid for an indefinite period subject to-

- (a) compliance with the conditions upon which it is issued; and
- (b) payment by a licence holder of an annual licence fee prescribed by Regulation.

18. General principles affecting issuance of licence

A licensing committee shall not issue a licence where it is satisfied that-

- (a) the applicant is below 18 years of age;
- (b) the issue of such licence would conflict with any approved or proposed town planning scheme or zoning area, or any health or other regulations;
- (c) the applicant is an unrehabilitated insolvent;
- (d) the applicant has surrendered his or her estate for the benefit of his or her creditors;
- (e) the applicant has, within a period of two years immediately preceding the date of the application, been convicted of an offence involving dishonesty;
- (f) the applicant is of unsound mind;
- (g) the applicant has failed to-
 - (i) submit a company registration certificate under the Registration of Business Names Act or a certificate of incorporation under the Companies Act,
 - (ii) submit proof of land ownership or availability of premises,
 - (iii) submit identification documents,
 - (iv) specify the kind of business activities to be undertaken, or

- (v) any other document that the committee may require.

19. Application for new product or place of manufacture

(1) A licensee who wishes to manufacture a new product or to change the location of his or her enterprise shall apply in the prescribed form to a licensing committee.

(2) Where an application under subsection (1) is granted, the applicant shall pay the prescribed fee at the time the new licence is issued to him or her.

20. Duplicate licence

A licensee may apply for and receive a duplicate licence, upon payment of a prescribed fee, if his or her licence has been lost, damaged or rendered illegible.

21. Display of licence

Where a licence is issued in respect of any premises, the holder of the licence shall exhibit such licence, and a signboard or name plate bearing in legible characters the name or style under which he or she carries on the enterprise, in a prominent place on such enterprise.

22. Transfer of licence

(1) A person may, on application in such form as may be prescribed, apply to a licensing committee for a licence to be transferred to another person.

(2) Without prejudice to the generality of subsection (1), a licensing committee may transfer a licence where-

- (a) the licensee is a citizen or wholly citizen owned company of Botswana holding a reserved licence, to another citizen or wholly citizen owned company;
- (b) the licence issued is in respect of specified premises, to another premises within the same licensing area;
- (c) the licensee has died, to his or her heir or beneficiary;
- (d) the licensee has been declared insolvent or has surrendered his or her estate for the benefit of his or her creditors, to his or her trustees; or
- (e) the licensee becomes subject to any legal disability, to his or her legal representative who is a citizen or a wholly citizen owned company.

(3) For the purposes of this section, a licence is deemed to have been transferred if it is re-issued for a manufacturing business to a person other than the person who holds or has held the licence in respect of such business.

(4) Any person who transfers, or is the transferee of a licence in contravention of the provisions of this section shall be guilty of an offence and liable to a fine of P1,000, or to imprisonment for two months, or to both.

23. Suspension of licence

(1) A licensing committee may, where it considers it appropriate, suspend a licence where an inspection report relating to the activity for which the licence is issued, made under any law, recommends suspension.

(2) A suspension under this section shall be for such period as the licensing committee may determine to enable the licensee to take remedial action so as to comply with such requirements of his licence and the provisions of this Act, the non-compliance of which form the basis of the suspension of his licence.

24. Revocation of licence

A licensing committee may revoke a licence where-

- (a) the licence was issued with conditions and the licensee has failed to satisfy those conditions;
- (b) a report relating to the activity for which the licence is issued made under any law recommends revocation; or
- (c) the licensee has been convicted of an offence under this Act.

(2) A licensing committee may revoke a licence where a licensee has failed to take remedial action referred to under section 23 (2) at the expiration of the time given thereunder.

(3) A licensee shall be given three months to wind up a business where his licence has

been revoked under subsection (1).

PART VI

Regional Appeals Board (s 25)

25. Regional Appeals Board

(1) There is hereby established, for each region, a Regional Appeals Board.

(2) The Minister shall, by notice published in the *Gazette*, appoint members of the Regional Appeals Board.

(3) A Regional Appeals Board established in accordance with subsection (1) shall consist of the following persons-

- (a) a person from the private sector who shall be Chairperson;
- (b) a Council Secretary, City Clerk or Town Clerk;
- (c) two representatives from the private sector appointed on a regional basis;
- (d) an attorney;
- (e) a representative of the Ministry of Lands and Housing;
- (f) a representative of the Ministry of Trade and Industry; and
- (g) such two Councillors as the Minister may determine.

(4) The members of the Regional Appeals Board shall elect, from among their number, a Vice Chairperson.

(5) The provisions of section 13 shall apply with necessary modifications to the Regional Appeals Board.

(6) A person aggrieved by a licensing committee's decision-

- (a) not to issue a licence;
- (b) not to transfer a licence;
- (c) to suspend a licence; or
- (d) to revoke a licence,

may appeal, in writing, to the Regional Appeals Board within 30 days of notification of the decision.

(7) A person aggrieved by a decision of the Regional Appeals Board on any matter may appeal to the Minister in writing, within 30 days of notification of the decision of the Board.

PART VII

Establishment of the Industrial Licensing Authority (s 26)

26. Establishment of Industrial Licensing Authority

(1) There is hereby established an Industrial Licensing Authority consisting of a Chairperson and such members as the Minister may by notice published in the *Gazette* appoint.

(2) The Industrial Licensing Authority shall be responsible for the issue, in accordance with the provisions of this Act, of licences to large enterprises to manufacture any product, and the suspension or cancellation of such licences for sufficient reasons.

(3) The provisions of sections 10, 15 to 24 and 25 (7) shall apply with necessary modifications to the Industrial Licensing Authority.

PART VIII

Miscellaneous (ss 27-35)

27. Certain industries to be reserved for citizens

(1) The Minister may make regulations providing that licences to carry on such enterprises as may be prescribed shall be issued only to citizens of Botswana, or to companies wholly owned by citizens of Botswana.

(2) Regulations made under this section may provide that only citizens of Botswana shall be entitled to carry on a particular enterprise in such areas in the country as may be prescribed.

(3) Notwithstanding the provisions of this section, the Minister may make regulations providing that licences to carry on enterprises reserved for citizens and which enterprises fall within the medium or large scale category shall be issued to joint ventures between citizens and foreign partners, provided that the citizen partner holds a minimum of 51 per cent share holding

in the joint venture.

28. Minister's powers

(1) The Minister may-

- (a) give written directions on matters of policy to licensing committees, which directions shall be followed by the licensing committees; or
- (b) amend, suspend or cancel any licence issued by the licensing committee if he or she is satisfied, after due inquiry and after giving the licensee an opportunity of being heard, that it is in the public interest or in the interest of the efficient development of the industry concerned that the licence should be amended, suspended or cancelled;

(2) Any suspension of a licence under subsection (1) (b) may be made subject to such conditions as the Minister may consider appropriate.

29. Appointment of authorised officers

(1) The Minister may appoint suitable public officers as authorised officers for the purposes of conducting inspections and gathering information, whether it be in furtherance of an investigation carried out under this Act or for purposes of collection of data.

(2) Any authorised officer may inspect the premises of any manufacturing enterprise at any time, and any person at such premises shall assist such authorised officer in the performance of his or her duties.

(3) Any person who obstructs or in any way prevents an authorised officer from conducting an inspection or from obtaining any information he or she requires shall be guilty of an offence and liable to a fine not exceeding P10,000, or to imprisonment for a term not exceeding two years, or to both.

30. Compliance with other laws

The issue of a licence to any person under this Act shall not be deemed in any way to relieve the licensee from compliance with any other written law relating to the activity for which the licence was issued.

31. Duty to provide information and statistics

A manufacturing enterprise licensed under this Act shall provide all such information and statistics relating to the enterprise as may be required by the licensing committee or some other agency authorised by the licensing committee and failure to do so shall be sufficient reason for the suspension of the licence issued to that enterprise.

32. Offences and penalties

(1) Any person who-

- (a) wilfully makes a false statement in any form, book or other document required to be kept under this Act;
- (b) forges a licence;
- (c) alters or erases any part of a licence or any entry lawfully made thereunder;
- (d) produces or uses a licence which is forged or which to his or her knowledge has been unlawfully altered;
- (e) produces or uses a licence in the name of some other person or of a fictitious person;
- (f) forges any document for the purpose of obtaining a licence;
- (g) fronts for another person; or
- (h) runs a business under a licence obtained under paragraph (g), shall be guilty of an offence and liable to a fine not exceeding P1,000 for a first offence and to a fine not exceeding P10,000 and imprisonment for a term not exceeding two years, or to both, for a second or subsequent offence.

(2) Subject to subsection (1), where a manager, agent or servant of a licensee does or omits to do anything which if done or omitted to be done by the licensee would be in contravention of any provision of this Act, the licensee shall be deemed to have contravened such provision and shall be liable to penalties thereof.

(3) Subsection (2) shall not apply where-

- (a) the act or omission was done without the licensee's knowledge, consent or connivance;
- (b) all reasonable steps were taken by the licensee to prevent the act or omission.

(4) Where the licensee issued instructions forbidding an act or omission, such action shall not of itself be sufficient proof of compliance with subsection (3) (b).

33. Regulations

The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing, the Minister may make regulations-

- (a) prescribing the circumstances that would be sufficient reason for the issuance, suspension or cancellation of a licence; or
- (b) providing for the registration of micro and small enterprises exempt from the Act.

34. Repeal of Cap. 43:01

The Industrial Development Act, in section 35 referred to as "the repealed Act", is hereby repealed.

35. Transitional provision

Notwithstanding the repeal effected under section 34 any-

- (a) application or process commenced; or
- (b) determination, order or other ruling made, under the repealed Act, immediately before the coming into operation of this Act shall be dealt with in accordance with the provisions of the repealed Act.