

THE INDUSTRIAL DEVELOPMENT ACT, 1968

No. 22



of 1968

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AN ACT TO ENCOURAGE AND CONTROL THE ORDERLY PROMOTION AND DEVELOPMENT OF INDUSTRY IN BOTSWANA

Date of Assent: 6.3.68.

Date of Commencement: On a date to be appointed.

ENACTED by the Parliament of Botswana.

Short Title and Commencement

1. This Act may be cited as the Industrial Development Act, 1968, and shall come into operation on a date to be appointed by the Minister by notice in the *Gazette*.

Interpretation and Application

2. (1) In this Act unless the context otherwise requires —

“application” means an application for a licence in accordance with section 4 to manufacture any product at any place in Botswana, and includes an application to manufacture a different or additional product and an application to manufacture at a different or additional place;

“licence” means a licence to manufacture issued under this Act;

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

“product” means any article, thing or substance produced by any manufacturing enterprise to which this Act applies, but shall exclude any immovable structure.

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

- (a) employs, in the aggregate, anywhere in Botswana, ten or more persons, including managers, directors or sales, clerical or other staff; or
- (b) irrespective of the number of persons employed therein, uses any engines, motors, or other appliances providing energy derived from steam, water, wind, electricity, the combustion of fuel or any other source, of not less than twenty five horse power in aggregate.

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

- (a) the Botswana Meat Commission;
- (b) any manufacturing enterprise for milling maize licenses under the provisions of the Control of Maize Milling Proclamation, 1961 (No. 27 of 1961);
- (c) any manufacturing enterprise licensed in terms of the provisions of any regulation made under the Dairies and Dairy Produce Proclamation (Chapter 129);
- (d) any co-operative society registered under the provisions of the Co-operative Societies Law, 1962 (No. 41 of 1962);
- (e) any manufacturing enterprise whose premises are licensed in terms of any regulation made under the provisions of the Hides and Skins Export Proclamation (Chapter 178).

(4) Notwithstanding subsection (2) and subsection (3) the Minister may, by notice in the *Gazette* —

- (a) declare any specified manufacturing enterprise or any description of manufacturing enterprise to be subject to this Act; or
- (b) exempt any specified manufacturing enterprise or any description of manufacturing enterprise from the provisions of this Act.

Licences to Manufacture

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

(2) Any person who contravenes any provision of subsection (1) shall be guilty of an offence and shall be liable to a fine of R200 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment and in the case of a continuing offence shall be liable to a further fine of R200 and to imprisonment for a period not exceeding one year or to both such fine and such imprisonment in respect of each day on which the offence continues.

Applications for a Licence

4. An application for a licence shall be made to the Minister in the prescribed form and shall be accompanied by the prescribed fee.

Existing Manufacturers

5. (1) Where a person is, immediately prior to the commencement of this Act, manufacturing any product at any place in Botswana he shall be permitted a period of grace of three months from the date of such commencement in which to apply for a licence, and no application fee shall be payable in respect of such application.

(2) Upon receipt of an application under subsection (1) the Minister shall issue to the applicant, a licence to manufacture that same product at that same place.

Publication of Application

6. In the case of an application not coming within the terms of section 5, the Minister shall cause such application to be advertised in such manner as may be prescribed.

Applicant Seeking Protection

7. An advertised application may indicate that the applicant desires protection by the granting of a licence to manufacture a particular product, to the exclusion either generally or in respect of any part of Botswana of other manufacturers of that product.

Representations and Evidence

8. (1) Any person wishing to make representations concerning an application published in accordance with section 6 shall do so in writing to the Minister within such period as may be prescribed and shall forward a copy of such representations to the applicant.

(2) Any representations made under subsection (1) must be relevant and related to any matter referred to in section 10(2).

(3) The Minister may require the person making representations to give evidence in person and may invite any person to submit verbal or written evidence relating to any matter referred to in section 10(2).

Minister May Direct Inquiry

9. (1) Subject to the provisions of the proviso to section 12 (1), the Minister may appoint a person or persons to conduct an inquiry into any application and any representations made in respect thereto, and to submit a report to him.

(2) An inquiry under this section shall be conducted in the prescribed manner.

(3) Where the Minister considers it desirable he may require two or more applications to be inquired into conjointly.

Grounds on Which Minister May Decide Not to Grant Licence

10. (1) After considering an application, and any representations or any report made in respect thereof, the Minister shall decide whether the application should be granted or refused, or should be granted in part and refused in part, and shall so inform the applicant in writing.

(2) The grounds on which the Minister may refuse to grant a licence, either absolutely or in part, shall be one or other of the following —

- (a) that the capital, technical skill or raw materials available are, in the opinion of the Minister, inadequate to secure the successful establishment and operation of the particular enterprise in which the applicant proposes to engage and that the failure of the applicant's enterprise would be likely to prejudice the successful development of the industry concerned;
- (b) that the place at which the applicant proposes to establish a manufacturing establishment is not a suitable situation for the industry concerned;
- (c) that a licence for the manufacture of the product which the applicant proposes to manufacture has been granted to someone else in respect of the same part of Botswana and such other person has been given protection under section 12 in relation to that product;

(d) that the granting of such a licence would not, in the opinion of the Minister, be in the best interests of the economy or public weal of Botswana or of the particular industry concerned.

(3) Before deciding to grant a licence, the Minister shall also be satisfied that the applicant has interests in land, buildings and machinery, or has entered into agreements or negotiations to acquire such interests, which are sufficient to ensure that the manufacture of the product concerned will commence without undue delay.

(4) Any person aggrieved by the refusal of the Minister to grant a licence, whether in whole or in part, may appeal to the President within such time, and in such manner, and upon payment of such fees, as may be prescribed and the President may give such direction in the matter as he may think fit.

Issue of Licences

11. (1) Where the Minister decides to grant a licence he may, upon payment of the prescribed fee, issue to the applicant a licence to manufacture the product specified in the licence at such place as shall also be specified in the licence.

(2) Where the application is from a person already in possession of a licence, but is for a licence to manufacture a different or additional product, or for a licence to manufacture the same product at a different or additional place, the Minister may, upon payment of the prescribed fee, issue a new licence, or may amend the existing licence accordingly.

Licences Granting Protection

12. (1) Where the applicant has asked for protection in accordance with section 7 and the Minister has decided to grant a licence under section 11, the President may, if he is satisfied that it is in the public interest and in the interests of the efficient development of the industry concerned, grant protection by making an Order published in the *Gazette* excluding all other manufacture of the products in respect of which protection was requested, or one or some of such products, either in Botswana generally or in any specified part of Botswana:

Provided that where any person made representations concerning the application in accordance with section 8 which were adverse to the application protection shall not be granted under the provisions of this section unless an inquiry has first been conducted under the provisions of section 9.

(2) Protection may be granted in accordance with subsection (1) —

(a) for a specified period of time;

(b) until the fulfillment of any condition or the happening of any event;

and may be granted absolutely or conditionally, so however, that no protection shall be granted which shall endure for a period in excess of four years:

Provided that protection may, at the President's discretion, upon application, be renewed for such further period as the President may determine, so, however, that further protection shall not be granted which shall endure for a period in excess of four years.

(3) Where the President has granted protection under this section the Minister shall not, during the period of such protection, issue any other licence which conflicts with such protection.

Cancellation of Licence and Removal of Protection

13. Where a person to whom a licence has been issued under this Act has, in the opinion of President –

- (a) failed within a reasonable time to commence to manufacture the product in respect of which the licence was issued; or
- (b) ceased to manufacture the product in respect of which the licence was issued; or
- (c) failed to comply with any condition imposed under the provisions of section 12 (2);

the President after giving such person an opportunity to be heard may by Order published in the *Gazette* cancel the licence from such date as he may decide, or amend the licence in such manner as he deems fit, or if protection has been attached to the licence in pursuance of section 12 remove or amend such protection.

Transfer of Licence

14. (1) No licence shall be transferred from one person to another without the prior approval of the Minister.

(2) An application for the transfer of a licence from one person to another person shall be made to the Minister in such manner and in such form as may be prescribed.

(3) The Minister may, in his discretion, grant or refuse the application and may, if the application is granted, amend the licence concerned, or where protection has been attached to the licence he may remove such protection:

Provided that a transfer shall not be permitted in the case of a licence which has been issued to a person who, at the time of the proposed transfer, has not commenced active production.

Renewal of Licences

15. Unless earlier cancelled under section 13 or section 18, a licence issued under this Act shall be valid in the first place for the current calendar year only, but shall be renewable from year to year upon payment of the prescribed fee.

Compliance With Other Laws

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

Regulations

17. The Minister may make regulations generally for the better carrying into effect of the provisions of this Act and, without prejudice to the generality of the foregoing, he may make regulations —

- (a) prescribing anything required to be prescribed under this Act;
- (b) in respect of any matter for which he is required to make regulations under this Act;
- (c) regulating the procedure at an inquiry ordered under section 9;
- (d) classifying products for the purpose of the issue of licences.

Offences and Penalties

18. (1) Any person who knowingly makes a false statement in any application or in connection with any matter in respect of which he is required to give information under this Act shall be guilty of an offence, and shall be liable to a fine of R100 or to imprisonment for a period of three months or both such fine and such imprisonment, and where a licence has been issued in connection with such false statement the court on convicting for an offence under this subsection may, at the request of the prosecution, forthwith cancel such licence.

(2) Any person who contravenes any provision of this Act for which no other penalty is prescribed, shall be guilty of an offence and shall be liable to a fine of R100 or to imprisonment for a period of three months or both to such fine and such imprisonment.

Passed by the National Assembly this day, the 17th January, 1968.

G. T. MATENGE,
Clerk of the National Assembly.