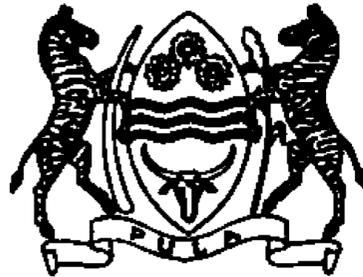


INDUSTRIAL DEVELOPMENT ACT, 1988

No. 17



of 1988

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An Act to establish an Industrial Licensing Authority to supervise industrial development.

Date of Assent: 15.11.88

Date of Commencement: 25.11.88

ENACTED by the Parliament of Botswana.

Short title

1. This Act may be cited as the Industrial Development Act, 1988.

Inter-pretation

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

“application” means an application for a licence in accordance with section 10 to manufacture any product at any place in Botswana, an application for an exclusive licence, and includes an application to manufacture a different or additional product, an application to manufacture at a different or additional place, an application to transfer a licence to another person and an application for renewal of a licence;

“Authority” means the Industrial Licensing Authority established under section 3;

“licence” means a licence to manufacture issued under this Act, and an exclusive licence issued under section 15;

“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;

“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) is not a manufacturing enterprise wholly owned by citizens of Botswana or being a manufacturing enterprise wholly owned by citizens of Botswana employs, in the aggregate at any given moment anywhere in Botswana, ten 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 with others; or

(c) irrespective of the number of persons employed therein, uses any engines, motors 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 enterprise undertaken by that Commission;

Cap. 43:05

(b) any manufacturing enterprise for milling licensed under the Control of Maize Milling Act;

Cap. 129
(1959)

(c) any manufacturing enterprise licensed in terms of the provisions of any regulations made under the Dairies and Dairy Produce Act;

- (d) any cooperative society registered under the provisions of the Cooperative Societies Act; Cap. 42:03
 - (e) any manufacturing enterprise whose premises are licensed in terms of any regulations made under the provisions of the Hides and Skins Export Act; Cap. 49:02
 - (f) any diamond cutting licensed under the Diamond Cutting Act; Cap. 66:04
 - (g) the Botswana Vaccine Institute.
3. (1) There shall be an Industrial Licensing Authority consisting of a Chairman and such number of other members as the Minister may by notice published in the Gazette appoint. Establishment of the Industrial Licensing Authority
- (2) The Minister may designate a public officer to act as licensing officer and secretary to the Authority.
- (3) The Authority shall meet at least once a month to consider all applications made under the provisions of this Act.
- (4) The Authority may, where it deems it necessary, in deciding upon any application take evidence on oath, summon witnesses or call for the production of any book, plan or document relating to such application.
- (5) Any person who after being duly sworn gives evidence before the Authority on any matter relevant to the application under enquiry knowing such evidence to be false or not knowing or believing it to be true shall be guilty of an offence and liable to a fine of P1 000 or to imprisonment for twelve months or to both such fine and imprisonment.
4. The Authority shall be responsible for — Powers and duties of the Authority
- (a) the issue in accordance with the provisions of this Act of licences to manufacture any product for sale at any place in Botswana, and the suspension or cancellation of such licences for sufficient reasons;
 - (b) reviewing policy on industrial development and licensing with a view to advising the Minister thereon;
 - (c) the inspection of industrial enterprises to ensure that they are conducted in accordance with any regulations made under this Act and with the labour laws, and for this purpose to appoint authorised officers;
 - (d) collecting information and data required to monitor the industrial development of the country, and may for this purpose conduct such enquiries as it deems necessary.
5. Notwithstanding the provisions of section 7 the Authority may, after considering any application and any report or representation made thereon refuse or refuse in part the said application on one or other of the following grounds — Grounds for refusal of Licence
- (a) that the capital, technical skills or raw material available are, in the opinion of the Authority 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 the manufacturing establishment is not a suitable place for the industry;
- (c) that a licence for the manufacture of the product which the applicant proposes to manufacture has already been granted to some other person in respect of the same part of Botswana and such licence is an exclusive licence;
- (d) that the applicant is a minor;
- (e) that the issue of such a licence for the establishment of such a manufacturing enterprise at that place would conflict with any approved or proposed town planning scheme or zoning area;
- (f) that the granting of such a licence would not, in the opinion of the Authority, be in the best interests of the economy or public weal of Botswana or of the particular industry concerned;
- (g) that the applicant has already been issued with or applied for licences in respect of four or more manufacturing enterprises under this Act and could only be considered for a further licence if he has the written approval of the Minister to his application.

Authority to be satisfied

6. Before deciding to grant a licence, the Authority 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.

General restrictions on power to issue licence

7. The Authority may refuse to issue a licence to any person who —

- (a) is an unrehabilitated insolvent;
- (b) has surrendered his estate for the benefit of his creditors;
- (c) has, within a period of two years immediately preceding the date of the application, been convicted of an offence involving dishonesty.

Certain industries to be reserved for citizens

8. (1) Regulations may be made 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.

Licence requirement

9. (1) Subject to the provisions of the 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 Authority.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine of P1 000 or to imprisonment for twelve months or to both such fine and imprisonment, and in case of a continuing offence shall be liable to a further fine of P500 or to imprisonment for three months in respect of each day on which the offence continues.

<p>10. (1) An application for a licence to carry on a manufacturing enterprise in Botswana after the date of the coming into force of this Act shall be made in the prescribed form to the Authority.</p>	<p>Application for licence</p>
<p>(2) Where a person is, immediately prior to the date of the coming into force of this Act, manufacturing any product in any place in Botswana, and has either already been licensed under the Industrial Development Act or did not require a licence under that Act such person shall be permitted a period of grace of three months from such date to apply for a licence and no application fee shall be payable in respect of such application.</p>	<p>Cap. 43:01</p>
<p>(3) Upon receipt of an application under subsection (2) the Authority shall issue to the applicant a licence to manufacture that product at that place.</p>	
<p>(4) Where an application other than an application under subsection (2) made by a licenced enterprise is granted, the applicant shall pay the prescribed licence fee at the time the licence is issued to him.</p>	
<p>11. On receipt of an application, other than from enterprises referred to in subsection (2) of section 10, made under section 10, the Authority shall, as soon as practicable, publish or cause to be published a notice of the application in two separate issues of the Gazette and of a newspaper circulating in the area where the applicant intends to carry on his manufacturing enterprise.</p>	<p>Advertisement of applications</p>
<p>12. Where a notice of an application has been published in accordance with the provisions of section 11, any person who wishes to object to the issue of the licence to the applicant shall, within 14 days of the last publication of the notice, give notice in writing of his intention to oppose the application and the grounds thereof to the Authority and to the applicant.</p>	<p>Objections</p>
<p>13. After the expiration of the period specified in section 12 for lodging any objections, the Authority shall proceed to consider the application and decide on it.</p>	<p>Consideration of objections</p>
<p>14. (1) A licensee who wishes to manufacture a new product or to change the location of his enterprise shall apply in the prescribed form to the Authority.</p>	<p>Application for new product or place of manufacture</p>
<p>(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.</p>	
<p>15. The Chairman of the Authority may grant a temporary licence valid for a month to enable a licensee to renew his licence or, where he is satisfied that the default was for good and sufficient reason, to enable a licensee to commence production on a date later than that stipulated in his licence.</p>	<p>Temporary licence</p>
<p>16. A licensee may apply for and receive a duplicate licence, upon payment of the prescribed fee, if his licence has been lost, damaged or rendered illegible.</p>	<p>Duplicate licence</p>
<p>17. 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 carries on the enterprise, in a prominent place on such premises.</p>	<p>Display of licence</p>

Exclusive
licences

18. (1) An applicant may apply to the Authority for an exclusive 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.

(2) Where the Authority decides to grant a licence to the applicant the Authority shall forward the application for an exclusive licence to the Minister who shall then forward the application with his recommendations to the President, and the President may, if he is satisfied that it is in the public interest and in the interest of the efficient development of the industry concerned, grant an exclusive licence by making an order, published in the Gazette, excluding all other manufacture of all or some of the products, in respect of which application for an exclusive licence was made, either in Botswana generally or in any specified part of Botswana.

(3) An exclusive licence may be granted —

(a) for a specified period of time; or

(b) until the fulfilment of any condition or the happening of any event,

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

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

(4) Where an exclusive licence has been granted under this section the Authority shall not, during the period of validity of such licence, issue any other licence which conflicts with such exclusive licence.

Waiver of
restriction

19. The Minister may, in his discretion, grant approval in writing of the application for a licence, by a person who has already applied for or been issued with four or more licences, if the Minister is satisfied that it is in the public interest and in the interest of the efficient development of the industry concerned that such approval should be granted.

Appoint-
ment of
authorised
officers

20. (1) The Minister may from time to time by notification in the Gazette appoint suitable public officers to be authorised officers for the purpose of conducting inspections and gathering information whether it be in furtherance of an investigation carried out under this Act or for purposes of a record as data.

(2) Any authorised officer appointed under subsection (1) may inspect the premises of any manufacturing enterprise at any time, and any person at any such premises shall assist such authorised officer in the performance of his duties.

(3) Any person who obstructs or in any way prevents an authorised officer from conducting an inspection or from obtaining any information he requires shall be guilty of an offence and liable to a fine of P500 or imprisonment for a period of six months.

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

Transfer
of licences

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

(3) The Authority may, in its discretion, grant or refuse an application and may, if the application is granted, amend the licence concerned, or, where an exclusive licence has been granted, refer the matter to the Minister with a recommendation that such transfer be granted or refused.

22. (1) Any person aggrieved by a decision of the Authority —

Appeal
to Minister

- (a) refusing to grant a licence;
- (b) refusing a change or transfer of a licence; or
- (c) cancelling a licence,

may, within 30 days of receiving the communication informing him of the decision of the Authority, appeal to the Minister against such decision.

(2) The Minister shall give his decision on such appeal within sixty days of the receipt of the appeal or, after due notice to the appellant, within 90 days of the receipt of the appeal.

(3) The Minister's decision shall be final and conclusive.

23. The Minister may —

Minister's
power

- (a) give directions on matters of policy to the Authority, which directions shall be followed by the Authority;
- (b) amend, suspend or cancel any licence issued by the Authority if he 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 interests of the efficient development of the industry concerned that the licence should be amended, suspended or cancelled; any suspension under this paragraph may be made subject to such conditions as the Minister may deem fit;
- (c) by regulations prescribe the circumstances that would be sufficient reason for the suspension or cancellation of a licence;
- (d) by regulations prescribe the procedure to be followed by the Authority in deciding upon an application for a licence to which objections have been raised;
- (e) by regulations prescribe any matter or thing to be prescribed under this Act;
- (f) by regulations reserve certain types of manufacturing enterprises for citizens of Botswana;
- (g) make regulations in relation to any other matter or thing required for the better administration of this Act.

24. (1) A licence issued under this Act shall be valid in the first place for the current calendar year, but shall be renewable from year to year upon application on the prescribed form and payment of the prescribed fee.

Licence
renewable
annually

(2) A penalty of fifty percent of the prescribed fee shall be payable by any enterprise that fails to renew its licence before it expires.

Compliance
with other
laws

25. 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 licence was issued.

Duty to
provide
information
and statistics

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

Offences and
penalties

27. (1) Any person who knowingly makes a false statement in any application or in connexion 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 P500 and to imprisonment for six months, and where a licence has been issued in connexion with such false statement the court upon convicting any person of 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 P250 and to imprisonment for three months.

Repeal of
Cap. 43:01

28. The Industrial Development Act is hereby repealed.

PASSED by the National Assembly this 26th day of August, 1988.

C.G. MOKOBI,
Clerk of the National Assembly.