

BOTSWANA MEAT COMMISSION (TRANSITION) ACT, 2019

No. 20



of 2019

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An Act to provide for the registration of Botswana Meat Commission as a public company limited by shares under the Companies Act; for its continued existence as if it had been incorporated under that Act, and for matters incidental thereto.

Date of Assent: 28.08.19

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I — Preliminary

Short title and commencement

1. This Act may be cited as the Botswana Meat Commission (Transition) Act, 2019, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

“Board” means the Board of Directors of the Company referred to under section 5;

“Botswana Privatisation Asset Holding (Proprietary) Limited” means a company established by the Government for the purpose of holding assets from or in respect of, privatised public enterprises, with the object of the economic empowerment of citizens of Botswana;

“Commission” means Botswana Meat Commission established under the Botswana Meat Commission Act;

“Company” means Botswana Meat Commission, as continued under section 3;

“conversion date” means the date on which Botswana Meat Commission is registered as a company;

“Employee Share Ownership Plan” means a plan established under section 6 for the benefit of staff of the Company who are citizens;

“Pension Fund” means the Botswana Meat Commission Staff Pension Fund which is a defined contribution fund;

“Registrar” means the Registrar of Companies appointed under the Companies Act;

“repealed Act” means the Botswana Meat Commission Act repealed under section 13; and

“subsidiary” has the meaning assigned to it under the Companies Act.

Cap. 42: 01

PART II — Registration, Conversion and Financial Interest

Registration and continuation of Botswana Meat Commission

3. (1) The Commission may apply to the Registrar, in accordance with section 355 (4) of the Companies Act, to be registered as a public company limited by shares, and shall, upon registration, continue to exist as if it had been incorporated under that Act.

(2) The shareholding of the Company shall be open to the Government, employees of the Commission and members of the public and except as the Minister may by Order permit, no person either individually or collectively other than the Government shall hold more than 10 percent of the share capital of the Company.

(3) On the conversion date, the Government and all persons who held proprietary rights in the Commission immediately prior to conversion shall be allotted shares in the Company on such basis as may be determined by the Minister.

(4) The Minister shall sign the constitution or documents required to register the Commission as a company.

(5) The Company may use "Botswana Meat Commission Limited" as its company name and be legally designated as such for all purposes.

4. (1) The Minister may, where the Commission has converted to a company and after consulting the Commission, prescribe —

- (a) the conversion of proprietary rights into share capital;
- (b) the conversion of subventions or other financial or material contributions received by the Commission into share capital;
- (c) the formulation of an employee share option scheme for the employees of the Commission; and
- (d) any other matter which the Minister may determine as necessary for the protection of the rights of any class of stakeholder of the Commission.

(2) The Minister shall hold the financial interest of the Government in the Company.

5. Notwithstanding anything to the contrary contained in the Companies Act, the Minister shall appoint the following persons to hold office from the date of conversion until the first annual general meeting of the Company —

- (a) the initial Board of Directors;
- (b) the Company Secretary;
- (c) the public officer to the Company; and
- (d) the auditors of the Company, who shall be professional accountants, registered under the Accountants Act or any other relevant Act and resident in Botswana.

6. (1) As soon as is practicable after the conversion date, the Company shall establish an Employee Share Ownership Plan, on such terms as are determined by the Board and approved by the Minister.

(2) The Company shall reserve such percentage of its shares as the Minister may, by Order published in the *Gazette*, determine for allotment to —

- (a) the Employee Share Ownership Plan; and
- (b) the Botswana Privatisation Asset Holding (Proprietary) Limited.

(3) An offer of shares to employees in terms of the Employee Share Ownership Plan shall, for purposes of the Companies Act, be deemed not to be an offer made to the public.

Conversion of
financial
interest

Appointment of
office holders

Cap. 61:05

Employee
Share
Ownership
Plan

Tax exemptions
Cap. 52:01
Cap. 53:01

7. (1) Notwithstanding the provisions of the Income Tax Act and the Transfer Duty Act, no transfer duty or any other tax shall be payable in respect of —

- (a) the creation of the Company's initial share capital in terms of section 3 (2);
- (b) the issue of shares in the Company to the Minister;
- (c) the issue or transfer of shares in the Company from the Government;
- (d) the establishment of the Employee Shares Ownership Plan and the issue or transfer of shares in the Company to the Employee Shares Ownership Plan and the Botswana Privatisation Asset Holding (Proprietary) Limited in terms of sections 6 (2) (a) and (b) respectively;
- (e) the transfer of any assets or part of the business of the Company or any of its subsidiaries or companies established under section 6 of the repealed Act;
- (f) the transfer of any asset from the Company to any of its subsidiaries or companies established under section 6 of the repealed Act;
- (g) the transfer by the Company of any shares in any of its subsidiaries or companies established under section 6 of the repealed Acts; and
- (h) anything done in order to give effect to —
 - (i) the Acts referred to in paragraphs (a) to (f), or
 - (ii) the conversion of the Commission from a statutory corporation to a public company, or the registration of the Company's constitution.

(2) Subject to subsection (1), the Company shall not be exempt from any tax, duty, rate or levy imposed by the provisions of the Customs Act, Excise Duty Act, Value Added Tax Act or Income Tax Act.

(3) The income of the Commission shall be exempt from income tax for 10 years following the conversion date.

Act No. 33 of
2018,
Act No. 34 of
2018,
Cap. 50:03

PART III — *Financial Provisions*

Licences
Cap. 36:03

8. (1) As soon as practicable after the conversion date, the Company shall apply under the Livestock and Meat Industries Act for a licence authorising the Company to operate any abattoir:

Provided that, after the conversion date, the company shall continue to undertake the business of operating abattoir, for a period of 12 months or until the issue of an abattoir licence under the Livestock and Meat Industries Act.

Cap. 36:01

(2) As soon as practicable after the conversion date, the Company shall apply under the Control of Livestock Industry Act for a licence authorising the Company purchase, sell or export livestock:

Provided that, after the conversion date, the company shall continue to undertake the business of purchasing, selling and exporting livestock, for a period of 12 months or until the issue of licenses under the Control of Livestock Industry Act.

(3) The Company shall not be exempt from applying to any other relevant authority for a licence to engage in any activity specified in its constitution.

9. (1) During the period in which the Minister holds the Government's shares in the Company in trust for the Republic of Botswana and in order to enable the Company to discharge its functions and to meet its obligations, it may borrow money in accordance with its constitution, and on such terms and in such sums as it may require.

Borrowing powers

(2) Any borrowing by the Company under subsection (1) shall be in consultation with the Minister.

10. An auditor, appointed under section 5 (d), shall, in accordance with the provisions of Part XIII of the Companies Act as applicable, audit the accounts of the Company from the conversion date to the end of the financial year of the Company.

Accounts and audit

PART IV — *Miscellaneous*

11. The Stabilization Reserve and the Development Reserve established under the Botswana Meat Commission Act shall continue to operate in the same manner as they have been operating prior to the conversion date until directed otherwise by the Minister.

Stabilization and development reserves

12. From the conversion date, any reference to "wholly-owned Government corporation", "statutory corporation" or any such similar reference in the following Acts shall not be deemed to be a reference to the Company —

Reference to certain terms

(a) the Bank of Botswana Act;

Cap. 55:01

(b) the Public Finance Management Act;

Cap. 54:01

(c) the Public Audit Act; and

Cap. 54:02

(d) the Retirement Funds Act.

Cap. 27:03

13. The Botswana Meat Commission Act is repealed from the conversion date.

Repeal of Cap. 74:04

14. (1) Notwithstanding the provisions of the Companies Act to the contrary, the Minister may, by Order published in the *Gazette*, exclude certain assets or liabilities of the Commission from vesting in the Company as assets or liabilities of the Company.

Savings and transitional provisions

(2) Any act lawfully performed by the Commission before the conversion date, shall continue to be valid and shall be performed by the Company.

(3) Any legal proceedings pending immediately before the conversion date to which the Commission was a party shall be continued as if the Company had been party thereto instead of the Commission.

(4) All employees of the Commission shall become the corresponding employees of the Company and shall continue in office for the period for which, and be subject to the conditions under which, they were appointed as employees of the Commission.

(5) The members of the Commission, appointed under the Schedule to the repealed Act, shall until otherwise determined by the Minister and subject to the constitution referred to under section 3 (4), serve as the initial directors of the Company.

(6) Any enquiry or proceedings, whether of a disciplinary nature or otherwise, instituted or pending in respect of any employee of the Commission before the conversion date shall be dealt with, inquired into and determined in accordance with the procedures in place before the conversion date concerning such enquiry or proceedings.

(7) The Pension Fund shall remain in existence after the conversion date and every employee who was a member of the Pension Fund immediately before the conversion date, shall remain a member of the Fund in accordance with its trust deed and rules and shall retain all benefits that are due to them in terms of the rules of the Fund.

(8) Any agreement entered into, made, executed or drawn up by, with or in favour of the Commission and in force immediately before the commencement of this Act shall continue to apply and be of force and effect.

(9) As of the conversion date and subject to subsection (1), all assets and liabilities of the Commission shall become assets and liabilities of the Company without further assurance and the Company shall have all the powers necessary to take possession of, recover and deal with, such assets and discharge such liabilities.

(10) All subsidiary legislation made under the repealed Act, and in force immediately prior to the coming into operation of this Act shall, in so far as it is not inconsistent with this Act, continue in force as if made under this Act.

(11) Any licence issued immediately before the commencement of this Act shall be deemed to have been issued under this Act and shall remain valid until its expiry date.

PASSED by the National Assembly this 8th day of August, 2019.

BARBARA N. DITHAPO,
Clerk of the National Assembly.