

INDUSTRIAL DEVELOPMENT

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Act 23, 2019.

An Act to provide for the regulation of manufacturing enterprises through their licensing, registration and supervision to facilitate industrial development and for connected and incidental matters.

[Date of Commencement: ON NOTICE.]

PART I

Preliminary Provisions (ss 1-3)

1. Short title

This Act is the Industrial Development Act, 2019, and comes into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

2. Interpretation

In this Act-

"authorised officer" means a public officer appointed by the Minister in terms of section 25;

"certificate holder" means a person issued with a registration certificate under Part III;

"Director" means the Director of Industrial Affairs;

"industrial licence" means a licence issued under section 8 to operate a manufacturing enterprise;

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

"licensee" means a person to whom an industrial licence is issued in terms of section 8;

"manufacture" means the transformation (by any means) of any material or a component of a material (whether raw or in any other form) into a new product and includes-

- (a) packaging;
- (b) canning;
- (c) assembly of parts; and
- (d) other processes as the Minister may prescribe;

"manufacturing enterprise" means a manufacturing business entity which is licensed or registered under this Act;

"medium manufacturing 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 the Regional Appeals Board continued under section 32;

"micro manufacturing 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 continued under section 32;

"registration certificate" means a certificate issued under section 18; and

"small manufacturing enterprise" means a business entity with such annual turnover and staff complement as the Minister may, by Order published in the *Gazette*, prescribe.

3. Application of Act

(1) This Act applies to any manufacturing enterprise which-

- (a) is operated and owned, wholly or partly by a citizen of Botswana;
- (b) is operated or owned, wholly or partly by a citizen of Botswana; or
- (c) is operated and owned, or operated or owned by any person not being a citizen of Botswana, who operates by himself or herself or with others.

(2) Notwithstanding subsection (1), this Act does not apply to-

- (a) the Botswana Meat Commission;
- (b) any manufacturing enterprise licensed under the Arms and Ammunition Act (Cap. 24:01);
- (c) any manufacturing enterprise for milling licensed under the Control of Maize Milling Act (Cap. 43:05);
- (d) any manufacturing enterprise licensed to manufacture medicine and related products under the Medicines and Related Substances Act (Cap. 63:04);
- (e) any manufacturing enterprise licensed in terms of any regulations made under the Hides and Skins Export Act (Cap. 49:01);
- (f) any regulated sector involved in manufacturing which is licensed under the Botswana Energy Regulatory Authority Act (Cap. 74:11);
- (g) the Botswana Vaccine Institute;
- (h) any manufacturing enterprise licensed under the Mines and Minerals Act (Cap. 66:01); and
- (i) any person issued with a diamond cutting licence under the Diamond Cutting Act (Cap. 66:04).

PART II

Licensing of Manufacturing Enterprises (ss 4-14)

4. Application of Part II

(1) This Part applies to any manufacturing enterprise which-

- (a) presents any health and safety concerns in its manufacturing processes or in the manufactured products or by-products; or
- (b) poses a danger to public health or if, in the manufacturing process, a danger to public health is likely to occur.

(2) Notwithstanding subsection (1), the Minister may exempt a category of micro and small manufacturing enterprises from the requirements of this Part.

(3) The Minister may make regulations to apply exclusively to the category of micro and small manufacturing enterprises that are exempted from being licensed under subsection (2).

(4) In this section, "health and safety concerns" refers to factors that may arise in the manufacturing process which negatively affect the environment, public safety or occupational health.

5. Manufacturing enterprises requiring industrial licence

(1) A person shall not operate a manufacturing enterprise, to manufacture for sale-

- (a) animal feed;
- (b) baby formula;
- (c) food;
- (d) beverages;

- (e) cement;
- (f) chemical products; or
- (g) such other products as the Minister may prescribe,

at any place in Botswana except in terms of an industrial licence issued by the Director, in accordance with this Act, authorising the person to manufacture such a product.

(2) In exercising the powers under subsections (1)(g) to prescribe products which require an industrial licence, the Minister shall be guided by-

(a) health and safety standards, codes or guidelines prescribed under this Act; and

(b) any other standards, codes or guidelines provided for in any law regulating the manufacture of the product in question.

(3) The Minister may amend subsection (1) by Order to remove from or add to the list of products that can be manufactured under an industrial licence issued under this Part.

(4) The Director shall be responsible for the issue of industrial licences to all manufacturing enterprises that are subject to the provisions of this Part.

(5) The Minister may make regulations-

(a) reserving industrial licences, for citizens of Botswana or companies wholly owned by citizens of Botswana-

(i) to operate certain manufacturing enterprises; and

(ii) to operate certain manufacturing enterprises in specific areas within Botswana;

(b) specifying which medium or large manufacturing enterprises reserved for citizens of Botswana or companies wholly owned by citizens of Botswana may be licensed to operate as joint ventures by citizens and non-citizens.

(6) Regulations made under subsection (5)(b) shall impose conditions on industrial licences issued to joint ventures including a condition that in any joint venture arrangement a citizen partner must hold a minimum of 51 per cent shareholding in the joint venture.

6. Application for industrial licence

(1) A person shall not operate a manufacturing enterprise unless he or she has been issued with an industrial licence in terms of this Act.

(2) When applying for an industrial licence in terms of subsection (1), an applicant shall state-

(a) the name and address of the applicant, and where the application is made by partners in a joint venture, the name and address of each of those partners;

(b) a description of the manufacturing enterprise that the applicant proposes to operate;

(c) the details of the land or premises where the applicant proposes to operate or manufacture the product from;

(d) evidence that the applicant has the-

(i) financial and technical capability and the necessary experience to manufacture the product for which the licence is sought, and

(ii) requisite ownership or usage rights of the land or premises to be used for manufacturing the product;

(e) where the application is made by partners in a joint venture arrangement, information relating to the shareholding by the partners which demonstrates that the citizen partner has a minimum of 51 per cent shares.

(3) Any person who contravenes the provisions of subsection (1) commits an offence and is liable to-

(a) a fine not exceeding P50 000, or to imprisonment for a term not exceeding 10 years, or to both; and

(b) in the case of a continuing offence, a further fine of P500 in respect of each day on which the offence continues but the further fine shall not exceed P100 000.

7. Assessment of application for industrial licence

(1) The Director shall, within 14 days of the date of receipt of an application, acknowledge receipt of the application in writing.

(2) In assessing an application under section 6, the Director shall be guided by the following-

- (a) public health and safety guidelines which may be prescribed under this Act;
- (b) whether the proposed manufacturing enterprise-
 - (i) presents any health and safety concerns in its manufacturing processes or in the manufactured products or by-products, or
 - (ii) poses a danger to public health or if, in the manufacturing process, a danger to public health is likely to occur;
- (c) whether the applicant can operate the manufacturing enterprise in respect of which the application is made, in a safe and sustainable manner.

(3) If the Director requires further information or documents to assess the application, the Director may, within 28 days from the date of receipt of the application and by written notice, request for further information or documents from the applicant.

(4) The notice referred to under subsection (3) shall-

- (a) specify the information or documents required from the applicant;
- (b) where applicable, notify third parties of the application and invite comments from them;
- (c) specify the time within which the information, documents or comments shall be submitted to the Director; and
- (d) specify the date by which the Director intends to make a final decision on the application.

(5) The Director may, where he or she considers necessary, by notice in the *Gazette* and two local newspapers in circulation, publish the industrial licence he or she proposes to issue and invite interested parties to comment within the time specified in the notice.

(6) The Director shall notify the applicant, in writing, of his or her decision within 10 days from the date of the decision and where the Director decides not to issue the industrial licence, he or she shall state the reasons in such notice.

8. Refusal to issue industrial licence

The Director shall not issue an industrial licence where-

- (a) the applicant is below 18 years of age;
- (b) the premises from which the manufacturing enterprise is to operate from are situated in an area where that activity is not permitted and will conflict with approved or proposed town planning scheme or zoning area;
- (c) the issuing of the industrial licence will contravene any laws on public health, occupational health or environmental safety;
- (d) the applicant is an unrehabilitated insolvent;
- (e) the applicant has surrendered his or her estate for the benefit of his or her creditors;
- (f) the applicant has, within a period of two years immediately preceding the date of the application, been convicted of an offence involving dishonesty;
- (g) the applicant is of unsound mind;
- (h) the applicant has failed to-
 - (i) submit a company registration certificate under the Registration of Business Names Act (Cap. 42:05) or a certificate of incorporation under the Companies Act (Cap. 42:01),
 - (ii) submit proof of land ownership, usage rights or availability of premises,
 - (iii) submit identification documents for shareholders,
 - (iv) specify the kind of manufacturing activities to be undertaken,
 - (v) submit, if applicable, any other document or information required by the Director under section

7(3),

(vi) demonstrate that he or she has the financial and technical capability or the necessary experience to manufacture the product for which the licence is sought, or

(vii) demonstrate, in a joint venture arrangement, that the citizen partner has a minimum of 51 per cent and that the industrial licence being applied for is for a medium or large manufacturing enterprise.

9. Issue of industrial licence and its validity

(1) The Director shall, where he or she is satisfied that the application meets the requirements of the Act, on payment of the prescribed fee, issue to the applicant, an industrial licence containing such conditions as the Director considers necessary.

(2) Without limiting the generality of subsection (1), the Director may impose any of the following conditions on an industrial licence-

(a) a condition that the product manufactured under such a licence shall be sold or offered for sale only within the premises in which such product is manufactured;

(b) any conditions as are necessary in the interest of public health and safety such as-

(i) specifying the type of premises from which specific products may be manufactured from,

(ii) specifying the activities that the licensee is authorised to carry out and the scope of such activities in so far as they are connected to the manufacture of the product;

(c) where relevant, a condition that the industrial licence is only transferable to a citizen of Botswana; and

(d) such further conditions and restrictions as the Director considers necessary.

(3) An industrial licence issued under this Act is valid for an indefinite period subject to-

(a) compliance with the conditions upon which it is issued; and

(b) payment by the licensee of such an annual licence fee as may be prescribed.

10. Application for new product, additional and change of location and notification of change of business name

(1) A licensee who wishes to manufacture a different or new product from the one for which he or she is licensed shall apply, in such manner as may be prescribed, to the Director.

(2) An application under subsection (1) shall be treated in the same manner as an application under section 6 and if the Director is satisfied that the application meets the requirements of the Act, he or she shall, on payment of the prescribed fee, issue an industrial licence in respect of that different or new product.

(3) A licensee who wishes to change the location of the manufacturing enterprise, or operate from additional premises shall apply, in such manner as may be prescribed, to the Director.

(4) The Director may allow a licensee to change the location of the manufacturing enterprise or operate at additional premises if the Director determines that the proposed premises-

(a) are not situated in an area that will conflict with any approved or proposed town planning scheme or zoning area;

(b) are appropriate for the manufacture of the product for which an industrial licence is issued.

(5) An approval by the Director for the change of location of a manufacturing enterprise or for the operation of the manufacturing enterprise at additional premises shall be endorsed in the industrial licence to which it relates.

(6) A licensee shall, in relation to a change of the business name of a manufacturing enterprise, notify the Director as soon as practicable after the Registrar of Business Names has, after receiving a notice in writing under section 9 of the Registration of Business Names Act-

(a) made the necessary changes in the register of business names in relation to that name; and

(b) made the necessary amendments in the certificate of registration or issued a new certificate in terms of section 14(2) of the Registration of Business Names Act.

(7) A notice of a change of the business name of a manufacturing enterprise under subsection (6) shall be made in the prescribed form.

11. Display of industrial licence

(1) The licensee shall display an industrial licence issued under section 9 or 10(2) in a prominent place in the premises in respect of which the industrial licence is issued.

(2) The licensee shall display on the premises from which a manufacturing enterprise operates a signboard or name plate bearing in legible characters the name or style under which he or she operates the manufacturing enterprise.

12. Transfer of industrial licence

(1) An industrial licence issued under this Part may not be transferred except with the approval of the Director.

(2) A licensee may apply to the Director in such form as may be prescribed, for the transfer of an industrial licence to another person.

(3) The Director may transfer a licence where, an application made under subsection (2) satisfies the following requirements-

(a) where the licensee is a citizen or wholly citizen owned company of Botswana holding an industrial licence for a manufacturing enterprise reserved for citizens, the transfer is to another citizen or wholly citizen owned company;

(b) where the licence issued is in respect of specified premises, the transfer is to other premises which comply with the requirements relating to that manufacturing enterprise and are located within the same licensing area;

(c) that the licensee has died and the transfer is to the licensee's heir or beneficiary;

(d) that the licensee has been declared insolvent or has surrendered his or her estate for the benefit of his or her creditors, and the transfer is to the licensee's trustees; or

(e) that the licensee has become or is subject to any legal disability, and the transfer is to the licensee's legal representative.

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

(5) Any person who transfers an industrial licence, or is the transferee of such a licence, in contravention of the provisions of this section commits an offence and is liable to a fine not exceeding P50 000, or to imprisonment for 10 years, or to both.

13. Suspension and revocation of industrial licence

(1) The Director may suspend or impose further conditions on an industrial licence-

(a) where a licensee-

(i) fails to comply with any lawful direction or requirement of the Director given under section 24(2) or 28,

(ii) defaults on or breaches any material condition of the licence,

(iii) is found to have presented false information which formed the basis of the licence being granted;

(b) if he or she is satisfied, after due inquiry, that it is in the interests of the efficient development of the industry concerned to do so;

(c) as may be necessary in the interest of public health and safety or in the interest of the public; or

(d) where, following an investigation carried out under section 26 relating to the activity for which the licence is issued, the appropriate action is the suspension of, or imposition of further conditions on, the licence.

(2) The Director may revoke a licence-

(a) where a licensee-

(i) contravenes the provisions of this Act,

(ii) fails to comply with any lawful direction or requirement of the Director given under section 24(2) or 28,

(iii) defaults on or breaches any material condition of the licence,

(iv) is declared bankrupt, insolvent or enters into liquidation, or

- (v) is found to have presented false information which formed the basis of the licence being granted;
- (b) if he or she is satisfied, after due inquiry, that it is in the interests of the efficient development of the industry concerned to revoke the licence;
- (c) as may be necessary in the interest of public health and safety or in the interest of the public;
- (d) where the licensee fails to start operations within one year from the date of issue of the industrial licence, or where the licensee had temporarily stopped operations, within one year from that time; or
- (e) where, following an investigation carried out under section 26 relating to the activity for which the licence is issued, the appropriate action is the revocation of the licence.

(3) When determining which action to take under subsection (1), the Director shall take into account-

- (a) the impact of the contravention on public health and safety;
- (b) the extent to which the licensee has achieved any financial or any other gain from the contravention;
- (c) whether the licensee has committed a similar contravention in the past;
- (d) the duration and seriousness of the contravention; and
- (e) any mitigating or aggravating factors.

(4) A revocation, suspension or imposition of further conditions upon a licence under this section shall not be made until the licensee has, by notice in writing, been given the opportunity by the Director, to-

- (a) rectify that contravention or failure; or
- (b) show cause, within such time as may be specified, why the licence should not be revoked, suspended or have further conditions imposed on it.

(5) The Director shall cause to be published, a notice in the *Gazette* and two newspapers in circulation, of the revocation, suspension or imposition of further conditions on the licence.

14. Register for industrial licences

(1) The Director shall keep and maintain a register for industrial licences where he or she shall record information relating to all licensed manufacturing enterprises.

(2) The register referred to in subsection (1) shall contain-

- (a) the key elements of all industrial licences issued by the Director;
- (b) all manufacturing enterprises licensed by the Director;
- (c) a record of the annual licence fees paid in respect of a manufacturing enterprise; and
- (d) any other information, as the Director considers appropriate.

(3) The register for industrial licences shall be accessible to members of the public for inspection at all times during business hours.

PART III

Registration of Manufacturing Enterprises (ss 15-23)

15. Application of Part III

(1) This Part applies to all manufacturing enterprises that do not require to be licensed under Part II including micro manufacturing enterprises and small manufacturing enterprises.

(2) A manufacturing enterprise requires registration under this Part where it does not-

- (a) present any health and safety concerns in its manufacturing processes or in the products or by-products that it manufactures; or
- (b) pose a danger to public health or if, in the manufacturing process, a danger to public health will or is likely to occur.

(3) Notwithstanding subsections (1) and (2), the Minister may exempt a category of micro and small manufacturing enterprises from the requirements of this Part.

(4) The Minister may make regulations to apply exclusively to the category of micro and small manufacturing enterprises that are exempt from registration under subsection (3).

16. Registration requirements

(1) A person shall not operate a manufacturing enterprise unless the manufacturing enterprise has been registered and the person issued with a registration certificate under this Part.

(2) The Minister may make regulations-

(a) reserving registration certificates, for citizens of Botswana or companies wholly owned by citizens of Botswana-

(i) to operate certain manufacturing enterprises, and

(ii) to operate certain manufacturing enterprises in specific areas within Botswana;

(b) specifying which medium or large manufacturing enterprises reserved for citizens of Botswana or companies wholly owned by citizens of Botswana may be registered to operate as joint ventures by citizens and non-citizens.

(3) Regulations made under subsection (2)(b) shall impose conditions on registration certificates issued to joint ventures including a condition that in any joint venture arrangement a citizen partner must hold a minimum of 51 per cent shareholding in the joint venture.

17. Application for registration certificate

(1) A person who wishes to register a manufacturing enterprise shall make an application, in such form as may be prescribed, to the Director and shall provide-

(a) proof that he or she has the necessary qualifications to operate that manufacturing enterprise; or

(b) proof that he or she has the skilled manpower capacity to operate the manufacturing enterprise; and

(c) any other information as may be required by the Director including information that the manufacturing enterprise does not-

(i) present any health and safety concerns in its manufacturing processes or in the manufactured products or by-products, or

(ii) pose a danger to public health or that, in the manufacturing process, a danger to public health will not or is not likely to occur.

(2) The Director may require an applicant to furnish the following information in addition to that required under subsection (1)(c)-

(a) the business name;

(b) the business registration number;

(c) the place of business and address; and

(d) the nature of business.

18. Issue of registration certificate

(1) The Director shall, where he or she is satisfied that the applicant satisfies the requirements of this Act and on payment of a prescribed annual registration fee, register the manufacturing enterprise, and issue a certificate of registration in such form as may be prescribed.

(2) A certificate of registration issued under subsection (1) shall be proof that the manufacturing enterprise is registered and entitled to operate a manufacturing enterprise.

(3) The Director may impose such conditions on the certificate of registration as he or she considers necessary.

19. Display of registration certificate

(1) The certificate holder shall display a registration certificate issued under section 18 in a prominent place in the premises in respect of which that certificate is issued.

(2) The certificate holder shall display on the premises from which a manufacturing enterprise operates a signboard or name plate bearing in legible characters the name or style under which he or she operates the manufacturing enterprise.

20. Transfer of registration certificate

(1) A registration certificate issued under this Part may not be transferred except with the approval of the Director.

(2) A certificate holder may apply to the Director in such form as may be prescribed, for the transfer of a registration certificate to another person.

(3) The Director may transfer a registration certificate where, an application made under subsection (2) satisfies the following requirements-

(a) where the certificate holder is a citizen or wholly citizen owned company of Botswana holding a registration certificate for a manufacturing enterprise reserved for citizens, the transfer is to another citizen or wholly citizen owned company;

(b) where the registration certificate issued is in respect of specified premises, the transfer is to other premises which comply with the requirements relating to that manufacturing enterprise and are located within the same licensing area;

(c) that the certificate holder has died and the transfer is to the certificate holder's heir or beneficiary;

(d) that the certificate holder has been declared insolvent or has surrendered his or her estate for the benefit of his or her creditors, and the transfer is to the certificate holder's trustees; or

(e) that the certificate holder has become or is subject to any legal disability, and the transfer is to the certificate holder's legal representative.

(4) For the purposes of this section, a registration certificate is deemed to have been transferred if it is re-issued for a manufacturing enterprise and to a person other than the person who holds or has held the registration certificate in respect of that enterprise.

(5) Any person who transfers a registration certificate, or is the transferee of such a certificate, in contravention of the provisions of this section commits an offence and is liable to a fine not exceeding P50 000, or to imprisonment for 10 years, or to both.

21. Validity of registration certificate

(1) A registration certificate issued under this Act is valid for an indefinite period subject to-

(a) compliance with the conditions upon which it is issued; and

(b) payment by the certificate holder of the prescribed annual registration fee.

(2) A registration certificate shall become invalid-

(a) upon cancellation of the certificate by the Director under section 22; or

(b) if the name of the enterprise is removed from the register in terms of section 22(4).

22. Suspension or cancellation of registration certificate

(1) Subject to subsections (2), (3) and (5) the Director may suspend or cancel a registration certificate.

(2) The Director may suspend a registration certificate where-

(a) the certificate holder fails to comply with any lawful direction given by the Director under section 23(2) or 28;

(b) the certificate holder defaults on or breaches any condition imposed on the registration certificate excluding that under section 21(1)(b);

(c) the certificate holder is found to have presented false information which formed the basis of the registration of the manufacturing enterprise;

(d) he or she is satisfied, after due inquiry, that it is in the interests of the efficient development of the industry concerned to suspend the registration certificate;

(e) as may be necessary in the interest of public health and safety or in the interest of the public; or

(f) where, following an investigation carried out under section 26 relating to the activity for which the registration certificate is issued, the appropriate action is the suspension of the registration certificate.

(3) The Director may cancel a registration certificate where-

(a) the certificate holder fails to comply with any lawful direction given by the Director under section 23(2) or 28;

(b) the certificate holder defaults on or breaches any condition imposed on the registration certificate including that under section 21(1);

(c) the certificate holder is found to have presented false information which formed the basis of the registration of the manufacturing enterprise;

(d) he or she is satisfied, after due inquiry, that it is in the interests of the efficient development of the industry concerned to cancel the registration certificate;

(e) as may be necessary in the interest of public health and safety or in the interest of the public;

(f) where, following an investigation carried out under section 26 relating to the activity for which the registration certificate is issued, the appropriate action is the cancellation of the registration certificate; or

(g) where the certificate holder fails to start operations within one year from the date of issue of the registration certificate, or where the certificate holder had temporarily stopped operations, within one year from that time.

(4) Where a registration certificate is cancelled under this section the Director shall also remove the name of the manufacturing enterprise in respect of which the registration certificate relates from the register.

(5) The Director shall not suspend or cancel a registration certificate until the certificate holder has, by notice in writing, been given the opportunity by the Director, to-

(a) rectify that contravention or failure; or

(b) show cause, within such time as may be specified, why the registration certificate should not be suspended or cancelled.

(6) The Director shall cause to be published, a notice in the *Gazette* and two newspapers in circulation, of the suspension or cancellation of a registration certificate.

23. Register for registration certificates

(1) The Director shall keep and maintain a register for registration certificates where he or she shall record information relating to all registered manufacturing enterprises.

(2) The register referred to in subsection (1) shall contain-

(a) the key elements of all registration certificates issued by the Director;

(b) all manufacturing enterprises registered by the Director;

(c) a record of the registration fees paid in respect of a registration certificate; and

(d) any other information, as the Director considers appropriate.

(3) The register for registration certificates shall be accessible to members of the public for inspection at all times during business hours.

PART IV

Administration and enforcement (ss 24-28)

24. Supervision by Director

(1) The Director is responsible for the administration of this Act and shall supervise and monitor a licensee or a certificate holder to ensure-

(a) compliance with this Act and the terms and conditions of an industrial licence or a registration certificate; and

(b) implementation of the decisions and instructions issued to licensees and certificate holders.

(2) When exercising his or her supervisory function, the Director may, in accordance with this Act-

(a) carry out an investigation on a licensee or certificate holder;

(b) carry out site inspections and audit the operations of any manufacturing enterprises including the premises;

(c) request for any information from a licensee or a certificate holder, as the Director considers necessary;

(d) give directions on any matter as is necessary under this Act; and

(e) take such action as may be necessary, in accordance with this Act.

25. 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 inspection or investigation carried out under this Act or for purposes of collection of data.

(2) The Minister shall, by notice in the *Gazette*, publish the appointments made under subsection (1).

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

(4) The Director shall issue an authorised officer with an identification card for purposes of conducting investigations and inspections under this Act.

(5) 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, commits an offence and is liable to a fine not exceeding P10 000, or to imprisonment for a term not exceeding two years, or to both.

26. Investigation by Director

(1) The Director may, either on his or her own initiative or upon receipt of information or complaint from any person, investigate a licensee or a certificate holder where the Director has reasonable grounds to suspect that the licensee or certificate holder is contravening or has contravened the provisions of this Act or the conditions of a licence or certificate.

(2) Where the Director decides to conduct an investigation under subsection (1), he or she shall, as soon as practicable, give written notice to the licensee, certificate holder and any affected persons, where applicable, of the investigation and the notice shall-

(a) indicate the subject matter and the purpose of investigation;

(b) request the licensee, certificate holder and the affected persons to submit to the Director any information which may be relevant to the investigation within the time specified in the notice; and

(c) invite the licensee, certificate holder and the affected persons to submit to the Director, any representation which the licensee, certificate holder or affected persons may wish to make to the Director in connection with the investigation within the time specified in the notice.

(3) Where the Director considers that it is expedient in the interest of public health and safety that an investigation requires to be carried out immediately, the Director may dispense with the requirement to give notice.

27. Search of premises

(1) The Director may direct an authorised officer to enter and search the premises from which the manufacturing enterprise operates in connection with an investigation under section 26.

(2) An authorised officer shall before searching any premises in accordance with subsection (1), give a licensee, a certificate holder or the person in control of the premises four days' written notice of the intended search and grounds for searching the premises.

(3) Where the Director considers that to give notice under subsection (2) would materially prejudice the investigation or that the authorised officer has taken all the reasonable steps to give notice to the licensee, certificate holder or person in control of the premises but is unable to do so, the search may be undertaken without giving notice.

(4) An authorised officer may not enter and search any premises unless he or she obtains a warrant, in accordance with subsection (5), authorising such entry and search.

(5) Where a magistrate is satisfied, upon application made on oath or affirmation by an authorised officer, that there are reasonable grounds for the authorised officer to exercise the powers conferred on him or her by this section, the magistrate may grant a warrant authorising the authorised officer to exercise those powers in relation to any premises specified in the warrant.

(6) An authorised officer shall, when entering the premises, provide proof of authority to search the premises by handing a copy of the warrant and an identification card issued in terms of section 25, to the licensee, certificate holder or the person in control of the premises.

(7) An authorised officer may, at any time during normal business hours-

(a) enter the premises where information or documents are kept by the licensee or the certificate holder;

(b) search the premises or any person on the premises if there are reasonable grounds for believing that the person has possession of any document or article that has a bearing on the investigation;

- (c) examine any document or article found in the premises that has a bearing on the investigation;
 - (d) require information to be given on any document by the owner of the premises, person in control of the premises, any person who has control of the document or information or any other person who may have the information;
 - (e) take extracts from or make copies of any document found on the premises that has a bearing on the investigation; and
 - (f) take possession of such documents or information, where it appears necessary to prevent interference with the information or where it is not reasonably practicable to make copies.
- (8) An authorised officer may be accompanied and assisted by any other person specified in the warrant.
- (9) Notwithstanding subsection (4), an authorised officer may, without a warrant enter any premises, other than a private dwelling, to exercise the powers under subsection (1) if the licensee, certificate holder or the person in control of the premises consents, in writing, to the entry and search of the premises.
- (10) An authorised officer who removes anything from any premises in accordance with subsection (7) shall-
- (a) issue a receipt for that thing to the owner of the premises or the person in control of the premises; and
 - (b) return that thing as soon as it is practicable after achieving the purpose for which it was removed.
- (11) On leaving any premises, which an authorised officer has entered by virtue of a warrant under this section, the authorised officer, shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as found by that authorised officer.

28. Enforcement

Where the Director determines, after an investigation or search under section 26 or 27, that a licensee or a certificate holder has contravened a provision of this Act or a condition of a licence or certificate, the Director may-

- (a) subject to sections 13 and 22, suspend or revoke the licence or suspend or cancel the certificate; or
- (b) issue a direction to the licensee or certificate holder requiring him or her to take such steps as may be necessary to rectify the contravention.

PART V General Provisions (ss 29-40)

29. Compliance with other laws

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

30. Duty to provide information

A licensee, certificate holder or manufacturing enterprise subject to this Act shall provide all such information and statistics relating to the enterprise as may be required by the Director or some other agency authorised by the Director and failure to do so shall be sufficient reason for the suspension of the licence or registration certificate or removal of the manufacturing enterprise from the registers required to be kept under sections 14 and 23.

31. Appeals

A person aggrieved by a decision of the Director given under this Act may, within 30 days from the date of the notification or communication of the decision to him or her, appeal, in writing, against that decision to the Regional Appeals Board.

32. Continuation of Regional Appeals Board

- (1) There shall continue to be, for each region, a Regional Appeals Board.
- (2) The Minister shall, by notice published in the *Gazette*, appoint members of the Regional Appeals Board for each region on such terms and conditions as may be specified.
- (3) A Regional Appeals Board shall, in each region, consist of the following members-
 - (a) a member from the private sector, who shall be the Chairperson;
 - (b) the Council Secretary or Town Clerk;

- (c) two representatives from the private sector;
- (d) an attorney;
- (e) a representative of the Ministry responsible for land;
- (f) a representative of the Ministry responsible for trade; and
- (g) such two Councillors, as the Minister may determine.

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

(5) The quorum for a Regional Appeals Board shall be five members.

33. Tenure of office of members

(1) A member of a Regional Appeals Board other than a Council Secretary or Town Clerk appointed under section 32 shall hold office for a period not exceeding three years and shall be eligible for re-appointment for a further term not exceeding three years.

(2) Any person appointed as a member of a Regional Appeals Board before the coming into operation of this Act shall continue to hold office as such, subject to the person's terms and conditions as specified in the person's instrument of appointment.

34. Secretariat of Regional Appeals Board

(1) The office of the Council Secretary or Town Clerk shall be the Secretariat for the Regional Appeals Board in each region.

(2) The Secretariat shall-

- (a) be responsible for the accurate and complete recording of the proceedings of the Regional Appeals Board;
- (b) be responsible for the keeping of records under paragraph (a);
- (c) be responsible for arranging the meetings of the Regional Appeals Board;
- (d) receive appeals made under section 31 and submit them to the Regional Appeals Board; and
- (e) carry out such other functions as the Regional Appeals Board may direct.

35. Disclosure of interest

(1) Where at any meeting of a Regional Appeals Board, a matter is deliberated on in which a member or the member's immediate family member has a direct or indirect interest in a private capacity, the member shall, as soon as practicable, before the matter is deliberated on or immediately upon the commencement of the meeting, disclose such interest to the Board and shall not, unless the Board otherwise directs, take part in the deliberation of that matter.

(2) For purposes of this section "immediate family member" means a spouse, son, daughter, sibling or parent.

(3) A disclosure of interest made under subsection (1) shall be made in writing to the Board.

(4) Where a member fails to disclose his or her interest in accordance with subsection (1) and he or she takes part in making a decision which benefits that member, or his or her immediate family member, that decision shall be null and void.

(5) Any member who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P6 000 or to imprisonment for a term not exceeding two years, or both.

36. Confidentiality

(1) A member shall observe and preserve the confidentiality of all matters coming before the Regional Appeals Board and shall not disclose that information, and such confidentiality shall subsist even after the expiry of a member's term of office.

(2) Any person to whom confidential information is revealed through working with the Regional Appeals Board shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) A person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P6 000 or to imprisonment for a term not exceeding two years, or both.

37. 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 an industrial licence or registration certificate;
- (c) alters or erases any part of an industrial licence or registration certificate or alters or erases any entry lawfully made on the licence or registration certificate;
- (d) produces or uses an industrial licence or registration certificate which is forged or which to his or her knowledge has been unlawfully altered;
- (e) produces or uses an industrial licence or registration certificate in the name of some other person or of a fictitious person;
- (f) forges any document for the purpose of obtaining an industrial licence or registration certificate;
- (g) fronts for another person; or
- (h) operates a manufacturing enterprise under an industrial licence or registration certificate obtained under paragraph (g),

commits an offence and is liable to a fine not exceeding P50 000 for a first offence and to a fine not exceeding P20 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 or certificate holder does or omits to do anything which if done or omitted to be done by the licensee or certificate holder would be in contravention of any provision of this Act, the licensee or certificate holder shall be deemed to have contravened such provision and is liable to penalties for that contravention.

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

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

38. Regulations

The Minister may 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 health and safety standards, codes or guidelines for the manufacture of a product;
- (b) prescribing the circumstances that would be sufficient reason for-
 - (i) the issue, suspension or revocation of a licence;
 - (ii) the issue, suspension and cancellation of a registration certificate;
- (c) prescribing anything under this Act which is to be prescribed;
- (d) providing for the regulation of micro and small enterprises exempt from the requirements of Part II as provided for under section 4(2); or
- (e) providing for the regulation of micro and small enterprises exempt from the requirements of Part III as provided for under section 15(3).

39. Repeal of Cap. 43:01 and savings

(1) The Industrial Development Act is repealed.

(2) Notwithstanding the repeal effected under subsection (1), 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.

(3) Any subsidiary legislation made under the repealed Act and in force immediately at the coming into force of this Act shall, so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act, until revoked or amended by or under this Act.

(4) Any right of appeal which subsisted immediately before the commencement of this Act by virtue of the repealed Act shall be treated as subsisting by virtue of the corresponding provisions in this Act, and any appeal commenced before the repeal of the repealed Act may be prosecuted and disposed of as though commenced in terms of the provisions of this Act.

(5) Any licence issued under section 17 of the repealed Act 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 after which the licensee shall apply under this Act for an industrial licence or for a registration certificate.

40. Transitional provisions

The Minister may, by Order published in the *Gazette*, make such transitional arrangements as are necessary for the coming into operation of this Act.

INDUSTRIAL DEVELOPMENT

ARRANGEMENT OF SECTIONS

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Act 23, 2019.

An Act to provide for the regulation of manufacturing enterprises through their licensing, registration and supervision to facilitate industrial development and for connected and incidental matters.

[Date of Commencement: ON NOTICE.]

PART I
Preliminary Provisions (ss 1-3)

1. Short title

This Act is the Industrial Development Act, 2019, and comes into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

2. Interpretation

In this Act-

"authorised officer" means a public officer appointed by the Minister in terms of section 25;

"certificate holder" means a person issued with a registration certificate under Part III;

"Director" means the Director of Industrial Affairs;

"industrial licence" means a licence issued under section 8 to operate a manufacturing enterprise;

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

"licensee" means a person to whom an industrial licence is issued in terms of section 8;

"manufacture" means the transformation (by any means) of any material or a component of a material (whether raw or in any other form) into a new product and includes-

- (a) packaging;

- (b) canning;
- (c) assembly of parts; and
- (d) other processes as the Minister may prescribe;

"manufacturing enterprise" means a manufacturing business entity which is licensed or registered under this Act;

"medium manufacturing 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 the Regional Appeals Board continued under section 32;

"micro manufacturing 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 continued under section 32;

"registration certificate" means a certificate issued under section 18; and

"small manufacturing enterprise" means a business entity with such annual turnover and staff complement as the Minister may, by Order published in the *Gazette*, prescribe.

3. Application of Act

(1) This Act applies to any manufacturing enterprise which-

- (a) is operated and owned, wholly or partly by a citizen of Botswana;
- (b) is operated or owned, wholly or partly by a citizen of Botswana; or
- (c) is operated and owned, or operated or owned by any person not being a citizen of Botswana, who operates by himself or herself or with others.

(2) Notwithstanding subsection (1), this Act does not apply to-

- (a) the Botswana Meat Commission;
- (b) any manufacturing enterprise licensed under the Arms and Ammunition Act (Cap. 24:01);
- (c) any manufacturing enterprise for milling licensed under the Control of Maize Milling Act (Cap. 43:05);
- (d) any manufacturing enterprise licensed to manufacture medicine and related products under the Medicines and Related Substances Act (Cap. 63:04);
- (e) any manufacturing enterprise licensed in terms of any regulations made under the Hides and Skins Export Act (Cap. 49:01);
- (f) any regulated sector involved in manufacturing which is licensed under the Botswana Energy Regulatory Authority Act (Cap. 74:11);
- (g) the Botswana Vaccine Institute;
- (h) any manufacturing enterprise licensed under the Mines and Minerals Act (Cap. 66:01); and
- (i) any person issued with a diamond cutting licence under the Diamond Cutting Act (Cap. 66:04).

PART II

Licensing of Manufacturing Enterprises (ss 4-14)

4. Application of Part II

(1) This Part applies to any manufacturing enterprise which-

- (a) presents any health and safety concerns in its manufacturing processes or in the manufactured products or by-products; or
- (b) poses a danger to public health or if, in the manufacturing process, a danger to public health is likely to occur.

(2) Notwithstanding subsection (1), the Minister may exempt a category of micro and small manufacturing enterprises from the requirements of this Part.

(3) The Minister may make regulations to apply exclusively to the category of micro and small manufacturing enterprises that are exempted from being licensed under subsection (2).

(4) In this section, "health and safety concerns" refers to factors that may arise in the manufacturing process which negatively affect the environment, public safety or occupational health.

5. Manufacturing enterprises requiring industrial licence

(1) A person shall not operate a manufacturing enterprise, to manufacture for sale-

- (a) animal feed;
- (b) baby formula;
- (c) food;
- (d) beverages;
- (e) cement;
- (f) chemical products; or
- (g) such other products as the Minister may prescribe,

at any place in Botswana except in terms of an industrial licence issued by the Director, in accordance with this Act, authorising the person to manufacture such a product.

(2) In exercising the powers under subsections (1)(g) to prescribe products which require an industrial licence, the Minister shall be guided by-

- (a) health and safety standards, codes or guidelines prescribed under this Act; and
- (b) any other standards, codes or guidelines provided for in any law regulating the manufacture of the product in question.

(3) The Minister may amend subsection (1) by Order to remove from or add to the list of products that can be manufactured under an industrial licence issued under this Part.

(4) The Director shall be responsible for the issue of industrial licences to all manufacturing enterprises that are subject to the provisions of this Part.

(5) The Minister may make regulations-

(a) reserving industrial licences, for citizens of Botswana or companies wholly owned by citizens of Botswana-

- (i) to operate certain manufacturing enterprises; and
- (ii) to operate certain manufacturing enterprises in specific areas within Botswana;

(b) specifying which medium or large manufacturing enterprises reserved for citizens of Botswana or companies wholly owned by citizens of Botswana may be licensed to operate as joint ventures by citizens and non-citizens.

(6) Regulations made under subsection (5)(b) shall impose conditions on industrial licences issued to joint ventures including a condition that in any joint venture arrangement a citizen partner must hold a minimum of 51 per cent shareholding in the joint venture.

6. Application for industrial licence

(1) A person shall not operate a manufacturing enterprise unless he or she has been issued with an industrial licence in terms of this Act.

(2) When applying for an industrial licence in terms of subsection (1), an applicant shall state-

- (a) the name and address of the applicant, and where the application is made by partners in a joint venture, the name and address of each of those partners;
- (b) a description of the manufacturing enterprise that the applicant proposes to operate;
- (c) the details of the land or premises where the applicant proposes to operate or manufacture the product from;
- (d) evidence that the applicant has the-

(i) financial and technical capability and the necessary experience to manufacture the product for which the licence is sought, and

(ii) requisite ownership or usage rights of the land or premises to be used for manufacturing the product;

(e) where the application is made by partners in a joint venture arrangement, information relating to the shareholding by the partners which demonstrates that the citizen partner has a minimum of 51 per cent shares.

(3) Any person who contravenes the provisions of subsection (1) commits an offence and is liable to-

(a) a fine not exceeding P50 000, or to imprisonment for a term not exceeding 10 years, or to both; and

(b) in the case of a continuing offence, a further fine of P500 in respect of each day on which the offence continues but the further fine shall not exceed P100 000.

7. Assessment of application for industrial licence

(1) The Director shall, within 14 days of the date of receipt of an application, acknowledge receipt of the application in writing.

(2) In assessing an application under section 6, the Director shall be guided by the following-

(a) public health and safety guidelines which may be prescribed under this Act;

(b) whether the proposed manufacturing enterprise-

(i) presents any health and safety concerns in its manufacturing processes or in the manufactured products or by-products, or

(ii) poses a danger to public health or if, in the manufacturing process, a danger to public health is likely to occur;

(c) whether the applicant can operate the manufacturing enterprise in respect of which the application is made, in a safe and sustainable manner.

(3) If the Director requires further information or documents to assess the application, the Director may, within 28 days from the date of receipt of the application and by written notice, request for further information or documents from the applicant.

(4) The notice referred to under subsection (3) shall-

(a) specify the information or documents required from the applicant;

(b) where applicable, notify third parties of the application and invite comments from them;

(c) specify the time within which the information, documents or comments shall be submitted to the Director; and

(d) specify the date by which the Director intends to make a final decision on the application.

(5) The Director may, where he or she considers necessary, by notice in the *Gazette* and two local newspapers in circulation, publish the industrial licence he or she proposes to issue and invite interested parties to comment within the time specified in the notice.

(6) The Director shall notify the applicant, in writing, of his or her decision within 10 days from the date of the decision and where the Director decides not to issue the industrial licence, he or she shall state the reasons in such notice.

8. Refusal to issue industrial licence

The Director shall not issue an industrial licence where-

(a) the applicant is below 18 years of age;

(b) the premises from which the manufacturing enterprise is to operate from are situated in an area where that activity is not permitted and will conflict with approved or proposed town planning scheme or zoning area;

(c) the issuing of the industrial licence will contravene any laws on public health, occupational health or environmental safety;

(d) the applicant is an unrehabilitated insolvent;

(e) the applicant has surrendered his or her estate for the benefit of his or her creditors;

(f) the applicant has, within a period of two years immediately preceding the date of the application, been convicted of an offence involving dishonesty;

(g) the applicant is of unsound mind;

(h) the applicant has failed to-

(i) submit a company registration certificate under the Registration of Business Names Act (Cap. 42:05) or a certificate of incorporation under the Companies Act (Cap. 42:01),

(ii) submit proof of land ownership, usage rights or availability of premises,

(iii) submit identification documents for shareholders,

(iv) specify the kind of manufacturing activities to be undertaken,

(v) submit, if applicable, any other document or information required by the Director under section 7(3),

(vi) demonstrate that he or she has the financial and technical capability or the necessary experience to manufacture the product for which the licence is sought, or

(vii) demonstrate, in a joint venture arrangement, that the citizen partner has a minimum of 51 per cent and that the industrial licence being applied for is for a medium or large manufacturing enterprise.

9. Issue of industrial licence and its validity

(1) The Director shall, where he or she is satisfied that the application meets the requirements of the Act, on payment of the prescribed fee, issue to the applicant, an industrial licence containing such conditions as the Director considers necessary.

(2) Without limiting the generality of subsection (1), the Director may impose any of the following conditions on an industrial licence-

(a) a condition that the product manufactured under such a licence shall be sold or offered for sale only within the premises in which such product is manufactured;

(b) any conditions as are necessary in the interest of public health and safety such as-

(i) specifying the type of premises from which specific products may be manufactured from,

(ii) specifying the activities that the licensee is authorised to carry out and the scope of such activities in so far as they are connected to the manufacture of the product;

(c) where relevant, a condition that the industrial licence is only transferable to a citizen of Botswana; and

(d) such further conditions and restrictions as the Director considers necessary.

(3) An industrial licence issued under this Act is valid for an indefinite period subject to-

(a) compliance with the conditions upon which it is issued; and

(b) payment by the licensee of such an annual licence fee as may be prescribed.

10. Application for new product, additional and change of location and notification of change of business name

(1) A licensee who wishes to manufacture a different or new product from the one for which he or she is licensed shall apply, in such manner as may be prescribed, to the Director.

(2) An application under subsection (1) shall be treated in the same manner as an application under section 6 and if the Director is satisfied that the application meets the requirements of the Act, he or she shall, on payment of the prescribed fee, issue an industrial licence in respect of that different or new product.

(3) A licensee who wishes to change the location of the manufacturing enterprise, or operate from additional premises shall apply, in such manner as may be prescribed, to the Director.

(4) The Director may allow a licensee to change the location of the manufacturing enterprise or operate at additional premises if the Director determines that the proposed premises-

(a) are not situated in an area that will conflict with any approved or proposed town planning scheme or zoning area;

(b) are appropriate for the manufacture of the product for which an industrial licence is issued.

(5) An approval by the Director for the change of location of a manufacturing enterprise or for the operation of the manufacturing enterprise at additional premises shall be endorsed in the industrial licence to which it relates.

(6) A licensee shall, in relation to a change of the business name of a manufacturing enterprise, notify the Director as soon as practicable after the Registrar of Business Names has, after receiving a notice in writing under section 9 of the Registration of Business Names Act-

(a) made the necessary changes in the register of business names in relation to that name; and

(b) made the necessary amendments in the certificate of registration or issued a new certificate in terms of section 14(2) of the Registration of Business Names Act.

(7) A notice of a change of the business name of a manufacturing enterprise under subsection (6) shall be made in the prescribed form.

11. Display of industrial licence

(1) The licensee shall display an industrial licence issued under section 9 or 10(2) in a prominent place in the premises in respect of which the industrial licence is issued.

(2) The licensee shall display on the premises from which a manufacturing enterprise operates a signboard or name plate bearing in legible characters the name or style under which he or she operates the manufacturing enterprise.

12. Transfer of industrial licence

(1) An industrial licence issued under this Part may not be transferred except with the approval of the Director.

(2) A licensee may apply to the Director in such form as may be prescribed, for the transfer of an industrial licence to another person.

(3) The Director may transfer a licence where, an application made under subsection (2) satisfies the following requirements-

(a) where the licensee is a citizen or wholly citizen owned company of Botswana holding an industrial licence for a manufacturing enterprise reserved for citizens, the transfer is to another citizen or wholly citizen owned company;

(b) where the licence issued is in respect of specified premises, the transfer is to other premises which comply with the requirements relating to that manufacturing enterprise and are located within the same licensing area;

(c) that the licensee has died and the transfer is to the licensee's heir or beneficiary;

(d) that the licensee has been declared insolvent or has surrendered his or her estate for the benefit of his or her creditors, and the transfer is to the licensee's trustees; or

(e) that the licensee has become or is subject to any legal disability, and the transfer is to the licensee's legal representative.

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

(5) Any person who transfers an industrial licence, or is the transferee of such a licence, in contravention of the provisions of this section commits an offence and is liable to a fine not exceeding P50 000, or to imprisonment for 10 years, or to both.

13. Suspension and revocation of industrial licence

(1) The Director may suspend or impose further conditions on an industrial licence-

(a) where a licensee-

(i) fails to comply with any lawful direction or requirement of the Director given under section 24(2) or 28,

(ii) defaults on or breaches any material condition of the licence,

(iii) is found to have presented false information which formed the basis of the licence being granted;

(b) if he or she is satisfied, after due inquiry, that it is in the interests of the efficient development of the industry concerned to do so;

(c) as may be necessary in the interest of public health and safety or in the interest of the public; or

(d) where, following an investigation carried out under section 26 relating to the activity for which the licence is issued, the appropriate action is the suspension of, or imposition of further conditions on, the licence.

(2) The Director may revoke a licence-

(a) where a licensee-

(i) contravenes the provisions of this Act,

(ii) fails to comply with any lawful direction or requirement of the Director given under section 24(2)

or 28,

(iii) defaults on or breaches any material condition of the licence,

(iv) is declared bankrupt, insolvent or enters into liquidation, or

(v) is found to have presented false information which formed the basis of the licence being granted;

(b) if he or she is satisfied, after due inquiry, that it is in the interests of the efficient development of the industry concerned to revoke the licence;

(c) as may be necessary in the interest of public health and safety or in the interest of the public;

(d) where the licensee fails to start operations within one year from the date of issue of the industrial licence, or where the licensee had temporarily stopped operations, within one year from that time; or

(e) where, following an investigation carried out under section 26 relating to the activity for which the licence is issued, the appropriate action is the revocation of the licence.

(3) When determining which action to take under subsection (1), the Director shall take into account-

(a) the impact of the contravention on public health and safety;

(b) the extent to which the licensee has achieved any financial or any other gain from the contravention;

(c) whether the licensee has committed a similar contravention in the past;

(d) the duration and seriousness of the contravention; and

(e) any mitigating or aggravating factors.

(4) A revocation, suspension or imposition of further conditions upon a licence under this section shall not be made until the licensee has, by notice in writing, been given the opportunity by the Director, to-

(a) rectify that contravention or failure; or

(b) show cause, within such time as may be specified, why the licence should not be revoked, suspended or have further conditions imposed on it.

(5) The Director shall cause to be published, a notice in the *Gazette* and two newspapers in circulation, of the revocation, suspension or imposition of further conditions on the licence.

14. Register for industrial licences

(1) The Director shall keep and maintain a register for industrial licences where he or she shall record information relating to all licensed manufacturing enterprises.

(2) The register referred to in subsection (1) shall contain-

(a) the key elements of all industrial licences issued by the Director;

(b) all manufacturing enterprises licensed by the Director;

(c) a record of the annual licence fees paid in respect of a manufacturing enterprise; and

(d) any other information, as the Director considers appropriate.

(3) The register for industrial licences shall be accessible to members of the public for inspection at all times during business hours.

PART III

Registration of Manufacturing Enterprises (ss 15-23)

15. Application of Part III

(1) This Part applies to all manufacturing enterprises that do not require to be licensed under Part II including micro manufacturing enterprises and small manufacturing enterprises.

(2) A manufacturing enterprise requires registration under this Part where it does not-

(a) present any health and safety concerns in its manufacturing processes or in the products or by-products that it manufactures; or

(b) pose a danger to public health or if, in the manufacturing process, a danger to public health will or is likely to occur.

(3) Notwithstanding subsections (1) and (2), the Minister may exempt a category of micro and small manufacturing enterprises from the requirements of this Part.

(4) The Minister may make regulations to apply exclusively to the category of micro and small manufacturing enterprises that are exempt from registration under subsection (3).

16. Registration requirements

(1) A person shall not operate a manufacturing enterprise unless the manufacturing enterprise has been registered and the person issued with a registration certificate under this Part.

(2) The Minister may make regulations-

(a) reserving registration certificates, for citizens of Botswana or companies wholly owned by citizens of Botswana-

(i) to operate certain manufacturing enterprises, and

(ii) to operate certain manufacturing enterprises in specific areas within Botswana;

(b) specifying which medium or large manufacturing enterprises reserved for citizens of Botswana or companies wholly owned by citizens of Botswana may be registered to operate as joint ventures by citizens and non-citizens.

(3) Regulations made under subsection (2)(b) shall impose conditions on registration certificates issued to joint ventures including a condition that in any joint venture arrangement a citizen partner must hold a minimum of 51 per cent shareholding in the joint venture.

17. Application for registration certificate

(1) A person who wishes to register a manufacturing enterprise shall make an application, in such form as may be prescribed, to the Director and shall provide-

(a) proof that he or she has the necessary qualifications to operate that manufacturing enterprise; or

(b) proof that he or she has the skilled manpower capacity to operate the manufacturing enterprise; and

(c) any other information as may be required by the Director including information that the manufacturing enterprise does not-

(i) present any health and safety concerns in its manufacturing processes or in the manufactured products or by-products, or

(ii) pose a danger to public health or that, in the manufacturing process, a danger to public health will not or is not likely to occur.

(2) The Director may require an applicant to furnish the following information in addition to that required under subsection (1)(c)-

(a) the business name;

(b) the business registration number;

(c) the place of business and address; and

(d) the nature of business.

18. Issue of registration certificate

(1) The Director shall, where he or she is satisfied that the applicant satisfies the requirements of this Act and on payment of a prescribed annual registration fee, register the manufacturing enterprise, and issue a certificate of registration in such form as may be prescribed.

(2) A certificate of registration issued under subsection (1) shall be proof that the manufacturing enterprise is registered and entitled to operate a manufacturing enterprise.

(3) The Director may impose such conditions on the certificate of registration as he or she considers necessary.

19. Display of registration certificate

(1) The certificate holder shall display a registration certificate issued under section 18 in a prominent place in the premises in respect of which that certificate is issued.

(2) The certificate holder shall display on the premises from which a manufacturing enterprise operates a signboard or name plate bearing in legible characters the name or style under which he or she operates the manufacturing enterprise.

20. Transfer of registration certificate

(1) A registration certificate issued under this Part may not be transferred except with the approval of the Director.

(2) A certificate holder may apply to the Director in such form as may be prescribed, for the transfer of a registration certificate to another person.

(3) The Director may transfer a registration certificate where, an application made under subsection (2) satisfies the following requirements-

(a) where the certificate holder is a citizen or wholly citizen owned company of Botswana holding a registration certificate for a manufacturing enterprise reserved for citizens, the transfer is to another citizen or wholly citizen owned company;

(b) where the registration certificate issued is in respect of specified premises, the transfer is to other premises which comply with the requirements relating to that manufacturing enterprise and are located within the same licensing area;

(c) that the certificate holder has died and the transfer is to the certificate holder's heir or beneficiary;

(d) that the certificate holder has been declared insolvent or has surrendered his or her estate for the benefit of his or her creditors, and the transfer is to the certificate holder's trustees; or

(e) that the certificate holder has become or is subject to any legal disability, and the transfer is to the certificate holder's legal representative.

(4) For the purposes of this section, a registration certificate is deemed to have been transferred if it is re-issued for a manufacturing enterprise and to a person other than the person who holds or has held the registration certificate in respect of that enterprise.

(5) Any person who transfers a registration certificate, or is the transferee of such a certificate, in contravention of the provisions of this section commits an offence and is liable to a fine not exceeding P50 000, or to imprisonment for 10 years, or to both.

21. Validity of registration certificate

(1) A registration certificate issued under this Act is valid for an indefinite period subject to-

(a) compliance with the conditions upon which it is issued; and

(b) payment by the certificate holder of the prescribed annual registration fee.

(2) A registration certificate shall become invalid-

(a) upon cancellation of the certificate by the Director under section 22; or

(b) if the name of the enterprise is removed from the register in terms of section 22(4).

22. Suspension or cancellation of registration certificate

(1) Subject to subsections (2), (3) and (5) the Director may suspend or cancel a registration certificate.

(2) The Director may suspend a registration certificate where-

(a) the certificate holder fails to comply with any lawful direction given by the Director under section 23(2) or 28;

(b) the certificate holder defaults on or breaches any condition imposed on the registration certificate excluding that under section 21(1)(b);

(c) the certificate holder is found to have presented false information which formed the basis of the registration of the manufacturing enterprise;

(d) he or she is satisfied, after due inquiry, that it is in the interests of the efficient development of the industry concerned to suspend the registration certificate;

(e) as may be necessary in the interest of public health and safety or in the interest of the public; or

(f) where, following an investigation carried out under section 26 relating to the activity for which the registration certificate is issued, the appropriate action is the suspension of the registration certificate.

(3) The Director may cancel a registration certificate where-

(a) the certificate holder fails to comply with any lawful direction given by the Director under section 23(2) or 28;

(b) the certificate holder defaults on or breaches any condition imposed on the registration certificate including that under section 21(1);

(c) the certificate holder is found to have presented false information which formed the basis of the registration of the manufacturing enterprise;

(d) he or she is satisfied, after due inquiry, that it is in the interests of the efficient development of the industry concerned to cancel the registration certificate;

(e) as may be necessary in the interest of public health and safety or in the interest of the public;

(f) where, following an investigation carried out under section 26 relating to the activity for which the registration certificate is issued, the appropriate action is the cancellation of the registration certificate; or

(g) where the certificate holder fails to start operations within one year from the date of issue of the registration certificate, or where the certificate holder had temporarily stopped operations, within one year from that time.

(4) Where a registration certificate is cancelled under this section the Director shall also remove the name of the manufacturing enterprise in respect of which the registration certificate relates from the register.

(5) The Director shall not suspend or cancel a registration certificate until the certificate holder has, by notice in writing, been given the opportunity by the Director, to-

(a) rectify that contravention or failure; or

(b) show cause, within such time as may be specified, why the registration certificate should not be suspended or cancelled.

(6) The Director shall cause to be published, a notice in the *Gazette* and two newspapers in circulation, of the suspension or cancellation of a registration certificate.

23. Register for registration certificates

(1) The Director shall keep and maintain a register for registration certificates where he or she shall record information relating to all registered manufacturing enterprises.

(2) The register referred to in subsection (1) shall contain-

(a) the key elements of all registration certificates issued by the Director;

(b) all manufacturing enterprises registered by the Director;

(c) a record of the registration fees paid in respect of a registration certificate; and

(d) any other information, as the Director considers appropriate.

(3) The register for registration certificates shall be accessible to members of the public for inspection at all times during business hours.

PART IV

Administration and enforcement (ss 24-28)

24. Supervision by Director

(1) The Director is responsible for the administration of this Act and shall supervise and monitor a licensee or a certificate holder to ensure-

(a) compliance with this Act and the terms and conditions of an industrial licence or a registration certificate; and

(b) implementation of the decisions and instructions issued to licensees and certificate holders.

(2) When exercising his or her supervisory function, the Director may, in accordance with this Act-

(a) carry out an investigation on a licensee or certificate holder;

(b) carry out site inspections and audit the operations of any manufacturing enterprises including the premises;

(c) request for any information from a licensee or a certificate holder, as the Director considers necessary;

(d) give directions on any matter as is necessary under this Act; and

(e) take such action as may be necessary, in accordance with this Act.

25. 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 inspection or investigation carried out under this Act or for purposes of collection of data.

(2) The Minister shall, by notice in the *Gazette*, publish the appointments made under subsection (1).

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

(4) The Director shall issue an authorised officer with an identification card for purposes of conducting investigations and inspections under this Act.

(5) 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, commits an offence and is liable to a fine not exceeding P10 000, or to imprisonment for a term not exceeding two years, or to both.

26. Investigation by Director

(1) The Director may, either on his or her own initiative or upon receipt of information or complaint from any person, investigate a licensee or a certificate holder where the Director has reasonable grounds to suspect that the licensee or certificate holder is contravening or has contravened the provisions of this Act or the conditions of a licence or certificate.

(2) Where the Director decides to conduct an investigation under subsection (1), he or she shall, as soon as practicable, give written notice to the licensee, certificate holder and any affected persons, where applicable, of the investigation and the notice shall-

(a) indicate the subject matter and the purpose of investigation;

(b) request the licensee, certificate holder and the affected persons to submit to the Director any information which may be relevant to the investigation within the time specified in the notice; and

(c) invite the licensee, certificate holder and the affected persons to submit to the Director, any representation which the licensee, certificate holder or affected persons may wish to make to the Director in connection with the investigation within the time specified in the notice.

(3) Where the Director considers that it is expedient in the interest of public health and safety that an investigation requires to be carried out immediately, the Director may dispense with the requirement to give notice.

27. Search of premises

(1) The Director may direct an authorised officer to enter and search the premises from which the manufacturing enterprise operates in connection with an investigation under section 26.

(2) An authorised officer shall before searching any premises in accordance with subsection (1), give a licensee, a certificate holder or the person in control of the premises four days' written notice of the intended search and grounds for searching the premises.

(3) Where the Director considers that to give notice under subsection (2) would materially prejudice the investigation or that the authorised officer has taken all the reasonable steps to give notice to the licensee, certificate holder or person in control of the premises but is unable to do so, the search may be undertaken without giving notice.

(4) An authorised officer may not enter and search any premises unless he or she obtains a warrant, in accordance with subsection (5), authorising such entry and search.

(5) Where a magistrate is satisfied, upon application made on oath or affirmation by an authorised officer, that there are reasonable grounds for the authorised officer to exercise the powers conferred on him or her by this section, the magistrate may grant a warrant authorising the authorised officer to exercise those powers in relation to any premises specified in the warrant.

(6) An authorised officer shall, when entering the premises, provide proof of authority to search the premises by handing a copy of the warrant and an identification card issued in terms of section 25, to the licensee, certificate holder or the person in control of the premises.

(7) An authorised officer may, at any time during normal business hours-

(a) enter the premises where information or documents are kept by the licensee or the certificate holder;

(b) search the premises or any person on the premises if there are reasonable grounds for believing that the person has possession of any document or article that has a bearing on the investigation;

(c) examine any document or article found in the premises that has a bearing on the investigation;

(d) require information to be given on any document by the owner of the premises, person in control of the premises, any person who has control of the document or information or any other person who may have the information;

(e) take extracts from or make copies of any document found on the premises that has a bearing on the investigation; and

(f) take possession of such documents or information, where it appears necessary to prevent interference with the information or where it is not reasonably practicable to make copies.

(8) An authorised officer may be accompanied and assisted by any other person specified in the warrant.

(9) Notwithstanding subsection (4), an authorised officer may, without a warrant enter any premises, other than a private dwelling, to exercise the powers under subsection (1) if the licensee, certificate holder or the person in control of the premises consents, in writing, to the entry and search of the premises.

(10) An authorised officer who removes anything from any premises in accordance with subsection (7) shall-

(a) issue a receipt for that thing to the owner of the premises or the person in control of the premises; and

(b) return that thing as soon as it is practicable after achieving the purpose for which it was removed.

(11) On leaving any premises, which an authorised officer has entered by virtue of a warrant under this section, the authorised officer, shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as found by that authorised officer.

28. Enforcement

Where the Director determines, after an investigation or search under section 26 or 27, that a licensee or a certificate holder has contravened a provision of this Act or a condition of a licence or certificate, the Director may-

(a) subject to sections 13 and 22, suspend or revoke the licence or suspend or cancel the certificate; or

(b) issue a direction to the licensee or certificate holder requiring him or her to take such steps as may be necessary to rectify the contravention.

PART V **General Provisions (ss 29-40)**

29. Compliance with other laws

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

30. Duty to provide information

A licensee, certificate holder or manufacturing enterprise subject to this Act shall provide all such information and statistics relating to the enterprise as may be required by the Director or some other agency authorised by the Director and failure to do so shall be sufficient reason for the suspension of the licence or registration

certificate or removal of the manufacturing enterprise from the registers required to be kept under sections 14 and 23.

31. Appeals

A person aggrieved by a decision of the Director given under this Act may, within 30 days from the date of the notification or communication of the decision to him or her, appeal, in writing, against that decision to the Regional Appeals Board.

32. Continuation of Regional Appeals Board

- (1) There shall continue to be, for each region, a Regional Appeals Board.
- (2) The Minister shall, by notice published in the *Gazette*, appoint members of the Regional Appeals Board for each region on such terms and conditions as may be specified.
- (3) A Regional Appeals Board shall, in each region, consist of the following members-
 - (a) a member from the private sector, who shall be the Chairperson;
 - (b) the Council Secretary or Town Clerk;
 - (c) two representatives from the private sector;
 - (d) an attorney;
 - (e) a representative of the Ministry responsible for land;
 - (f) a representative of the Ministry responsible for trade; and
 - (g) such two Councillors, as the Minister may determine.
- (4) The members of the Regional Appeals Board in each region shall elect, from among their number, a Vice Chairperson.
- (5) The quorum for a Regional Appeals Board shall be five members.

33. Tenure of office of members

- (1) A member of a Regional Appeals Board other than a Council Secretary or Town Clerk appointed under section 32 shall hold office for a period not exceeding three years and shall be eligible for re-appointment for a further term not exceeding three years.
- (2) Any person appointed as a member of a Regional Appeals Board before the coming into operation of this Act shall continue to hold office as such, subject to the person's terms and conditions as specified in the person's instrument of appointment.

34. Secretariat of Regional Appeals Board

- (1) The office of the Council Secretary or Town Clerk shall be the Secretariat for the Regional Appeals Board in each region.
- (2) The Secretariat shall-
 - (a) be responsible for the accurate and complete recording of the proceedings of the Regional Appeals Board;
 - (b) be responsible for the keeping of records under paragraph (a);
 - (c) be responsible for arranging the meetings of the Regional Appeals Board;
 - (d) receive appeals made under section 31 and submit them to the Regional Appeals Board; and
 - (e) carry out such other functions as the Regional Appeals Board may direct.

35. Disclosure of interest

- (1) Where at any meeting of a Regional Appeals Board, a matter is deliberated on in which a member or the member's immediate family member has a direct or indirect interest in a private capacity, the member shall, as soon as practicable, before the matter is deliberated on or immediately upon the commencement of the meeting, disclose such interest to the Board and shall not, unless the Board otherwise directs, take part in the deliberation of that matter.
- (2) For purposes of this section "immediate family member" means a spouse, son, daughter, sibling or parent.
- (3) A disclosure of interest made under subsection (1) shall be made in writing to the Board.

(4) Where a member fails to disclose his or her interest in accordance with subsection (1) and he or she takes part in making a decision which benefits that member, or his or her immediate family member, that decision shall be null and void.

(5) Any member who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P6 000 or to imprisonment for a term not exceeding two years, or both.

36. Confidentiality

(1) A member shall observe and preserve the confidentiality of all matters coming before the Regional Appeals Board and shall not disclose that information, and such confidentiality shall subsist even after the expiry of a member's term of office.

(2) Any person to whom confidential information is revealed through working with the Regional Appeals Board shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) A person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P6 000 or to imprisonment for a term not exceeding two years, or both.

37. 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 an industrial licence or registration certificate;
- (c) alters or erases any part of an industrial licence or registration certificate or alters or erases any entry lawfully made on the licence or registration certificate;
- (d) produces or uses an industrial licence or registration certificate which is forged or which to his or her knowledge has been unlawfully altered;
- (e) produces or uses an industrial licence or registration certificate in the name of some other person or of a fictitious person;
- (f) forges any document for the purpose of obtaining an industrial licence or registration certificate;
- (g) fronts for another person; or
- (h) operates a manufacturing enterprise under an industrial licence or registration certificate obtained under paragraph (g),

commits an offence and is liable to a fine not exceeding P50 000 for a first offence and to a fine not exceeding P20 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 or certificate holder does or omits to do anything which if done or omitted to be done by the licensee or certificate holder would be in contravention of any provision of this Act, the licensee or certificate holder shall be deemed to have contravened such provision and is liable to penalties for that contravention.

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

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

38. Regulations

The Minister may 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 health and safety standards, codes or guidelines for the manufacture of a product;
- (b) prescribing the circumstances that would be sufficient reason for-
 - (i) the issue, suspension or revocation of a licence;
 - (ii) the issue, suspension and cancellation of a registration certificate;
- (c) prescribing anything under this Act which is to be prescribed;

(d) providing for the regulation of micro and small enterprises exempt from the requirements of Part II as provided for under section 4(2); or

(e) providing for the regulation of micro and small enterprises exempt from the requirements of Part III as provided for under section 15(3).

39. Repeal of Cap. 43:01 and savings

(1) The Industrial Development Act is repealed.

(2) Notwithstanding the repeal effected under subsection (1), 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.

(3) Any subsidiary legislation made under the repealed Act and in force immediately at the coming into force of this Act shall, so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act, until revoked or amended by or under this Act.

(4) Any right of appeal which subsisted immediately before the commencement of this Act by virtue of the repealed Act shall be treated as subsisting by virtue of the corresponding provisions in this Act, and any appeal commenced before the repeal of the repealed Act may be prosecuted and disposed of as though commenced in terms of the provisions of this Act.

(5) Any licence issued under section 17 of the repealed Act 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 after which the licensee shall apply under this Act for an industrial licence or for a registration certificate.

40. Transitional provisions

The Minister may, by Order published in the *Gazette*, make such transitional arrangements as are necessary for the coming into operation of this Act.