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

[Date of Commencement: 25th November, 1988]

1. **Short title**

This Act may be cited as the Industrial Development Act.

2. **Interpretation**

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

   "application" means an application for a licence in accordance with section 9 to manufacture any product at any place in Botswana, an application for an exclusive licence, and includes an application to manufacture a different or additional product, an application to manufacture at a different or additional place, an application to transfer a licence to another person and an application for renewal of a licence;

   "Authority" means the Industrial Licensing Authority established under section 3;

   "licence" means a licence to manufacture issued under this Act, and an exclusive...
licence issued under section 11;

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

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

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

(a) is not a manufacturing enterprise wholly owned by citizens of Botswana or being a manufacturing enterprise wholly owned by citizens of Botswana employs, in the aggregate at any given moment anywhere in Botswana, ten or more persons, including managers, directors, or sales or clerical or other staff;

(b) any person not being a citizen of Botswana carries on by himself or with others; or

(c) irrespective of the number of persons employed therein, uses any engines, motors or other appliances providing energy derived from steam, water, sun, wind, electricity, the combustion of fuel or any other source of not less than 20 kilowatts or equivalent power in aggregate.

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

(a) the Botswana Meat Commission including any individual enterprise undertaken by that Commission;

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

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

(d) any co-operative society registered under the provisions of the Co-operative Societies Act;

(e) any manufacturing enterprise whose premises are licensed in terms of any regulations made under the provisions of the Hides and Skins Export Act;

(f) any diamond cutting licensed under the Diamond Cutting Act;

(g) the Botswana Vaccine Institute.

3. Establishment of the Industrial Licensing Authority

(1) There shall be an Industrial Licensing Authority consisting of a Chairman and such number of other members as the Minister may by notice published in the Gazette appoint.

(2) The Minister may designate a public officer to act as licensing officer and secretary to the Authority.

(3) The Authority shall meet at least once a month to consider all applications made
under the provisions of this Act.

(4) The Authority may, where it deems it necessary, in deciding upon any application take evidence on oath, summon witnesses or call for the production of any book, plan or document relating to such application.

(5) Any person who after being duly sworn gives evidence before the Authority on any matter relevant to the application under enquiry knowing such evidence to be false or not knowing or believing it to be true shall be guilty of an offence and liable to a fine of P1 000 or to imprisonment for twelve months or to both such fine and imprisonment.

4. Powers and duties of the Authority

The Authority shall be responsible for-

(a) the issue in accordance with the provisions of this Act of licences to manufacture any product for sale at any place in Botswana, and the suspension or cancellation of such licences for sufficient reasons;

(b) reviewing policy on industrial development and licensing with a view to advising the Minister thereon;

(c) the inspection of industrial enterprises to ensure that they are conducted in accordance with any regulations made under this Act and with the labour laws, and for this purpose to appoint authorised officers;

(d) collecting information and data required to monitor the industrial development of the country, and may for this purpose conduct such enquiries as it deems necessary.

5. Grounds for refusal of licence

Notwithstanding the provisions of section 6 the Authority may, after considering any application and any report or representation made thereon refuse or refuse in part the said application on one or other of the following grounds-

(a) that a licence for the manufacture of the product which the applicant proposes to manufacture has already been granted to some other person in respect of the same part of Botswana and such licence is an exclusive licence;

(b) that the applicant is a minor;

(c) that the issue of such a licence for the establishment of such a manufacturing enterprise at that place would conflict with any approved or proposed town planning scheme or zoning area or any health or other regulations;

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

6. General restrictions on power to issue licence

The Authority may refuse to issue a licence to any person who-

(a) is an unrehabilitated insolvent;
(b) has surrendered his estate for the benefit of his creditors;

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

7. Certain industries to be reserved for citizens

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

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

8. Licence requirement

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

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

9. Application for licence

(1) An application for a licence to carry on a manufacturing enterprise in Botswana after the date of the coming into force of this Act shall be made in the prescribed form to the Authority.

(2) Where a person is, immediately prior to the date of the coming into force of this Act, manufacturing any product in any place in Botswana, and has either already been licensed under the Industrial Development Act or did not require a licence under that Act such person shall be permitted a period of grace of three months from such date to apply for a licence and no application fee shall be payable in respect of such application.

(3) Upon receipt of an application under subsection (2) the Authority shall issue to the applicant a licence to manufacture that product at that place.

(4) Where an application other than an application under subsection (2) made by a licensed enterprise is granted, the applicant shall pay the prescribed licence fee at the time the licence is issued to him.

10. Application for new product or place of manufacture

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

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

The Chairman of the Authority may grant a temporary licence valid for a month to enable a licensee to renew his licence or, where he is satisfied that the default was for good and sufficient reason, to enable a licensee to commence production on a date later than that stipulated in his licence.

12. **Duplicate licence**

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

13. **Display of licence**

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

14. **Exclusive licences**

(1) An applicant may apply to the Authority for an exclusive licence to manufacture a particular product to the exclusion, either generally or in respect of any part of Botswana, of other manufacturers of that product.

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

(3) An exclusive licence may be granted-

(a) for a specified period of time; or

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

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

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

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

15. **Appointment of authorised officers**

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

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

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

16. Transfer of licences

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

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

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

(4) Any person who transfers, or is the transferee of a licence in contravention of the provisions of this section shall be guilty of an offence and liable to a fine of P1 000 and to imprisonment for 12 months, and in respect of every day on which the offence continues shall be liable to a further fine of P500 and to imprisonment for 3 months.

17. Appeal to Minister

(1) Any person aggrieved by a decision of the Authority-

(a) refusing to grant a licence;

(b) refusing a change or transfer of a licence; or

(c) cancelling a licence,

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

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

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

18. Minister's power

The Minister may-

(a) give directions on matters of policy to the Authority, which directions shall be followed by the Authority;
(b) amend, suspend or cancel any licence issued by the Authority if he is satisfied, after due inquiry and after giving the licensee an opportunity of being heard, that it is in the public interest or in the interest of the efficient development of the industry concerned that the licence should be amended, suspended or cancelled; any suspension under this paragraph may be made subject to such conditions as the Minister may deem fit;

(c) by regulations prescribe the circumstances that would be sufficient reason for the suspension or cancellation of a licence;

(d) give directions to the Authority in respect of the publication in the Gazette of notices for public information regarding the grant, cancellation, amendment or transfer of any or all licences;

(e) by regulations reserve certain types of manufacturing enterprises for citizens of Botswana;

(f) make regulations in relation to any other matter or thing required for the better administration of this Act.

19. **Licence renewable annually**

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

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

20. **Compliance with other laws**

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

21. **Duty to provide information and statistics**

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

22. **Offences and penalties**

   (1) Any person who knowingly makes a false statement in any application or in connection with any matter in respect of which he is required to give information under this Act shall be guilty of an offence, and shall be liable to a fine of P500 and to imprisonment for six months, and where a licence has been issued in connection with such false statement the court upon convicting any person of an offence under this subsection may, at the request of the prosecution, forthwith cancel such licence.

   (2) Any person who contravenes any provision of this Act for which no other penalty is prescribed, shall be guilty of an offence and shall be liable to a fine of P250 and to
imprisonment for three months.