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ACT NO. 10 OF 2014

Industrial Licensing Act, 2014

An Act to provide for the licensing of industrial enterprises and related matters.

Enacted by the Parliament of Lesotho

Short title and commencement

1. This Act may be cited as Industrial Licensing Act, 2014 and shall come into operation on the date to be determined by the Minister by notice published in the Gazette.

Interpretation

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

“Director” means the Director of Industry appointed as such in the Ministry responsible for trade and industry;

“enterprise” means an individual, entity or such other juristic person engaged in an industrial activity;

“industrial activity” means any action which subjects physical matter to any process which materially changes it in substance, nature, character or appearance, and includes processing and assembling activities;

“licence” means a document authorizing the holder to conduct the industrial activity stated therein;

“medium enterprise” means an enterprise which employs between 21 and 50 employees including the owner, with an annual turnover of less than M5,000,000.00;

“member” means a member of the Tribunal established under section 17;

“micro enterprise” means an enterprise which employs a maximum of 5 employees including the owner, with an annual turnover of less than

M200,000.00;

“Minister” means the Minister responsible for trade and industry;

“MSME” refers to micro, small and medium enterprises;

“person” includes a juristic person, syndicate or any other entity that may engage in an industrial activity;

“Principal Secretary” means the Principal Secretary for the Ministry responsible for trade and industry;

“small enterprise” means an enterprise which employs between 6 and 21 employees including the owner, with an annual turnover of less than M1,000,000.00;

“Tribunal” means the Industrial Licensing Appeal Tribunal established under section 17.

Objective of this Act

3. The objective of this Act is to promote private sector development through -

- (a) industrial licensing and regulatory framework that facilitates speedy issuing of industrial licences for all sizes of enterprises;
- (b) elimination of barriers to investment and industrial operations.

Application for licence

4. A person who intends to engage in a industrial activity shall apply in a prescribed form to the Director for an industrial licence and the application shall be accompanied by -

- (a) impact assessment reports on public health, occupational safety and environmental issues where necessary;

- (b) information on capital resources available;
- (c) information on the proposed location and activity;
- (d) the estimated number of jobs to be created; and
- (e) the prescribed application fee.

Issuance of licence

5. (1) The Director shall, within 5 working days of the receipt of the application, make a determination as to whether or not the application referred to in section 4 is approved.

(2) If the Director fails to make a determination under subsection (1), the Director shall be deemed to have approved the application for the licence and shall, upon request by the applicant, issue the licence.

(3) Notwithstanding subsections (1) and (2), the Director may, where necessary, request, in writing, the Principal Secretary to extend the period referred to in subsection (1) for a further 5 days.

(4) Where the Director makes a request under subsection (3), he or she shall inform the applicant of his or her decision before the expiry of the 5 working days referred to in subsection (1).

(5) In considering an application for a licence the Director shall take into account the following matters:

- (a) public health and safety;
- (b) national security; and
- (c) environmental protection.

(6) The Director shall, if satisfied that all the requirements set out in section 4 have been met and upon payment of the licence fee by the applicant, issue a licence which shall be in a prescribed form.

(7) The Director may impose such conditions as he or she may deem

necessary and such conditions shall be written legibly on such licence.

MSME development and pioneer industries

6. The Director may where necessary make recommendations to the Minister on incentives or other forms of assistance that may be extended to MSMEs and to pioneer industries.

Renewal of licence

7. (1) If the holder of a licence wishes to renew the licence, he or she may submit an application for renewal to the Director within one month before the expiry of the licence.

(2) Notwithstanding subsection (1), the application for renewal of a licence shall be submitted to the Director at least 7 days before the date of its expiry.

(3) If the licensee fails to submit the licence for renewal -

- (a) within 31 working days after the expiry of such licence, the Director may renew the licence subject to payment of late renewal fee to be prescribed in the regulations;
- (b) after 31 working days of the expiry of such licence, the Director may close the operations in accordance with section 31.

Suspension and cancellation

8. (1) A licence issued under this Act shall be valid for the period stated in it unless suspended or cancelled in accordance with the provisions of this Act.

(2) The Director may, after giving a hearing to a licensee, suspend or cancel the licence on grounds of -

- (a) ceasure of business operations;
- (b) failure to comply with rules and regulations related to health, environment, occupational safety and labour

standards;

- (c) using the licence for a purpose different from the one it was issued for or for fraudulent activity;
- (d) failure to comply with licence conditions; or
- (e) contravention of any other law relating to, or connected with, industrial enterprises.

Merger and acquisition

9. (1) Where there is a merger or an acquisition, the licences of the enterprises involved may, upon application, be transferred to the merged or acquiring enterprise.

(2) The head of the management of the merged or acquiring enterprises shall notify the Director of the merger or acquisition within 5 working days after the merger or acquisition becomes effective.

Display of licence

10. A licensee shall display the licence, at a conspicuous place, on the licensed premises at all times and produce the licence upon the request by the Director or any officer so authorised by the Director.

Records or books to be kept

11. (1) A licensee shall -
- (a) keep, for a period of at least 3 years, such records or books as are necessary to exhibit the state of affairs of the enterprise and to explain the transactions and the financial position of the enterprise;
 - (b) avail the records or books to the Director as and when the Director so requires.
- (2) Records or books referred to in subsection (1) include -

- (a) financial statements;
- (b) audit report;
- (c) employment figures;
- (d) source of raw materials and product destination;
- (e) operational challenges; and
- (f) order records and data.

Director of Industry

12. There is established the Office of the Director of Industry within the Ministry responsible for trade and industry.

Functions of the Director

13. (1) The Director shall be responsible for the implementation of this Act.
- (2) The Director shall:
- (a) provide licence application forms and provide advice and assistance in filling an application form;
 - (b) receive completed forms and conduct an immediate review and inform the applicant of any missing information immediately after such review;
 - (c) conduct inspection and prepare inspection report and facilitate inspection and preparation of impact assessment report on public health, occupational health, environment and labour issues to ease compliance with section 4;
 - (d) grant and issue a licence where he or she is satisfied that all the requirements have been complied with and where the application has not been approved, inform the appli-

cant of the decision within 5 days;

- (e) advise the applicant of further requirements to be complied with under any other law;
 - (f) record and annually up-date information relating to licensees and the information shall include industrial activity, employment created, target market and any other related information;
 - (g) publish a list of enterprises operating without valid licenses, those with outstanding fines and those found to have contravened any law relating to their operations in Lesotho;
 - (h) conduct training and awareness campaigns in relation to developments and international requirements on industrial operations and international trade;
 - (i) design and publish an Industrial Development Activity Bulletin;
 - (j) develop risk-based inspection schedules including procedures for verification and validation of active licences and risk-based automatic licence renewals; and
 - (k) do anything in relation to industrial licensing pursuant to the provisions of this Act or regulations made thereunder.
- (3) The Director may -
- (a) at any reasonable time, conduct an inspection and in so doing may enter any business premises to determine if the licensee complies with the provisions of this Act and licence conditions;
 - (b) during the inspection and if the licensee agrees, conduct any other activity of support including support of educational nature and the Director and licensee shall jointly

determine the nature and content of such an activity;

- (c) in conducting the inspections, demand that the licensee -
 - (i) produce the licence, permit or certificate required under any other law; and
 - (ii) provide information on the operations of the enterprise and any other relevant information;
- (d) notify a relevant Government agency of any irregularity or contravention of any other law identified during the inspection.

Liability of manager and director

14. (1) A person who, at any time, is managing, supervising or conducting industrial operations on behalf of the licensee shall be subject to the same penalties under this Act as the licensee, but this section shall not be interpreted to relieve the licensee from obligations and penalties to which he or she may be liable to.

(2) Where the licensee is a company, the Director may require the directors of the company, either jointly or severally, to discharge the obligations and pay all the penalties imposed on the company.

Extension and exemption

15. The Minister may, upon recommendation of the Director -

- (a) extend the periods of time in respect of which the obligations under this Act shall be complied with; and
- (b) exempt micro, small and medium enterprises and a specific category of business from the application of this Act to the extent and on such conditions as may be prescribed in the regulations.

Appeals

16. (1) A person -
- (a) whose application for a licence is declined;
 - (b) whose licence is cancelled or suspended;
 - (c) whose operations have been closed; or
 - (d) who is not satisfied with any decision made in the exercise of powers under this Act,

may, within 15 days after the decision, lodge an appeal with the Tribunal and state the reasons for the appeal.

(2) The Tribunal shall determine an appeal not later than 14 working days after the receipt of notice of appeal, and failure to do so may be deemed to be a decision in favour of the appellant and the Tribunal shall, upon request by the appellant, issue a written statement to the effect that the appeal has been upheld.

(3) A person who is aggrieved by the decision of the Tribunal under this section shall be entitled to a review of the decision by the Commercial Court.

(4) The Tribunal may, in considering an appeal, affirm, modify or revoke a decision made under this Act.

Establishment of the Industrial Licensing Appeal Tribunal

17. There is established the Industrial Licensing Appeal Tribunal which shall hear appeals from the decisions of the Director.

Composition

18. The Tribunal shall consist of -
- (a) a chairperson who shall be an independent legal practitioner;

- (b) 2 other independent persons with experience, knowledge and expertise in economics and public administration; and
- (c) 3 alternate persons of similar credentials and integrity who shall serve when any member is not able to participate in the proceedings.

Appointment

19. (1) A member of the Tribunal shall be appointed for a period of 3 years.

(2) A member shall be appointed by the Minister.

(3) The Minister shall appoint the Chairperson after consultation with the Attorney General.

(4) The Minister shall cause the names of the members to be published in the Government Gazette.

Vacation of office

20. A member shall cease to hold office if the member -

- (a) dies or resigns;
- (b) is removed from office of trust because of misconduct, or is convicted of fraud or an offence involving dishonesty or is engaged in dishonourable conduct;
- (c) is declared bankrupt or insolvent;
- (d) becomes a member of Parliament or a partisan.

Qualification for appointment as member

21. A person shall not be appointed as a member if he or she -

- (a) is below the age of 18;

- (b) is of unsound mind;
- (c) has in terms of any law in any country -
 - (i) been declared insolvent and has not been rehabilitated or discharged; or
 - (ii) made an assignment to, arrangement or composition with his creditors which has not been rescinded or set aside;
- (d) has been convicted of fraud or of an offence involving dishonesty;
- (e) is a member of Parliament or is a partisan; or
- (f) is removed from office of trust because of misconduct.

Conduct of members and disclosure of interest

22. (1) A member shall not -
- (a) engage in any activity that may undermine the integrity of the Tribunal;
 - (b) participate in any deliberations concerning a matter in which the member has a financial or other personal interest;
 - (c) use any confidential information obtained in the performance of his or her functions as a member to procure, directly or indirectly, a financial or other advantage either personally or for any other person.
- (2) A member who has or acquires any financial or other personal interest, either directly or indirectly, in any matter which is before the Tribunal shall -
- (a) immediately and fully disclose the interest to other members; and

(b) recuse himself or herself from the proceedings.

(3) A member who fails to comply with this section commits an offence and shall be liable on conviction to a fine of M50,000.00 or imprisonment for a period of one and a half years or both.

Remuneration of member and expenses

23. A member shall be paid such allowances as the Minister may determine after consultations with the Minister responsible for finance.

Proceedings

24. (1) An appeal shall heard by 3 members and where a member is not able to participate for any reason, the chair shall call upon an alternate member to serve.

(2) The decisions of the Tribunal shall be taken by majority.

(3) The chair may appoint an expert to assist it in the proceedings and the expert may sit with the Tribunal and assist as requested but is not a member of the Tribunal.

(4) Except as provided in this Act and the regulations, the Tribunal shall regulate its own proceedings without procedural formalities but shall observe rules of natural justice.

(5) The Tribunal shall consider any directive concerning industrial policy given to the Tribunal by written memorandum signed by the Minister.

(6) The Tribunal shall not be bound by rules of evidence and may inform itself on any matter as it considers appropriate.

(7) The Tribunal may, on its initiative make investigations and inquiries and seek and receive evidence additional to that tendered by the parties to the proceedings.

(8) A party to the proceedings before the Tribunal shall bear his or her own costs and the Tribunal shall not make any order as to costs except where the appeal is found frivolous whereby the Tribunal may order costs against the

appellant.

Powers

25. The Tribunal shall have the power to -

- (a) summon any person to give evidence before it;
- (b) administer oaths;
- (c) demand production of documents and data material;
- (d) where necessary, because of the confidential nature of the evidence or for any other reasons, hear an appeal wholly or partly in camera.

Secrecy and confidentiality requirement of members

26. (1) A member shall not disclose information acquired during the proceedings and such information shall be treated as confidential.

(2) A member who contravenes subsection (1) commits an offence and may upon conviction be liable to a fine of M20,000.00 and shall forfeit all allowances payable to him.

Representation

27. (1) An appellant shall appear before the Tribunal personally and may be represented by a legal practitioner.

(2) A person appearing before the Tribunal to give evidence or produce documents shall not be excused from answering a question or producing a document on the ground that the answer to the question or production of document may tend to incriminate the person.

(3) A person who satisfied the Tribunal that they have a substantial interest in a proceeding may appear and be heard in that proceeding and may produce evidence and cross examine witnesses.

Decision of the tribunal

28. (1) The decision of the Tribunal shall be given orally and in writing and shall contain the reasons for the decision.

(2) A party to the proceedings of the Tribunal shall be entitled, upon request, to be given free of charge, the record of the proceedings or the decision of the Tribunal.

Authentication of documents

29. A document requiring authentication by the Tribunal shall be sufficiently authenticated if it is signed by the chair of the Tribunal.

Correction of errors

30. The Tribunal shall have powers at any time, by certificate signed by the Chairperson, to correct any error arising from an accidental slip or omission in a decision or order of the Tribunal.

Offences and penalties

31. (1) A person who engages in industrial operations without a valid licence commits an offence and shall be liable, on conviction to a fine of M1000.00 for each day the contravention continues or to imprisonment for a period of 6 months or both.

(2) For purposes of subsection (1), a licence issued under this Act is valid unless expired, suspended or cancelled in accordance with the provisions of this Act.

(3) A person who -

- (a) provides false information or deliberately withholds Information required under this Act;
- (b) obstructs or refuses the Director entry or access to the industrial operations or processes;
- (c) fails to -

- (i) renew a licence;
- (ii) produce a licence when so required; or
- (iii) comply with the Act or the licence conditions;
- (d) frustrates the inspection or carrying out of powers under this Act or the regulations;
- (e) operates without a licence,

commits an offence and shall be liable, on conviction to a fine of M500, 000.00 or imprisonment for a period of 3 years or both.

(4) The Director may, with the assistance of the Commissioner of Police, close an industrial operation if the licensee -

- (a) fails to renew the licence as provided in section 7; or
- (b) operates -
 - (i) without a licence; or
 - (ii) with a suspended or cancelled licence.

(5) The Court, before which a person is prosecuted for an offence against this Act or the regulations, or licence conditions may, in addition to any order upon conviction or a determination that an offence has been committed -

- (a) order that equipment, appliances and all assets used in the commission of the offence be forfeited to the State and be disposed of as the court directs;
- (b) order the licensee or in the case of a body corporate, a manager or director to undertake community work.

Regulations

32. (1) The Minister may make regulations for the purposes of giving

effect to the objectives of this Act.

(2) Without prejudice to the generality of subsection (1) the regulations may prescribe -

- (a) types of licences which may be based on potential risk to public health, national security or protection of the environment or any other matter;
- (b) entry threshold for foreign investment in industrial activities;
- (c) risk based inspection schedules including procedures for verification and validation of active licenses and risk based automatic renewal;
- (d) application forms and all matters relating to the handling of applications;
- (e) application and licence fees;
- (f) forms to be used for the issue of licences;
- (g) the general conditions attached to licences;
- (h) the duration of licences;
- (i) the procedure to be followed where an enterprise is to be closed under section 31;
- (j) all matters relating to operation of the Tribunal;
- (k) specific regulations for micro, small and medium enterprises including conditions applicable to business referred to in section 15(b); and
- (l) any other matter required to be prescribed by the Minister under this Act.

(3) The Minister -

- (a) shall review the fees referred to in subsection (2)(e) and any fee payable under the Act or the regulations made pursuant to this section every 3 years;
- (b) may, by notice published in the Gazette, amend a fine payable under this Act.

Repeals and savings

33. (1) The Industrial Licensing Act of 1969¹ is repealed.

(2) Notwithstanding the provisions of subsection (1), upon the coming into operation of this Act -

- (a) a licence granted under the Industrial Licensing Act, 1969 shall continue to be in force until its expiry and may be renewed under this Act; and
- (b) any pending application for a licence shall be processed under this Act.

NOTE

1. Act No. 27 of 1969

GOVERNMENT NOTICE NO. 47 OF 2014

The Parliament of Lesotho**Statement of Objects and Reasons of the
Industrial Licensing Act, 2014****(Circulated by the authority of the Minister
of Trade and Industry, Cooperatives and Marketing)**

The Licensing regime for the manufacturing activities under the Industrial Licensing Act No. 27 of 1969 has proven to be too long and cumbersome, time consuming and costly in business terms and as such a barrier to investment. To create an enabling environment that facilitates manufacturing activities and investment in Lesotho there was a need for the review of the 1969 Act.

The purpose of the Industrial Licensing Bill, 2014 is to facilitate and promote industrial development and small, micro and medium enterprises (SMMES) through a new regulatory regime which is simple, short, cost effective and responsive to the needs of investors. The licensing powers are vested on the Director of Industry, this makes the licensing procedure short and simple which consequently will save time and money for the investors as applications will be considered as soon as they are lodged.

The Bill encourages SMME development by providing a possibility of different licence fees for SMMES. Further, the Minister is empowered to exempt some business categories from the application of the Act whereby the Minister could use such powers in favour of SMMES. This will promote entrepreneurship and creation of private wealth as the SMMES will be able to operate easily and without too much regulation.