

REPUBLIC OF SOUTH AFRICA

WINE AND SPIRIT CONTROL AMENDMENT BILL

*(As amended by the Portfolio Committee on Agriculture, Water Affairs and Forestry
(National Assembly))*

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 115B—97]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP BEHEER OOR WYN EN SPIRITUS

*(Soos gewysig deur die Portefeuljekomitee oor Landbou, Waterwese en Bosbou (Nasionale
Vergadering))*

(MINISTER VIR LANDBOU EN GRONDSAKE)

[W 115B—97]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Wine and Spirit Control Act, 1970, so as to insert and to delete certain definitions; to authorise the utilisation of the research levy for additional purposes; to provide for the control and management of the wine and spirit industry during a transitional phase; to establish a management authority; to authorise the designation of assignees to enforce and administer that Act or certain provisions thereof; to make certain textual alterations; and to provide for the lapsing of that Act at the end of the transitional phase; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: —

Amendment of section 1 of Act 47 of 1970, as amended by section 1 of Act 70 of 1972, section 1 of Act 74 of 1974, section 1 of Act 87 of 1980, section 1 of Act 44 of 1983, section 1 of Act 36 of 1988, section 32 of Act 60 of 1989 and section 1 of Act 87 of 1990 5

1. Section 1 of the Wine and Spirit Control Act, 1970 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the substitution for the words preceding the definition of “absolute alcohol” of the following words: 10
 “**In this [Chapter] Act**, unless the context otherwise indicates —”;
- (b) by the insertion of the following definition after the definition of “absolute alcohol”:
 “‘assignee’ means a juristic person designated as such in terms of item 15
 5(c) of Schedule 2;”;
- (c) by the substitution for the definition of “co-operative society” of the following definition:
 “‘co-operative society’ means a co-operative society or co-operative company (other than the **[vereniging] KWV** or a co-operative trading society or a central or federal co-operative trading company) which deals 20
 with products of winegrowers and has been registered under the law relating to co-operative societies and companies;”;

- (d) by the insertion after the definition of “distiller” of the following definitions:
 “‘interest group’ means any group of persons who take part in the production purchase, sale, processing or consumption of wine or spirit, and includes labour employed in the production and processing of wine and spirit; 5
‘KWV’ means KWV Co-operative Limited, and any juristic person in which it has the controlling share;”;
- (e) by the insertion after the definition of “liquor product” of the following definition:
 “‘management authority’ means the management authority established by item 1 of Schedule 2;”; and 10
- (f) by the deletion of the definition of “vereniging”.

Amendment of section 2 of Act 47 of 1970, as amended by section 2 of Act 44 of 1983, section 32 of Act 60 of 1989 and section 2 of Act 87 of 1990

2. Section 2 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph: 15

“(a) No winegrower shall sell or otherwise dispose of any spirit or brandy obtained by him **[from the vereniging]** or distilled from wine which has been produced by him or has been derived from grapes purchased or otherwise acquired by him, except through or with the consent of the **[vereniging]** management authority.”. 20

Substitution of section 8 of Act 47 of 1970

3. The following section is hereby substituted for section 8 of the principal Act:

“Appeal on question of alleged unfair dealing or unjust treatment

8. Whenever, in respect of any agreement between the **[vereniging]** management authority or the KWV, as the case may be, and any distiller, wholesale trader or association of distillers or wholesale traders, it is alleged by either party that any transaction or arrangement entered into by **[either]** any party to the said agreement with a third party constitutes unfair dealing or unjust treatment, such aggrieved party may, with the consent of the Minister, appeal to a board of appeal constituted as provided in section 7.”. 25 30

Amendment of section 51 of Act 47 of 1970, as amended by section 10 of Act 87 of 1980 and substituted by section 31 of Act 87 of 1990

4. Section 51 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 35

- “(2) The **[vereniging]** management authority may use or transfer to a juristic person for such use so much of the moneys in such account as the Minister may from time to time approve, after consideration of an estimate containing all particulars determined from time to time by the Minister and submitted to him by the **[vereniging]** management authority, in such manner and at such times as it may deem fit for aiding or promoting research, **[and]** furnishing information, developing and transferring technology, provision of training and improving the general competitive advantage, in the Republic or elsewhere, in respect of— 40
- (a) the cultivation of vines of wine-grape varieties, including rootstocks used in the cultivation of such vines; 45
- (b) the production of wine, other fermented or distilled products of the grape or grape juice; or
- (c) economic and other matters incidental thereto.”.

Substitution of section 56A of Act 47 of 1970, as inserted by section 11 of Act 36 of 1988 50

5. The following section is hereby substituted for section 56A of the principal Act:

“Restriction of liability

56A. The [vereniging] KWV, its officers and employees [or] and any member of a committee appointed by the [vereniging] KWV, the management authority and its members and an assignee, its employees and agents shall not be liable in respect of anything done or omitted in good faith in the exercise of a power or the performance of a duty under or by virtue of this Act or the regulations made thereunder, or in respect of anything which may arise therefrom.”. 5

Insertion of sections 58A, 58B, 58C and 58D in Act 47 of 1980

6. The following sections are hereby inserted in the principal Act after section 58: 10

“Transitional measure

58A. As from the date of commencement of the Wine and Spirit Control Amendment Act, 1998, this Act shall be deemed to have been amended by and shall be administered in accordance with Schedule 2.

Saving 15

58B. Notwithstanding the amendments effected to this Act by the Wine and Spirit Control Amendment Act, 1998, anything done, agreed to or undertaken in terms of this Act prior to those amendments, by the Minister or the KWV as agreed to by the Minister, shall not be rendered invalid merely as a result of those amendments. 20

Repeal of sections

58C. Sections 3, 17, 18(7) and 27 shall be repealed simultaneously on 30 June 1999, or on a date determined by the Minister in the Gazette, whichever date may occur first.

Lapsing of this Act 25

58D. This Act shall lapse and the laws mentioned in Schedule 3 be repealed to the extent indicated in the third column of Schedule 3—
(a) on a date determined by the Minister in the Gazette in consultation with the management authority; or
(b) on 30 June 1999,
whichever date may occur first.”. 30

Substitution of word “vereniging” in Act 47 of 1970

7. The principal Act is hereby amended by— 35
 (a) the substitution for the word “vereniging”, wherever it occurs in sections 3, 17, 18 (7) and 27, of the expression “KWV”; and
 (b) subject to the provisions of the Wine and Spirit Control Amendment Act, 1998, the substitution for the word “vereniging”, wherever it occurs, of the words “management authority”.

Addition of Schedules

8. The following Schedules are hereby added to the principal Act, the existing Schedule becoming Schedule 1: 40

“Schedule 2**Establishment of management authority**

1. There is hereby established a juristic person to be known as the management authority, with the capacity to sue and be sued in its own name. 45

Constitution of management authority

2. (1) The management authority shall consist of the nominated representatives of the interest groups in the wine and spirit industry determined by the Minister.

(2) The Minister shall invite nominations from the interest groups in the wine and spirit industry and —

(a) in the case of the constitution of the management authority where assignees have not been designated in terms of this Act, subject to subitem (3), appoint not more than nine persons from those nominations and not more than three persons in the discretion of the Minister, as members of the management authority; or

(b) in the case of the constitution of the management authority where assignees have been designated in terms of this Act, appoint not more than three persons as additional members of the management authority from those nominations.

(3) The Minister shall include representation of small-scale and historically disadvantaged farmers on the management authority.

(4) The Minister shall designate the chairperson and vice-chairperson of the management authority from the members of the management authority.

Meetings and recommendations of management authority

3. (1) The management authority shall meet for the first time at the time and place determined by the Minister and thereafter at the times and places determined by the chairperson or, if he or she is absent, the vice-chairperson.

(2) When the chairperson is absent or not able to perform his or her functions, the vice-chairperson shall act as chairperson and, if both the chairperson and the vice-chairperson are absent from a meeting or not able to perform their functions, the members present shall elect a person from their ranks to preside at that meeting.

(3) The management authority shall determine the procedure for calling a meeting, the procedure to be followed at meetings, and the times when and the manner in which members of the management authority shall be notified of meetings.

(4) The majority of the members of the management authority shall constitute a quorum for a meeting of the management authority.

(5) In any decision or advice to the Minister, the minority views of any one or more members of the management authority, as well as any relevant report emanating therefrom, shall be reflected therein.

(6) No decision or recommendation by the management authority or action taken on authority of such decision or recommendation shall be invalid merely because of a casual vacancy in the management authority or because a person who was not entitled to sit as member of the management authority did sit as such when the decision was taken or the recommendation was formulated.

Administration and finances of management authority

4. (1) The officers or employees appointed in terms of the laws governing the public service that are needed by the management authority for the proper exercise of its powers and performance of its duties may be designated by the Director-General of the Department of Agriculture after consultation with the management authority.

(2) Notwithstanding anything to the contrary contained in any law or in the absence of any express provision to that effect, any levy imposed in terms of section 22 may also be utilised —

(a) to remunerate the members of the management authority;

(b) to pay for professional and secretarial services rendered to the management authority, other than services rendered in terms of subitem (1); and

(c) to reimburse an assignee for services rendered.

(3) The funds of the management authority shall consist of money received from the payment of the levies imposed in terms of sections 22 and 48.

(4) The management authority shall utilise its funds for the defraying of expenses in connection with the performance of its functions.

(5) The chairperson of the management authority shall be the accounting officer charged with the responsibility of accounting for all money received and the utilisation thereof.

(6) The accounting officer shall ensure that proper books and financial records are kept by the management authority, which books and records shall be audited by the Auditor-General.

(7) The accounting officer shall submit year end financial statements to the Minister within four months after the end of the financial year.

(8) The financial year shall be the period from 1 January to 31 December of any year.

Functions of management authority

5. The management authority—

(a) shall, subject to the provisions of paragraph (c) and item 2(4) exercise the powers and perform the duties conferred upon or assigned to the management authority in terms of this Act;

(b) may enter into an agreement with a juristic person having particular knowledge of the wine and spirit industry at its disposal, for the purposes of the administration and enforcement of this Act or certain provisions thereof;

(c) shall, in pursuance of an agreement contemplated in paragraph (b), for the purposes of the application of the administration and enforcement of this Act or certain provisions thereof, designate such juristic person having particular knowledge of the wine and spirit industry at its disposal, as an assignee in respect of this Act or certain provisions thereof;

(d) may, in pursuance of an agreement contemplated in paragraph (b), in writing, direct an assignee to administer and enforce this Act or certain provisions thereof in a specified manner;

(e) may, in terms of an agreement contemplated in paragraph (b), arrange the payment of remuneration to its members and the reimbursement of an assignee for services rendered, from the levies paid under this Act;

(f) may, in terms of an agreement contemplated in paragraph (b), arrange the diversion of levies paid under this Act to an assignee for services rendered; and

(g) may advise the Minister on the regulatory system which may replace this Act.

Functions of KWV

6. The KWV shall, subject to the restrictions in terms of sections 3 and 17, and subject to the repeal of these sections contemplated in section 58C, perform the duties conferred upon or assigned to it and fulfill the obligations imposed on it in terms of this Act.

Functions of assignee

7. (1) An assignee shall—

(a) subject to the directions of the management authority, exercise the powers and perform the duties that are conferred upon or assigned to the management authority in terms of this Act, in terms of the designation;

(b) notwithstanding anything to the contrary contained in any law or in the absence of any express provision to that effect, be competent to exercise the powers and perform the duties referred to in paragraph (a); and

- (c) unless it is otherwise agreed by the management authority in terms of item 5(b), have no recourse against the State in respect of any expenses incurred in connection with the exercise of those powers or the performance of those duties.
- (2) The chief executive official of an assignee — 5
- (a) shall act on behalf of that assignee in the exercise of the powers and the performance of the duties concerned; and
- (b) may in writing delegate or assign to an employee or agent of that assignee any power or duty which the assignee concerned may exercise or perform in terms of this Act, or in writing authorise any such employee to exercise such power or perform such duty. 10

Schedule 3

Laws repealed

No. and year of law	Title	Extent of Repeal	
No. 70 of 1972	Wine and Spirit Control Amendment Act, 1972	The whole	15
No. 74 of 1974	Wine and Spirit Control Amendment Act, 1974	The whole	20
No. 26 of 1975	Wine and Spirit Control Amendment Act, 1975	The whole	
No. 62 of 1975	Second Wine and Spirit Control Amendment Act, 1975	The whole	25
No. 69 of 1976	Wine and Spirit Control Amendment Act, 1976	The whole	30
No. 47 of 1978	Wine and Spirit Control Amendment Act, 1978	The whole	
No. 87 of 1980	Wine and Spirits Amendment Act, 1980	The whole	35
No. 44 of 1983	Wine and Spirit Control Amendment Act, 1983	The whole	
No. 63 of 1984	Wine and Spirits Amendment Act, 1984	The whole	40
No. 97 of 1986	Transfer of Powers and Duties of the State President Act, 1986	Those items in Schedules 1 and 2 that have reference to Act No. 47 of 1970	45
No. 36 of 1988	Wine and Spirit Amendment Act, 1988	The whole	
No. 60 of 1989	Liquor Products Act, 1989	That item in the Schedule that has reference to Act No. 47 of 1970	50
No. 87 of 1990	Wine and Spirit Control Amendment Act, 1990	The whole	
No. 49 of 1996	General Law Amendment Act, 1996	That item in the Schedule that has reference to Act No. 47 of 1970"	55

Short title and commencement

9. This Act shall be called the Wine and Spirit Control Amendment Act, 1998, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 60

MEMORANDUM ON THE OBJECTS OF THE WINE AND SPIRIT CONTROL AMENDMENT BILL

1. The proposed amendments to the Wine and Spirit Control Act, 1970 (Act No. 47 of 1970), consist of urgent technical amendments that have become necessary as a result of the imminent conversion of the Koöperatiewe Wynbouersvereniging (hereinafter referred to as "the KWV"), which is the main functionary in terms of the Act, from a co-operative society into a company. The effect that the KWV's new status could have on its role as the enforcer of the Act is a source of serious concern in the national Department of Agriculture and the wine and spirit industry.

2. The proposed amendments to the Act envisage a transitional phase during which existing regulation in terms of the Act can be phased out and a new official policy can be formulated with regard to possible future regulation of the wine and spirit industry. It is feared that the Act could become legally unenforceable if it is not suitably amended.

3. The Minister for Agriculture and Land Affairs appointed a committee, known as the Committee to Investigate Regulation of the Wine and Distillation Industry to *inter alia* examine and comment on the existing regulatory environment in the industry concerned and to report on what regulation is desirable for the industry in the short, medium and long term.

4. That committee recommended—

- (a) that the Act should be repealed in its entirety by the date of the conversion of the KWV to a company;
- (b) that irrespective of the possible effect of the conversion of the KWV on the Act, a committee consisting of the Department, the KWV and the Cape Wine and Spirit Institute (an NGO representing wholesalers and distillers in the industry — hereinafter referred to as "the CWSI"), be appointed by the Minister to enforce and take full accountability for the Act until the actual date of repeal by Parliament; and
- (c) that an alternative regulatory framework for the utilisation of assets accumulated in the course of the exercise of statutory powers and the activities of the KWV should be agreed to between all stakeholders and put in place prior to the repeal of the Act.

5. The Minister subsequently appointed a task team to *inter alia* formulate draft legislation to facilitate more representative management of the Act. The task team, consisting of representatives from the Department, KWV and the CWSI, drafted the Bill.

6. The amendments to the Act envisage a transitional phase during which a statutory management authority is appointed by the Minister to take over the enforcement of and full accountability for the Act. It is envisaged that this phase should be concluded by the repeal of the Act by not later than 30 June 1999.

7. The proposed management authority will during the transitional phase be supplied with personnel through Departmental secondments, KWV secondments or temporary staff, or a combination of the three sources, depending on the personnel requirements of the management authority. There are therefore no personnel implications.

8. The proposed amendments to the Act include provisions for the financing of the management authority from an existing wine industry levy since the Department could not make provision in its budget for that purpose during the prescribed transitional phase, i.e. not later than 30 June 1999. The financing of the management authority therefore does not represent additional state expenditure.

9. The proposed Bill is the result of intensive negotiations between the following parties:

The Minister for Agriculture and Land Affairs
The national Department of Agriculture
KWV
CWSI

10. The national Department of Agriculture and the State Law Advisers are of the opinion that this Bill should be dealt with in accordance with section 76 of the Constitution of the Republic of South Africa, 1996.