

REPUBLIC OF SOUTH AFRICA

LIQUOR BILL

(As amended by the Select Committee on Economic and Foreign Affairs (National Council of Provinces))

(MINISTER OF TRADE AND INDUSTRY)

[B 131B—98]

REPUBLIEK VAN SUID-AFRIKA

DRANKWETSONTWERP

(Soos gewysig deur die Gekose Komitee oor Ekonomiese en Buitelandse Sake (Nasionale Raad van Provinsies))

(MINISTER VAN HANDEL EN NYWERHEID)

[W 131B—98]

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BILL

To maintain economic unity and essential national standards in the liquor trade and industry; to regulate the manufacture, distribution and sale of liquor on a uniform basis; to facilitate the entry and empowerment of new entrants into the liquor trade; and to address and reduce the economic and social costs of excessive alcohol consumption; and to provide for matters connected therewith.

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

Definitions

- 1.** (1) In this Act, unless the context indicates otherwise—
- (i) “advisory committee” means the National Liquor Advisory Committee established by section 4; 5
 - (ii) “any other law” includes the common law;
 - (iii) “appeal tribunal” means the National Liquor Appeal Tribunal established by section 17(1);
 - (iv) “beer” means— 10
 - (a) a drink manufactured by the fermentation of a mash of malt, with or without cereals and flavoured with hops;
 - (b) ale, cider or stout; or
 - (c) any substance or other fermented drink— 15
 - (i) manufactured as or sold under the name of beer, ale, cider or stout; or
 - (ii) declared to be beer under subsection (2)(a), if it contains more than one per cent by volume of alcohol, but does not include sorghum beer;
 - (v) “chairperson” means the relevant chairperson appointed in terms of section 19; 20
 - (vi) “Companies Act, 1973” means the Companies Act, 1973 (Act No. 61 of 1973);
 - (vii) “controlling interest”, in relation to— 25
 - (a) any business or undertaking, means any interest of whatever nature enabling the holder thereof to exercise, directly or indirectly, any control whatsoever over the activities or assets of the business or undertaking; and
 - (b) any asset, means any interest of whatever nature enabling the holder thereof to exercise, directly or indirectly, any control whatsoever over the asset; 30
 - (viii) “co-operative” means a co-operative as defined in the Co-operatives Act, 1981 (Act No. 91 of 1981);

- (ix) “court” means a competent court in its area of jurisdiction; (xix)
- (x) “department” means the national department responsible for liquor matters;
- (xi) “Director-General” means the Director-General of the department; (xi)
- (xii) “financial year” means—
 - (a) the period from the date on which this Act takes effect to the last day of 5
March in the following year; and
 - (b) each period of 12 months thereafter ending on the last day of March;
- (xiii) “inspector” means an inspector designated in terms of section 60(1); (xx)
- (xiv) “liquor” means—
 - (a) any liquor product as defined in section 1 of the Liquor Products Act, 10
1989;
 - (b) any beer or sorghum beer; and
 - (c) any other substance or drink declared to be liquor under subsection
(2)(b);
- (xv) “Liquor Act, 1989” means the Liquor Act, 1989 (Act No. 27 of 1989); (xiii) 15
- (xvi) “Liquor Products Act, 1989” means the Liquor Products Act, 1989 (Act No.
60 of 1989);
- (xvii) “manufacturer” means—
 - (a) any manufacturer of liquor;
 - (b) any wine farmer; 20
 - (c) any rectifier, blender, broker, distiller, bottler or importer; or
 - (d) any officer, director, agent or affiliate of any person referred to in
paragraphs (a), (b) and (c);
- (xviii) “methylated spirit” means—
 - (a) spirit denatured in accordance with any law on the denaturation or 25
methylation of spirit;
 - (b) any other denatured, medicated, perfumed or otherwise treated spirit
declared to be methylated spirit under subsection (2)(d);
- (xix) “Member of the Executive Council” means the Member of the Executive
Council of a province to whom the Premier concerned assigned the 30
responsibility for liquor matters in that province;
- (xx) “micromanufacturer” means a producer of liquor who in a calendar year does
not produce more than the prescribed volume contemplated in section
27(a)(ii);
- (xxi) “Minister” means the Minister responsible for liquor matters in the national 35
sphere of government;
- (xxii) “municipality” means a municipality in terms of section 10B of the Local
Government Transition Act, 1993 (Act No. 209 of 1993);
- (xxiii) “national authority” means the National Liquor Authority established by
section 9; 40
- (xxiv) “organ of state” means an organ of state as defined in section 239 of the
Constitution;
- (xxv) “panel of appeal” means a body established under section 17(2);
- (xxvi) “person” includes a trust or co-operative;
- (xxvii) “premises” includes any place, land, building or conveyance, or any part 45
thereof;
- (xxviii) “prescribe” means prescribe by regulation;
- (xxix) “provincial authority” means a body established under section 14 of this Act;
- (xxx) “provincial department” means the department responsible for liquor matters
in a province; 50
- (xxxi) “register” means the relevant register referred to in section 44(1)(a);
- (xxxii) “registered person” means a person to whom a certificate of registration has
been issued or who is deemed to be registered in terms of this Act;
- (xxxiii) “registered premises” means premises in respect of which a certificate of
registration has been issued; 55
- (xxxiv) “regulation” means a regulation made under this Act;
- (xxxv) “relevant authority” means the national authority or a provincial authority, as
the case may be;
- (xxxvi) “retailer” means any person registered for a category of registration
contemplated in section 27(c) or (d); 60

- (xxxvii) “sell” includes exchange or keep, offer, display, deliver, supply or dispose of for sale, or authorise, direct or allow a sale;
- (xxxx) “South African citizen” means a South African citizen in terms of the South African Citizenship Act, 1995 (Act No. 80 of 1995);
- (xxxix) “sorghum beer” means — 5
- (a) the drink generally known as sorghum beer and commonly manufactured from grain sorghum, millet or other grain;
 - (b) any other drink manufactured or sold under the name of sorghum beer;
 - (c) any other grain or cereal and vegetable or fruit extract which would result in becoming liquor by fermentation by the addition of water-based liquid irrespective of whether or not it is known as sorghum beer; or 10
 - (d) any other substance or fermented drink declared to be sorghum beer under subsection (2)(c);
- (xl) “supply” with regard to any liquor, means to place a person in possession or control of the liquor; 15
- (xli) “this Act” includes any regulation or notice made or issued under this Act;
- (xlii) “wholesaler” means any person registered for the category of registration contemplated in section 27(b).
- (2) The Minister may by notice in the *Gazette*—
- (a) declare any substance or fermented drink other than the drinks contemplated in paragraphs (a), (b) and (c)(i) of the definition of “beer” in subsection (1), to be beer for the purposes of this Act; 20
 - (b) declare any substance or drink other than the liquor contemplated in paragraphs (a) and (b) of the definition of “liquor” in subsection (1), to be liquor for the purposes of this Act; 25
 - (c) declare any substance or fermented drink other than the drink contemplated in paragraphs (a) and (b) of the definition of “sorghum beer” in subsection (1), to be sorghum beer for the purposes of this Act; and
 - (d) declare any denatured, medicated, perfumed or otherwise treated spirit other than the spirit contemplated in paragraph (a) of the definition of “methylated spirit” in subsection (1), to be methylated spirit for the purposes of this Act. 30

CHAPTER 1

OBJECTS AND APPLICATION OF ACT

Objects of Act

2. The objects of this Act are to maintain economic unity and essential national standards in the liquor trade and industry, to encourage and support the liquor industry and to manage and reduce the socio-economic and other costs of excessive alcohol consumption by— 35
- (a) establishing a national and uniform administrative and regulatory framework within which the liquor industry can conduct its business; 40
 - (b) creating an environment in which—
 - (i) the entry of new participants into the liquor industry is facilitated;
 - (ii) appropriate steps are taken against those selling liquor outside the administrative and regulatory framework established in terms of this Act;
 - (iii) those involved in the liquor industry may attain and maintain adequate standards of service delivery; 45
 - (iv) community considerations on the registration of retail premises are taken into account; and
 - (v) the particular realities confronting the liquor industry can be addressed; and 50
 - (c) promoting a spirit of co-operation and shared responsibility within all spheres of government, and among other interested persons in their dealings with consumers of liquor and in their attempt to address the socio-economic costs and health and other related problems associated with excessive alcohol consumption. 55

Application of Act and conflict with other laws

- 3.** (1) This Act shall not apply to—
- (a) an officer as defined in section 1(1) of the Customs and Excise Act, 1964 (Act No. 91 of 1964), in the performance of his or her functions as such;
 - (b) an administrator of a deceased or insolvent estate, in the administration of that estate;
 - (c) a sheriff or any other officer acting in terms of an order of a court, judge or magistrate, in the performance of his or her functions as such;
 - (d) the master of a ship or the commander of an aircraft of an air service licensed in terms of the Air Services Licensing Act, 1990 (Act No. 115 of 1990), to provide a scheduled air transport service, with regard to the sale of liquor to a passenger on board that ship while in a harbour in, or in the territorial waters of, the Republic during a voyage of not less than 100 kilometres, or to a passenger on board that aircraft while on a flight of not less than 100 kilometres from one airport in the Republic to another;
 - (e) a person, with regard to the sale of any spiritous or distilled perfumery or medicated spirit, which perfumery or spirit is not methylated spirit;
 - (f) the manufacturer of sweets containing not more than two per cent by mass of alcohol and manufactured in the Republic, with regard to the sale of those sweets to a registered person.
- (2) Subject to sections 31(a), 41(1) and (2), 60(1), 61(2), 63(2)(a) and 64(4), if any conflict relating to a matter dealt with in this Act arises between this Act and the provisions of any other law, save the Constitution or any Act amending this Act, the provisions of this Act shall prevail.

CHAPTER 2

25

NATIONAL AND PROVINCIAL STRUCTURES AND FUNCTIONS*Part 1**National structures***Establishment of advisory committee**

- 4.** The National Liquor Advisory Committee is hereby established. 30

Composition of advisory committee

- 5.** (1) The Minister shall appoint the members of the advisory committee, which shall consist of—
- (a) four persons representing the liquor industry, consisting of—
 - (i) one person representing the manufacturing sector; 35
 - (ii) one person representing the wholesale sector;
 - (iii) one person representing the retail sector; and
 - (iv) one person representing the sorghum beer sector;
 - (b) seven persons representing society in general: Provided that such representation shall have regard to the demographic composition of the population, gender equity and a fair geographic spread; 40
 - (c) an officer of the department, duly designated by the Director-General; and
 - (d) nine officers in the public service from the national or provincial sphere of government representing each of the functional areas of government of—
 - (i) health; 45
 - (ii) welfare;
 - (iii) education;
 - (iv) transport;
 - (v) safety and security;
 - (vi) tourism; 50
 - (vii) economic affairs;

- (viii) agriculture; and
- (ix) arts, culture, science and technology.

(2) The members contemplated in subsection (1)(d) shall be appointed by the Minister after consultation with all relevant Ministers and Members of the Executive Council responsible for those functional areas at national and provincial level. 5

(3) Whenever the Minister is required to appoint any member contemplated in subsection (1)(a) or (b), the Minister shall—

- (a) publish in the *Gazette* and by any other widely circulated means of communication, a notice calling for nominees and stating the criteria for nomination; 10
- (b) consider all nominations submitted in response to the notice;
- (c) compile a short list of nominees and publish it for comment in the manner contemplated in paragraph (a); and
- (d) consider any comments received in response to the publication of the short list. 15

(4) A member of the advisory committee shall hold office for the period determined by the Minister at the time of the member's appointment, but not exceeding five years at a time, and a member shall be eligible for reappointment for one further term at the end of his or her first term of office.

Personnel and administration of advisory committee 20

6. The department shall, subject to the laws governing the public service, appoint or designate the officers and provide the administrative and other resources and services required to enable the advisory committee to perform its functions.

Funds of advisory committee

7. (1) The funds of the advisory committee shall consist of— 25
- (a) money appropriated by Parliament for the advisory committee; and
 - (b) any money which may accrue to the advisory committee from any other source.

(2) The advisory committee may pay out of its funds any amount required to meet the operational costs of the committee in connection with its functions, in accordance with a budget for each financial year approved by the Director-General. 30

Powers and duties of advisory committee

8. The advisory committee—
- (a) shall advise the Minister or a Member of the Executive Council, as the case may be, on any matter— 35
 - (i) referred to the advisory committee by the Minister or Member for consideration and arising from the application of this Act;
 - (ii) relating to the facilitation of the advancement, upliftment and economic empowerment of persons or groups or categories of persons disadvantaged by unfair discrimination; 40
 - (iii) relating to the consumption of alcohol amongst the youth; or
 - (iv) relating to the problems that excessive alcohol consumption has on public health and family and social life;
 - (b) shall monitor and evaluate trends and developments in the liquor industry and promote research in that regard; 45
 - (c) shall design and monitor the implementation of educational and social responsibility programmes on the potentially harmful effects of alcohol;
 - (d) may facilitate the resolution of any dispute which may arise between the respective provincial authorities or between the national authority and the respective provincial authorities regarding the regulation and control of liquor matters; 50
 - (e) may liaise with any foreign or international body having objects similar to the objects of this Act; and
 - (f) may exercise any other power and shall perform any other duty conferred or imposed on it in terms of this Act. 55

Establishment of national authority

9. The National Liquor Authority is hereby established.

Composition of national authority

10. (1) The Minister shall appoint the members of the national authority, which shall consist of— 5

- (a) an officer of the department, duly designated by the Director-General; and
- (b) two other persons.

(2) Whenever the Minister is required to appoint any member contemplated in subsection (1)(b), the Minister shall—

- (a) publish in the *Gazette* and by any other widely circulated means of communication, a notice calling for nominees and stating the criteria for nomination; 10
- (b) consider all nominations submitted in response to the notice;
- (c) compile a short list of nominees and publish it for comment in the manner contemplated in paragraph (a); and 15
- (d) consider any comments received in response to the publication of the short list.

(3) A member of the national authority shall hold office for the period determined by the Minister at the time of the member's appointment, but not exceeding five years at a time, and a member shall be eligible for reappointment for one further term at the end of his or her first term of office. 20

Personnel and administration of national authority

11. The department shall, subject to the laws governing the public service, appoint or designate the officers and provide the administrative and other resources and services required to enable the national authority to perform its functions. 25

Funds of national authority

12. (1) The funds of the national authority shall consist of—

- (a) money appropriated by Parliament for the national authority; and
- (b) any money which may accrue to the national authority from any other source.

(2) The national authority may pay out of its funds any amount required to meet the operational costs of the authority in connection with its functions, in accordance with a budget for each financial year approved by the Director-General. 30

Powers and duties of national authority

13. The national authority—

- (a) shall consider and approve or refuse applications for the categories of registration contemplated in section 27(a) and (b); 35
- (b) may cancel any registration approved by it or deemed to be approved by it in the manner contemplated in this Act;
- (c) may determine conditions applicable to the categories of registration contemplated in section 27(a) and (b); and 40
- (d) may exercise any other power and shall perform any other duty conferred or imposed on it in terms of this Act.

Part 2**Provincial structures****Establishment of provincial authorities** 45

14. (1) The provincial legislature of each province of the Republic shall, subject to this Act, pass legislation for its province with regard to—

- (a) the establishment of a provincial liquor authority;
- (b) the composition and administration of that authority; and
- (c) subject to the laws governing the public service, the appointment or 50

designation of personnel to assist that authority in the exercise of its powers and the performance of its duties.

Funds of provincial authority

- 15.** (1) The funds of a provincial authority shall consist of—
- (a) money appropriated by the relevant provincial legislature for that provincial authority; and
 - (b) any money which may accrue to the provincial authority from any other source.

(2) A provincial authority may pay out of its funds any amount required to meet the operational costs of the authority in connection with its functions, in accordance with a budget for each financial year approved by the head of the provincial department.

Powers and duties of provincial authority

- 16.** A provincial authority—
- (a) shall consider and approve or refuse applications for the categories of registration contemplated in section 27(c) and (d);
 - (b) may cancel any registration approved by it or deemed to be approved by it in the manner contemplated in this Act;
 - (c) may determine conditions applicable to the categories of registration contemplated in section 27(c) and (d); and
 - (d) may exercise any other power and shall perform any other duty conferred or imposed on it in terms of this Act.

Part 3

Appeal tribunal and panels of appeal

Establishment of appeal tribunal and panels of appeal

17. (1) There is hereby established the National Liquor Appeal Tribunal, consisting of three fit and proper persons, of which at least one shall have a suitable degree of skill and experience in the application of civil and criminal law matters, appointed by the Minister, which shall consider appeals against decisions made by the national authority.

(2) The provincial legislature of each province of the Republic shall, subject to this Act, pass legislation for its province with regard to—

- (a) the establishment of a panel of appeal which shall consider appeals against decisions made by the relevant provincial authority;
- (b) the composition and administration of that panel; and
- (c) subject to the laws governing the public service, the appointment or designation of personnel to assist the panel in the exercise of its powers and the performance of its duties.

(3) Whenever the Minister is required to appoint any member contemplated in subsection (1), the Minister shall—

- (a) publish in the *Gazette* and by any other widely circulated means of communication, a notice calling for nominees and stating the criteria for nomination;
- (b) consider all nominations submitted in response to the notice;
- (c) compile a short list of nominees and publish it for comment in the manner contemplated in paragraph (a); and
- (d) consider any comments received in response to the publication of the short list.

(4) A member contemplated in subsection (1) shall hold office for the period determined by the Minister at the time of the member's appointment, but not exceeding five years at a time, and a member shall be eligible for reappointment for one further term at the end of his or her first term of office.

(5) Section 12 or 15, as the case may be, shall, with the necessary changes, apply with regard to the funds of the appeal tribunal and a panel of appeal.

(6) Section 11 shall, with the necessary changes, apply with regard to the officers and the administrative and other resources and services required to enable the appeal tribunal to perform its functions.

Part 4

General provisions applicable to national and provincial structures 5

Disqualification for and vacating of office

- 18.** (1) No person shall be appointed to the advisory committee, the relevant authority, the appeal tribunal or a panel of appeal if that person—
- (a) is not a South African citizen;
 - (b) is of unsound mind; 10
 - (c) has at any time been convicted and sentenced to imprisonment without the option of a fine;
 - (d) is an unrehabilitated insolvent; or
 - (e) is a member of Parliament, a provincial legislature, a Municipal Council, the national Cabinet or the Executive Council of a province. 15
- (2) A member of a body referred to in subsection (1) shall vacate his or her office if he or she—
- (a) becomes subject to a disqualification contemplated in subsection (1);
 - (b) ceases to hold a qualification, office or interest by virtue of which that member was appointed; 20
 - (c) has been absent without permission from more than two consecutive ordinary meetings of the relevant body;
 - (d) resigns by written notice to the Minister or the Member of the Executive Council; or
 - (e) is removed from office by the Minister or by the Member of the Executive Council, as the case may be, if he or she is of the opinion that it is in the public interest to remove a member. 25
- (3) Without prejudice to the generality of subsection (2)(e), the Minister or Member of the Executive Council, as the case may be, may at any time remove from office any member of a body referred to in subsection (1), for reasons of— 30
- (a) incompetence;
 - (b) nepotism;
 - (c) dishonesty;
 - (d) conflict of interest;
 - (e) failure to act in the interests of the committee, authority, tribunal or panel; 35
 - (f) failure to attend to the matters of the committee, authority, tribunal or panel;
 - (g) the member bringing the committee, authority, tribunal or panel into disrepute.
- (4) All vacancies in the bodies referred to in subsection (1) shall be filled in accordance with the procedure contemplated in section 5(3), 10(2), 17(3) or the relevant provincial legislation, as the case may be: Provided that a vacancy relating to a person contemplated in section 5(1)(c) or 10(1)(a), shall be filled in terms of the relevant section. 40

Designation of chairpersons

- 19.** (1) The member of the advisory committee contemplated in section 5(1)(c) shall 45
serve as the chairperson of the committee.
- (2) The member of the national authority contemplated in section 10(1)(a) shall serve as the chairperson of the authority.
- (3) The Member of the Executive Council shall designate one member of a provincial authority to serve as chairperson of the authority. 50
- (4) The Minister or the Member of the Executive Council, as the case may be, shall designate one member of the appeal tribunal or a panel of appeal to act as chairperson.
- (5) The Minister or the Member of the Executive Council, as the case may be, may appoint any other member of the committee, authority, tribunal or panel as

vice-chairperson, who shall act as chairperson if a chairperson contemplated in subsection (1), (2), (3) or (4) is unable to serve in that capacity or if the office becomes vacant.

Allowances of members

20. (1) A member of the advisory committee, the relevant authority, the appeal tribunal or a panel of appeal who is not in the full time employ of the State or an organ of state may, subject to subsection (2), be paid travelling, subsistence or other allowances in connection with the affairs of the committee, authority, tribunal or panel. 5

(2) The Minister, in consultation with the Minister in the national sphere of government responsible for state expenditure, or the Member of the Executive Council in consultation with the Minister and the Member of the Executive Council responsible for state expenditure in a province, as the case may be, may determine the amount, terms and conditions of the allowances contemplated in subsection (1). 10

(3) The Director-General or the head of the provincial department, as the case may be, shall pay the allowances contemplated in this section out of the funds and in accordance with the budget of the advisory committee, relevant authority, appeal tribunal or panel of appeal, as the case may be. 15

Annual reports and audit

21. (1) The advisory committee, the relevant authorities, the appeal tribunal and a panel of appeal shall— 20

(a) according to generally accepted accounting standards, keep accounting records of its income, expenditure, assets and liabilities, in the original or a reproduced form, for at least five years; and

(b) annually, not later than 90 days after the end of each financial year, draw up financial statements, which shall include at least— 25

(i) a statement of income and expenditure for that financial year; and

(ii) a balance sheet showing its assets, liabilities and financial position as at the end of that financial year.

(2) The financial statements referred to in subsection (1)(b) shall be audited by the Auditor-General. 30

(3) The bodies referred to in subsection (1) shall annually, not later than six months after the end of each financial year, submit to the Minister or Member of the Executive Council, as the case may be, a report on all its activities during the previous year, including—

(a) the audited financial statements referred to in subsection (2); 35

(b) a narrative report on its affairs and activities during the relevant financial year in the prescribed manner; and

(c) a report on its administrative efficiency.

(4) The report referred to in subsection (3) shall be laid upon the Table in Parliament or in the relevant provincial legislature, as the case may be, within 30 days after it was received by the Minister or Member of the Executive Council, if Parliament or the provincial legislature is then in session, or, if Parliament or the provincial legislature is not then in session, within 30 days after the commencement of its next ensuing session. 40

Part 5

Meetings and conduct of business 45

Procedures

22. The Minister may prescribe the necessary matters and procedures for the conduct of meetings and business by the advisory committee, the relevant authority, the appeal tribunal or a panel of appeal: Provided that the regulations in respect of a provincial authority or panel of appeal in its province shall be made after consultation with the Member of the Executive Council. 50

Disqualification of members at meetings

23. (1) A member of the relevant authority, the appeal tribunal or a panel of appeal, shall not sit on the relevant body when—

(a) any premises in respect of which any application is made and of which the 55

- member or his or her spouse or child is the owner, mortgagee, lessor or lessee;
- (b) any applicant, objector or person who has made representations in support of an application and of whom the member or his or her spouse or child is a partner, director, manager, agent, officer or employee; or 5
- (c) any business in respect of which any application is made and in which the member or his or her spouse or child has a direct financial interest, is concerned in the consideration of a matter by the relevant body.
- (2) In the application of this section, “spouse” includes— 10
- (a) a legally married husband or wife;
- (b) a partner in a legal customary union;
- (c) a partner in a union recognised by any religion as a legal marriage; and
- (d) a person with whom a member lives as if they were married or with whom the member habitually cohabits.

Notices and summons 15

24. (1) The chairperson of the relevant authority, the appeal tribunal or a panel of appeal may cause any person who is or may be affected by or is involved in the consideration of a particular matter by the relevant body, to be notified in the prescribed manner to be present at any meeting, with notice to him or her of the date, time and place of the meeting at which his or her presence is required and the relevant matter to be considered thereat. 20

(2) A person who has received a notice in terms of subsection (1), shall personally appear before the relevant body on the date and at the time and place set out in the notice and may appoint an advocate or attorney to represent him or her.

(3) The chairperson of a body referred to in subsection (1) may cause any person to be summonsed in the prescribed manner to be present at any meeting to— 25

(a) give evidence; or

(b) produce any document or any other thing which is in his or her possession or custody or under his or her control and which, in the opinion of the chairperson, relates or may relate to a matter to be considered thereat, 30

with notice to that person of the date, time and place of the meeting at which his or her presence is required.

Accessibility of meetings

25. (1) Subject to subsections (2) and (3), any meeting of the relevant authority, the appeal tribunal or a panel of appeal shall be accessible to the public. 35

(2) The chairperson of the relevant meeting may direct that any person whose presence is in his or her opinion not desirable at the relevant meeting, may not attend the meeting or shall leave the meeting.

(3) The deliberations and voting on any matter at a meeting shall take place behind closed doors. 40

CHAPTER 3

REGISTRATION

Compulsory registration

26. Subject to section 3(1), no person shall manufacture, distribute or sell liquor unless that person is registered or is deemed to be registered in terms of this Act to manufacture, distribute or sell that liquor. 45

Categories of registration

27. An application for registration in terms of this Act may be made in respect of only one of the following categories:

- (a) The manufacture of liquor—
 - (i) that exceeds the prescribed volume; or
 - (ii) that does not exceed the prescribed volume;
- (b) the wholesale distribution and sale of liquor;
- (c) the retail sale of liquor for consumption— 5
 - (i) off the premises where the liquor is being sold;
 - (ii) on the premises where the liquor is being sold; or
 - (iii) on and off the premises where the liquor is sold; or
- (f) the retail sale and consumption of liquor at a special event.

Disqualification and other incompetency 10

- 28.** No person may apply to be registered in terms of this Act, if that person—
- (a) is a minor on the date of submitting the application for registration;
 - (b) in the three years preceding the date on which the application for registration is submitted, was convicted of or completed serving a sentence of imprisonment for murder, rape, robbery, culpable homicide involving an assault, assault with intent to cause grievous bodily harm, any offence arising from the trade in or the possession of drugs, any offence involving sexual abuse of a child or any offence involving dishonesty, or any attempt to commit any of those offences; 15
 - (c) is an unrehabilitated insolvent; 20
 - (d) is of unsound mind;
 - (e) is a company or a close corporation that is not registered in terms of the provisions of the Companies Act, 1973, or the Close Corporations Act, 1984 (Act No. 69 of 1984), as the case may be;
 - (f) is a trust in which— 25
 - (i) the majority of trustees having the controlling power at any given time are not South African citizens or permanent residents of South Africa; and
 - (ii) the majority of the beneficial interests are held by the persons referred to in subparagraph (i); or 30
 - (g) owes a prescribed debt to the State or an organ of state.

Application procedure for registration to manufacture or distribute liquor

- 29.** (1) An application for a category of registration contemplated in section 27(a) or (b) shall be made to the national authority in accordance with the procedure outlined in— 35
- (a) subsections (2), (3), (4), (5) and (6) in respect of a category of registration contemplated in section 27(a)(i) or (b); and
 - (b) subsections (2), (7), (8), (9), (10) and (11) in respect of the category of registration contemplated in section 27(a)(ii).
- (2) An application for registration contemplated in subsection (1) shall be made by submitting to the national authority— 40
- (a) the prescribed form properly completed and specifying—
 - (i) the particulars of the applicant which, in the case of—
 - (aa) a natural person, shall include his or her full name, identity number and residential address and a statement that he or she is not disqualified for registration in terms of section 28; 45
 - (bb) a company or close corporation, shall include its full name, registration number and the address of its registered office;
 - (cc) a company, except for a company which is listed on the Johannesburg Stock Exchange, shall include the names, identity numbers and residential addresses of each director and a statement that none of them is disqualified from registration in terms of section 28; 50
 - (dd) a close corporation, shall include the names, identity numbers and residential addresses of all its members and a statement that none of them is disqualified from registration in terms of section 28; 55
 - (ee) a trust, shall include the names, identity numbers and residential addresses of all its trustees, and a statement that none of them is disqualified from registration in terms of section 28;

- (ff) an association or a partnership, shall include the names, identity numbers and residential addresses of all its members or partners, and a statement that none of them is disqualified from registration in terms of section 28; or
 - (gg) a co-operative, shall include the names, identity numbers and residential addresses of all members of its management body, and a statement that none of them is disqualified from registration in terms of section 28; 5
 - (ii) the physical address and the erf, street or farm number and a description of the premises on or from which the applicant intends to manufacture, store, distribute or sell liquor, as the case may be, including a plan of the premises; and 10
 - (iii) the category in respect of which registration is being sought;
 - (b) any other information that may be required by the national authority to enable the authority to determine whether or not the applicant meets the requirements of registration; 15
 - (c) the prescribed fee which shall be paid in the prescribed manner; and
 - (d) proof that the applicant has published a notice in the *Gazette* and two registered newspapers widely circulated in the area in which the premises in respect of which the application is made, is situated, at least 21 days prior to submitting the application. 20
- (3) Within 30 days after receiving an application for a category of registration contemplated in section 27(a)(i) or (b), the national authority must commence consultations with the applicant for purposes of—
- (a) determining whether all the requirements for application as prescribed have been met; 25
 - (b) considering the merits of the application; and
 - (c) determining the terms and conditions applicable to the registration that conform with prescribed criteria, norms and standards pertaining, amongst others, to— 30
 - (i) limiting vertical integration, the creation of a controlling interest or excessive concentration of ownership and control amongst participants in the liquor industry;
 - (ii) encouraging divesture and diversity of ownership of manufacturing and wholesale distribution enterprises participating in the liquor industry; 35
 - (iii) enhancing the involvement of historically disadvantaged social groups in the liquor industry; and
 - (iv) facilitating the entry of new participants in the liquor industry.
- (4) Within 30 days after the consultations contemplated in subsection (3) have been concluded, the national authority shall consider the application and the content of the consultations and shall thereafter notify the applicant in writing—
- (a) if the application complies with the requirements of the Act and no objection has been received by the national authority—
 - (i) that it is confirmed that the application complies with the Act;
 - (ii) of the terms and conditions, if any, that it intends to make applicable to the registration; and 45
 - (iii) that the applicant has 30 days from the date of service of the notice to respond to the proposed terms and conditions; or
 - (b) if the application does not comply with the requirements of the Act or if an objection to the application has been received— 50
 - (i) of the reasons for determining that the application does not comply with the requirements of the Act or shall provide the applicant with a copy of any objection and, if applicable, that certain terms and conditions will be imposed should the application be approved; and
 - (ii) that the applicant has 30 days from the date of service of the notice to comply with the requirements and, if applicable, to respond to any objection or to the proposed terms and conditions. 55
- (5) The period contemplated in subsection (4)(a)(iii) or (b)(ii) may be extended by the national authority on good cause shown by the applicant.
- (6) If an applicant who has been served a notice contemplated in subsection (4)— 60

- (a) complies with the requirements of the Act and consents to the terms and conditions being imposed, the national authority shall register the applicant by entering the applicant's name in the register;
- (b) complies with the requirements of the Act and does not consent to the terms and conditions being imposed, the national authority shall consider the representations of the applicant and— 5
- (i) may retain or amend the proposed terms and conditions in the manner that it deems fit, and notify the applicant in writing of the retained or amended terms and conditions and the reasons for its decision; and
- (ii) shall register the applicant by entering the applicant's name in the register; or 10
- (c) has not complied with the requirements of the Act or failed to respond to any objection, the national authority shall refuse to register the applicant and notify the applicant in writing of that refusal.
- (7) Within 60 days after receiving an application for the category of registration contemplated in section 27(1)(a)(ii), the national authority shall consider the application and any further information provided by the applicant, and register the applicant by entering the applicant's name in the register, if it is satisfied that the application complies with the requirements for registration. 15
- (8) If, after considering an application for a category of registration contemplated in section 27(a)(ii), the national authority is of the opinion that the application does not comply with the requirements for registration, the authority shall notify the applicant in writing of the reasons for its decision and inform the applicant that he, she or it has 30 days from the date of service of the notice to comply with the requirements. 20
- (9) The period contemplated in subsection (8) may be extended by the national authority on good cause shown by the applicant. 25
- (10) If an applicant who has been served a notice contemplated in subsection (8) complies with the requirements as set out in that notice timeously and adequately, the national authority shall register the applicant by entering the applicant's name in the register. 30
- (11) If an applicant who has been served a notice contemplated in subsection (8) has not complied with the requirements as set out in that notice timeously and adequately, the national authority shall refuse to register the applicant and notify the applicant in writing of that refusal and the reasons thereof.
- (12) The national authority shall within 30 days of its final decision on the registration of an applicant serve on all objectors to that application a notice in writing of its decision and the reasons therefor. 35

Application procedure for registration for retail sale of liquor

- 30.** (1) An application for a category of registration contemplated in section 27(c) or (d) shall— 40
- (a) be made to the relevant provincial authority; and
- (b) subject to subsection (13) and section 85(h), be made in terms of this section.
- (2) An application for registration contemplated in subsection (1) shall be made by submitting to the provincial authority—
- (a) the prescribed form properly completed and specifying— 45
- (i) the particulars of the applicant which, in the case of—
- (aa) a natural person, shall include his or her full name, identity number and residential address and a statement that he or she is not disqualified for registration in terms of section 28;
- (bb) a company or close corporation shall include its full name, registration number and the address of its registered office; 50
- (cc) a company, except for a company which is listed on the Johannesburg Stock Exchange, shall include the names, identity numbers and residential addresses of all its directors and a statement that none of them is disqualified from registration in terms of section 28; 55
- (dd) a close corporation, the names, identity numbers and residential addresses of all its members and a statement that none of them is disqualified from registration in terms of section 28;

- (*ee*) a trust, shall include the names, identity numbers and residential addresses of all its trustees and a statement that none of them is disqualified from registration in terms of section 28;
- (*ff*) an association or partnership, shall include the names, identity numbers and residential addresses of all its members or partners, and a statement that none of them is disqualified from registration in terms of section 28; 5
- (*gg*) a co-operative, shall include the names, identity numbers and residential addresses of all members of its management body, and a statement that none of them is disqualified from registration in terms of section 28. 10
- (ii) the physical address and the erf, street or farm number and a description of the premises from which the applicant intends to sell liquor, including a plan of the premises; and
- (iii) the category in respect of which registration is being sought; 15
- (*b*) any other information that may be required by the provincial authority to enable the authority to determine whether or not the applicant meets the requirements of registration;
- (*c*) the prescribed fee which shall be paid in the prescribed manner;
- (*d*) proof that the applicant has given notice through a widely accessible means of communication in the area in which the premises in respect of which the application is made, is situated, at least 21 days prior to submitting the application; and 20
- (*e*) proof of service of the notice contemplated in paragraph (*d*) on the governing body of every education institution or place of worship within a radius prescribed by the Member of the Executive Council from the premises in respect of which the application is made. 25
- (3) A notice contemplated in subsection (2)(*d*) shall state—
 - (i) the applicant's intention to apply for registration within a month of the notice;
 - (ii) the premises in respect of which the registration is sought; and 30
 - (iii) that any person may within 60 days of the notice lodge its objections in writing regarding the application to the provincial authority.
- (4) For a continuous period of at least 21 days prior to submitting the application, an applicant shall in the manner prescribed affix a copy of the notice referred to in subsection (2)(*d*) to the premises or on a board affixed to a pole firmly planted in the ground at the premises in respect of which the application is made, in such a manner that the notice is clearly visible and legible to passers-by. 35
- (5) Upon receipt of the application contemplated in subsection (2), the provincial authority shall in the prescribed manner enable the public to—
 - (*a*) have access to, inspect or obtain a copy of the application; and 40
 - (*b*) lodge objections to any application.
- (6) Within 60 days in the case of a category of registration contemplated in section 27(*c*), or three days in the case of a category of registration contemplated in section 27(*d*), after receiving an application which complies fully with subsection (2), the provincial authority shall consider the application and any further information provided by the applicant and register the applicant by entering the applicant's name in the register if it is satisfied that— 45
 - (*a*) the applicant complies with the requirements for registration contemplated in subsections (2), (3) and (4); and
 - (*b*) no objections have been received by the provincial authority. 50
- (7) If, after considering an application for registration contemplated in subsection (1), the provincial authority is of the opinion that the application does not comply with the requirements for registration referred to in subsections (2), (3) and (4) or if an objection to the application has been received, the provincial authority shall notify the applicant in writing of the reasons for its decision or shall provide the applicant with a copy of any objection received, and inform the applicant that he, she or it has 30 days from the date of service of the notice to comply with the requirements and respond to any objection. 55
- (8) The period contemplated in subsection (7) may be extended by the provincial authority on good cause shown by the applicant.
- (9) If an applicant who has been served a notice contemplated in subsection (7) 60

complies with the requirements as set out in that notice or responds to any objection timeously and adequately, the provincial authority shall register the applicant by entering the applicant's name in the register.

(10) If an applicant who has been served a notice contemplated in subsection (7) has not complied with the requirements as set out in that notice timeously and adequately or has failed to respond to any objection, the provincial authority shall refuse to register the applicant and notify the applicant in writing of the refusal and the reasons therefor. 5

(11) A provincial authority shall not register a person if the approval of the registration would result in that person having a controlling interest in a different category of registration. 10

(12) A provincial authority shall within 30 days of its final decision on the registration of an applicant, serve on all objectors to that application a notice in writing of its decision and the reasons therefor.

(13) The provisions of subsections (2)(d) and (e), (3) and (4) shall not be applicable in respect of an application for registration contemplated in section 27(d). 15

Death or incapability of applicant

31. If a person who has made an application for a registration, excluding the category of registration contemplated in section 27(d), dies, becomes insolvent, is placed under judicial management or is declared by a court to be incapable of handling his or her own affairs on or before the date on which the application is considered— 20

- (a) the relevant administrator of the deceased or insolvent estate, judicial manager or curator or, if such an administrator, manager or curator has not yet been appointed or the holder of that office is unable or unwilling to act, a person who has an interest in the application and is authorised thereto by the relevant authority considering the application, shall, subject to the law regarding deceased estates, insolvency, judicial management or mental health, have all the rights that the applicant would have had if he or she had not died, become insolvent, been placed under judicial management or been declared so incapable; and 25
- (b) the relevant authority may, subject to this Act and the said law, in its discretion approve the registration in favour of such an administrator, manager, curator or person. 30

Appeals against refusals and conditions

32. (1) An applicant may, within 30 days after being served a notice of a decision of the relevant authority not to approve an application for registration, or of a determination of terms and conditions, appeal against the decision or determination by submitting to the appeal tribunal or relevant panel of appeal, as the case may be, copies of— 35

- (a) the application to register;
- (b) the notice sent to the applicant by the national authority in terms of section 29(4) or by a provincial authority in terms of section 30(7) or (10), as the case may be;
- (c) details of the applicant's response to the relevant authority's notice referred to in paragraph (b); and
- (d) the relevant authority's final notice and reasons for the decision which is the subject of the appeal. 45

(2) An objector to an application may within 30 days after being served the notice contemplated in section 29(12) or 30(12), appeal against the relevant decision by submitting to the relevant panel of appeal—

- (a) a copy of the objection; 50
- (b) a copy of the notice contemplated in section 29(12) or 30(12); and
- (c) the grounds of appeal.

(3) Within 90 days after receipt of the relevant documents, the appeal tribunal or the relevant panel of appeal, as the case may be, shall consider the appeal in the prescribed manner, including providing the appellant, the relevant authority and any other interested party with the opportunity to make oral representations, and shall serve 55

notices in writing of its decision on the appellant, the relevant authority and other parties involved, stating the reasons for the decision.

(4) If the appeal tribunal or relevant panel of appeal upholds an appeal—

- (a) contemplated in subsection (1), the relevant authority shall register the person; or
- (b) contemplated in subsection (2), the relevant authority shall consider afresh the registration in respect of which the appeal was made.

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Certificate of registration

33. (1) Upon registering the applicant, the relevant authority shall—

- (a) issue a certificate of registration in the applicant's name in the prescribed form, which shall include—
 - (i) a registration number;
 - (ii) the premises in respect of which registration has been granted;
 - (iii) the conditions upon which registration was granted; and
 - (iv) the category of registration;
- (b) send the certificate to the applicant; and
- (c) advise the applicant of the date on which the applicant's name was entered in the register.

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(2) The registration of any registered person shall be valid until—

- (a) the registration is cancelled in terms of this Act;
- (b) the registered person has voluntarily de-registered; or
- (c) in the case of a body corporate, it is wound-up or dissolved.

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Commencement of registrations

34. (1) Subject to subsection (2), a certificate of registration which has been issued shall be valid—

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- (a) if no fees have been prescribed in respect of the issue thereof, as from the date of such issue; or
- (b) if any fees have in fact been so prescribed, as from the date on which such fees are paid.

(2) If any fees prescribed under subsection (1) are not paid in respect of an applicable registration before the expiration of the period so prescribed, that registration shall not acquire validity and the application for the registration shall be deemed not to have been approved.

Effects of registration

35. (1) The certificate of registration of a person or a duly certified copy of the certificate, shall be sufficient proof that the person—

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- (a) has met all the requirements of registration; and
- (b) has been registered in terms of this Act.

(2) A registered person shall reflect its registered status and registration number on all of that person's trading documents.

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Annual registration fee

36. A registered person shall pay a prescribed annual registration fee in respect of each registration of which he, she or it is the registered person, on or before the prescribed date.

Non-compliance with obligations

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37. (1) The relevant authority shall—

- (a) serve a compliance notice in the prescribed form on a registered person if the authority has reason to believe that the person has not complied with—
 - (i) a material provision of the terms and conditions of that person's registration; or
 - (ii) that person's obligations in terms of this Act; and

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- (b) refer the person to the South African Police Service for criminal investigation if it is satisfied that any non-compliance contemplated in paragraph (a) may constitute an offence.
- (2) A compliance notice contemplated in subsection (1), shall—
 - (a) be in writing; 5
 - (b) notify the person of the alleged non-compliance and the steps the person is required to take in order to comply; and
 - (c) inform the person, that he, she or it has 30 days from the date of the notice to comply with the requirements.
- (3) The period contemplated in subsection (2)(c) may be extended by the relevant authority on good cause shown by the registered person. 10

Cancellation of registration

- 38.** (1) If a registered person who has been served a notice in terms of section 37 does not comply timeously with the requirements stated in the notice or becomes disqualified or otherwise incompetent in terms of this Act, the relevant authority shall— 15
 - (a) cancel the person's certificate of registration and registration;
 - (b) notify the person in writing of—
 - (i) the cancellation and state the reasons therefor; and
 - (ii) the date on which the registration was cancelled; and
 - (c) amend the register accordingly. 20
- (2) When a person's registration has been cancelled, all the rights, benefits and allowances accruing therefrom shall lapse immediately.
- (3) For the purposes of this Act, cancellation of registration takes effect on the date on which the certificate of registration is cancelled by the relevant authority.

Appeals against cancellation of registration 25

- 39.** (1) A registered person may refer the decision of the relevant authority to cancel that person's registration for appeal to the appeal tribunal or relevant panel of appeal, as the case may be, and the procedure established by section 32(1), shall apply, with the necessary changes, to the noting of that appeal.
- (2) Within 90 days after receipt of the relevant documents, the appeal tribunal or panel of appeal, as the case may be, shall consider the appeal in the prescribed manner and shall serve written notices of its decision on the appellant and the relevant authority, stating the reasons for the decision.
- (3) If the appeal tribunal or a panel of appeal upholds an appeal— 35
 - (a) the relevant authority shall re-instate the registration of the relevant person, by—
 - (i) re-issuing the certificate of registration; and
 - (ii) amending the register accordingly; and
 - (b) the person shall be deemed not to have had that person's registration cancelled. 40

Voluntary deregistration and winding-up or dissolution

- 40.** (1) A registered person may deregister voluntarily by sending the relevant authority a notice in writing—
 - (a) stating the person's intention and reasons to deregister voluntarily; and
 - (b) specifying a date, at least 60 days after the date of the notice, on which the deregistration is to take effect. 45
- (2) If a registered person resolves to be sequestrated, wound-up or dissolved, that person shall within 30 days of the completion of the sequestration, winding-up or the dissolution process or an order of court, send to the relevant authority a written notice—
 - (a) stating that fact; and
 - (b) containing certified copies of all relevant documents confirming the winding-up or dissolution. 50

- (3) Upon receiving a notice contemplated in subsection (2), the relevant authority shall on the date specified in the notice—
- (a) cancel the certificate of registration of the person and deregister it by amending the register; and
 - (b) notify the person in writing of the date on which the deregistration was effected in the register. 5

Death or incapability of certain registered persons

41. (1) If a registered person, excluding a registered person in respect of a category of registration contemplated in section 27(d), dies, becomes insolvent, is placed under judicial management or is declared by a court to be incapable of handling his or her own affairs— 10

- (a) the relevant administrator of the deceased or insolvent estate, judicial manager or curator shall, subject to the law regarding deceased estates, insolvency, judicial management or mental health, as from the date of his or her appointment as such, for all purposes become the registered person; and 15
- (b) the relevant administrator of the deceased or insolvent estate, judicial manager or curator may, for the purposes of the administration or management of the estate concerned, conduct the business to which the registration relates. 20

(2) The chairperson of the relevant authority may, on application by any person and if satisfied that every person who has a financial interest in the business contemplated in subsection (1) has been given reasonable notice of the application, appoint any person who is not disqualified or otherwise incompetent in terms of this Act to hold the relevant registration, to conduct that business until the appointment of the administrator, manager or curator so contemplated, and a person so appointed shall, subject to the law regarding deceased estates, insolvency, judicial management or mental health, for the period of his or her appointment for all purposes be deemed to be the registered person. 25

(3) If the only member of a company or close corporation which is a registered person dies, becomes insolvent, is placed under judicial management or is declared by a court to be incapable of handling his or her own affairs, subsections (1) and (2) shall apply, with the necessary changes, despite any other law, to that company or corporation. 30

Replacement certificate of registration

42. (1) The chairperson of the relevant authority may at any time after the issue of a certificate of registration and with the concurrence of the registered person, replace that certificate by the issue of another certificate of the same kind in respect of the relevant premises to the registered person against payment of the prescribed fee. 35

(2) A registration certificate issued under subsection (1), shall be subject to the conditions set out in that certificate that the chairperson may in his or her discretion impose.

Controlling interest 40

43. (1) A registered person shall not permit any other person to procure a controlling interest in the business to which the registration relates, unless the chairperson of the relevant authority has, on application by the registered person, granted consent that the other person may procure that interest in that business.

- (2) The chairperson shall not grant consent under subsection (1)— 45
- (a) where the person who is the subject of the application, is disqualified or incompetent in terms of this Act to be registered; or
 - (b) if in his or her opinion the possibility exists that the granting of the application may cause a harmful monopolistic situation to arise or be aggravated in the liquor trade or a branch thereof. 50

Register of registered persons and national record of registrations

44. (1) The national and each provincial authority shall—
- (a) in respect of the decisions of that authority keep a register in the prescribed form of all persons—
 - (i) that have been registered; 5
 - (ii) whose registrations have been cancelled; and
 - (iii) that have voluntarily deregistered or have been wound-up or dissolved; and
 - (b) submit the information referred to in paragraph (a) on a monthly basis to the department. 10
- (2) The department shall keep a national record of registrations in the prescribed form of all persons—
- (a) that have been registered;
 - (b) whose registrations have been cancelled; and
 - (c) that have voluntarily deregistered or have been wound-up or dissolved. 15
- (3) Within 60 days after the end of each financial year, the department shall publish in the *Gazette* and at least one other widely circulated means of communication the national record of registrations, setting out the names of all persons—
- (a) who are registered on the last day of the relevant financial year;
 - (b) whose registrations were cancelled during the relevant financial year; and 20
 - (c) who deregistered voluntarily or have been wound-up or dissolved during the relevant financial year.
- (4) Subsection (3) does not preclude the department from publishing the names of the persons contemplated in that subsection in any widely circulated means of communication as and when it deems fit. 25

Payments into revenue funds

45. All prescribed fees received in terms of this Act—
- (a) by the national authority, shall be paid into the National Revenue Fund; and
 - (b) by a provincial authority, shall be paid into the relevant Provincial Revenue Fund. 30

CHAPTER 4

TERMS AND CONDITIONS APPLICABLE TO SALE OF LIQUOR

Persons to whom liquor may be sold

46. (1) Subject to subsection (2) and sections 49 and 50—
- (a) a manufacturer of liquor, registered for a category of registration contemplated in section 27(a), may only sell liquor to a registered person; and 35
 - (b) a wholesaler, registered for the wholesale distribution of liquor contemplated in section 27(b), may only sell liquor to a registered person for the retail sale of liquor—
 - (i) for consumption off the premises where the liquor is being sold; 40
 - (ii) for consumption on the premises where the liquor is being sold;
 - (iii) for consumption on and off the premises on which the liquor is being sold; or
 - (iv) at a special event.
- (2) Despite section 89, a manufacturer registered for a category of registration contemplated in section 27(a)(i) may sell the liquor produced by him, her or it, directly to the public for consumption on and off the registered premises, subject to the terms and conditions that the relevant authority may determine. 45

Transfer of registration

47. (1) A registered person may apply to the relevant authority for the transfer of that 50

person's registration to another person who is not disqualified or otherwise incompetent in terms of this Act to be a registered person.

(2) Section 29 or 30, as the case may be, shall apply, with the necessary changes, to an application contemplated in subsection (1).

Alterations to and extension of registered premises 5

48. A registered person shall not—

- (a) effect any structural alteration, addition or reconstruction of or to the registered premises; or
- (b) extend the registered premises,

except with the consent of the chairperson of the relevant authority, granted on application by the registered person and on any condition that the chairperson may deem fit. 10

Micromanufacturers

49. (1) Despite any provision of this Act or any other law, but subject to the regulations, a micromanufacturer that holds a registration for a category of registration contemplated in section 27(a)(ii), may sell the liquor produced by him, her or it— 15

- (a) to any registered person; and
- (b) directly to the public for consumption on and off the registered premises, as prescribed.

(2) A micromanufacturer may be registered for— 20

- (a) manufacture and sale of its product on separate premises; and
- (b) manufacture and sale or manufacture or sale, as the case may be, on more than one premises:

Provided that the total volume of liquor that is produced and sold by the micromanufacturer does not exceed the prescribed volume in a calendar year. 25

(3) Section 53 is not applicable to micromanufactures.

Sorghum beer manufacturers

50. (1) Despite any provision of this Act or any other law, but subject to the regulations, a sorghum beer manufacturer that holds a registration for a category of registration contemplated in section 27(a)(i) or (ii), may sell the sorghum beer produced by him, her or it— 30

- (a) to any registered person; and
- (b) directly to the public for consumption on and off the registered premises, as prescribed.

(2) A sorghum beer manufacturer may be registered for— 35

- (a) manufacture and sale of its product on separate premises; and
- (b) manufacture and sale or manufacture or sale, as the case may be, on more than one premises:

Provided that the total volume of sorghum beer that a manufacturer that holds a category of registration contemplated in section 27(a)(ii) produce shall not exceed the prescribed volume in a calendar year. 40

(3) Sections 52 and 53 are not applicable to a manufacturer of sorghum beer.

Prohibition on sale of liquor to certain persons

51. No registered person may sell liquor to—

- (a) any person who is under the age of 18 years; or 45
- (b) any person under the influence of alcohol or a drug having a narcotic effect.

Conditions applicable to storing and display of liquor

52. A registered person selling liquor shall—

- (a) in the case of a manufacturer, store such liquor in a separate place or a separate portion of the manufacturing facility designated for that purpose; 50

- (b) in the case of a wholesaler, store such liquor in those parts of the premises designated for that purpose on the plan accompanying the application for registration and distribute that liquor only from those parts of the designated premises; and
- (c) in the case of a retailer, display liquor for the purpose of sale only in that portion of the premises designated for that purpose on the plan accompanying the application for registration. 5

Restrictions on sale, supply and delivery of liquor

53. (1) Subject to sections 49(3) and 50(3), a registered manufacturer or wholesaler may only deliver liquor pursuant to a sale— 10
- (a) from any vehicle or otherwise if the person in control of the vehicle or the liquor is in possession of an invoice or delivery note in respect of that delivery reflecting the name and identity number or registration number of the registered retailer and the address at which the delivery is to be made; and
 - (b) at the premises referred to in the certificate of registration or at the address specified by the registered retailer on an invoice or delivery note at the time of placing the order for the supply of the liquor. 15
- (2) The invoice or delivery note contemplated in subsection (1) shall record—
- (i) the name and identity number or registration number of the registered retailer; and 20
 - (ii) the address at which the delivery is to be made.

Management of business

54. (1) A person other than a natural person shall not conduct any business under a registration unless a natural person who permanently resides in the Republic and who is not disqualified or incompetent in terms of this Act to be a registered person, is appointed by that person in the prescribed manner to manage and be responsible for that person's business. 25
- (2) A natural person who is a registered person may in the prescribed manner appoint another natural person who permanently resides in the Republic and who is not disqualified or incompetent in terms of this Act to be a registered person, to manage and be responsible for the business to which the said registration relates. 30
- (3) If a registered person or the only member of a company or close corporation which is a registered person—
- (a) has, in the opinion of the chairperson of the relevant authority, left the relevant registered premises without making provision for the conduct thereon of the business to which the registration relates; or 35
 - (b) becomes a person who is disqualified or otherwise incompetent in terms of this Act to be a registered person,
- or if the registered person which is a partnership, is dissolved, the chairperson of the relevant authority may, on application by a person who has an interest in the relevant business, appoint any person who is, in the opinion of the chairperson, fit to manage and be responsible for that business for a period of not more than 12 months, and a person so appointed shall, subject to subsection (4)(b), for the period of his or her appointment for all purposes be deemed to be the registered person. 40
- (4) An appointment under subsection (3)— 45
- (a) shall be subject to the conditions set out in the appointment that the chairperson may in his or her discretion impose;
 - (b) shall not affect any right of a person who has an interest in the business concerned; and
 - (c) may at any time be withdrawn by the chairperson. 50
- (5) A person managing and responsible for a business to which a registration relates, shall be subject to the same obligations and liabilities as the relevant registered person.

(6) Subsection (5) shall not be interpreted to release the registered person from any obligation or liability to which he or she is subject in law.

(7) In the application of this section, the chairperson shall act in consultation with the members of the relevant authority.

Sale of liquor at special events 5

55. A person who is registered to sell liquor at a special event may—

- (a) sell liquor only at that event; and
- (b) sell liquor only at the place where and during the times when that event is held as set out in the application for registration.

Trading hours 10

56. A person registered to sell liquor may—

- (a) despite any other law, sell liquor on any day of the week; and
- (b) sell liquor only during the hours determined by the municipality in whose area of jurisdiction the premises are situated.

Business on registered premises 15

57. Despite any other law, the Minister may prescribe the business that a registered person may conduct on the registered premises.

Limitations on employers

58. (1) No registered person may employ any person in or in connection with the sale of liquor who— 20

- (a) is under the age of 18 years; or
- (b) has within the preceding three years been convicted of a contravention of any law governing the sale of liquor.

(2) Subsection (1)(a) does not apply to any person of or above the age of 16 years who is undergoing or has undergone training in catering services, and who is employed on the premises of the registered person to whom he or she is duly apprenticed in any capacity. 25

Public health notices

59. The Minister may, in consultation with the Minister responsible for health in the national sphere of government, prescribe the content and the manner in which public health notices relating to the manufacture, distribution, sale and consumption of liquor shall be displayed by a person manufacturing, distributing or selling liquor. 30

CHAPTER 5

LAW ENFORCEMENT AND JUDICIAL PROCEEDINGS

Part 1 35

Inspections

Designation of inspectors

60. (1) Subject to any other law—

- (a) the Minister or his or her delegatee may designate any officer of the department as an inspector; or 40
- (b) the Member of the Executive Council or his or her delegatee may designate any officer of a provincial department as an inspector.

(2) A designation in terms of subsection (1) may be general or specific.

(3) An inspector shall in the exercise of his or her powers in terms of this Act, be deemed to be a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977). 45

(4) A certificate of designation in the prescribed form issued by the Minister or Member of the Executive Council, as the case may be, certifying that a person has been designated as an inspector, shall be *prima facie* proof of the designation.

Powers and duties of inspectors

61. (1) An inspector may conduct an inspection and monitor and enforce compliance with this Act and any other law which authorises him or her to conduct an inspection or monitor and enforce compliance of any liquor related matter. 5

(2) Subject to sections 62 and 63 and any other law, an inspector who conducts an inspection may—

- (a) question any person present on any land or premises in respect of any matter which may be relevant to the inspection; 10
- (b) question any person whom the inspector believes may have information relevant to the inspection;
- (c) inspect any document that a person is required to maintain in terms of this Act or any other law or which may be relevant to any liquor related inspection; 15
- (d) copy any document referred to in paragraph (c), or if necessary, remove the document in order to copy it;
- (e) take samples of any substance that is relevant to the work or inspection;
- (f) take photos or make audio-visual recordings of anything or any person, process, action or condition on or regarding any land or premises; and 20
- (g) do all things necessary for conducting the inspection.

(3) An inspector who removes anything other than a substance contemplated in subsection (2)(e) from land or premises being inspected, shall—

- (a) issue a receipt for it to the owner of or person in control of the premises; and
- (b) return it as soon as practicable after achieving the purpose for which it was removed. 25

Entry with warrant

62. (1) An inspector may enter any land or premises if a magistrate has issued a warrant in accordance with subsection (2) to enter or inspect the land or premises, and the warrant is still valid. 30

(2) A magistrate may issue a warrant to enter and inspect any land or premises, if, from information in writing on oath, the Magistrate has reason to believe that—

- (a) it is necessary to obtain information, in the interest of the public, that cannot be obtained without entering the land or those premises; or
- (b) there is non-compliance with this Act. 35

(3) A warrant in terms of subsection (2) may be issued at any time and shall specifically—

- (a) identify the land or premises that may be entered and inspected; and
- (b) authorise the inspector to enter and inspect the land or premises and to do anything contemplated in section 61(2). 40

(4) A warrant in terms of subsection (2) is valid until—

- (a) it is executed;
- (b) it is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;
- (c) the purpose for which it was issued has lapsed; or 45
- (d) 90 days have passed since the date it was issued.

(5) Before commencing any inspection, an inspector who carries out a warrant shall—

- (a) if the owner of or a person apparently in control of the land or premises is present—
 - (i) identify himself or herself and explain his or her authority to that person and furnish proof of his or her designation; and 50
 - (ii) hand a copy of the warrant to that person or a person named in it; or

- (b) if the owner or person apparently in control of the land or premises is absent or refuses to accept a copy, attach a copy of the warrant to the land or premises in a prominent and visible place.

Entry without warrant

- 63.** (1) An inspector who does not have a warrant in his or her possession may enter and inspect— 5
- (a) any land or premises with the consent of the owner or person apparently in control of the land or those premises; or
 - (b) any land or premises, except residential land or premises in respect of which a certificate of registration has not been issued, on a routine basis— 10
 - (i) no more than six times during a 12 month period; or
 - (ii) more frequently than contemplated in subparagraph (i) if permitted by any law for the purposes of an inspection.
- (2) In addition to the entry permitted in terms of subsection (1), an inspector may enter any land or premises without a warrant— 15
- (a) if authorised to do so by any other law; or
 - (b) in respect of which there is an outstanding compliance notice issued in terms of section 68, for the purpose of determining whether that notice has been complied with.
- (3) Before commencing an inspection on any land or premises in terms of this section, an inspector shall identify himself or herself and explain his or her authority and furnish proof of his or her designation to the person apparently in control of the land or premises or the person who gave permission to enter. 20
- (4) An entry and inspection without a warrant shall be carried out during normal hours of business. 25

Use of force

- 64.** (1) An inspector executing a warrant in terms of section 62 may overcome any resistance to entry or inspection by using the force that is reasonably required, including breaking a lock, door or window of the land or premises to be entered.
- (2) Before using force, the person executing the warrant shall audibly demand admission and shall announce his or her purpose, unless he or she reasonably believes that doing so may induce someone to destroy, dispose of, or tamper with any object or document that is the object of the inspection. 30
- (3) The funds of the relevant department or provincial department shall be used to compensate anyone who suffers damage because of forced entry during the execution of any inspection when no one responsible for the land or premises was present. 35
- (4) Subject to any other law or in the case of an emergency, force may not be used to effect an entry or conduct an inspection in terms of section 63.

Inspector may be accompanied

- 65.** An inspector may be accompanied during an inspection by a member of the South African Police Service, or any other person reasonably required to assist in conducting the inspection, or all of them. 40

Duty to produce documents

- 66.** Any person who is in possession of any document relevant to an inspection, shall produce it at the request of the inspector. 45

Duty to answer questions and assist inspector

67. (1) Any person who is questioned by an inspector in terms of this Chapter shall first be informed of his or her constitutional rights before any questioning commences and any voluntary answer thereafter by that person shall be truthful and to the best of his or her ability. 5

(2) An answer or explanation given to an inspector may not be used or admitted in criminal proceedings against the person who provides it, except in proceedings against that person on a charge relating to—

- (a) the administration or taking of an oath;
- (b) the making of false statements; or 10
- (c) the failure to answer a lawful question fully and satisfactorily.

(3) An owner or occupier of any land or premises shall provide any facility and assistance that is reasonably required by an inspector to perform his or her functions effectively.

Compliance notices 15

68. (1) An inspector who is of the opinion that any provision of this Act has not been complied with, may, subject to subsection (2), issue a compliance notice in the prescribed form to the owner or person apparently in control of the relevant land or premises.

(2) A compliance notice contemplated in subsection (1) shall set out— 20

- (a) the provision that has allegedly not been complied with;
- (b) details of the nature and extent of the alleged non-compliance;
- (c) any steps that are required to be taken and the period within which those steps shall be taken; and
- (d) any penalty that may be imposed in terms of section 76 in the event of 25 non-compliance with those steps.

(3) A compliance notice contemplated in subsection (1) shall remain in force until an inspector issues a compliance certificate contemplated in subsection (4) in respect of that notice.

(4) An inspector who is satisfied that the owner or person apparently in control of any 30 land or premises has satisfied the terms of a compliance notice may issue a compliance certificate to indicate that compliance.

Closing of registered and other premises

69. (1) An inspector or any member of the relevant authority may, if he or she is of the opinion that a strike or lock-out or public disturbance, disorder, riot or public violence 35 is occurring or threatening at or near any registered premises or any premises on or place in which liquor may be sold without a registration, in such manner as may appear to him or her in the circumstances of the case to be the most effective, order the registered person or the person concerned, as the case may be, or the manager or agent of the person, to close the premises or place concerned during the times or for the periods that 40 the inspector or member may deem fit.

(2) A registered person or the person concerned, or his or her manager or agent, shall, on receipt of an order given under subsection (1), forthwith comply therewith, and, if he or she fails to do so, the person who has given the order may take the steps and use or 45 cause to be used the force that he or she may deem necessary to close the premises or place concerned.

(3) Any order given under subsection (1), may at any time be withdrawn—

- (a) by the person who gave such an order;
- (b) where such an order was given by an inspector, by any other inspector of the 50 relevant authority; or
- (c) where such an order was given by a member of a relevant authority, by another member of the relevant authority.

Part 2***Prohibited and controlled liquids*****Prohibited concoctions and drinks**

- 70.** (1) No person shall manufacture, have in his or her possession or custody or under his or her control or consume or sell, supply or give to any person— 5
- (a) any concoction manufactured by the fermentation of treacle, sugar or other substances and known as isityimiyana, hopana, qediviki, skokiaan, uhali or barberton;
 - (b) any concoction which, though called by another name is similar or substantially similar to any of the concoctions referred to in paragraph (a); 10
 - (c) any concoction manufactured by the fermentation of any substance the consumption of which would, in the opinion of the Minister, be prejudicial to the health and well-being of the population of the Republic, and specified by him or her by a notice in the *Gazette*; or
 - (d) any drink manufactured by the distillation of any concoction referred to in paragraph (a), (b), or (c). 15
- (2) The Minister may at any time by a like notice withdraw or amend any notice issued under subsection (1)(c).

Methylated spirit

- 71.** (1) The Minister may make regulations regarding— 20
- (a) the regulation and restriction of the importation, transshipment, conveyance, transmission, keeping, sale, supply or use of methylated spirit;
 - (b) the categories of persons who may sell methylated spirit;
 - (c) the keeping of records or other documents in respect of any dealing in methylated spirit, the form and manner in which the records or other 25 documents shall be kept and the particulars to be entered therein;
 - (d) the custody and retention of records or other documents contemplated in paragraph (c);
 - (e) the denaturation, odourisation, colouring and rendering impotable of methylated spirit sold or kept for sale, and the manner in which this shall be 30 done;
 - (f) the quantities of methylated spirit which may be sold on any occasion to any person and the receptacles in which it shall be sold; and
 - (g) the prohibition or restriction of the purchase or possession of methylated spirit, including the granting of permits for the purchase or possession thereof. 35
- (2) A regulation made under this section may for a contravention thereof or failure to comply therewith prescribe a penalty which shall not exceed imprisonment for a period of six months.
- (3) Different regulations may be made under this section in respect of different 40 categories of persons or different areas.

Part 3***Offences and penalties*****Offences regarding inspections**

- 72.** (1) No person shall—
- (a) refuse to grant an inspector access to premises to which the inspector is duly 45 authorised to have access;
 - (b) obstruct, interfere or hinder an inspector who is exercising a power or performing a duty in terms of this Act;
 - (c) refuse to provide an inspector with a document or information that the person is lawfully required to provide in terms of this Act; 50
 - (d) furnish false or misleading information to an inspector;

- (e) unlawfully prevent the owner of any land or premises, or a person working for that owner, from entering the land or premises in order to comply with a requirement of this Act;
- (f) pretend to be an inspector;
- (g) falsify an authorisation or a warrant, compliance notice or compliance certificate contemplated in this Chapter; 5
- (h) fail to comply with a compliance notice issued in terms of this Chapter;
- (i) enter any land or premises without a warrant in circumstances requiring a warrant;
- (j) act contrary to a warrant issued in terms of this Chapter; 10
- (k) without authority enter or inspect land or premises; or
- (l) disclose any information relating to the financial or business affairs of any person which was acquired in the exercise of any power or performance of any duty in terms of this Act, except—
 - (i) to a person who requires that information in order to exercise a power or perform a duty in terms of this Act; 15
 - (ii) if the disclosure is ordered by a competent court; or
 - (iii) if the disclosure is in compliance with the provisions of any law.

Offences regarding trade in liquor

- 73.** (1) Subject to Section 89, no registered person shall enter into or be a party to any agreement, understanding or condition whereby any registered person is directly or indirectly bound at any time— 20
- (a) to take delivery of liquor, whether together with any other article or not, from or through any registered person and whether to the exclusion, wholly or partly, of any other registered person or not; 25
 - (b) to take delivery of, distribute or keep in stock liquor of a particular registered manufacturer;
 - (c) not to take delivery of liquor from or through a particular registered person; or
 - (d) not to take delivery of, distribute or keep in stock liquor of a particular registered manufacturer. 30
- (2) Subject to section 89, no registered person shall hold a controlling interest in another person registered in a different category of registration: Provided that this subsection does not apply to registration for the sale of liquor at a special event.
- (3) Subject to section 89, no registered wholesaler or retailer shall accept delivery of any liquor which has not been ordered by such wholesaler or retailer. 35
- (4) No registered person shall fix, maintain or establish the price at which another registered person shall sell any liquor.
- (5) No registered manufacturer, officer or director of any registered manufacturer shall be the owner, proprietor or lessor of any premises covered directly or indirectly by any wholesaler's registration. 40

General offences

- 74.** (1) No person shall—
- (a) sell liquor otherwise than in terms of a registration;
 - (b) be violent or drunk and disorderly on premises in respect of which a certificate of registration has been issued; 45
 - (c) if he, she or it is the owner or occupier of registered premises, allow violent or drunk and disorderly behaviour on that premises;
 - (d) be drunk and disorderly in or on—

- (i) any road, street, lane, thoroughfare, square, park or market;
- (ii) any shop, warehouse or public parking area;
- (iii) any form of public transport; or
- (iv) any place of entertainment, café, eating-house or racecourse or any other premises or place to which the public has or is granted access, irrespective of whether access is granted against payment or is restricted to any category of persons or not; 5
- (e) consume any liquor in or on any road, street, lane or thoroughfare, or on vacant land adjacent thereto, in an urban area or other area subdivided into erven or plots with streets bounded by such erven or plots; 10
- (f) introduce, possess or consume any liquor on a sports ground that is not a registered premises, to which the public has or is granted access, irrespective of whether access is granted against payment or is restricted to any category of persons or not, except on any registered premises situated on the sports ground concerned; 15
- (g) falsely represent himself or herself or any other person to be over the age of 18 years in order to persuade a registered person, or his, her or its agent or employee, to sell or supply liquor to him or her or to that other person; or
- (h) supply liquor to a person in his, her or its employment for his or her own consumption as wages or remuneration, as an inducement to employment or as a supplement thereto. 20

Responsibility of registered persons for other persons

75. When the manager of the business to which a registration relates, the agent or employee of the registered person or a member of the family of such a person or manager does or omits to do any act which would be an offence in terms of this Act for the relevant registered person to do or omit to do, that registered person shall, in the absence of evidence to the contrary, be deemed himself or herself to have done or omitted to do the act, unless the court is satisfied that— 25

- (a) the registered person neither connived at nor permitted the act or omission by the manager, agent, employee or member concerned; 30
- (b) the registered person took all reasonable steps to prevent the act or omission; and
- (c) an act or omission, whether lawful or unlawful, of the nature charged on no condition or under no circumstance fell within the scope of the authority or employment of the manager, agent, employee or member concerned, 35

and the fact that the registered person issued instructions whereby an act or omission of that nature is prohibited shall not in itself be sufficient proof that he or she took all reasonable steps to prevent the act or omission.

Penalties

76. (1) Any person who contravenes or fails to comply with a provision of— 40

- (a) section 24, 72 or 74(b), (c), (d), (e), (f), or (g) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year;
- (b) section 26, 46, 51, 53, 54(1), 55, 58, 70, 74(a) or 75 shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding three years; or 45
- (c) section 73, 74(h) or 89(2), (3) or (4) shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding five years.

(2) Any person who is found to be continuously contravening or failing to comply with a provision of this Act, shall in respect of each day on which that person contravenes or fails to comply with that provision, be guilty of an offence, including the 50

day of an conviction for an offence in terms of this subsection or any subsequent day, and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

(3) Any person who is convicted of an offence in terms of this Act within a period of five years after he or she was convicted of a contravention of any law governing the sale of liquor, shall be liable to double the fine or imprisonment which may be imposed for that offence or to both that fine and that imprisonment. 5

(4) Despite any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.

Part 4

10

Judicial proceedings against or by relevant authority

Service of notices and documents

77. Any notice or document required to be served in terms of this Act, may be served by hand or sent by telefacsimile or registered letter addressed to the person to whom a notice or a document is to be served at the physical address, postal address or telefacsimile number, as the case may be, most recently provided by that person to the relevant authority or the person who wish to serve such document or notice, and knowledge of the contents shall be deemed to exist— 15

- (a) where the notice or document was hand delivered, when it was delivered;
- (b) where the notice or document was sent by telefacsimile, upon recordal thereof by the sending station; and 20
- (c) where the notice or document was posted by registered mail, fourteen days after it was sent,

in the absence of evidence to the contrary that the person on whom it was served, acting in good faith, through absence, accident, illness or other cause beyond that person's control did not receive the notice, or did not receive the notice until a later date. 25

Service of process

78. In any judicial proceedings instituted against the relevant authority, the service on the chairperson and at the office of the State Attorney if it is, or the branch of that office that is, situated in the area of jurisdiction of the court, of any process or any document whereby the proceedings are instituted, shall be sufficient service on the relevant authority. 30

Intermediation of State Attorney

79. No steps shall be taken by the relevant authority in any judicial proceedings contemplated in section 78 and no judicial proceedings shall be instituted by the relevant authority, except with the intermediation of the State Attorney. 35

Notices of intention to defend

80. The time to be allowed for the delivery of a notice of intention to defend in any judicial proceedings contemplated in section 78 shall, despite any other law, be not less than one month after service of the document whereby the proceedings are instituted, unless the court concerned has in a particular case authorised a shorter period. 40

Costs

81. The costs incurred by the relevant authority in connection with any judicial proceedings contemplated in section 78 shall, unless the court orders the costs to be borne by the opposite party or by the relevant authority on an attorney and own client scale, and subject to section 64(3), be paid out of the National Revenue Fund or the relevant Provincial Revenue Fund, as the case may be. 45

Appeals to High Court

82. (1) A person who has made any application, objection or representations in terms of this Act and who feels aggrieved by a decision on a question of law made by the appeal tribunal or a panel of appeal in connection with the application, objection or representations, may appeal to a division of the High Court against the decision. 5

(2) An appeal contemplated in subsection (1) shall be noted and prosecuted as if it were an appeal against a judgment in a magistrate's court in civil proceedings.

(3) If the court, after considering the appeal, is satisfied that the appeal tribunal or panel of appeal has misdirected itself in the making of the decision concerned, the court may set aside that decision, and shall in setting aside the decision, unless in its opinion exceptional circumstances warrant another order, issue an order that the relevant authority consider afresh the matter in respect of which the decision was made. 10

Part 5

Evidential matters

Proof of certain facts by affidavit 15

83. (1) If the question arises in any civil proceedings whether a particular act, transaction or occurrence did or did not take place in a particular department of the State or an organ of state or in a branch or office of such a department or organ, or the question arises in such proceedings whether a particular functionary in such a department, organ, branch or office did or did not perform a particular act or did or did not take part in a particular transaction, a document purporting to be an affidavit by a person who in that affidavit alleges— 20

(a) that he or she is in the employ of the State or organ of state in the department's branch or office concerned;

(b) that— 25

(i) if the act, transaction or occurrence concerned took place in that department, branch or office; or

(ii) if the functionary concerned performed such an act or took part in such a transaction,

it would in the ordinary course of events have come to the deponent's knowledge and a record thereof which is available to him or her would have been kept; and 30

(c) that it has not come to his or her knowledge—

(i) that such an act, transaction or occurrence took place; or

(ii) that that functionary performed such an act or took part in such a transaction, 35

and that there is no record thereof,

shall on mere production be admissible as proof in those proceedings that the act, transaction or occurrence concerned did not take place or that the functionary concerned did not perform the act concerned or did not take part in the transaction concerned. 40

(2) If the question arises in any civil proceedings whether a person with a particular name did or did not furnish a particular officer with particular information or a particular document, a document purporting to be an affidavit by a person who in that affidavit alleges that he or she is that officer and that no person with such a name furnished him or her with such information or document, shall on mere production be admissible as proof in those proceedings that the person did not furnish that officer with such information or document. 45

(3) If the question arises in any civil proceedings whether a fact or information has been recorded under this Act or whether a document is kept or retained thereunder, a document purporting to be an affidavit by a person who in that affidavit alleges that he or she is the person on whom this Act confers the power or imposes the duty to record that fact or information or to keep or retain that document and that he or she has recorded the fact or information concerned or keeps or retains the document concerned or that he or she has satisfied himself or herself that the fact or information concerned has been recorded or that the document concerned is kept or retained, shall on mere production be 55

admissible as proof in those proceedings that that fact or information has been so recorded or that that document is so kept or retained.

Procedural requirements for proof by affidavit

84. (1) An affidavit contemplated in section 83 shall not be admissible as proof in terms of the applicable subsection unless a copy thereof has been served by the party intending to make use thereof on every other party to the proceedings concerned at least seven days before the date of the production thereof. 5

(2) The court to which an affidavit referred to in subsection (1) is submitted may on application by any party to the proceedings concerned order that the person who made the affidavit concerned be called upon to give evidence in those proceedings or that written interrogatories be submitted to him or her for reply, and such interrogatories and any reply thereto purporting to be a reply by that person shall likewise be admissible as proof in those proceedings. 10

CHAPTER 6

REGULATIONS

15

Regulations

85. (1) The Minister may after consultation with the Member of the Executive Council of each province make regulations regarding—

- (a) the facilitation of the empowerment of new entrants in the industry;
- (b) the payment of fees in respect of any application made in terms of this Act; 20
- (c) the payment of fees in respect of registrations;
- (d) the payment of annual fees in respect of registrations;
- (e) the duties of officers by virtue of this Act;
- (f) the form of certificates of registration, notices, summonses, appointments and designations, determinations, applications, objections and other documents in terms of this Act; 25
- (g) notices of information with regard to the abuse of liquor or any other related matter deemed by him or her to be in the public interest;
- (h) within the framework of section 30, the application procedure for the category of registration contemplated in section 27(d); 30
- (i) the manner in which a general dealer which is a registered person shall demarcate prescribed premises and keep, display and sell liquor and control access thereto;
- (j) the furnishing of information by registered persons regarding a price schedule and the volumes of liquor manufactured and sold or manufactured or sold, as the case may be, by them during a specified period; 35
- (k) the prohibition or granting of registration for the retail sale of liquor at or near a petroleum service station;
- (l) any matter required or permitted to be prescribed in terms of this Act; and
- (m) generally all matters which are reasonably necessary or expedient to be prescribed in order to achieve the objects of this Act. 40

(2) A regulation made under this Act may provide that a person who contravenes or fails to comply with a provision thereof, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(3) A regulation regarding any fees shall be made in consultation with the Minister in the national sphere of government responsible for state expenditure. 45

CHAPTER 7

GENERAL PROVISIONS

Limitation of liability

86. The State, an organ of state, a member of the advisory committee, the national authority, a provincial authority, the appeal tribunal, and a panel of appeal, or any person in their service or acting on their authority, or any person appointed to exercise any power or to perform any duty in terms of this Act, is not liable in respect of any loss or damage resulting from anything done or not done in good faith in terms of this Act. 5

Repeal of laws

87. The laws mentioned in Schedule 1 are hereby repealed to the extent indicated in the third column thereof. 10

Continuation of certain pending matters

88. Despite the repeal of any law by this Act, any application made by virtue of such a law before the date of commencement of the repeal and not disposed of on that date, shall be continued and disposed of as if the law were not so repealed. 15

Transitional arrangements

89. (1) Despite section 87—

(a) every exemption, licence or approval set out in the first column of Schedule 2 and in force immediately before the date of commencement of this Act, shall be deemed from that date to be a registration in the category set out in the second column of that Schedule; and 20

(b) a notice issued under section 33 of the Liquor Act, 1989, in respect of an application for a licence set out in the first column of Schedule 2 and in force immediately before the date of commencement of this Act, shall be deemed from that date to be a registration set out in the second column of that Schedule. 25

(2) A producer as defined in section 31(2) of the Liquor Act, 1989, and the holder of a wholesale liquor licence who is deemed to be registered to sell liquor for wholesale by virtue of the conversion contemplated in subsection (1) shall dispose of all his, her or its interests in the retail liquor trade within a period of three years after the commencement of this Act. 30

(3) A person conducting business both as a producer and as a wholesaler of liquor by virtue of a license issued in terms of the Liquor Act, 1989, shall dispose of all his, her or its interests in the retail liquor trade and in either manufacturing or wholesaling within three years after the commencement of this Act. 35

(4) The holder of a brewers' licence who is deemed to be registered to manufacture liquor by virtue of the conversion contemplated in subsection (1), shall dispose of all his, her or its interests in the wholesale and retail liquor trade in so far as such interests relate to the sale of beer and sorghum beer, or beer or sorghum beer, as the case may be, within a period of three years after the commencement of this Act. 40

(5) Any determination made in terms of section 51 of the Liquor Act, 1989, shall lapse three years after the commencement of this Act.

(6) Any consent granted under section 158(2) of the Liquor Act, 1989, shall lapse on 31 December of the year following the year in which this Act comes into operation and shall on that date cease to be of any force and effect. 45

(7) Subject to subsection (1), any application or matter received by a local authority in terms of the Liquor Act, 1989, before the commencement of this Act and not disposed of prior to such commencement, shall be disposed of by that local authority in terms of that Act.

(8) The holder of a grocer's wine licence in terms of the Liquor Act, 1989, who is deemed to be registered to sell liquor by virtue of the conversion contemplated in subsection (1), shall be entitled to sell wine as defined in section 1 of the Liquor Products Act, 1989, for a period of five years after the commencement of this Act, whereafter the licence shall lapse: Provided that such holder may at any time after the commencement of this Act apply to the relevant authority for a registration contemplated in section 27(c)(i) for prescribed separate premises. 5

(9) The conversion of a wholesaler (manufacturer) set out in Schedule 2 shall be subject to the scrutiny and confirmation of the relevant authority.

Short title and commencement

10

90. This Act is called the Liquor Act, 1998, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

Schedule 1
Repeal of laws
(Section 87)

No. and year of law	Short title	Extent of repeal
Act No. 27 of 1989	Liquor Act, 1989	The whole
Act No. 60 of 1989	Liquor Products Act, 1989	Section 32 in respect of the amendment of the Liquor Act, 1989
Act No. 44 of 1993	Airports Company Act, 1993	Section 35
Act No. 105 of 1993	Liquor Amendment Act, 1993	The whole
Act No. 57 of 1995	Liquor Amendment Act, 1995	The whole

SCHEDULE 2

Conversion of exemptions, licences and approvals

(Section 89(1))

Kind of exemption, licence or approval in force immediately before the date of commencement of this Act	Category of registration deemed to be in force from the date of commencement of this Act
An exemption in terms of section 3(1)(e), (f), (g), (h), (j) or (k), or (2) of the Liquor Act, 1989, or any other law	A registration for the retail sale of liquor contemplated in section 27(c)(i), (ii) or (iii) or (d) of this Act, as the case may be, for a period of three years, whereafter such registration shall lapse
An exemption referred to in section 4(1) of the Liquor Act, 1989	A registration for the retail sale of liquor contemplated in section 27(c)(i), (ii) or (iii) or (d) of this Act, as the case may be for a period of three years, whereafter such registration shall lapse
A hotel liquor licence referred to in section 20(a)(i) of the Liquor Act, 1989	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, contemplated in section 27(c)(ii) of this Act
A restaurant liquor licence referred to in section 20(a)(ii) of the Liquor Act, 1989	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, contemplated in section 27(c)(ii) of this Act
A wine-house licence referred to in section 20(a)(iii) of the Liquor Act, 1989	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, contemplated in section 27(c)(ii) of this Act
A theatre liquor licence referred to in section 20(a)(iv) of the Liquor Act, 1989	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, contemplated in section 27(c)(ii) of this Act
A club liquor licence referred to in section 20(a)(v) of the Liquor Act, 1989	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, contemplated in section 27(c)(ii) of this Act
A sorghum beer licence referred to in section 20(a)(vi) of the Liquor Act, 1989	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, contemplated in section 27(c)(ii) of this Act
A special liquor licence referred to in section 20(a)(vii) of the Liquor Act, 1989	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, contemplated in 27(c)(ii) of this Act
A temporary liquor licence referred to in section 20(a)(viii) of the Liquor Act, 1989	A registration for the retail sale of liquor at a special event contemplated in section 27(d) of this Act
An occasional licence referred to in section 20(a)(ix) of the Liquor Act, 1989	A registration for the retail sale of liquor at a special event contemplated in section 27(d) of this Act
A wholesale liquor licence referred to in section 20(b)(i) of the Liquor Act, 1989	A registration for the distribution of liquor by a wholesaler contemplated in section 27(b) of this Act: Provided that the conversion may be subject to section 29(3)(c) of this Act

Kind of exemption, licence or approval in force immediately before the date of commencement of this Act	Category of registration deemed to be in force from the date of commencement of this Act
A wholesaler (manufacturer) that was granted a licence referred to in section 20(b)(i) of the Liquor Act, 1989	A registration for the manufacture of liquor contemplated in section 27(a)(i) or (ii) of this Act, as the case may be: Provided that the conversion shall be subject to sections 29(3)(c) and 89(9) of this Act
A brewer's licence referred to in section 20(b)(ii) of the Liquor Act, 1989	A registration for the manufacture of liquor above or below the prescribed volume contemplated in section 27(a)(i) or (ii) of this Act, as the case may be: Provided that the conversion may be subject to section 29(3)(c) of this Act
A liquor store licence referred to in section 20(b)(iii) of the Liquor Act, 1989	A registration for the retail sale of liquor for consumption off the premises on which liquor is being sold, contemplated in section 27(c)(i) of this Act
A grocer's wine licence referred to in section 20(b)(iv) of the Liquor Act, 1989	A registration for the retail sale of liquor for consumption off the premises on which liquor is being sold, contemplated in section 27(c)(i) of this Act, subject to section 89(8) of this Act
A wine farmer's licence referred to in section 20(b)(v) of the Liquor Act, 1989	A registration for the manufacture of liquor above or below the prescribed volume contemplated in section 27(a)(i) or (ii) of this Act, as the case may be: Provided that the conversion may be subject to section 29(3)(c) of this Act
A sorghum beer brewer's licence referred to in section 20(b)(vi) of the Liquor Act, 1989	A registration for the manufacture of liquor above or below the prescribed volume contemplated in section 27(a)(i) or (ii) of this Act, as the case may be: Provided that the conversion may be subject to section 29(3)(c) of this Act
A sorghum beer licence referred to in section 20(b)(vii) of the Liquor Act, 1989	A registration for the retail sale of liquor for consumption off the premises on which liquor is being sold, contemplated in section 27(c)(i) of this Act
A special licence referred to in section 20(b)(viii) of the Liquor Act, 1989	A registration for the retail sale of liquor for consumption off the premises on which liquor is being sold, contemplated in section 27(c)(i) of this Act
A producer's licence referred to in section 20(b)(ix) of the Liquor Act, 1989	A registration for the manufacture of liquor above or below the prescribed volume contemplated in section 27(a)(i) or (ii) of this Act, as the case may be: Provided that the conversion may be subject to section 29(3)(c) of this Act
An approval granted in terms of section 60 of the Liquor Act, 1989, to a holder of a wine-house licence	A registration for the retail sale of liquor for consumption off the premises on which liquor is being sold, contemplated in section 27(c)(i) of this Act
A sports ground liquor licence referred to in section 189 of the Liquor Act, 1989	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, contemplated in section 27(c)(ii) of this Act

Kind of exemption, licence or approval in force immediately before the date of commencement of this Act	Category of registration deemed to be in force from the date of commencement of this Act
A special licence (Tavern) referred to in section 20(a)(vii) of the Liquor Act, 1989	A registration for the retail sale of liquor for consumption on and off the premises on which liquor is being sold, contemplated in section 27(c)(iii) of this Act

MEMORANDUM ON THE OBJECTS OF THE LIQUOR BILL

1. GENERAL

The Department of Trade and Industry ("the DTI"), together with the provincial departments charged with economic affairs, has since 1996 embarked on an extensive exercise to evaluate current legislation regulating the manufacture, distribution and retail sale of liquor, and to do research on the state of the liquor industry. This process culminated in the publication of the Liquor Policy Document (the "Liquor Policy") and the Draft Liquor Bill on 11 July, 1997. A further process of consultation with all interested parties followed, resulting in the Liquor Bill, 1998 ("the Bill").

The impetus behind the drafting of new liquor legislation, is to address the dire socio-economic consequences of liquor in our society. The radical steps necessitating this have been precipitated by an understanding that alcohol is a potentially harmful substance if not used properly, as has been confirmed recently by the Constitutional Court. However, those steps are tempered by an appreciation that new legislation must recognise the economic benefits of the liquor trade. The object is to ensure effective and efficient regulation of liquor and liquor products by encouraging compliance, applying appropriate penalties to violations that reflects the socio-economic costs associated with alcohol and empowering the previously disadvantaged by facilitating entry into the industry. In order to achieve this, it is necessary to have reference to the context within which this new legislation has materialised.

The history of liquor regulation in South Africa is an integral part of segregation, in that liquor was used as a means of social control, social engineering and labour mobilisation. Legislation was promulgated to prohibit Blacks from producing and obtaining liquor and the "tot" system is still used as a method of payment to certain labourers. While liquor became an instrument of discrimination, lack of development and high levels of unemployment, it also became a source of concentration of massive wealth, political power and benefits for a few.

This dual approach to the different constituencies was the basis of constant raids, harassment, arrests, prosecutions and imprisonment of Blacks. It also precipitated an inordinate amount of social decay, family violence, alcohol related disease, crime, accidents and work related problems in the Black community. It spawned a huge illegal liquor trade resulting in only 10% of the estimated 250 000 liquor outlets being licenced. However, those conditions were not left unchallenged, because the Black community mounted resistance and defiance to those problems by, for example, burning township beer halls in an attempt to bring proper attention to the issue.

The above situation obviated the need to review the status quo and to look into the causes of those problems and to identify possible solutions. Consequently, the Department, in compliance with democratic norms and Constitutional imperatives, initiated consultations with the various stakeholders in the liquor trade, namely the Provinces, the liquor industry, including the manufacturers, the wholesalers, the retailers, and their respective associations, and the civil society organisations, to share ideas on addressing the identified problems.

The outcome confirmed the need to draft a new policy, which resulted in this Bill. It also confirmed the need to restructure the liquor industry and to adopt a system that would permit effective and efficient regulation. The objective was to find a balance between the benefits from the liquor industry and the negative socio-economic consequences of using liquor.

2. THE LIQUOR POLICY

The Liquor Policy embraces the following:

- (a) Recognising liquor as a potentially harmful substance and promoting public education and social responsibility programmes;

- (b) addressing the socio-economic costs of liquor consumption by promoting maintenance and support structures for rehabilitation of affected individuals;
- (c) regulating the manufacture, distribution and sale of liquor and ensuring compliance and providing severe penalties for violations;
- (d) redressing the inequities of discrimination through empowerment of the previously disadvantaged;
- (e) creating jobs and economic growth;
- (f) ensuring the participation of public representatives in critical matters that affect the public in regulation of liquor via the appropriate regulatory structures; and
- (g) restructuring the industry by implementing a three-tier registration system which will ensure effective regulation of the manufacturing, distribution and sale of liquor, will facilitate the empowerment of the disadvantaged and will boost job creation.

3. OBJECTS OF BILL

The objects of the Bill are to maintain economic unity and essential national standards in the liquor trade and industry, to encourage and support the liquor industry and to manage and reduce the socio-economic and other costs of excessive alcohol consumption by—

- (a) establishing a national and uniform administrative and regulatory framework within which the liquor industry can conduct its business;
- (b) creating an environment in which—
 - (i) the entry of new participants into the liquor industry is facilitated;
 - (ii) appropriate steps are taken against those selling liquor outside the administrative and regulatory framework established in terms of this Bill;
 - (iii) those involved in the liquor industry may attain and maintain adequate standards of service delivery;
 - (iv) community considerations on the registration of premises are taken into account; and
 - (v) the particular realities containing the liquor industry can be addressed; and
- (c) promoting a spirit of co-operation and shared responsibility within all spheres of government, and among other interested persons in their dealings with consumers of liquor and in their attempt to address the socio-economic costs and health and other related problems associated with excessive alcohol consumption. (See clause 2.)

National Liquor Advisory Committee

In keeping with the policy guidelines of the Liquor Policy, the Bill provides for the creation of the National Liquor Advisory Committee (“the NLAC”). (See clauses 4-8.) The NLAC will consist of representatives from the liquor industry, the community and the DTI, and officials of departments in the national and provincial spheres of government responsible for various relevant matters.

The NLAC will advise the Minister of Trade and Industry (“the Minister”) or the Member of the Executive Council (“the MEC”) on any matter arising from the Bill, including the consumption of alcohol among the youth and the impact of alcohol abuse on public health, family and social life. It will also evaluate and monitor trends in the liquor industry and promote research in this regard. In addition, it will design and monitor the implementation of educational and social responsibility programmes on the potentially harmful effect of alcohol. Clause 21 of the Bill provides for the annual reporting and accounting procedures that have to be followed by the NLAC. The financial statements of the NLAC shall be audited by the Auditor-General.

National Liquor Authority

The Bill provides for another body, the National Liquor Authority (“the NLA”), which will be charged with approving or refusing of applications for registration for the manufacture and the wholesale distribution of liquor, cancellation of these registrations, determining the conditions applicable to these registrations, and performing any other function conferred on it by the Bill. (See clauses 9-13.) In addition, clause 21 of the Bill provides for the annual reporting and accounting procedures that have to be followed by the NLA. The financial statements of the NLA shall be audited by the Auditor-General. Furthermore, the NLA is required to maintain a register of all current and past registrations and to send a monthly report to the DTI detailing these statistics. (See clause 44.)

Provincial liquor authorities

In the Provinces, the Bill provides for the creation of provincial liquor authorities (“PLA’s”), which will be charged with approval or refusal of applications for registration in the four categories of the retail sale of liquor, withdrawal or suspension of any these registrations, determination of conditions applicable to these registrations, and the performance of any other function conferred on it by the Bill. (See clauses 14-16.) The PLA’s are required to compile annual reports pursuant to the accounting procedures listed in clause 21 of the Bill. The financial statements of the PLA’s shall be audited by the Auditor-General. The Bill also empowers the PLA’s to refer a registered person to the South African Police Service for criminal investigation. Furthermore, the PLA’s may cancel a registration in cases of continued non-compliance. A register of all current and past registration must be maintained by each PLA and this must be sent to the DTI in the form of a monthly report detailing these statistics.

Appeals

An appeal tribunal with functions corresponding to those of the provincial panels of appeal will be established to hear appeals against the decisions of the NLA. Applicants who apply to be registered for the manufacture and wholesale distribution of liquor, and objectors, may lodge appeals to the appeal tribunal against decisions of the NLA. Provision is also made for the creation of a panel of appeal in each province. Applicants who apply to be registered in the different categories of retail sale of liquor or objectors to registrations may lodge appeals to the relevant panel of appeal against decisions of a PLA. (See clauses 17, 32 and 39.)

Disputes between liquor authorities

In the event of any dispute arising between the NLA and a PLA, and between the PLA’s, regarding the regulation of and control over liquor, the NLAC will be tasked to resolve such dispute.

Vertical integration

To enable effective administration and proper regulation of the liquor industry, vertical integration will be limited. This implies that no person may hold controlling interests in businesses registered in more than one category (i.e., manufacturing, distribution or retailing). (See clause 89(2).)

Tie agreements

The practice known as “tie agreements”, which usually takes the form of an obligation placed by a liquor trader on another liquor trader to the benefit of the former, will be prohibited. Consent granted to enter into such agreements under the provisions of the Liquor Act, 1989, will lapse on 31 December of the year following the year in which this Bill is promulgated. (See clause 89.)

Registration procedure

The Bill allows for manufacturers, wholesalers and retailers to apply for registration to sell liquor through a much simplified procedure compared to that of the Liquor Act, 1989. This will facilitate the legislation of survival-type businesses among the previously disadvantaged sectors of the community. The procedure also significantly expands the involvement of the community. Applicants will be required to give adequate notice of intention to apply for registration and there is an objection procedure that is more simplified compared to current legislation. However, persons convicted of serious offences less than three years prior to application may not be registered.

Categories of registration

Four categories of registration are provided for, namely, manufacture of liquor, wholesale distribution of liquor, retail sale of liquor and retail sale of liquor at special events. In addition, within the category of manufacturing of liquor, there are two sub categories, namely, (i) above the prescribed volume, and (ii) below the prescribed volume. (See clause 27.)

Restrictions

Where restrictions occur, these are placed to ensure that liquor sales occur in an orderly fashion. For example, grocer's wine licences will be converted to retail registrations for the sale of liquor for consumption on premises other than where the liquor is being sold. Although the Bill allows liquor sales on any day of the week, liquor sales may only occur during such hours as may be determined by the local municipal authority. Selling liquor to persons under 18 years of age or to intoxicated persons is an offence.

Health warnings

The Minister, in concurrence with the Minister of Health, may determine the contents of health warnings to be displayed by registered businesses, and the manner in which they shall be displayed.

Inspection

Provision is made for the creation of both national and provincial liquor inspectorates. (See clause 60.) The inspectors will be granted wide powers so as to ensure that the provisions of the Bill will be effectively enforced. (See clauses 61 and 62.)

Consultation

The process leading to the new Bill included wide-ranging consultations with the liquor industry, religious leaders, non-governmental organisations, labour unions and empowerment groups. Role-players were invited to submit their comments on new legislation to the provincial departments of economic affairs and the DTI in late 1996. On publication of the Draft Liquor Bill on 11 July 1997, notices were placed in national and regional newspapers announcing that government would hold workshops throughout the country. Anyone with an interest in the matter had the opportunity to submit comments. Concerns could also be raised in written form and submitted to the DTI or provincial departments. The Bill has been subjected to a process of extensive revision in response to the comments received.

The government launched an extensive program of public awareness, granting many interviews on radio and national television and agreeing to meet all interested parties who wishes to raise their concerns personally. Although the deadline for comments expired on 12 September 1997, the government has continued to meet representatives from the entire spectrum of South African society right to the present.

4. PROCEDURE

The State Law Advisers are of the opinion that, as the object of the Bill appears to be the maintenance of economic unity and essential national standards in the liquor trade and industry, Section 44(2)(b) of the Constitution is applicable in respect of matters in the Bill falling within a functional area listed in Schedule 5 of the Constitution, in terms of which the Bill should be dealt with in accordance with section 76(1) of the Constitution.