

REPUBLIC OF SOUTH AFRICA

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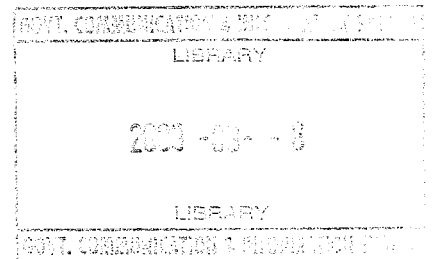
# LIQUOR BILL

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*(As presented by the Portfolio Committee on Trade and Industry (National Assembly))*  
*(The English text is the official text of the Bill)*

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(MINISTER OF TRADE AND INDUSTRY)



[B 23B—2003]

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# BILL

To establish national norms and standards in order to maintain economic unity within the liquor industry; to provide for essential national standards and minimum standards required for the rendering of services; to provide for measures to promote co-operative government in the area of liquor regulation; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

## CONTENTS

### *Sections*

<b>CHAPTER 1</b>		<b>5</b>
<b>DEFINITIONS, INTERPRETATION, OBJECTS AND APPLICATION OF ACT</b>		
1.	Definitions and interpretation	
2.	Objects of Act	
3.	Application of Act	10
<b>CHAPTER 2</b>		
<b>NATIONAL LIQUOR POLICY</b>		
4.	Regulation of manufacture and distribution of liquor	
5.	Regulation of methylated spirits	
6.	Prohibition of impotable substance	15
7.	Registered activities from registered premises	
8.	Prohibitions regarding employment in liquor industry	
9.	Advertising restrictions	
10.	Prohibition of supply of liquor or methylated spirits to minor	
<b>CHAPTER 3</b>		<b>20</b>
<b>REGISTRATION AS MANUFACTURER AND DISTRIBUTOR</b>		
11.	Categories of registration and qualifications	
12.	Determination of application	
13.	Conditions of registration	
14.	Certificate, validity, and public notice of registration	25
15.	Transfer of registration	
16.	Variation of conditions of registration	
17.	Death, insolvency or incapability of registered person	
18.	Application, registration and renewal fees	
19.	Conditions of licence	30
20.	Cancellation of registration	

- 21. Voluntary cancellation
- 22. Cancellation as consequence of sequestration or winding-up
- 23. National record of registrations
- 24. Review or appeal of Minister's decisions

#### **CHAPTER 4**

5

#### **COMPLIANCE**

- 25. Designation of inspectors
- 26. Functions of inspectors
- 27. Entry of premises with warrant
- 28. Entry of premises without warrant
- 29. Use of force
- 30. Duty to produce documents, answer questions and assist inspector
- 31. Compliance notices
- 32. Objection to compliance notice
- 33. Review or appeal of Minister's decisions

10

15

#### **CHAPTER 5**

#### **OFFENCES AND PENALTIES**

- 34. Offences
- 35. Penalties and forfeiture
- 36. Imputation of criminal liability

20

#### **CHAPTER 6**

#### **NATIONAL LIQUOR POLICY COUNCIL**

- 37. Establishment of Council
- 38. Composition of Council
- 39. Functions of Council
- 40. Proceedings

25

#### **CHAPTER 7**

#### **REGULATIONS AND NOTICES**

- 41. Public health considerations
- 42. Power to issue regulations and notices
- 43. Procedure when issuing regulations

30

#### **CHAPTER 8**

#### **GENERAL PROVISIONS**

- 44. Limitation of liability
- 45. Delegation of power
- 46. Repeal of laws
- 47. Short title and commencement

35

#### **SCHEDULE 1**

#### **TRANSITIONAL PROVISIONS**

#### **SCHEDULE 2**

40

#### **REPEAL OF LAWS**

## CHAPTER 1

## DEFINITIONS, INTERPRETATION, OBJECTS AND APPLICATION OF ACT

## Definitions and interpretation

1. (1) In this Act, unless the context indicates otherwise —
- “**applicable provincial legislation**” means legislation enacted by a provincial legislature regulating the micro-manufacture, retail sale or consumption of liquor; 5
- “**applicant**” means a person who has applied to be registered in terms of this Act;
- “**beer**” includes —
- (a) ale, cider and stout; and
- (b) any other fermented drink, other than traditional African beer— 10
- (i) that is manufactured as, or sold under the name of, beer, ale, cider or stout, if it contains more than one per cent by volume of alcohol; or
- (ii) that is declared to be beer under section 42(2)(a);
- “**bottle**” means to place and seal a substance in the container in which it will be offered for retail sale; 15
- “**Competition Commission**” means the body established by section 19 of the Competition Act, 1998 (Act No. 89 of 1998);
- “**control**” has the meaning determined in accordance with the Competition Act, 1998 (Act No. 89 of 1998);
- “**Council**” means the National Liquor Policy Council established by section 37; 20
- “**department**” means the department responsible for liquor matters in the national sphere of government;
- “**distribute**” means to offer liquor or methylated spirits for sale, or sell it, to a registered person;
- “**distributor**” means a person registered as such in terms of this Act; 25
- “**Director-General**” means the Director-General of the department responsible for liquor matters in the national sphere of government;
- “**financial year**” means the calendar year commencing on the first day of April in any year and ending on the last day of March in the following year;
- “**impotable substance**” means any substance that is unsafe for human consumption; 30
- “**inspector**” means a person designated as such in terms of section 25 (1);
- “**liquor**” means —
- (a) a liquor product, as defined in section 1 of the Liquor Products Act, 1989 (Act No. 60 of 1989); 35
- (b) beer or traditional African beer; or
- (c) any other substance or drink declared to be liquor under section 42(2)(a);
- “**manufacture**” means to produce or bottle liquor or methylated spirits for the purpose or with the intent of selling it;
- “**manufacturer**” means a person registered as such in terms of this Act; 40
- “**Member of the Executive Council**” means, in respect of each province, that person appointed in terms of section 132 of the Constitution to whom the responsibility for liquor licensing has been assigned;
- “**methylated spirits**” means—
- (a) a spirits denatured in accordance with any law on the denaturation or methylation of spirits; 45
- (b) any other denatured spirits, including—
- (i) a medicated spirits; or
- (ii) a denatured spirits declared to be a methylated spirits in terms of this Act; 50
- “**micro-manufacturer**” means a person registered as such in terms of applicable provincial legislation to manufacture liquor at or below the prescribed threshold volume;
- “**Minister**” means—
- (a) the member of Cabinet responsible for liquor matters in the national sphere of government; or 55
- (b) a person acting on or in terms of a delegation made under section 45;
- “**minor**” means a person who has not attained the age of 18 years;
- “**person**” includes a trust, and any other entity mentioned in the definition of “person” set out in the Interpretation Act, 1957 (Act No. 33 of 1957); 60

- “**premises**” includes any place, land, building or conveyance, or any part of it;
- “**prescribe**” means prescribe by regulation in terms of this Act;
- “**prescribed threshold volume**” means the volume determined by the Minister in terms of section 4(10);
- “**private collection**” means liquor held by a person if that person acquired that liquor for private consumption and without the intention of re-selling it, whether by—
- (a) producing it;
  - (b) purchasing it from a retail seller;
  - (c) acquiring it from another private collection; or
  - (d) importing it into the Republic;
- “**register**”, when used as a noun, means the register referred to in section 23;
- “**registered person**” means—
- (a) a manufacturer, distributor, micro-manufacturer or retail seller; or
  - (b) a person acting in the capacity of an employee or agent of a person referred to in paragraph (a);
- “**registered premises**” means premises that have been registered in terms of this Act;
- “**registrant**” means a person who has been registered in terms of this Act;
- “**regulation**” means a regulation made under this Act;
- “**retail sale**” means the sale of liquor for the purpose of consumption;
- “**retail seller**” means a person who is registered or licensed in terms of applicable provincial legislation to sell liquor, or make liquor available for sale, for the purpose of consumption;
- “**sell**” includes exchange, offer, display, deliver, supply or dispose of, for sale, or authorise, direct or allow a sale;
- “**supply**”, with regard to any liquor or methylated spirits, means to place a person in possession or control of that liquor or methylated spirits, respectively;
- “**traditional African beer**”—
- (a) has the meaning determined in terms of the Customs and Excise Act, 1964 (Act No. 91 of 1964), if any; or
  - (b) in the absence of a meaning contemplated in paragraph (a), has the meaning set out in Schedule 1;
- “**traditional African beer powder**”—
- (a) has the meaning determined in terms of the Customs and Excise Act, 1964 (Act No. 91 of 1964), if any; or
  - (b) in the absence of a meaning contemplated in paragraph (a), has the meaning set out in Schedule 1;
- “**this Act**” includes any schedule, and any regulation or notice made under this Act.
- (2) For all purposes of this Act, the question whether, at the time of producing, bottling, importing or acquiring any liquor, a person did so for the purpose or with the intention of selling that liquor is a matter of fact to be inferred from the circumstances, including but not limited to—
- (a) the frequency and quantity of liquor produced, bottled, imported or acquired by that person;
  - (b) the frequency and quantity of sales of liquor by that person;
  - (c) the existence or absence of any evidence that—
    - (i) at the time that liquor was acquired, the person could reasonably have expected that the acquisition and retention of that liquor could result in commercial gain; or
    - (ii) the person acquired or retained the liquor with the expectation of realising a commercial gain;
  - (d) the existence or absence of any evidence of advertising, promotional or marketing activity by that person relating to the sale of liquor; and
  - (e) the nature of any relationship between that person and a registered person.

## Objects of Act

### 2. The objects of this Act are—

- (a) to reduce the socio-economic and other costs of alcohol abuse by—
  - (i) setting essential national norms and standards in the liquor industry;
  - (ii) regulating the manufacture and wholesale distribution of liquor;

- (iii) setting essential national norms and standards for the regulation of the retail sale and micro-manufacture of liquor; and
- (iv) providing for public participation in the consideration of applications for registration; and
- (b) to promote the development of a responsible and sustainable liquor industry in a manner that facilitates—
  - (i) the entry of new participants into the industry;
  - (ii) diversity of ownership in the industry; and
  - (iii) an ethos of social responsibility in the industry.

**Application of Act** 10

3. (1) Subject to subsection (2), this Act applies to all manufacturing and distribution of liquor or methylated spirits and to the regulation of impotable substances within the Republic.

(2) This Act does not apply to a private collection.

**CHAPTER 2** 15

**NATIONAL LIQUOR POLICY**

**Regulation of manufacture and distribution of liquor**

4. (1) The Minister must regulate the manufacture and distribution of liquor in accordance with this Act.
- (2) A person must not manufacture or distribute liquor, except to the extent that the person is permitted to do so in terms of this Act. 20
- (3) Subject to the conditions of its registration, a manufacturer may—
- (a) manufacture liquor; and
  - (b) distribute the liquor that it has manufactured —
    - (i) to another manufacturer or to a distributor; and 25
    - (ii) to a retail seller, if permitted by the conditions of registration.
- (4) Subject to the conditions of registration, a distributor may distribute liquor.
- (5) Subject to the conditions of registration or licence, a micro-manufacturer may —
- (a) manufacture liquor in a volume not exceeding the prescribed threshold volume; and 30
  - (b) distribute the liquor that it has manufactured to —
    - (i) another manufacturer or to a distributor; and
    - (ii) to a retail seller, if permitted by the conditions of registration.
- (6) In addition to any authority granted in terms of applicable provincial legislation, a retail seller may — 35
- (a) purchase or otherwise acquire liquor other than by manufacturing it; and
  - (b) sell or otherwise dispose of liquor as a return of stock to a manufacturer or distributor.
- (7) A sale of liquor by a retail seller in circumstances that would constitute a genuine retail sale if the purchaser of that liquor were an unregistered person, does not constitute distribution for the purposes of this Act merely because the purchaser of that liquor is a registered person. 40
- (8) A sale of liquor by a retail seller to any person, whether registered or unregistered, constitutes distribution for the purposes of this Act if the retail seller—
- (a) knew that the purchaser intended to re-sell that liquor; or 45
  - (b) reasonably ought to have concluded that the purchaser intended to resell that liquor, having regard to the circumstances of the sale, including but not limited to the factors listed in section 1(2) and—
    - (i) whether the retail seller knew the purchaser was a registered person, if applicable; 50
    - (ii) the nature of any delivery instructions given by the purchaser;
    - (iii) any request by the purchaser to establish a discounted pricing arrangement, or a standing arrangement for ordering, billing, credit or payment; and
    - (iv) any request or instructions by the purchaser to receive liquor and tranship 55 that liquor to the purchaser or a third party.

(9) Nothing in this section restricts or limits any right that a manufacturer, distributor or micro-manufacturer may have in terms of applicable provincial legislation to apply to be registered or licensed as a retail seller.

(10) The Minister, by notice in the *Gazette*, must prescribe—

- (a) a threshold volume of liquor contemplated in subsection (5)(a); or 5
- (b) a formula or mechanism for the calculation of a threshold volume of liquor contemplated in subsection (5)(a).

#### **Regulation of methylated spirits**

5. (1) A person must not manufacture or distribute methylated spirits except in accordance with this Act. 10

(2) The Minister may make regulations—

- (a) declaring any substance to be methylated spirits;
- (b) restricting and regulating the importation, manufacture, distribution, conveyance, keeping or use of methylated spirits;
- (c) restricting or prohibiting the purchase or possession of methylated spirits; 15
- (d) concerning the denaturation, odourisation, colouring and rendering impotable of methylated spirit sold or kept for sale;
- (e) prescribing the categories and qualifications of persons who may sell methylated spirits to the public;
- (f) prescribing the maximum quantities of methylated spirits that may be sold on to any person; and 20
- (g) prescribing the form, manner, custody and retention of records or other documents to be kept in respect of any dealing in methylated spirits.

#### **Prohibition of impotable substance**

6. (1) A person must not produce, bottle or sell any substance under the name of any liquor or methylated spirits, if that substance is not liquor or methylated spirits, respectively, as defined in this Act. 25

(2) A person must not manufacture or sell any impotable substance for consumption.

#### **Registered activities from registered premises**

7. (1) A registrant may carry out its registered activities only in or from registered premises and in accordance with the regulations or any applicable conditions of registration. 30

(2) A registrant may store liquor only in registered premises, and in accordance with the regulations or any applicable conditions of registration.

#### **Prohibitions regarding employment in liquor industry** 35

8. (1) Despite any law or agreement to the contrary, a registered person must not employ a person who has not yet attained the age of 16 in any activity relating to the manufacture or distribution of liquor or methylated spirits unless the employee is undergoing training or a learnership contemplated in section 16 of the Skills Development Act, 1998 (Act No. 97 of 1998). 40

(2) Despite any agreement to the contrary, an employer must not—

- (a) supply liquor or methylated spirits to any person as an inducement to employment;
- (b) supply liquor or methylated spirits to an employee as or in lieu of wages or remuneration; or 45
- (c) deduct from an employees' wages or remuneration any amount relating to the cost of liquor or methylated spirits—
  - (i) supplied to the employee or to a person on behalf of the employee; or
  - (ii) purchased by, or on behalf of, the employee.

#### **Advertising restrictions** 50

9. (1) A person must not advertise—

- (a) any liquor or methylated spirits—
  - (i) in a false or misleading manner;

- (ii) in a manner intended to target or attract minors; or
  - (b) any substance that is prohibited in terms of this Act.
- (2) A person must not advertise any substance as liquor or methylated spirits if that substance is not liquor or methylated spirits, respectively, as defined in this Act.

**Prohibition of supply of liquor or methylated spirits to minor** 5

- 10.** (1) A person must not sell liquor or methylated spirits to a minor.
- (2) A person must take reasonable measures to determine accurately whether or not a person is a minor, before selling liquor or methylated spirits to that person.
- (3) A minor must not make a false claim about age in order to induce a person to sell or supply liquor or methylated spirits to him or her. 10
- (4) A person must not make a false claim about the age of a minor in order to induce a person to sell liquor or methylated spirits to the minor.

**CHAPTER 3**

**REGISTRATION AS MANUFACTURER AND DISTRIBUTOR**

**Categories of registration and qualifications** 15

- 11.** (1) A qualified person, including any registered person—
- (a) may apply to the Minister, in the prescribed manner and form, to be registered as a manufacturer or distributor of liquor, or both; and
  - (b) must indicate clearly in the application the extent to which it wishes to distribute liquor. 20
- (2) Any person may be registered as a manufacturer or distributor of liquor, or both, except a person who—
- (a) is a minor at the date of submitting the application for registration;
  - (b) is an unrehabilitated insolvent;
  - (c) at the time of application is committed in terms of the Mental Health Act, 1973 (Act No. 18 of 1973); 25
  - (d) has been convicted of a contravention of this Act within the three years immediately preceding the date of application; or
  - (e) has been convicted, under applicable legislation, of an offence which is inconsistent with the objects and purposes of this Act, at any time— 30
    - (i) after the coming into operation of this Act; and
    - (ii) within the three years immediately preceding the date of application.

**Determination of application**

- 12.** (1) The Minister may—
- (a) require further information relevant to an application; and 35
  - (b) refuse an application if the applicant has not supplied any information required in terms of paragraph (a) within the prescribed time.
- (2) If an application complies with the provisions of this Act, the Minister, after considering the application, must either —
- (a) register the applicant, subject to section 13; or 40
  - (b) refuse to register the applicant if the applicant is disqualified in terms of section 11(2).
- (3) If the Minister refuses an application, the Minister must give the applicant written reasons for the decision.

**Conditions of registration** 45

- 13.** (1) If the Minister is required to register an applicant in terms of section 12, the Minister must further consider the application, relating to the following criteria:
- (a) The commitments made by the applicant in terms of black economic empowerment;
  - (b) The applicant's proposed contribution to combating alcohol abuse, including whether the applicant has subscribed to any industry code of conduct approved by the Minister; and 50



- (c) The extent to which the proposed registration will materially restrict or promote—
- (i) new entrants to the liquor industry;
  - (ii) job creation within the liquor industry;
  - (iii) diversity of ownership within the liquor industry; 5
  - (iv) efficiency of operation of the liquor industry;
  - (v) exports; or
  - (vi) competition within the liquor industry.
- (2) Before proposing any conditions on a registration, the Minister may—
- (a) consult the Competition Commission when considering the matters set out in subsection (1)(c); and 10
  - (b) publish a notice inviting public submissions concerning the application.
- (3) The Minister, having regard to the objects and purposes of this Act, the circumstances of the application, the declared wishes of the applicant in terms of section 11(1)(b) and the criteria set out in subsection (1), may— 15
- (a) propose any reasonable and justifiable conditions on the registration of an applicant who seeks to be registered only as a distributor; or
  - (b) propose any reasonable and justifiable conditions on the registration of any other applicant, including but not limited to, conditions that determine the extent to which the applicant may distribute liquor to retail sellers. 20
- (4) In addition to the provisions of subsection (3), if an applicant has a director, member, trustee, partner or member of its board or executive body who falls in the category of persons disqualified in terms of section 11(2), the Minister may propose a condition designed to prevent that person from exercising any decision-making authority with respect to the proposed registered activities. 25
- (5) If the Minister proposes conditions on an applicant's registration, the Minister must inform the applicant of the proposed conditions, and the reasons for them in writing.
- (6) An applicant who has received a proposal of conditions may respond to the Minister within— 30
- (a) 30 days from the date on which the applicant is informed of the proposal; or
  - (b) such longer period as the Minister may permit, on good cause shown.
- (7) If an applicant who has received a proposal of conditions —
- (a) consents to the conditions being imposed, the Minister must register the applicant, subject only to the conditions as proposed; or 35
  - (b) does not respond, or responds but does not consent, to the proposed conditions, the Minister must consider any response submitted by the applicant and may —
    - (i) refuse to register the applicant, if it has not responded; or
    - (ii) finally determine the conditions to be imposed, and register the applicant. 40
- (8) The Minister must—
- (a) inform an applicant in writing of a decision in terms of subsection (7); and
  - (b) provide written reasons for that decision if —
    - (i) the Minister has refused to register the applicant; or
    - (ii) the Minister has amended a previously proposed condition. 45

#### **Certificate, validity, and public notice of registration**

- 14.** (1) Upon registering an applicant, the Minister must—
- (a) issue a prescribed certificate of registration to the applicant; and
  - (b) enter the registration in the register.
- (2) A valid certificate of registration, or a certified copy of it, is sufficient proof that the registrant is registered in terms of this Act. 50
- (3) A registration—
- (a) takes effect on the date on which the certificate of registration is issued; and
  - (b) remains in effect until —
    - (i) the registrant is deregistered; or 55
    - (ii) the registration is cancelled in terms of this Act.
- (4) A registrant must—
- (a) reflect its registered status and registration number on all of its trading documents;
  - (b) comply with its conditions of registration and the provisions of this Act; 60
  - (c) pay the prescribed annual renewal fees within the prescribed time;

- (d) keep any records prescribed in terms of section 42(1)(b) in the prescribed manner and form; and
- (e) file any prescribed reports with the Minister in the prescribed manner and form.

### Transfer of registration

5

15. (1) The registration of a registrant may be transferred to another person if—
- (a) the registrant, or the person to whom the registration is to be transferred, applies in the prescribed manner and form for approval of the transfer;
  - (b) the person to whom the registration is to be transferred is not disqualified under section 11(2); and
  - (c) the Minister has considered the application and approved the transfer.
- (2) If an application in terms of subsection (1) proposes a transfer of registration to—
- (a) an unregistered person, section 12, read with the changes required by the context, applies to that application; or
  - (b) a registered person, sections 12 and 13, read with the changes required by the context, apply to that application.
- (3) If a registered person acquires control over another registered person that holds a different category of registration, the registered persons must notify the Minister in the prescribed manner and form.
- (4) If two or more registered persons establish a joint venture to hold a category of registration that is different from the category held by either of them, a fresh application for registration under section 11(1) must be filed in the name of the joint venture.

### Variation of conditions of registration

16. (1) The Minister may reconsider, and vary the conditions of registration of any registrant, in any of the following circumstances:
- (a) If the registrant, after registration in terms of this Act, becomes registered or licensed as a micro-manufacturer or retail seller in terms of applicable provincial legislation.
  - (b) If the registrant has notified the Minister of a material alteration contemplated in subsection (3).
  - (c) Upon request by the registrant submitted to the Minister in the prescribed manner and form.
  - (d) If at least five years have passed since the Minister last reviewed or varied the conditions of registration in terms of this section.
- (2) A registrant who applies for registration or licensing as a micro-manufacturer or retail seller in terms of applicable provincial legislation must notify the Minister of that application in the prescribed manner and form.
- (3) A registrant must notify the Minister in the prescribed manner and form if it proposes to—
- (a) relocate any of the activities authorised under its certificate of registration; or
  - (b) alter the nature or conduct of any of those activities,
- in a manner that differs in a material way from that specified in its application for registration.
- (4) Within 30 days after receiving a notice in terms of subsection (2) or (3), the Minister must advise the registrant either that —
- (a) the Minister will review the conditions of registration in light of the proposed changes; or
  - (b) the Minister accepts the proposed changes.
- (5) If the Minister reviews conditions of registration in terms of this section—
- (a) section 13, read with the changes required by the context, applies to the review; and
  - (b) the Minister may propose new or alternative conditions—
    - (i) only in relation to the registrant's materially altered circumstances, in the case of a review contemplated in subsection (1)(b) or (c); or
    - (ii) to the extent permitted by section 13, having regard to the circumstances at the time of the review, in any other case.

### Death, insolvency or incapability of registered person

17. (1) For the purposes of this section, the expression “an administrator of an estate” includes—
- (a) an executor of a deceased estate;
  - (b) a liquidator or trustee of an insolvent estate; and 5
  - (c) a curator.
- (2) If a registrant dies, becomes insolvent or is placed under curatorship, the administrator of that registrant’s estate may, for the purposes of the administration of the estate—
- (a) continue to conduct the registered activities in the name of the estate; or 10
  - (b) make a proposal to the Minister in terms of section 15 to transfer the registration to another qualified person.
- (3) Any person may apply in the prescribed manner and form to the Minister for the appointment of a person to conduct the registered activities of a registrant, pending the appointment of an administrator contemplated in subsection (2). 15
- (4) Before granting an application made in terms of subsection (3), the Minister must be satisfied that—
- (a) every person with a financial interest in the matter has been given reasonable notice of the application;
  - (b) an administrator has not been appointed; and 20
  - (c) there are reasonable grounds for believing that an administrator will be appointed.
- (5) A person appointed in terms of subsection (3) may, for the purposes of the administration of the estate, continue to conduct the registered activities in the name of the estate, until an administrator has been appointed as contemplated in this section. 25

### Application, registration and renewal fees

18. (1) The Minister may prescribe—
- (a) an application fee to be paid in connection with any application in terms of this Act;
  - (b) an initial registration fee to be paid upon registration; and 30
  - (c) an annual registration renewal fee to be paid by registrants.
- (2) The Minister may prescribe different fees in terms of subsection (1) for different categories of applicants or registrants.

### Conditions of licence

19. (1) In addition to the authority set out in section 17, the Minister may review, and 35 propose new conditions on, a registration if the registrant —
- (a) with respect to a matter arising out of the registration of that person in terms of this Act, has contravened—
    - (i) Chapter 2 of the Competition Act, 1998 (Act No. 89 of 1998);
    - (ii) The Counterfeit Goods Act, 1997 (Act No. 37 of 1997); 40
    - (iii) The Liquor Products Act, 1989 (Act No. 60 of 1989);
    - (iv) The Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972); and
    - (v) The Customs and Excise Act, 1964 (Act No. 91 of 1964);
  - (b) has not met its commitments in terms of black economic empowerment, and 45 cannot provide adequate reasons for failing to do so; or
  - (c) has not met its commitments or complied with its plans concerning combating alcohol abuse, or has breached an approved code of conduct, and cannot provide adequate reasons for failing to do so.
- (2) Before imposing a condition in terms of subsection (1)(b) or (c), the Minister must 50 provide the registrant with a reasonable opportunity to remedy the shortcoming in its conduct.
- (3) Section 13, read with the changes required by the context, applies to a proposal by the Minister to impose conditions under this section.
- (4) The Minister may propose new or alternative conditions under this section only to 55 the extent that is reasonable and justifiable in the circumstances that gave rise to the review.

### Cancellation of registration

20. (1) A registration may be cancelled—
- (a) by the Minister, in terms of subsection (2) or (3);
  - (b) voluntarily by the registrant, in terms of section 21; or
  - (c) as a consequence of sequestration, winding-up or dissolution, in terms of section 22. 5
- (2) The Minister may cancel a registration if the registrant—
- (a) becomes disqualified on any of the grounds set out in section 11(2);
  - (b) does not comply with a condition of registration;
  - (c) repeatedly breaches the provisions of any legislation listed in section 19(1), or repeatedly fails to meet a commitment contemplated in section 13(1)(a) or (b); 10  
or
  - (d) does not comply with the provisions of this Act.
- (3) In addition to the authority set out in subsection (2), the Minister may cancel the registration of a registrant if the registrant— 15
- (a) has been served a compliance notice in terms of section 31, and—
    - (i) has failed to comply with it; or
    - (ii) has not objected to the notice in terms of section 32; or
  - (b) if it has objected—
    - (i) failed to comply with the order of the Minister given in terms of section 32(2); or 20
    - (ii) has not succeeded in any review or appeal against that order in terms of section 33.
- (4) If the Minister has cancelled a registration, the Minister must notify the former registrant in writing of— 25
- (a) the cancellation;
  - (b) the reasons for the cancellation; and
  - (c) the date of cancellation.
- (5) If a registration is cancelled in terms of this section, section 21 or section 22, the Minister must— 30
- (a) cancel the registration certificate; and
  - (b) amend the register accordingly.
- (6) A registration is cancelled as of the date on which the Minister cancels the certificate of registration, which, in the case of a cancellation in terms of section 21, must be on the date specified by the registrant in the notice of voluntary cancellation. 35

### Voluntary cancellation

21. A registrant may cancel the registration by giving the Minister written notice in the prescribed manner and form —
- (a) stating the person's intention to voluntarily cancel the registration and reasons for doing so; and 40
  - (b) specifying a date, at least seven days after the date of the notice, on which the cancellation is to take effect.

### Cancellation as consequence of sequestration or winding-up

22. (1) If a registrant's estate is wound up or sequestrated without having transferred the registration in terms of section 15, the liquidator or trustee of that estate must notify the Minister in the prescribed manner and form within six months after the sequestration or winding-up, or such longer time as the Minister, on request, may allow. 45
- (2) Upon receiving a notice in terms of subsection (1), the Minister must cancel the registration concerned.

### National record of registrations 50

23. (1) The Minister must establish and maintain a register in the prescribed form of all persons who have been registered under this Act or applicable provincial legislation, including those whose registration has been transferred, altered or cancelled.
- (2) The Minister must—
- (a) permit any person to inspect the register established in terms of subsection (1), during normal business hours, and upon payment of the prescribed fee; 55

- (b) publish the register on a website; and
  - (c) provide a print copy of the register, or extract from it at any time to a person requesting it, upon payment of the prescribed fee.
- (3) Any person may—
- (a) inspect a copy of a registration certificate issued in terms of this Act; and 5
  - (b) obtain a copy of it, upon payment of the prescribed fee.

#### **Review or appeal of Minister's decisions**

24. (1) A decision of the Minister in terms of this Chapter is subject to review or appeal to the extent provided for, and in accordance with, the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000). 10
- (2) In addition to any other remedy available to a Court conducting a review of a decision by the Minister in terms of this Chapter, the Court may make an order setting aside any condition attached to a registration, if the court is not satisfied that the condition is reasonable and justifiable, having regard to the objects and purposes of this Act, the circumstances of the application or review, as the case may be, and the provisions of section 13. 15

### **CHAPTER 4**

#### **COMPLIANCE**

##### **Designation of inspectors**

25. (1) The Minister— 20
- (a) may designate any person as an inspector, with either general or specific authority to exercise powers in terms of this Act; and
  - (b) must issue to each inspector a certificate in the prescribed form stating that a person has been designated as an inspector.
- (2) A valid certificate issued in terms of subsection (1)(b) is sufficient evidence of the authority of the inspector named on it. 25
- (3) When exercising powers in terms of this Act, an inspector is a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and may exercise the powers conferred on a peace officer by law.

##### **Functions of inspectors** 30

26. (1) An inspector may—
- (a) investigate complaints submitted to the inspector in the prescribed manner and form; and
  - (b) subject to this Act or any other law that authorises the inspector to conduct an inspection — 35
    - (i) monitor and enforce compliance with this Act or that law; or
    - (ii) conduct an inspection under this Act or that law.
- (2) Subject to sections 28(3) and 30 (3) and (5), and the provisions of any other law, an inspector may —
- (a) question any person whom the inspector believes may have information relevant to an inspection; 40
  - (b) question any person present on any premises being inspected, in respect of any matter which may be relevant to the inspection;
  - (c) inspect any document that—
    - (i) a person is required to maintain in terms of this Act or any other relevant law; or 45
    - (ii) may be relevant to any liquor-related inspection;
  - (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 inspection; 50
  - (f) seize—
    - (i) any liquor that appears to have been produced or bottled contrary to section 4(2);
    - (ii) any liquor, if it appears that the liquor is being distributed contrary to section 4(2); 55

- (iii) any methylated spirits that appears to have been manufactured or sold contrary to this Act; or
- (iv) any substance that appears to be prohibited in terms of section 6.
- (g) for the purpose of the inspection, take photos or make audio-visual recordings of anything or any person, process, action or condition implicated in the inspection on or regarding any premises; and 5
- (h) do all things necessary for conducting the inspection.
- (3) An inspector who —
  - (a) seizes any goods in terms of subsection (2)(f), must—
    - (i) issue a receipt for the goods to the owner of or person in control of the premises; and 10
    - (ii) secure the seized goods, pending a decision concerning forfeiture of those goods in terms of section 35(2); or
  - (b) removes anything from premises being inspected, must —
    - (i) issue a receipt for it to the owner of or person in control of the premises; 15
    - and
    - (ii) unless it is a substance contemplated in subsection (1)(e), return it as soon as practicable after achieving the purpose for which it was removed.
- (4) An inspector may be accompanied during an inspection by a member of the South African Police Service and any other person reasonably required to assist in conducting the inspection. 20

### Entry of premises with warrant

27. (1) An inspector may enter any premises if a magistrate has issued a warrant to do so in accordance with subsection (2).
- (2) A magistrate may issue a warrant to enter and inspect any premises, if, on the basis of information provided in writing and on oath, the magistrate has reason to believe that— 25
- (a) this Act is not being complied with; and
  - (b) the entry and inspection are necessary, in the interest of the public, to obtain information — 30
    - (i) that is related to the alleged failure to comply with this Act; and
    - (ii) that cannot be obtained without entering those premises.
- (3) A warrant in terms of subsection (2) may be issued at any time and must specifically —
- (a) identify the premises that may be entered and inspected; and 35
  - (b) authorise the inspector to enter and inspect the premises and to do anything contemplated in section 26.
- (4) A warrant in terms of subsection (2) is valid until —
- (a) it is executed;
  - (b) it is cancelled by the magistrate who issued it or, in that magistrate's absence, 40
  - by a person with similar authority;
  - (c) the purpose for which it was issued has fallen away; or
  - (d) 90 days have elapsed since the date it was issued.
- (5) Before commencing an inspection under a warrant, an inspector must —
- (a) if the owner of or a person in control of the premises is present — 45
    - (i) provide identification to that owner or person in control of the premises, and explain to that person the authority by which the inspection is being conducted, and show that person the inspector's certificate of designation; and
    - (ii) hand a copy of the warrant to that person or a person named in it; or 50
  - (b) attach a copy of the warrant to the premises in a prominent and visible place if—
    - (i) the owner is absent and there is no person in control of the premises; or
    - (ii) the owner or person in control of the premises refuses to accept a copy.

### Entry of premises without warrant 55

28. (1) An inspector who does not have a warrant may—
- (a) enter and inspect any premises with the consent of the owner or person in control of the land or those premises; or
  - (b) on a routine basis, enter and inspect any registered premises—

- (i) no more than six times during a 12-month period; or
  - (ii) more frequently if permitted by any other 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 — 5
- (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 31, 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, 10 the inspector must—
- (a) provide identification to the owner or other person in charge of the premises;
  - (b) explain to that person the authority by which the inspection is being conducted; and
  - (c) show that person the inspector's certificate of designation. 15
- (4) An entry and inspection without a warrant may be carried out only during normal hours of business.

### Use of force

- 29.** (1) An inspector executing a warrant in terms of section 27 may overcome any resistance to entry or inspection by using the force that is reasonably required, including 20 breaking a lock, door or window of the land or premises to be entered.
- (2) Before using force, the person executing the warrant must audibly demand admission and announce his or her purpose, unless there is reason to believe that doing so may induce someone to destroy, dispose of or tamper with any object or document 25 that is the object of the inspection.
- (3) The Minister must compensate anyone who suffers damage caused as a result of forced entry during an inspection if no one responsible for the premises was present.
- (4) Subject to any other law or except in the case of an emergency, force may not be used to effect an entry or conduct an inspection in terms of section 28.

### Duty to produce documents, answer questions and assist inspector 30

- 30.** (1) Any person who is in possession of a document relevant to an inspection must produce that document at the request of the inspector.
- (2) An owner or occupier of any land or premises must provide any facility and assistance that is reasonably required by an inspector to conduct an inspection 35 effectively.
- (3) Before questioning a person in terms of this Chapter, an inspector must inform that person of his or her applicable constitutional rights.
- (4) A person who is questioned by an inspector in terms of this Chapter must answer every question truthfully and to the best of his or her ability.
- (5) An answer or explanation given to an inspector may not be used or admitted in 40 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
  - (c) the failure to answer a lawful question fully and satisfactorily. 45

### Compliance notices

- 31.** (1) If an inspector believes that any provision of this Act or a condition of registration has not been complied with, the inspector may issue a compliance notice in the prescribed form to— 50
- (a) the registrant; or
  - (b) the owner of the registered premises or a person in control of the registered premises.
- (2) A compliance notice contemplated in subsection (1) must set out — 55
- (a) the provision that has not been complied with;
  - (b) details of the nature and extent of the non-compliance;
  - (c) any steps that are required to be taken and the period within which those steps must be taken; and

(d) any penalty that may be imposed in terms of this Act if those steps are not taken.

(3) A compliance notice contemplated in subsection (1) remains in force until an inspector issues a compliance certificate contemplated in subsection (4) in respect of that notice. 5

(4) If the requirements of a compliance notice have been satisfied, the inspector must issue a compliance certificate.

### **Objection to compliance notice**

**32.** (1) Any person issued with a compliance notice may object to it by making representations to the Minister within— 10

(a) 21 days of receipt of that notice; or

(b) such longer period as may be allowed by the Minister on good cause shown.

(2) After considering any representations by the objector and any other relevant information, the Minister may confirm, modify or cancel any compliance notice or any part of such notice. 15

(3) The Minister must serve a copy of the notice made in terms of subsection (2) on the objector and, if the objector is not a person registered in terms of this Act, any registered person affected by the notice.

(4) If the Minister confirms or modifies the notice or any part of the notice, the objector must comply with that notice, within the time period specified in that notice. 20

### **Review or appeal of Minister's decisions**

**33.** A decision of the Minister in terms of section 32 is subject to review or appeal to the extent provided for, and in accordance with, the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

## **CHAPTER 5**

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### **OFFENCES AND PENALTIES**

#### **Offences**

**34.** (1) It is an offence to—

(a) contravene or fail to comply with any provision of this Act; or

(b) fail to comply with any condition of registration imposed under this Act. 30

(2) A person must not —

(a) refuse to grant an inspector access to premises to which the inspector is 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; 35

(c) refuse to provide an inspector with a document or information that the person is lawfully required to provide in terms of this Act;

(d) furnish false or misleading information to an inspector;

(e) unlawfully prevent the owner of any premises, or a person working for that owner, from entering the premises in order to comply with a requirement of this Act; 40

(f) pretend to be—

(i) a registrant; or

(ii) an inspector;

(g) falsify, or without authorisation, alter— 45

(i) a registration certificate issued in terms of section 14(1); or

(ii) an authorisation of a warrant, compliance notice or compliance certificate contemplated in Chapter 4;

(h) fail to comply with a compliance notice issued in terms of Chapter 4;

(i) enter any premises without a warrant in circumstances requiring a warrant; 50

(j) act contrary to a warrant issued in terms of Chapter 4;

(k) without authority enter or inspect premises; or

(l) disclose any information relating to the financial or business affairs of any person that was acquired in the exercise of any power or performance of any duty in terms of this Act, except — 55



- (i) to a person who requires that information in order to exercise a power or perform a duty in terms of this Act;
- (ii) if the disclosure is ordered by a competent court; or
- (iii) if the disclosure is in compliance with the provisions of any law.

### Penalties and forfeiture

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35. (1) Any person who contravenes or fails to comply with a provision of —
- (a) section 4(2), 5(1), 6, 8 or 10, is liable on conviction to a fine not exceeding R1 000 000, or to imprisonment for a period not exceeding five years; or
  - (b) section 7, 9 or 34, is liable on conviction to a fine not exceeding R500 000, or to imprisonment for a period not exceeding one year. 10
- (2) In addition to imposing a penalty in terms of subsection (1), a court that has convicted a person of an offence—
- (a) in terms of section 4(2), must order the forfeiture to the State of any liquor manufactured or distributed by that person contrary to section 4(2), and seized in terms of section 26(2)(f); 15
  - (b) in terms of section 5, must order the forfeiture to the State of any methylated spirits manufactured or sold by that person contrary to this Act, and seized in terms of section 26(2)(f); or
  - (c) in terms of section 6, must order the destruction of any substance that is prohibited in terms of section 6, and that was in the possession of that person, and seized in terms of section 26(2)(f). 20
- (3) The Minister must order that any liquor that is forfeited to the State in terms of this section must be—
- (a) destroyed at the cost of the person from whom it was seized; or
  - (b) sold to a registered person, in accordance with any law regulating disposal of forfeited goods. 25

### Imputation of criminal liability

36. (1) If a manager, agent or employee of a registered person commits an offence by performing or omitting to perform an act and such performance or omission would have constituted an offence had it been done by the registered person, that registered person is equally guilty of the offence if the act or omission fell within the scope of the authority or employment of the manager, agent or employee concerned and the registered person— 30
- (a) either connived at or permitted the act or omission by the manager, agent or employee concerned; or 35
  - (b) did not take all reasonable steps to prevent the act or omission.
- (2) For purposes of subsection (1), the fact that a person issued instructions prohibiting an act or omission is not in itself sufficient proof that all reasonable steps were taken to prevent the act or omission.

## CHAPTER 6

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### NATIONAL LIQUOR POLICY COUNCIL

#### Establishment of Council

37. There is hereby established a National Liquor Policy Council.

#### Composition of Council

38. (1) The Council consists of— 45
- (a) the Minister;
  - (b) for each province, the Member of the Executive Council responsible for liquor licensing in that province;
  - (c) the Director-General, or other employee of the department designated by the Director-General; and 50
  - (d) for each province, one person designated—
    - (i) in terms of applicable provincial legislation; or

- (ii) by the Member of the Executive Council responsible for liquor licensing in that province.
- (2) The Minister chairs the Council.
- (3) The members contemplated in subsection (1)(c) and (d) have no vote on the Council.

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### Functions of Council

**39.** (1) The Council is a forum for intergovernmental co-operation contemplated in section 41(1)(h) of the Constitution.

(2) The functions of the Council are—

- (a) to consult on—
  - (i) national norms and standards for the liquor industry;
  - (ii) national policy in respect of the liquor industry;
  - (iii) liquor legislation or regulations, including the promotion of uniform national and provincial legislation in respect of liquor norms and standards;
  - (iv) any matter concerning the liquor industry within the national and provincial spheres of government;
  - (v) any matter concerning the management or monitoring of the liquor industry in the Republic, or licensing in any province;
  - (vi) any other matter that may be referred to it by a member of the Council;
- (b) to promote and facilitate intergovernmental relations in respect of the liquor industry; and
- (c) to facilitate the settlement of intergovernmental disputes concerning the liquor industry.

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### Proceedings

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**40.** (1) The Minister may convene a meeting of the Council at any time, but must convene at least two meetings in each financial year.

(2) The Minister may designate any meeting of the Council to be a meeting of all members, or only of voting members.

(3) A non-voting member may nominate an alternate from its relevant regulatory authority to represent that member at a meeting of the Council.

(4) The Council may invite non-members to attend meetings of the Council.

(5) As a body through which the national and provincial spheres of government seek to co-operate with one another in mutual trust and good faith, the Council must attempt to reach its decisions by consensus.

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(6) If the Council fails to reach consensus on a decision, it may resolve the matter by formal vote on a motion.

(7) A motion in terms of subsection (6) passes only if it is supported by—

- (a) the Minister; and
- (b) at least five other voting members of the Council.

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(8) Subject to subsections (1) and (7), the Council may adopt its own rules for the conduct of its meetings.

## CHAPTER 7

### REGULATIONS AND NOTICES

#### Public health considerations

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**41.** The Minister, in consultation with the member of Cabinet responsible for health, may prescribe the content of, and the manner in which, public health notices must be displayed on—

- (a) registered premises; and
- (b) premises licensed or registered by a provincial authority to sell or micro-manufacture liquor.

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### Power to issue regulation and notices

42. (1) In respect of any matter affecting the retail sale or micro-manufacture of liquor, the Minister, after consultation with the Council, may make regulations in order to establish uniform norms and standards in the liquor industry regarding—
- (a) the form and nature of statistical information that provincial authorities must supply to the Minister; and 5
  - (b) the information to be furnished to the Minister regarding the operation of the liquor industry by—
    - (i) a registered person; and
    - (ii) the holder of an import certificate in terms of section 16 of the Liquor Products Act, 1989 (Act No. 60 of 1989). 10
- (2) The Minister may, by notice in the *Gazette* —
- (a) make regulations in the manner contemplated in section (1) —
    - (i) declaring any substance or fermented drink to be beer, liquor, traditional African beer or an impotable substance; or 15
    - (ii) declaring any denatured, medicated, perfumed or otherwise treated spirits to be methylated spirits; and
  - (b) make any other regulations —
    - (i) required or permitted in terms of this Act; or
    - (ii) necessary or expedient to prescribe in order to achieve the objects of this Act. 20

### Procedure when issuing regulations

43. (1) Before the Minister may promulgate a regulation contemplated in section 42 that materially and adversely affects any person, the Minister must—
- (a) take appropriate steps to notify any persons who are likely to be materially or adversely affected by the regulation or notice and invite comment from them; 25
  - (b) publish the regulation or notice in the *Gazette* and invite comment from the public; and
  - (c) consider any comment received and any recommendations made by the Council. 30
- (2) If any regulation, other than one contemplated in section 42(1), affects a province, that regulation must be tabled with the Council for its consideration.
- (3) A decision of the Minister in terms of this Chapter is subject to review or appeal to the extent provided for, and in accordance with, the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000). 35

## CHAPTER 8

### GENERAL PROVISIONS

#### Limitation of liability

44. Subject to section 29(3), neither the State nor any organ of state or person exercising any power or performing any duty in terms of this Act is liable for any loss or damage resulting from an act or omission in good faith in the exercise of such power or the performance of such duty. 40

#### Delegation of power

45. (1) The Minister may delegate all or part of any power of the Minister in terms of this Act, other than the power to make regulations, to the Director-General or an officer of the national department responsible for liquor matters designated by the Director-General. 45
- (2) At any time, the Minister may revoke a delegation of power under subsection (1), and exercise that power directly.

**Repeal of laws**

46. Subject to Schedule 1, the laws mentioned in Schedule 2 are repealed to the extent indicated in the third column of that Schedule.

**Short title and commencement**

47. This Act is called the Liquor Act, 2003, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*. 5

## SCHEDULE 1

### TRANSITIONAL PROVISIONS

#### Definitions

1. For the purpose of this Schedule—

“**Liquor Act, 1989**” means the Liquor Act, 1989 (Act No. 27 of 1989);

“**Liquor Products Act, 1989**” means the Liquor Products Act, 1989 (Act No. 60 of 1989).

#### Transition from repealed laws to provincial legislation

2. (1) Despite section 46, in respect of each province, a provision of a law mentioned in Schedule 2 that concerns the micro-manufacture, retail sale or consumption of liquor or methylated spirits remains in force within that province until a date determined in accordance with subitems (2) and (3) and declared by notice in the *Gazette*.

(2) The Premier of a province, or the Member of the Executive Council responsible for liquor in the province, may notify the Minister that the government of that province wishes to consult with the Minister on the determination of a date contemplated in subitem (1), at any time after the legislature of that province has enacted legislation that—

- (a) is consistent with the objects and purposes of this Act;
- (b) provides for regulation of the micro-manufacture, retail sale and consumption of liquor, and methylated spirits within that province;
- (c) requires every person engaging in the micro-manufacture or retail sale of liquor or methylated spirits within that province to be registered, or to have a licence or permit, to perform any of those activities;
- (d) with respect to the registration or licensing of activities contemplated in paragraph (c) —
  - (i) provides for a reasonable procedure, having regard to the competing demands of simplicity, transparency and cost-effectiveness, for the application, evaluation and granting of registration, licences or permits required by that legislation; and
  - (ii) provides for the maintenance of a registry of any persons, firms and premises required to be registered or licensed in terms of that legislation, and the reporting of that information to the Minister;
- (e) establishes enforcement mechanisms to ensure proper monitoring and compliance by any persons registered or licensed in terms of that provincial legislation; and
- (f) provides reasonable transitional protection of the rights of existing licencees in terms of the laws repealed by section 46, to the extent that those licences involve the micro-manufacture, retail sale or consumption of liquor or methylated spirits.

(3) After receiving a notice in terms of subitem (2), the Minister must either —

- (a) in consultation with the appropriate Member of the Executive Council, determine a date contemplated in subitem (1) and declare that date by notice in the *Gazette*; or
- (b) if the Minister on reasonable grounds believes that the provincial legislation does not substantially meet the criteria required by subitem (2), notify the responsible Member of the Executive Council of that province to that effect, setting out the Minister’s reservations with respect to the provincial legislation.

(4) Until the date contemplated in subitem (1) with respect to any particular province, a reference in this Act to “applicable provincial legislation” must be regarded as being a reference to the provisions of any law mentioned in Schedule 2 that concern the micro-manufacture, retail sale or consumption of liquor or methylated spirits.

#### Transitional conflicts

3. The provisions of this Act prevail to the extent of any conflict between—

- (a) a provision of this Act; and

- (b) a provision of an Act mentioned in Schedule 2 that remains in force in terms of item 2.

#### Conversion of existing licences

4. (1) Despite the repeal of the Liquor Act, 1989, upon the coming into operation of this Act —

- (a) a determination made under section 51 of that Act remains valid, as if that Act had not been repealed, for a period determined in accordance with this item; and  
 (b) a licence issued under that Act remains valid, as if that Act had not been repealed, for a period determined in accordance with this item,

if that determination or licence, as the case may be, involved the manufacture or distribution of liquor, and was valid immediately before this Act came into operation.

(2) Subject to subitem (4), 90 days after this Act came into operation, a determination or licence referred to in subitem (1) that involved the manufacture or distribution of liquor, converts automatically to a registration under this Act as —

- (a) a manufacturer;  
 (b) a distributor; or  
 (c) both,

as elected by notification in writing to the Minister in accordance with subitem (3).

(3) A notification in terms of subitem (2)—

- (a) may be delivered to the Minister by hand, registered mail or fax within the 90-day period referred to in subitem (2); and  
 (b) will be deemed to have been received by the Minister on—  
 (i) the date of delivery by hand or transmission by fax; or  
 (ii) three days after the date on which it is sent by registered mail.

(4) If a licensee of a licence or determination referred to in subitem (2) fails to make an election by notification to the Minister as contemplated in subitems (2) and (3), the licence or determination—

- (a) does not convert as contemplated in subitem (2); and  
 (b) expires at the end of the last day of the 90-day period referred to in subitem (2).

(5) Within 12 months after the coming into operation of this Act, a manufacturer or distributor whose licence or determination has been converted in terms of subitem (2) must initiate a review by the Minister, by notice in the prescribed manner and form, of that manufacturer's or distributor's registration under this Act.

(6) Within 24 months after receiving an initiation notice in terms of subitem (5) and any additional relevant material that the Minister may require, the Minister must conduct a review of the initiator's registration, having regard to the objects of this Act, applying the criteria set out in section 13, and considering that the registered person is a going concern.

(7) Upon completing a review in terms of subitem (6), the Minister must either—

- (a) confirm the initiator's registration without alteration; or  
 (b) confirm the initiator's registration, subject to further conditions that are reasonable, justifiable and relevant to the matters mentioned in subitem (6).

(8) The provisions of section 13, read with the changes required by context, apply to any proposal by the Minister to impose further conditions as contemplated in subitem (7)(b).

(9) If a manufacturer or distributor who is required to initiate a review under subitem (5), fails to—

- (a) initiate that review within the time provided in subitem (5); or  
 (b) provide additional relevant material to the Minister within six months after being requested to do so,

the Minister may cancel the registration of that manufacturer or distributor, in the manner set out in section 20 (4), (5) and (6).

(10) If the Minister fails to complete a review within the time allowed by subitem (6), the initiator's registration will continue in force, subject to any conditions that applied at the time the initiation notice was delivered to the Minister.

### **Transitional provisions concerning retail sale**

5. Despite the repeal of the Liquor Act, 1989, until the date contemplated in item 2(1) with respect to any particular province, a person within that province who, at the coming into operation of this Act, was authorised in terms of that Act to engage in the retail sale of liquor may continue to engage in the retail sale of liquor to the extent permitted by that authorisation.

### **Consents granted under section 158(2) of Liquor Act, 1989**

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

### **Applications before commencement of this Act**

7. Any application or matter received by a competent authority under the Liquor Act, 1989, before the date of commencement of this Act and not disposed of prior to that date, must be disposed of by that authority in terms of that Act despite its repeal.

### **Traditional African beer and powder**

8. (1) If no definition of "traditional African beer" has been prescribed in terms of the Customs and Excise Act, 1964 (Act No. 91 of 1964), for the purposes of this Act, "traditional African beer" means a fermented liquid —

- (a) made by—
  - (i) the fermentation of malt, unmalted grain or meal of the cereals sorghum, maize, finger millet or pearl millet, with no more than five per cent sugar by weight relative to the combined weight of all the malt, grain or cereal ingredients; or
  - (ii) combining traditional African beer powder with water;
- (b) with no addition of ethyl alcohol;
- (c) with an alcohol content not exceeding 3,5 per cent by volume;
- (d) in a state of fermentation, or of which the fermentation has not been arrested; and
- (e) not containing or flavoured with hops or any product derived from hops.

(2) If no definition of "traditional African beer powder" has been prescribed in terms of the Customs and Excise Act, 1964 (Act No. 91 of 1964), for the purposes of this Act, "traditional African beer powder" means a dry product —

- (a) comprising—
  - (i) not more than three parts by mass of milled sorghum or maize malt; and
  - (ii) not less than seven parts by mass of milled precooked maize or sorghum unmalted grain or meal; and
- (b) which—
  - (i) does not contain any sugar derived from any source;
  - (ii) does not contain, and is not flavoured with, hops or products derived from hops; and
  - (iii) may contain active dry yeast added as a processing aid.

**SCHEDULE 2****REPEAL OF LAWS**

<b>No. and year of law</b>	<b>Short title</b>	<b>Extent of repeal</b>
Act No. 27 of 1989	Liquor Act, 1989	The whole
Act No. 60 of 1989	Liquor Products Act, 1989	Section 32 in respect of its amendment to 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



## MEMORANDUM ON THE OBJECTS OF THE LIQUOR BILL, 2003

### 1. BACKGROUND

The Department of Trade and Industry (hereinafter refer to as “the dti”) and the provincial departments responsible for liquor matters jointly embarked on an extensive exercise to evaluate the existing legislation regulating the manufacture, distribution and sale of liquor for consumption in 1994. An analysis of existing liquor legislation and the state of the liquor industry was conducted in 1996. The outcome of the joint review was a new policy on liquor regulation and draft legislation, which were approved by the Members of the Executive Council responsible for liquor matters through a series of MinMec meetings. The Liquor Policy and the draft Liquor Bill were published for public comment in July 1997. Their publication was followed by extensive consultation with stakeholders at national and provincial level.

The Liquor Bill, 1998, was tabled in Parliament in August 1998 and was approved on 2 November 1998, where after the Bill was referred to the President for his assent. The President had reservations about the constitutionality of the Bill and accordingly referred it to the Constitutional Court under section 84(2) of the Constitution of the Republic Act, 1996 (Act No. 108 of 1996). The Constitutional Court held in *Ex Parte President of the RSA In re: Constitutionality of the Liquor Bill, 2000(1) BCLR (CC)* that the Bill was unconstitutional in certain respects. The Liquor Bill, 2003, was drafted with a view to complying with that judgement.

The Bill provides for a national liquor policy in Chapter 2 of the Bill. These provisions are minimal in content, but are necessary to maintain economic unity, essential national standards and minimum standards required for the rendering of services.

Another new element introduced in the Bill is the establishment of the National Liquor Policy Council, which consists of the Minister of Trade and Industry and the relevant Members of the Executive Council of the provinces. This body is responsible for policy formulation and co-ordination and it gives expression and content to the concept of co-operative governance.

The Bill also provides for public interest prohibitions and the powers of inspection.

### 2. OBJECTS OF BILL

The objects of the Bill are—

- (a) to reduce the socio-economic and other costs of alcohol consumption by-
  - (i) setting essential national norms and standards in the liquor industry;
  - (ii) regulating the manufacture and wholesale distribution of liquor;
  - (iii) setting essential national norms and standards for the regulation of the retail sale and micro-manufacture of liquor;
  - (iv) providing for public participation in the consideration of applications for registration; and
- (b) to promote the entry of new participants into the liquor industry, a diversity of ownership and an ethos of social responsibility in the industry.

### 3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

As the Bill provides that the dti is responsible for the licensing and inspection of national manufacturing and for wholesale licences, the Bill requires that the dti have sufficient capacity to deal with these functions. The Department has provided for a Deputy Director and two Assistant Directors for the licensing and inspection function.

### 4. FINANCIAL IMPLICATIONS

Sufficient funds are available in the current budget for the additional staff required to perform the licensing and inspection function. Provision has also been made in the Medium Term Expenditure Framework.

**5. COMMUNICATION IMPLICATIONS**

As the Bill has been previously consulted on and does not constitute a departure of previously agreed policy, no public consultation process is envisaged, save through the Parliamentary process. However, once the Bill becomes law, extensive communication with industry and other stakeholders will occur through provincial workshops and through the national media.

**6. CONSTITUTIONAL IMPLICATIONS**

The constitutional concerns have been addressed in the new Bill. It is therefore not anticipated that further constitutional matters will arise.

**7. OTHER DEPARTMENTS/BODIES CONSULTED**

The content of the Bill was agreed upon between the Minister of Trade and Industry and the Members of the Executive council responsible for liquor matters in each province.

**8. PARLIAMENTARY PROCEDURE**

The State Law Advisers and the Department of Trade and Industry are of the opinion that the Bill must be dealt with in accordance with parliamentary procedure established by section 76 of the Constitution since it involves an intervention in terms of section 44(2) of the Constitution.